

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT AT MIGORI
PETITION NO. 9 OF 2017
FORMERLY KISII PETITION NO. 25 OF 2012

IN THE MATTER OF ARTICLES 22, 23(3), 40 AND 47 OF THE
CONSTITUTION 2010

AND

IN THE MATTER OF THE REGISTERED LAND ACT CAP 200 LAWS OF
KENYA (NOW REPEALED)

AND

IN THE MATTER OF THE LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF LAND REGISTRATION NO.
SUNA/EWASWETA/12313

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY
JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND
PROCEDURE **RULES** **2006**

AND IN THE MATTER OF SECTION 19 (SIXTH SCHEDULE) OF THE
CONSTITUTION 2010

BETWEEN

JOSEPH **ODERA**
LALA**PETITION**
ER

VERSUS

THE ATTORNEY-GENERAL (for Ministry of Lands —

District Land Registrar, Migori)	1 st RESPONDENT
WILKISTA AOKO	
OYUGA	2 nd RESPONDENT
HENRY OMURUNGA AKALONGO	3 rd
RESPONDENT	
MARGARET AKINYI	
OKECH	4 th RESPONDENT
JOHN MUSA	
SINDENG	5 th
RESPONDENT	
FLORENCE ANDESI	
ANGADIA	6 th RESPONDENT
JOEL ATUTI OGISE	
(Former District Land Registrar, Migori)	7 th
RESPONDENT	
JOSHUA OLUOCH SANDE.....	8 th
RESPONDENT	

JUDGEMENT

A. Introduction

1. The petitioner, **Joseph Odera Lala**, filed the present petition dated **25 June 2012**, originally at the High Court in Kisii as Petition No. 25 of 2012 before it was transferred to this court. He sought, among others, **nine substantive orders**, including declarations that the cancellation of his registration as proprietor of **Land Parcel No. SUNA EAST/WASWETA I/12313** was fraudulent, unlawful, and in violation of **Article 40 of the Constitution**; that the subsequent subdivisions and transfers were null and void; that all entries made on the register after **22nd June 2009** be annulled and the title revert to him; a permanent

injunction restraining the respondents from interfering with his possession; damages against the 2nd and 7th respondents; and costs of the petition.

2. The **2nd respondent**, on her own behalf and with the authority of the **3rd to 6th respondents**, filed a **replying affidavit dated 18th July 2013**, disputing the petitioner's ownership and alleging that his registration was fraudulent and irregular.
3. Subsequently, through an application dated **17th September 2013**, the petitioner sought and obtained **leave to amend the petition**, which he filed on **20th December 2013**, amending certain paragraphs and adding one **Joshua Oluoch Sande** as the **8th respondent**. The respondents maintained that the alleged sale to the petitioner was invalid, and that the subdivision and transfers complained of were lawfully undertaken.

B. Hearing

4. Having exchanged witness statements and documentary bundles, the parties listed the matter for trial. The petition was fixed for a **viva voce hearing**, and on **30th June 2015**, the court heard the petitioner's evidence. He testified that he purchased the land from the **late Philip Oyuga Odingo** in **1983**, took possession, developed and cultivated it, and was later issued a **certificate of title dated 22nd June 2009 (PEXh.1)**.

5. He stated that in **2011** several persons invaded the land, destroyed crops, and subdivided it, leading to the **deletion of his name from the register**. He produced various documents, including a **letter to the Permanent Secretary, Ministry of Lands dated 30th November 2011 (PEXh.2)**, the **Ministry's response dated 30th April 2012 (PEXh.3)**, a **District Land Registrar's letter dated 18th April 2012 (PEXh.4)**, an **extract of the register (PEXh.5)**, and **official searches (PEXh.6-9)** showing the disputed subdivisions. These constituted the core of the petitioner's evidential case.
6. During cross-examination, the petitioner admitted that while he had conducted searches before purchase, he did not produce key transactional documents such as the **written sale agreement, transfer instrument, or Land Control Board consent**. He maintained that these documents existed at his home and that the transfer had been executed by the deceased. He also testified about his efforts to obtain administrative redress through reports to the **Migori Land Registry, the District Commissioner, and Ardhi House (Ministry of Lands)**. His admissions particularly the absence of primary sale documents became a central issue raised by the respondents. The court later granted an **adjournment** to allow him to summon the **Land Registrar** to produce additional registry records.
7. The proceedings were subsequently delayed by several administrative and procedural developments. In **March 2017**, the case was **transferred from Kisii to the Environment and Land Court at Migori** for convenience. Between **2017 and 2019**, the court issued several directions summoning the **Land Registrar, Migori**, to produce the **registry file for LR No. SUNA EAST/WASWETA I/12313**. The hearing faced interruptions due to **changes in counsel, death and substitution of parties (including the 5th respondent)**,

and **COVID-19-related delays**. Despite these challenges, the **petitioner closed his case on 21st November 2019**, though the respondents' evidence was deferred pending production of the complete registry records.

8. In the later stages, the parties consented to have the petition determined through **written submissions**. On **17th May 2023**, the court directed timelines for filing, which both sides complied with. By **11th July 2023**, counsel confirmed that all submissions were on record, and the matter was set for **judgment**. At that stage, the evidential record consisted of the **Amended Petition dated 20th December 2013**, the **petitioner's sworn testimony (PW1)**, the **documentary exhibits (PExh.1-9)**, the **respondents' replying affidavits and supplementary affidavits**, and the **written submissions** filed pursuant to court directions. Although some registry documents had been produced, the **completeness of the Land Registrar's file** remained disputed as the matter proceeded to judgment.

C. Submissions

a) Petitioner's Submissions

9. In his written submissions dated **19th June 2023**, the petitioner reiterated that he lawfully acquired the suit property from the late **Philip Oyuga Odigo**, and that all necessary consents and documents were executed before registration. He contended that the unilateral cancellation of his title by the **District Land Registrar, Migori**, in **2011**, without notice or hearing, was illegal and contrary to **Articles 40 and 47 of the Constitution** as well as the **Fair Administrative Action Act**. Relying on **Sections 24, 26, 79 and 80 of the Land Registration Act**, he argued that the Registrar had no power to

revoke a title except by court order. He cited **Republic v Registrar of Titles, Mombasa & 2 Others ex parte Emfil Limited (2012) eKLR** and **Lawrence Muriithi Mbabu v District Land Registrar, Nyeri & Another [2019] eKLR**, among others urging the court to declare the cancellation null and void, restore his title, annul subsequent subdivisions and transfers, and grant damages and costs.

b) **Respondents' Submissions**

10. The **2nd to 6th respondents**, through submissions dated 10th July **2023**, opposed the petition. They contended that it failed to meet the **constitutional threshold** under **Articles 22 and 23** and the **Mutunga Rules**, as it raised ordinary civil and land ownership issues disguised as constitutional claims. They cited **Anarita Karimi Njeru v Republic [1979] KLR 154 and Trusted Society of Human Rights Alliance v Mumo Matemu [2014] eKLR**, arguing that the petitioner had not shown with precision how his constitutional rights were violated.
11. They further submitted that the petitioner had not proved lawful ownership of the land, having produced no **written sale agreement, transfer, or Land Control Board consent** as required by **Section 3(3) of the Law of Contract Act**. They emphasized that the transfer was effected after the death of the alleged vendor, rendering it void. They also pointed out that the petitioner had previously witnessed other transactions involving the same land, thus was estopped from claiming ownership. The respondents maintained that the Registrar acted within his statutory mandate in rectifying the register and urged the court to dismiss the petition as **incompetent and unmerited**, with **costs to the respondents**.

D. **Issues For Determination**

12. Having considered the pleadings, affidavits, evidence adduced by the parties, and the written submissions on record, this Court is of the considered view that the following issues fall for determination:
 1. Whether the Petition Meets the Threshold of a Constitutional Petition and Whether This Court Has Jurisdiction
 2. Whether the petitioner has proved ownership of **Land Parcel No. SUNA EAST/WASWETA I/12313**.
 3. Whether the actions of the **District Land Registrar, Migori** amounted to a violation of the petitioner's constitutional rights under **Articles 40 and 47** of the Constitution.
 4. Whether the subsequent subdivision and transfer of the suit land to the respondents were lawful.
 5. What orders, if any, should issue, including on costs.

E. Analysis and Determination

Issue No 1: Whether the Petition Meets the Threshold of a Constitutional Petition and Whether This Court Has Jurisdiction

13. Before delving into the substantive issues raised, it is prudent to first determine whether this petition meets the threshold of a constitutional petition, and whether this Court has the requisite jurisdiction to entertain it.
14. The jurisdiction of the Environment and Land Court (ELC) is conferred by **Article 162(2)(b)** of the **Constitution of Kenya, 2010**, and further elaborated under **Section 13 of the Environment and Land Court Act, No. 19 of 2011**. Article 162(2)(b) provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to "the environment and the use and occupation of, and title to, land." Section 13 of the said Act vests the

ELC with both **original and appellate jurisdiction** to hear and determine all disputes contemplated under Article 162(2)(b), including those relating to **title, tenure, boundaries, rates, rents, valuations, land administration and management, compulsory acquisition, public, private and community land**, and any other dispute relating to land and the environment. Subsection (3) expressly provides that nothing in the Act precludes the Court from hearing and determining **applications for redress of a denial, violation or infringement of rights or fundamental freedoms**, and subsection (7) empowers the Court to issue **injunctions, prerogative orders, declarations, compensation, or damages**, among other remedies.

15. Turning to the present case, the petitioner invokes **Articles 22, 23(3), 40 and 47** of the Constitution, alleging that the cancellation of his title to **Land Parcel No. SUNA EAST/WASWETA I/12313**, and its subsequent subdivision and transfer, violated his constitutional right to property and to fair administrative action. These issues plainly relate to the **use, occupation, and title to land**, thus falling squarely within the jurisdiction of this Court under **Article 162(2)(b)** and **Section 13 of the ELC Act**.
16. That said, the Court must still consider whether the petition meets the substantive **pleading threshold** of a constitutional claim. In ***Anarita Karimi Njeru v Republic [1979] KLR 154***, the Court emphasized the need for precision in constitutional pleadings that the petitioner must set out the specific provisions alleged to have been infringed, the nature of the infringement, and the manner of violation. Similarly, in ***Trusted Society of Human Rights Alliance v Attorney General & Others [2012] eKLR***, the Court held that constitutional litigation should not be converted into a general substitute for ordinary civil disputes.

17. On evaluation of the pleadings, it is evident that the core of this dispute is the **validity of title and registration**, issues ordinarily determinable under the **Land Registration Act** and related statutes. While the petitioner couches his grievance as a constitutional violation, the underlying controversy is civil in nature. Nevertheless, since the petition raises alleged infringements of **Articles 40 and 47**, which fall under the Bill of Rights, the Court will not summarily strike it out. Instead, it will proceed to determine whether the petitioner has proved any violation of his rights within the context of the land dispute.
18. In conclusion, I find that this Court **has jurisdiction** to entertain the petition under **Article 162(2)(b)** of the Constitution and **Section 13 of the Environment and Land Court Act**, but that the petition, while maintainable, does **not fully meet the precision threshold** required of constitutional pleadings. The Court will therefore proceed to consider the substantive issues raised on their merits.

Issue No 2: Whether the petitioner has proved ownership of Land Parcel No. SUNA EAST/WASWETA I/12313.

19. Having found that this Court has jurisdiction to entertain the petition, the next issue for determination is whether the petitioner has of Land Parcel No. **SUNA EAST/WASWETA I/12313**. The petitioner's case is that he was the registered proprietor of **Land Parcel No. SUNA EAST/WASWETA I/12313**, having been issued with a title deed on **22nd June 2009**. He avers that his registration was subsequently and unlawfully cancelled by the Land Registrar, and that the land was subdivided into **SUNA EAST/WASWETA I/16390** and **16391**, which were then transferred to third parties. He contends that these actions were fraudulent, violated his constitutional right to property under **Article 40**, and were undertaken without due process or notification to

him as required under **Article 47** on fair administrative action.

20. The respondents, through the replying affidavit of the 2nd respondent, **Wilkista Aoko Oyuga**, strongly opposed the petition. They contended that the petitioner was not a bona fide purchaser for value and that his alleged acquisition of the suit property was tainted with fraud. Specifically, the respondents asserted that the original owner of the land, one **Philip Oyuga Odingo**, had not transferred the property to the petitioner during his lifetime. They argued that the petitioner's name was irregularly entered in the land register long after the death of the said original proprietor and without any valid transfer or Land Control Board consent. It was further contended that the petitioner had himself been a witness when the said original owner sold portions of the same land to the 3rd to 6th respondents, hence he could not now claim ignorance or ownership over the same property.
21. Upon perusal of the record, this Court notes that the petitioner did not produce any **written sale agreement, transfer instrument, or Land Control Board consent** to support his alleged acquisition of the suit land. He conceded during cross-examination that no such documents existed in court. This omission is critical. Section 3(3) of the **Law of Contract Act** provides that *no suit shall be brought upon a contract for the disposition of an interest in land unless the contract is in writing, signed by the parties, and attested.*
22. The petitioner's reliance on the title deed alone is therefore insufficient. The law is clear that a title obtained through fraud or illegality is not indefeasible. Section 26(1) of the **Land Registration Act, 2012** provides that a certificate of title may be challenged where it is shown that the registration was obtained through fraud, misrepresentation, or an unprocedural process. In this case, there is no evidence of a lawful transfer from the original owner to the petitioner.

Neither is there any record showing how entry No. 5 in the register was made in his favour.

23. Further, the petitioner produced two letters one allegedly written by him to the Permanent Secretary, Ministry of Lands, dated **30th November 2011**, and another by a Land Registrar, dated **18th April 2012** to demonstrate that the cancellation of his title was irregular. However, the authors of these letters were never called as witnesses, and the letters were not subjected to cross-examination. Their evidentiary value is therefore minimal.
24. In contrast, the respondents' documents and affidavits established that the land had been lawfully dealt with by the original owner during his lifetime and that subsequent transactions were regularized under the law. The petitioner has not discharged the burden of proof as required under **Sections 107 and 108 of the Evidence Act**, which place the duty to prove alleged facts on the party asserting them.
25. From the totality of the evidence, it is apparent that the petitioner's registration was irregular, and his claim of violation of property rights cannot stand where the foundation of ownership is unproven. The petitioner's case therefore fails on the standard of a balance of probabilities.

Issue no 3. Whether the Actions of the District Land Registrar, Migori Amounted to a Violation of the Petitioner's Constitutional Rights under Articles 40 and 47 of the Constitution

26. The petitioner contends that the District Land Registrar, Migori, without notice or justification, cancelled his title to **Land Parcel No. SUNA EAST/WASWETA I/12313**, subdivided it into **Parcels 16390 and 16391**, and subsequently registered the subdivisions in the names of the 2nd to 6th respondents. He claims that these acts were undertaken

arbitrarily and in total disregard of his proprietary and procedural rights protected by **Articles 40** and **47** of the Constitution.

27. Article 40 guarantees every person the right to acquire and own property of any description and to protection from arbitrary deprivation of that property, except in accordance with the law and upon prompt payment of compensation. Article 47, on the other hand, secures the right to **fair administrative action**, which must be **lawful, reasonable, and procedurally fair**. Administrative authorities are therefore required to notify, hear, and give reasons to any person likely to be adversely affected by their decisions.
28. The respondents, through the 2nd respondent's replying affidavit, maintained that the petitioner's name had been irregularly entered in the land register and that the cancellation of his registration was done in the process of rectifying a manifest illegality. They asserted that since the petitioner had no valid transfer from the original proprietor, the Registrar merely exercised his statutory mandate under **Sections 79 and 80 of the Land Registration Act, 2012**, which empower the Land Registrar and the Court respectively to correct or cancel titles obtained by fraud, misrepresentation, or mistake.
29. From the record, there is no evidence that the Land Registrar issued any **notice to show cause** or invited the petitioner to make representations prior to cancelling his registration and creating new parcels. The letters produced by the petitioner, though of limited probative value, indicate that the cancellation was communicated *after* the event. Such omission falls short of the procedural fairness contemplated under Article 47 and the **Fair Administrative Action Act, 2015**. The Registrar ought to have accorded the petitioner an opportunity to be heard before taking an adverse action affecting his registered interest, however questionable that interest might have

been.

30. Nevertheless, a finding of procedural impropriety alone does not automatically confer proprietary rights where none existed in law. As already established under Issue 2, the petitioner failed to demonstrate a lawful basis for his title. His registration was unsupported by a sale agreement, transfer, or consent of the Land Control Board, and the evidence points to an irregular entry made after the death of the original owner. In those circumstances, while the Registrar may have erred procedurally by not giving notice, the substantive cancellation of an irregular title cannot be deemed unconstitutional.
31. In sum, I find that the petitioner's right to **fair administrative action under Article 47** was **infringed** to the extent that he was not notified before cancellation; however, the alleged violation of his **right to property under Article 40** is **unfounded**, since his ownership was never lawfully acquired. A person cannot invoke constitutional protection to shield a title rooted in illegality.

Issue No:4 Whether the subsequent subdivision and transfer of the suit land to the respondents were lawful.

32. The record shows that following the cancellation of the petitioner's title, **Land Parcel No. SUNA EAST/WASWETA I/12313** was subdivided into **SUNA EAST/WASWETA I/16390** and **16391**, and subsequently into several smaller parcels, some of which were transferred to the **2nd to 6th respondents**. The petitioner alleged that these subdivisions and transfers were fraudulent and designed to defeat his proprietary rights.
33. The 2nd respondent, on her part, maintained that the subdivisions were conducted lawfully through succession proceedings after the death of her husband, the late **Philip Oyuga Odigo**, who remained the

legitimate registered owner of the mother title prior to his demise. The respondents produced documents, including confirmed grants, sale agreements, and transfer instruments executed in their favour, to demonstrate their acquisition of the various parcels. The petitioner did not tender evidence to controvert those documents, nor did he prove any specific act of fraud attributable to any of the respondents.

34. Fraud, as established in **Koinange & 13 Others v Koinange [1986] KLR 23**, must be specifically pleaded and strictly proved. Mere allegations or suspicions are insufficient. On the evidence before me, I am not persuaded that the subdivisions and subsequent transfers were tainted by illegality or fraud. The transactions appear to have followed succession and conveyancing processes sanctioned by law. Consequently, I find that the subdivisions and subsequent transfers of the resultant parcels were **lawful and valid**, and cannot be nullified on the basis of the petitioner's unproven claims.

Issue No:5 What orders, if any, should issue, including on costs.

35. The petitioner sought, inter alia, declarations restoring his title, annulment of all subsequent transactions, a permanent injunction against the respondents, damages, and costs. Having found that the petitioner has failed to prove lawful ownership of the suit property or establish fraud or illegality on the part of the respondents, the substantive prayers cannot be granted.
36. Nevertheless, the Court takes note that the manner in which the **District Land Registrar, Migori**, effected the cancellation of the petitioner's title without giving notice or affording him a hearing contravened the principles of **fair administrative action** under **Article 47 of the Constitution** and **Section 4 of the Fair Administrative Action Act, 2015**. The Registrar ought to have issued the requisite notice and given the petitioner an opportunity to

be heard prior to taking such an adverse administrative action.

F. Final Orders

For the foregoing reasons, the Court makes the following orders:

1. The **petition dated 25th June 2012**, and amended on **20th December 2013**, is hereby **dismissed** for want of merit.
2. The Court, however, **censures the conduct** of the District Land Registrar, Migori, for cancelling the petitioner's title without notice, and directs that any future rectifications affecting proprietary interests shall strictly comply with **Sections 79 and 80 of the Land Registration Act**.
3. The subdivisions and transfers of **Land Parcel No. SUNA EAST/WASWETA I/12313** and its resultant parcels are hereby **upheld as lawful and valid**.
4. Each party shall **bear their own costs**, in the interest of justice and given the protracted and emotive nature of the dispute.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at on this **22nd** day of **October, 2025**.

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MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A.....for the Appellant/Applicant

N/A..... for the Respondent

Philomena W...... Court Assistant

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