



**Wanjiru (As Administrator of the Estate of Noah Karuga Koinange) v Kariuki (As Executors of the Estate of Wilfred Koinange Gathiomi) (Environment and Land Petition E015 of 2024) [2025] KEELC 5846 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5846 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ENVIRONMENT AND LAND PETITION E015 OF 2024**

**JA MOGENI, J**

**JULY 31, 2025**

**IN THE MATTER OF: ARTICLES 19, 20, 21(1) & (2), 22(1) & 2 (2), 23(1) & (3), 47(1) & (2), 60 (1) (B), 162 (2)(B), 165 (3) (B) & (D) 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF ARTICLES 40, 47 AND 50 (1) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: SECTION 111 OF THE LAND ACT, 2012**

**AND**

**IN THE MATTER OF: LAND VALUE INDEX LAWS (AMENDMENT) ACT, 2018**

**AND**

**IN THE MATTER OF: SECTIONS 24, 25, 26 & 101 OF THE LAND REGISTRATION ACT (REPEALED)**

**AND**

**IN THE MATTER OF: VIOLATION OF THE PETITIONERS' RIGHT TO PROPERTY BY ILLEGAL ACQUISITION AND ALIENATION OF THE PETITIONERS' LAND PARCEL KIAMBAA/WAGUTHU/1306. KIAMBAA/ WAGUTHU/1302 AND LIMURU/ BIBIRIONI/2223 SITUATED WITHIN KIAMBU COUNTY BY RESPONDENT WITHOUT COMPESATION AS REQUIRED BY THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**ANNASTASIA WANJIRU (AS ADMINISTRATOR OF THE ESTATE OF NOAH KARUGA KOINANGE) ..... PETITIONER**

**AND**



**JOEL NG'ANG'A KARIUKI (AS EXECUTORS OF THE ESTATE OF WILFRED KOINANGE GATHIOMI) ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner filed a Petition dated 30/10/2024 seeking: -
  - a. A declaration that the action of the Respondent by intermeddling with Kiambaa/Waguthu/532 and Kiambaa/Waguthu/1026 which were combined and subdivided into Kiambaa/Waguthu/1305, Kiambaa/Waguthu/1306 and Kiambaa/Waguthu/1307 has violated the Petitioner' and/or the Proprietors in Common's right to property guaranteed by Article 40 of *the Constitution* of Kenya, 2010.
  - b. A declaration that the Land Registrar Kiambu County to Cancel Title deed Numbers Kiambaa/Waguthu/1306, Kiambaa/Waguthu/1302 and Limuru/Bibirioni/2223 which are Currently in the name of Wilfred Koinange Gathiomi and order the Respondent Joel Ng'ang'a Kariuki to Surrender the said titles before the Lands Registrar Kiambu County for Cancellation.
  - c. A declaration that the action of the Respondent in intermeddling with Kiambaa/Waguthu/461 which was further subdivided to Kiambaa/Waguthu/1300 (subdivided to Kiambaa/Waguthu/5737 and Kiambaa/Waguthu/5738), Kiambaa /Waguthu/1301 and Kiambaa/Waguthu/1302 by the Respondents has violated the Petitioner's and/or the Proprietors in Common's rights to security of land rights guaranteed by Article 60 (1) of *the Constitution* of Kenya, 2010.
  - d. A declaration that the Respondents continued intermeddling with Limuru/Bibirioni/623. which was subdivided to Limuru/Bibirioni 2221, Limuru/Bibirioni/2222 (which was further subdivided into 10 parcels of land namely Limuru/Bibirioni/6816/6817/6818/6819/6820/6821/6822/6823/6824/6825, and Limuru/Bibirioni/2223 has violated the Petitioners' and/or Proprietors in Common's right or beneficiaries legitimate expectation to right to own property as guaranteed under Article 40 of *the Constitution*.
  - e. A declaration that Title deed Numbers Kiambaa/Waguthu/1306, Kiambaa/Waguthu/1302 and Limuru/Bibirioni/2223 which are Currently in the name of Wilfred Koinange Gathiomi be cancelled by the Registrar of Land Kiambu as they were not regularly acquired and this has violated Petitioner's and/or the Proprietors in Common's rights under Article 14 of the African Charter on Human and Peoples Rights relating to protection of the right to property.
  - f. A declaration that the Respondent action of trespassing and alienating Kiambaa/Waguthu/532 the Respondents have violated the Petitioners' and/or the Proprietors in Common's and beneficiaries rights under Article 17 of the Universal Declaration of Human Rights relating to protection of the right to property.
  - g. A declaration that the title deeds in dispute that was awarded to Wilfred Gathiomi be cancelled by the Lands Registrar Kiambu County and the register be rectified appropriately and revert the parcels of land in dispute to the estate of Noah Karuga Koinange since they were in violation of the Article 40 of the Constitution of Kenya.



- h. A Conservatory order restraining the Respondent from continued trespass and intermeddling with the Kiambaa/Waguthu/532.
  - i. Conservatory order restraining any intermeddling with Kiambaa/Waguthu/1300 (subdivided to Kiambaa/Waguthu/5737 and Kiambaa/Waguthu/5738) registered in the name of Joyce Kagendo Koinange until this application is heard and determined.
  - j. Costs of this Petition to be borne by the Respondent in any event.
  - k. A declaration that further continuous intermeddling of the Respondent with the suit property is a total violation of the Petitioner's right and the action is illegal null and void in law.
  - l. Such other orders that this Honourable Court shall deem just.
2. In the Petition, the Petitioner contended contravention and violation of her constitutional rights under Article 19, 20, 22, 27, 40, 60, 162 and 258 of *the Constitution* over and in relation to property known as Kiambaa/Waguthu/461, subdivided to Kiambaa/Waguthu/1300 (subdivided to Kiambaa/Waguthu/1301 and Kiambaa/Waguthu/1302, and Limuru/Bibirioni/632 subdivided to Limuru/Bibirioni/2221, 2222 and Limuru/Bibirioni/2223 where the Petitioner alleges that the parcels of land in dispute were distributed according to the provisions of the elders award that was read on 18<sup>th</sup> May 1992.
  3. She avers that the Respondent has continuously trespassed on the land forming the estate of her father and has encroached on parcels registered under her father's name (to which she is Administrator). That the Petitioner and other beneficiaries have been unable to obtain vacant possession of the suit property.
  4. It is the Petitioner's contention that other beneficiaries and her, have never consented to the issuance of a lease or title to the Respondent. That the unconstitutional and illegal alienation of the suit property has deprived the Petitioner and other beneficiaries of the estate of the deceased person of their constitutional right to and interest in the suit property.
  5. The Petition is supported by the Affidavit of the Petitioner sworn on even date. The Petitioner deposed that she is the daughter and administrator of Noah Karuga Koinange as per the annexed copy of Confirmation of Grant. She avers that the matter in Court relate to a land dispute which involve parcels of land registered in the name of Wilfred Koinange Gathiomi but the legally registered owner of the said parcels is Noah Karuga Koinange as per the annexure of copies of title.
  6. She deposes that whereas the parcels are registered in the name of Wilfred Koinange Gathiomi now deceased, she still holds the original titles. It is her evidence that the titles in dispute are Kiambaa/Waguthu/1306, Kiambaa/Waguthu/1302, and Limuru/Bibirioni/2223 in the name of Wilfred Koinange Gathiomi. That her father Noah Karuga Koinange was given the Land Reference Kiambaa/Waguthu/532 (as per annexure of copy of title) by his father in 1952 and he constructed a house thereupon in 1966 and drilled a borehole but he passed away in 2003.
  7. She gives a detailed history of the subdivisions and avers that the orders sought in the Petition will not harm nor prejudice the Respondent since she is seeking justice and fairness.
  8. The Petition is opposed by the Respondent who filed a response and stated in the response that he was responding to the Petitioner's letter dated 28/02/2025. My assumption is that he is referring to the Summons served upon him by the Petitioner. Whereas the Respondent was expected to file a Replying Affidavit, he chose to file what I consider as a letter to the Petition and reiterated the issues raised in the document earlier received in Court. Without too much regard to technicalities for all intends and purposes this is a Reply to the Petition.



9. He averred that the issues in the Petition were brought before the elders at the same time the matter was filed and tried at the High Court as already stated was finalized 30 years ago and long before the new constitutional dispensation. He responds that the late Noah Karuga Koinange had sold 18.37 acres of family land without authority. When it was taken to the elders it was decided that the said acres should be deducted from his share. At the same time, the High Court pronounced itself on this when the matter was filed in the Court and a decision made on 30/07/1992.
10. Apart from that he avers that the Court ruled that the Petitioner's father do surrender the title deeds held by him to facilitate distribution by elders and a copy of the Court orders dated 10/02/1993 is attached as testament. He further avers that since the titles were to be surrendered as per the order of the Court then the Petitioner's statement that she is still in possession of the titles which were to be surrendered means she bears invalid title deeds.
11. It is the Respondent's contention that the Petitioner is making an attempt to resurrect a matter that was settled decades ago which is an abuse of the Court process and the Petition should be dismissed.
12. The Petitioner filed written submissions dated 27/11/2024 and submitted on the issue of whether this Court had jurisdiction to determine the Petition. I am not sure why the Petitioner chose to submit on this issue since it was not an issue that came up in Petition nor in the Respondent's response.
13. It was her submission that the suit is properly placed before the Court since it relates to human rights violations as enshrined in the Bill of Rights under *the Constitution*. In her submissions on the issue of jurisdiction she relied on the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank limited & 2 Others (2012)eKLR.
14. She further stated that under Article 162 (b) of the Constitution, this Court has exclusive jurisdiction to hear and determine disputes related to the environment, the use and occupation of, and title to land, therefore this is the best forum to hear and determine the matter before this Honourable Court. That Under Article 258 (1) of *the Constitution* provides that every person has the right to institute Court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
15. Further that the issue before this Court is that there is Constitutional violation of the right of the Petitioner, the continuous harassment by Respondent towards the Petitioner in terms of interfering with quite possession and enjoyment of the land offends provisions of Article 40 of *the Constitution* of Kenya 2010, which provides that every person has the right, either individually or in association with others, to acquire and own property of any description in any part of Kenya.
16. The Respondent action for continuous trespass on the said piece of land denying the Petitioner and other beneficiaries opportunity to use and enjoy the land which are rightfully theirs amount to discrimination which offends provisions of Article 27 of *the Constitution* of Kenya which guarantees equality and freedom from discrimination.
17. The Petitioner also raises concerns about the enforcement of Article 40 of *the Constitution* against the Respondent. It was thus her argument that this Court should not overlook provision of Article 40 if read with Article 40{2} of *the Constitution* which provides that Parliament cannot pass a law that allows the Government or any person to limit or restrict the right to property.
18. The Petitioner humbly submits that the right to be heard is a fair practise guaranteed under *the Constitution* and therefore this Court should not dismiss the Petition but grant her the opportunity to be heard on merit since the matter in this Court raises the constitutional violation issues.



19. She submitted further that the law on striking out of pleadings is provided for under Order 2 rule 15 of the Civil Procedure Rules. That the word used in that rule is "may" which shows that the Court is clothed with discretionary jurisdiction to allow striking out and also order a party to amend instead of striking out.
20. It is her contention that the question here should be whether the Petition discloses a cause of action that must be determined upon a perusal of the Petition, together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true and in this case the Petitioner has attached her Supporting Affidavit detailing the issues before this Court.
21. She further submitted that it is trite law that a suit can only be struck out in the clearest of the cases where the Suit looks hopeless and no life can be breathed into it. Further that Courts of law should endeavour to sustain suits than striking them out.
22. She relied on the case Jubilee Insurance Company Limited v Grace Anyona Mbinda [2016] eKLR, the case of Blue Shield Insurance Company Ltd vs. Joseph Mboya Oguttu [2009] eKLR, Crescent Construction Co. Ltd Vs Delphis Bank Ltd (2007) eKLR and the case of D.T. Dobie & Company (Kenya) Ltd -vs- Muchina (1982) KLR 1.
23. The Respondent in submissions stated that this matter was settled 30 years ago by Court. That there are two elders who placed boundaries on the suit property and the father of the Petitioner was satisfied with the elders' award and although he lived till 2003, he never raised a question.
24. Further that the Court confirmed the elders award which was adopted in May 1992 and a Decree issued on 9/06/1992 with regard to land parcels Kiambaa/Waguthu/1302, Kiambaa/Waguthu/1306 and Limuru/Bibirion/2223 and others. That even on 18/10/2024 the High Court dismissed the Petitioner's application dated 19/07/2024 where she sought to set aside the Ruling of the Court delivered on 30/1/1992 pursuant to the Decree issued on 9/06/1992.
25. The Respondent submitted that she is seeking similar orders from this Court whereas this matter has been settled and therefore the Petitioner has no right to bring up this matter again.

### **Determination**

26. I have taken time to read through the Petition dated 30/10/2024 and in particular, part B which read 'Constitutional Foundation of the Petition' and part F, G, H and I which focuses on the nature of injury and the international treaties and convention, the African Charter on Human and People's Rights and Universal Declaration of Human Rights respectively."
27. It is clear to me that the Petitioner has laid out the actions by the Respondent which she believes were wrong and unconstitutional as well as the provisions of *the Constitution* and various human rights instruments, which the Petitioner believes were violated. However, the Petitioner has not clearly provided "who" "what" and "why" to this Court and as such I find that the Petition as drawn and filed does not meet the threshold for a Constitutional Petition.
28. More importantly, is that a party is bound by its pleadings. A further look at the pleadings indicate that the Petitioner (sic) was aggrieved with the decision of the High Court in 1994 which she chose not to disclose about instead choosing to focus on trespass issues. This Court has often stated its position on the suitable approach parties ought to take when laying a claim to land and seeking declaratory orders for proprietorship.



29. The matters in the instant Petition are those that require evidence. The rules of evidence are very clear, that he who alleges must prove. Section 107 – 109 provide thus: -

“ 107. Burden of proof.

- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact. The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

30. It is a well settled principle that the Petitioners in any Constitutional Petition ought to demonstrate with some degree of precision, the right they allege has been violated, the manner it has been violated and the relief they seek for that violation (See Anarita Karimi Njeru vs Republic (supra) and Trusted Society of Human Rights Alliance vs Attorney General and Others Petition No.229 of 2012).

31. This being a claim of violation of constitutional rights, it is also a matter of principle that one cannot claim to be deprived of that which he does not have rights over. In Veronica Njeri Waweru & 4 Others v City Council of Nairobi & 2 Others [2012] eKLR the Court observed:-

“The Petitioners have readily conceded that they have been occupying public property, a road reserve, for the last ten years. They have licenses to operate businesses, but have no proprietary interest in the land. Clearly, therefore, their claim that their rights under Article 40 have been violated has no basis. They do not own the land, and they therefore cannot be deprived of that which they have no rights over. I therefore find and hold that there has been no violation of the Petitioner’s right to property under Article 40.”

32. The pertinent question therefore would be whether or not the Petitioner is able to establish in a Constitutional Petition that she has rights and interests over the suit land, or whether the Court is able to do justice in such a Petition.

33. Section 26 of the Land Registration Act is categorical that a Certificate of Title is prima facie evidence that the person named therein is the proprietor of the land but the same can be challenged where the Certificate of Title has been acquired fraudulently, unprocedurally or through corrupt practice.

34. The Petitioner in this case ought to have explored a possibility of filing a Civil suit if she is not caught up with Section 7 of the Limitation of Actions Act, as an avenue in which her claim whether legitimate or not would be entertained.

35. Arising from the above, it is my finding that the Petitioner has not met the threshold of a Constitutional Petition. The Petition dated 30/10/2024 is hereby struck out and given the nature of the relationship between the parties each party to bear their own costs for the Petition. It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 31<sup>ST</sup> DAY OF JULY 2025.**



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**MOGENI J**

**JUDGE**

In the presence of:-

Anastacia – Petitioner in person

Joel Ng'ang'a – Respondent in person

Melita – Court Assistant

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**MOGENI J**

**JUDGE**

