



REPUBLIC OF KENYA



KENYA LAW

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**Mbithi & 305 others v Buruchara & 17 others; Mohamed & another
(Interested Parties) (Environment and Land Petition E012 of 2022)
[2025] KEELC 7785 (KLR) (11 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7785 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND PETITION E012 OF 2022
AY KOROSS, J
NOVEMBER 11, 2025**

BETWEEN

**DAVID MBITHI 1ST PETITIONER
JOHN PARKESUI 2ND PETITIONER
SIMON KOSEN 3RD PETITIONER
PATRICK MAKAU 4TH PETITIONER
SOLOMON TING'A 5TH PETITIONER
MUTETE PASERE & 300 OTHERS & 300 OTHERS & 300
OTHERS 6TH PETITIONER**

AND

**PAMELA BURUCHARA 1ST RESPONDENT
JACOB KIILU NGULI 2ND RESPONDENT
AMOS NGARE 3RD RESPONDENT
STEPHEN ONYAMBU 4TH RESPONDENT
MOHAMMED NUNO ABDI 5TH RESPONDENT
BEATRICE SYOMITI MAINGI 6TH RESPONDENT
SAMUEL MUCHIRA OBUYA 7TH RESPONDENT
ISAAC MANGOLE 8TH RESPONDENT
JEMIMAH VERONICAH KIOKO 9TH RESPONDENT
PETER MOBISA NYAMIKA 10TH RESPONDENT**



PETER NDEGWA WACHIRA 11TH RESPONDENT
SHARIFF SINKEEN KANYORO 12TH RESPONDENT
PAMELA BWARI ONYAMBU 13TH RESPONDENT
THE CHIEF LAND REGISTRAR 14TH RESPONDENT
OFFICER COMMANDING STATION-ATHI RIVER POLICE
STATION 15TH RESPONDENT
NATIONAL POLICE SERVICE 16TH RESPONDENT
DIRECTOR OF SURVEYS, MINISTRY OF LANDS & PHYSICAL
PLANNING 17TH RESPONDENT
THE ATTORNEY GENERAL 18TH RESPONDENT

AND

HASSAN MOHAMUD MOHAMED INTERESTED PARTY
MEADOW BROOKE FARM LIMITED INTERESTED PARTY

JUDGMENT

1. Through a petition initially filed on 21 06 2022, and later amended on 23 01 2025, the petitioners request this honourable court to consider granting them the following orders:
 - a. A declaration that the properties known as L.R Numbers 32202, 30031, 22884, 22886, 22887, 21736, 22888, 22889, 29684, 29506, 28519, 29700, 29431, 29861, 25047, 29691, 26987, 25465, 24569, 24733, 2 4863, 24742, 23104, 24762, 32007, 24433, 23175, 28353, 26897 and 26903 situate in Mavoko form part of communal land and the registrations of the said titles were fraudulent as the petitioners as occupiers had the right of preemption before the respondents.
 - b. A declaration that the respondents and or their agent, servants or howsoever by trespassing on the suit property clandestinely registered the properties illegally, placing new beacons, commencing fencing and forcefully preventing the petitioners from accessing the suit properties have violated the petitioners' right to ownership of land, dignity and protection as provided under Articles 28 and 40 of *akn ke act 2010 constitution the Constitution*.
 - c. A declaration that the petitioners have a legitimate expectation to the suit properties, having participated in proceedings of all the task forces set up by the government and accrued interest as a result of the government undertaking to do a survey and issue a title to the local community.
 - d. A declaration that the process of obtaining titles known as L.R numbers 32202, 30031, 22884, 22886, 22887, 21736, 22888, 22889, 29684, 29506, 28519, 29700, 29431, 29861, 25047, 29691, 26987, 25465, 24569, 24733, 24863, 24742, 23104, 24762, 32007, 24433, 23175, 28353, 26897, 26903 by the respondents was illegal, unlawful and done against the principle of natural justice.
 - e. A permanent injunction restraining the respondents and or their agents, servants or howsoever from interfering with the petitioners' quiet and peaceful occupation of the suit properties



known as L.R Numbers 32202, 30031, 22884, 22886, 22887, 21736, 22888, 22889, 29684, 29506, 28519, 29700, 29431, 29861, 25047, 29691, 26987, 25465, 24569, 24733, 24863, 24742, 23104, 24762, 32007, 24433, 23175, 28353, 26897 and 26903 situate in Mavoko.

- f. An order of cancellation of titles known as L.R Numbers 32202, 30031, 22884, 22886, 22887, 21736, 22888, 22889, 29684, 29506, 28519, 29700, 29431, 29861, 25047, 29691, 26987, 25465, 24569, 24733, 24863, 24742, 23104, 24762, 32007, 24433, 23175, 28353, 26897 and 26903 situate in Mavoko.
 - g. An order permanently restraining the 14th respondent from interfering with the petitioners' ownership of the suit properties by illegally registering any interests against the titles.
 - h. A declaration that the beacons placed on the suit properties by the respondents and or their agent, servants or whosoever, without the requisite involvement of the petitioners, are in contravention of the petitioners' right to peaceful occupation of their property.
 - i. A declaration that the petitioners are entitled to the right of preemption and should have been accorded the right to ownership as against the respondents, who are strangers and not members of the Kamba and Maasai Communities, who have been in long occupation of the suit properties.
 - j. That the 15th and 16th respondents be directed to provide security and protection to the petitioners and the suit properties and prevent and curtail the continued trespass and interference with the petitioners' ownership of the suit properties by the respondents and their agents, servants or whosoever.
 - k. Costs of the petition.
2. The petitioners' case was outlined in the amended petition and in the supporting affidavit of Samuel Lulungen Soikan, sworn on 23 01 2025, who described himself as a petitioner and stated that he held the authority to plead, which, unfortunately, has not been presented to this court.
 3. The petitioners' case was that they were the lawful occupants and in possession of land known as L.R. numbers 32202, 30031, 22884, 22886, 22887, 21736, 22888, 22889, 29684, 29506, 28519, 29700, 29431, 29861, 25047, 29691, 26987, 25465, 24569, 24733, 24863, 24742, 23104, 24762, 32007, 24433, 23175, 28353, 26897, and 26903 ("suit properties") located in Mavoko. These were allegedly registered in some of the respondents' names. They challenged these registrations, arguing that they overlooked the fact that the suit properties were private communal land, as they (petitioners) had lived there for 50 years, and that the petitioners had the first right of pre-emption.
 4. They maintained that, in the recent past, the respondents invaded the suit properties, undertook illegal subdivision, and placed illegal beacons without recognising their (petitioners') interests. However, when they raised complaints with the 16th respondent, no action was taken. Even more concerning was that some of the respondents had been transferring building materials to the suit properties under the protection of the 15th respondent.
 5. They argued that these actions breached their right to property under Articles 28, 40, and 64 of *akn ke act 2010 constitution the Constitution*. They also contended that by failing to provide them with security, the 15th respondent had violated their rights under Articles 10 and 43 of *akn ke act 2010 constitution the Constitution*. Additionally, they blamed the 14th respondent for unlawfully registering their land in the names of third parties. It was maintained that they had a legitimate expectation that the suit properties would be registered in their names, as they had participated in various task forces,



including the “Professor George Saitoti” and “Hon. Farida Karoney,” and that there was a general understanding that the government would establish a system to ensure equitable and fair registration in the area.

Respondents’ cases

6. On 20 03 2025, this court struck out the petitioners’ claims against the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 12th and 13th respondents leaving out their claims against the 10th, 11th, 14th, 15th, 16th, 17th, and 18th respondents.
7. The 10th respondent challenged the petitioners’ case through his affidavit sworn on 25 07 2024 and argued that the petition was without merit and did not meet the threshold for a constitutional petition, as neither were the issues raised with precision nor were the alleged provisions of the law that he allegedly contravened disclosed.
8. According to him, he followed the proper legal process in acquiring L.R. No. 22886 (‘ 10th respondent’s land’). In explaining the origin of his title, he stated that he applied for unallocated public land, and an allotment was issued to him on 24 09 2009, as evidenced by his allotment letter. He paid Kshs. 21,020 on 22 06 2010 for it. Subsequently, he initiated the registration process, and a deed plan was issued to him in January 2011. The property was then surveyed, and a new number was allocated. On 17 09 2012, the Director of Surveys wrote to the Commissioner of Lands to verify the authenticity of the letter of allotment, which the Commissioner of Lands confirmed in a letter dated 2 10 2012. Furthermore, on 24 06 2015, a beacon certificate was issued to him.
9. Subsequently, on 6 04 2018, he applied for the registration of a new lease. However, at that time, the Ministry of Lands had misplaced the deed plan. Upon the Chief Land Registrar’s request, the Director of Survey issued a certified copy on 23 09 2020, and a certificate of title was subsequently issued to him on 19 11 2020. He indicated that since the allotment, he has enjoyed peaceful possession of his land until the petitioners trespassed and encroached upon the general area, including his property, without his consent or authorisation. To him, the petitioners are trespassers as he legally owned his land, and he urged the court to dismiss the petition.
10. As for the 11th respondent, he filed an answer to the petition and a cross-petition dated 5 10 2022 and a supporting affidavit of even date. He denied assertions contained in the petition and stated that he was the legal owner of LR No. 21736 (“11th respondent’s land”), which he acquired in 1997 as an innocent purchaser for value without notice of defect in title and without being party to any fraud or misrepresentation.
11. To him, he had always been in occupation of his land, charged it, conducted a survey, inspected beacons, and paid annual land rates. Nonetheless, the petitioners had persistently trespassed on his land and that of his neighbours, prompting him to report them to the 15th respondent. According to him, the petitioners have not produced any documents, instruments, or certificates to support their claim. To him, petitioners’ conduct contravened his right to property as envisaged under Article 40(1) of *akn ke act 2010 constitution the Constitution*, as their acts were fraudulent, illegal, and encroached on his land. Therefore, in his cross-petition, he sought the following reliefs from this court.
 - a. The petition be dismissed.
 - b. A declaration does issue that the petitioners had contravened the 11th respondent’s rights to acquire and own property under Article 40 (1) of *akn ke act 2010 constitution the Constitution*.
 - c. A declaration does issue that the 11th respondent is the bonafide and lawful proprietor of LR No. 21736 as an innocent purchaser for value and without notice of any defect on the title and



without being party to any fraud or misrepresentation and is entitled to rights appurtenant to such registration and holds the said title and all rights arising therefrom as envisaged under Section 26 of the *akn ke act 2012 3 Land Registration Act*.

- d. An order of permanent injunction restraining the petitioners from interfering with the 11th respondent's rights of ownership and possession over LR. No. 21736.
- e. General damages for breach of the 11th respondent's rights of ownership under Article 40 of *akn ke act 2010 constitution the Constitution*.
- f. Any further or other relief that the honourable court may deem just and fit to grant in the circumstances.
- g. The petitioners do bear costs.

Interested parties' response

12. Upon joinder on 19 11 2024, the second interested party ("2nd IP") filed a response dated 10 06 2025 together with the supporting affidavit of Lilian Wambui Gichuru, asserting that it is the bona fide owner of Land Title Nos. 29431 and 29691 ("2nd IP's land"), possessing all the necessary ownership documents after purchasing them from the 1st and 4th respondents sometime in 2018. At that time, the land was still fallow and empty, with no structures or inhabitants, and it has since been developed. Despite this, the petitioners have threatened to invade these properties. To it, the petitioners' acts have contravened its right to acquire and own property under Article 40(1) and Article 64 of *akn ke act 2010 constitution the Constitution*. It urged the court to find and hold as follows: -
 - a. It is the rightful and registered owner of Land Title Numbers 29431 and 29691, situated at Mavoko Municipality in Machakos County.
 - b. The 2nd interested party has not violated the petitioners' right to acquire and own property.
 - c. The petition lacks merit and should be dismissed as against the 2nd interested party.
 - d. The petitioners should bear the costs of the petition.

Parties' written submissions

13. In accordance with the court's directive, the petition was considered through written submissions. The petitioners' legal representative, M s. Mwanzia Kyule & Associates submitted their written arguments dated 24 11 2024. M s. Mogire & Co. Advocates submitted on behalf of the 10th respondent, dated 26 07 2024. Ms. Ndambiri Mwangi & Associates Advocates represented the 11th respondent, with their submission dated 26 02 2024. Lastly, submissions from Ms. Mwangambo & Okonjo LLP were filed on behalf of the 2nd IP, dated 10 06 2025. Accordingly, in the process of identifying and deliberating upon the issues for determination, the court shall meticulously review the arguments presented by the parties in their comprehensive submissions. The court will also take into account relevant statutes and judicial precedents that underpin and contextualise these arguments.

Legal basis of the petition

14. The petition asserts it has been filed under several provisions; however, it specifies that the particular provisions of *akn ke act 2010 constitution the Constitution* violated by the respondents are Articles 28 and 40. These provisions state as follows:



Article 28

“Every person has inherent dignity and the right to have that dignity respected and protected.”

Article 40 (1)

“Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

- (a) of any description; and
- (b) in any part of Kenya.”

Issues for determination, analysis, and determination

15. Turning to the matter at hand, this court has carefully considered the pleadings, arguments from both sides, relevant laws, and the cited precedents. Consequently, the issues that need to be determined are as follows: -

- a. Whether the petitioners had authority to file a representative suit.
- b. Whether the petitioners have proved their rights to dignity and property protected under Articles 28 and 40 of *akn ke act 2010 constitution the Constitution* had been violated by the respondents.
- c. Whether the 11th respondent proved his rights to property protected under Article 40 (1) of *akn ke act 2010 constitution the Constitution* had been violated by the petitioners.
- d. What orders should be made concerning the petition, including an order on costs?

These issues will be addressed consecutively shortly.

- a. Whether the petitioners had authority to file a representative suit.

16. Regarding this matter, it is regrettable that none of the parties raised it for determination. In the amended petition, the six petitioners claim they represent not only their own interests but also those of “300” others. In other words, as envisaged by Order 1, Rule 13 (1) of the Civil Procedure Rules (“CPR”), they had been authorised by the other 300 to appear, plead, or act for them in the proceeding.

17. However, to act in such a manner as required by Order 1, Rule 13 (2), the petitioners needed to produce a written authority signed by the other 300 petitioners, permitting them to file the petition. These provisions of the law were explained in the Court of Appeal decision of *Kenya Trypanosomiasis Research Institute v Anthony Kabimba Gusinjilu (Suing for and on behalf of 112 Plaintiffs)* [2019] KECA 193 (KLR), thus:-

“The authority must be given in writing by each of the other plaintiff and the authority must be filed in court. The result is that the nominated plaintiff(s) becomes the named plaintiff and acts in a representative capacity. He becomes an active plaintiff and is dominus litis with regards to taking control of the suit, initiating any processes and signing documents.”

18. The details regarding the “300 others” remain unknown. Worse is, Samuel Lulungen Soikan, the deponent of the affidavit supporting the amended petition, is a stranger to the amended petition, as his name appears solely within this affidavit and nowhere else.



19. Accordingly, based on the relevant legal provisions and prevailing jurisprudence, it is evident that petitioners cannot purportedly appear, plead, or act on behalf of others unless explicitly authorised in writing, with such authority duly filed in the proceeding. Given that the suit is a representative action, the absence of written authority from the purported 300 petitioners renders this amended petition and cross petition fundamentally flawed and susceptible to being struck out.
20. Following this, the court finds the petition and cross-petition incompetent. Costs follow the event; thus, the petition and cross petition are hereby struck out with the petitioners and 11th respondent bearing their respective costs. The 10th respondent and the 2nd interested parties shall have costs. In the end, the court hereby issues the following final orders: -
- a. That the petition and cross-petition are hereby struck out, with the petitioners and 11th respondent bearing their respective costs.
 - b. That David Mbithi, John Parkesui, Simon Kosen, Patrick Makau, Solomon Ting'a and Mutete Pasere shall jointly and severally personally bear the 10th respondent's and 2nd interested party's costs.

Judgment accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 11TH DAY OF NOVEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

11.2025

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Ndambiri for 11th respondent.

Mr. Mogire for 10th respondent.

Miss Nyanchera holding brief for Mr. Mwangambo for 2nd interested party.

Mr. Lakicha for 1st interested party.

