

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ELC PETITION NO E001 OF 2025**

RUFUS J. M MUGWIKA.....PETITIONER

-AND-

ISAIAH KARIRA [SUED ON HIS OWN BEHALF AND AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE ESTATE OF THE LATE SAMUEL M’IMAGANA).....1<sup>ST</sup> RESPONDENT

DISTRICT LAND ADJUDICATION

SETTLEMENT OFFICER..... 2<sup>ND</sup> RESPONDENT

LAND REGISTRAR MERU.....3<sup>RD</sup>

RESPONDENT ATTORNEY GENERAL.....4<sup>TH</sup>  
RESPONDENT

**JUDGMENT**

1. The Petitioner has approached the court *vide* amended Petition dated the 25<sup>th</sup> June 2025 brought pursuant to the provisions of **Article 22, 27, 40 and 50 of the Constitution 2010** and wherein the Petitioner has sought various reliefs. The reliefs sought are highlighted as hereunder;

*a. A declaration that the actions of the Respondents amount to violation of Constitutional rights of the Petitioner and are hence unconstitutional, null and void ab initio.*

*b. A mandatory order compelling the Land Registrar Tigania to cancel land parcel RUIRI/RWARERA/10075 which is an illegal sub-division of the original RUIRI/RWARERA/321 and revert it to the original RUIRI/RWARERA/321 originally measuring 29.75 Acres.*

*c. Order of certiorari quashing the decision of the Adjudication officer in Objection No.2097 in respect of land parcel RUIRI/RWARERA/321 originally measuring*

***approximately 29.75 Acres which was rendered without the involvement of the petitioner.***

***d. A permanent order of injunction restraining the respondents themselves, agents, families, employees or any other person acting at their behest from interfering with parcel no. RUIRI/RWARERA/10075.***

***e. Any further orders this Honorable court deems just in furtherance of justice.***

***f. Costs of this Petition.***

2. The Petition is anchored on the various grounds which have been enumerated in the body thereof. In particular, the Petitioner has contended that same is the lawful proprietor of all that parcel of land known as Ruiru/Rwarera/321 [hereinafter referred to as the suit property]. Furthermore, the Petitioner has averred that same was adjudicated as the owner of the suit property in the year 1977. In addition, it has been averred that the suit property measures 29.75 acres.
3. Moreover, the Petitioner has contended that on or about the year 2023 same was issued with a certificate of title indicating that the suit property measured 5.67 HA. However, the Petitioner contended that the acreage reflected in the certificate of title did not correspond with the acreage of the suit property which was indicated in the adjudication record, including the register of existing rights [RER]. In this regard, the Petitioner averred that same instructed and retained an advocate to procure various documents from the land adjudication and to discern the basis of the reduction of the acreage of the suit property.
4. It was the contention of the Petitioner that upon procuring various documents from the land adjudication same discovered that some purported objection had been lodged against his title and thereafter objection proceedings undertaken by the 2<sup>nd</sup> Respondent, albeit without the knowledge and involvement of the Petitioner. In this regard, the Petitioner has contended that the objection proceedings that led to the reduction of acreage of the suit property were illegally instituted and prosecuted and thus same are a nullity. Moreover, the Petitioner has contended that the objection proceedings have constituted and/or

amounted to violation of his constitutional right[s] and Fundamental Freedom[s] in terms of **Articles 40, 47 and 50 of the Constitution 2010.**

5. The amended Petition is supported by the affidavit sworn by the Petitioner on the 25<sup>th</sup> day of June 2025 and the various annexures thereto. Moreover, the contents of the supporting affidavit have reiterated the grounds enumerated and highlighted in the body of the Petition.
6. The 1<sup>st</sup> Respondent duly entered appearance and filed a response dated the 9<sup>th</sup> July 2025 and wherein the 1<sup>st</sup> Respondent contended that the Petition beforehand is *devoid* of merits; constitute[s] an abuse of the due process of the court and is predicated on conscious and deliberate falsehood[s]. Furthermore, it has been contended that the amended petition is deficient and fatally defective for want of particularity and specificity.
7. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents duly entered appearance and filed a replying affidavit sworn on the 10<sup>th</sup> July 2025 and to which the deponent of the replying affidavit has annexed various documents including a copy of the objection proceedings which were lodged against the suit property. Furthermore, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent[s] have contended that the suit property was subjected to objection proceedings mounted by the petitioner and which objection proceedings were heard and disposed of *vide* a decision rendered on 20<sup>th</sup> May 2018, culminating into the partitioning of the suit property into two.
8. The petition came up for directions whereupon the advocates for the parties intimated to the court that same shall proceed on the basis of *viva voce* [Oral] evidence. To this end, the court proceeded to and issued directions pertaining to the filing of witness statement[s]; list of witnesses; and list and bundle of documents. Thereafter the court set down the petition for hearing.
9. The Petitioner's case is premised on the evidence of one witness, *namely*; Rufus J Mbaya Mugwika. Same testified as PW1.

10. It was the testimony of the witness [PW1] that same is the Petitioner herein. In addition, the witness averred that by virtue of being the Petitioner same is conversant/familiar with the facts of this case. In addition, the witness averred that same has since recorded and filed a witness statement dated the 31<sup>st</sup> July 2025; and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
11. Furthermore, the witness also referenced the supporting affidavit sworn on the 25<sup>th</sup> June 2025 and which affidavit the witness sought to adopt as additional evidence in chief. Suffice it to state that the contents of the supporting affidavit were equally adopted and constituted as additional evidence on behalf of the Petitioner.
12. The witness thereafter referenced a further affidavit sworn on the 25<sup>th</sup> July 2025 and similarly sought to adopt same as further evidence. For good measure, the further affidavit sworn on the 25<sup>th</sup> July 2025 was adopted and constituted as evidence-in Chief of the witness.
13. It was the further testimony of the witness that same has also filed a list and bundle of documents dated the 31<sup>st</sup> July 2025 and which documents the witness sought to tender and produce before the court. There being no objection to the production of the documents, same were tendered and produced as exhibits P1 to P8, respectively.
14. On cross examination by learned counsel for the 1<sup>st</sup> Respondent, the witness testified that the suit land is situated at Ruiru Rwarera Adjudication Section. In particular, the witness testified that same was allocated the land during the adjudication process. Moreover, the witness averred that same does not reside on the suit land. On the contrary, it was the testimony of the witness that same cultivates the land.
15. It was the further testimony of the witness that same was confronted by the 1<sup>st</sup> Respondent who contended to be the owner of the land in question. In this regard, the witness averred that he was constrained to and lodged a complaint with the police. To this end, the witness referenced exhibit P2

which is a copy of the occurrence book [OB] which was issued by the police upon the reporting/lodgement of the complaint.

- 16.Regarding the nature of the complaint, the witness averred that his complaint was to the effect that the 1<sup>st</sup> Respondent was laying a claim to ownership of the suit property. However, when confronted with the contents of the OB report, the witness averred that same did not lodge a complaint pertaining to forcible detainer. Moreover, the witness indicated that the contents of the OB were recorded by the police and not by himself. In any event, the witness added that he does not appreciate what forcible detainer denotes.
- 17.Whilst still under cross examination, the witness testified that same was issued with a certificate of title on the 29<sup>th</sup> June 2023. Moreover, the witness averred that he has produced a copy of the certificate of title as one of the exhibits before the court. Additionally, the witness testified that the acreage on the certificate of title indicate[s] 5.67HA, which translate[s] to approximately 14 acres. Besides, the witness averred that same has been knowledgeable of the acreage of the suit property since June 2023.
- 18.It was the further testimony of the witness that when he discovered the reduced acreage same went to the office of the land to alert the land offices of the deficiency in the acreage of the suit property. However, the witness conceded that he did not reduce his complaint/protest into writing. In particular, the witness reiterated that the complaint about the acreage of his land was not reduced into any letter or memorandum.
- 19.Whilst still under cross examination, the witness averred that same filed/lodged objection number 2097. However, the witness quickly changed tune and indicated that same did not lodge objection number 2097. Moreover, the witness posited that same does not know anything about objection number 2097.

20. Upon being referred to exhibit P4, the witness stated that the Document is a copy of the objection proceedings in respect of objection number 2097. Furthermore, the witness testified that it is him who has filed the document before the court. Moreover, the witness testified that he got to know of the objection proceedings in the year 2014.
21. Nevertheless, and upon being referred to the date at the foot of the objection proceeding[s], the witness averred that the objection is dated the 8<sup>th</sup> March 2018. To this end, the witness conceded that the document could not have been discovered in the year 2014 in the manner alluded to earlier.
22. Additionally, it was the testimony of the witness that same came to discover about the document [objection proceedings] in the year 2015. Nevertheless, when the date of the objection proceedings were repeated to the witness, the witness again conceded that the document could not have been discovered in 2015.
23. Regarding the person who is indicated as the objector, the witness testified that the objector is shown as Rufus Mbaya Mugwika. To this end, the witness conceded that the objector is himself. In addition, the witness also acknowledged that the objection proceedings contained his identity card number. Moreover, the witness also averred that the objection proceedings also bear his thumbprint. Nevertheless, the witness was quick to state that the thumbprint shown do not belong to him.
24. It was the further evidence of the witness that despite having seen his name on the objection proceedings; his identity card; and the thumbprint, same has never lodged any formal complaint to deny the objection proceedings.
25. The witness further averred that the objection proceedings have also referenced the name of one Jane Kararu. However, the witness indicated that the said Jane Kararu is not his wife.
26. On further cross examination, the witness testified that the objection proceedings appear[s] to have been heard and concluded by the land

adjudication officer. Moreover, the witness stated that the decision of the land adjudication officer indicated that the suit property was to be partitioned into two and that he [witness] was to retain 12 acres whilst the remainder was to be awarded to the 1<sup>st</sup> Respondent. In addition, the witness also confirms that the land adjudication officer also decreed the creation of a new number, *namely*; plot number 10075.

27. It was the further testimony of the witness that same has never filed any appeal to the minister to challenge the decision of the land adjudication officer. Moreover, the witness testified that the land registry/office wrote to him [witness] in 2023. In particular, the witness posited that the contents of the letter written in 2023 touched on and concerned implementation of the decision of the land adjudication officer.
28. On cross examination by learned counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents; [the honourable attorney general] the witness averred that his I.D Number is 8883738. Moreover, the witness averred that the I.D Number shown at the foot of the objection proceedings is the same as his I.D Number. Moreover, the witness averred that he is the only one who is in custody of his I.D Number.
29. It was the further testimony of the witness that he is the owner of plot number 321. Furthermore, the witness averred that plot number 321 is duly captured/reflected at the foot of exhibit P1 [copies of the register of existing rights]. In addition, the witness averred that part 14 of the adjudication record which has been produced before the court reflects objection number 2097. Moreover, the witness acknowledged that the said objection is indicated to have been lodged on the 8<sup>th</sup> March 2018.
30. Whilst still under cross examination, the witness testified that the objection proceedings were concluded and a decision was made wherein it was indicated that plot number 321 was to be partitioned into two and a portion thereof was assigned as plot number 10075.
31. It was the further testimony of the witness that after conclusion of the adjudication process same inspected the register and confirmed the details

thereunder. In particular, the witness highlighted part 9 which shows/reflected that his land measured 5.67 HA.

32.It was the further testimony of the witness that same has produced before the court a copy of the objection proceedings. Nevertheless, the witness averred that the objection proceedings were procured/obtained from the land office. In addition, the witness averred that he acquired the objection proceedings on the 10<sup>th</sup> January 2025.

33.With the foregoing testimony, the Petitioner's case was closed.

34.The 1<sup>st</sup> Respondent's case is premised on the evidence of one witness, *namely*; Issaih Karira. Same testified as RW1.

35.It was the testimony of the witness that same is the 1<sup>st</sup> Respondent herein. In this regard, the witness posited that by virtue of being the 1<sup>st</sup> Respondent, same is therefore conversant/familiar with the facts of the case. Additionally, the witness testified that same has since filed a response to the petition dated the 9<sup>th</sup> July 2025 and which response the witness sought to adopt and rely on.

36.Furthermore, the witness referenced the statement dated the 28<sup>th</sup> August 2025 and thereafter sought to adopt and rely on the witness statement as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

37.Moreover, the witness adverted to the list and bundle of documents dated the 22<sup>nd</sup> August 2025 and thereafter sought to tender the said document as exhibits before the court. There being no objection to the production of the documents, same were tendered and produced as exhibits D1 to D5 on behalf of the 1<sup>st</sup> Respondent.

38.On cross examination, by learned counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the witness averred that the plot number 10075 was registered in the name of his father [now deceased]. Furthermore, the witness testified that plot number 10075 arose from the objection

proceedings which were heard and determined by the 2<sup>nd</sup> Respondent. In particular, the witness referenced objection number 2097.

39. Whilst still under cross examination, the witness averred that the objection proceedings were heard and determined *vide* ruling rendered on the 28<sup>th</sup> May 2018. Moreover, the witness testified that plot number 10075 was birthed from the objection proceedings touching on and affecting plot number 321.

40. On cross examination by learned counsel for the Petitioner, the witness testified that plot number 10075 arose from the objection proceedings. Furthermore, the witness pointed out that the objection underpinning the proceedings was number 2097. In addition, the witness posited that the objection was heard and determined in 2018.

41. Whilst still under cross examination, the witness testified that same participated during the objection proceedings. Nevertheless, the witness clarified that his participation was by way of assisting his father [now deceased], who was the Respondent to the Objection lodged.

42. It was the further testimony that his father [now deceased] was not the original owner of plot number 321. On the contrary, the witness averred that the original owner of plot number 321 was M'Maitai M'Mugambi.

43. On further cross examination, the witness testified that the decision of the land adjudication is shown to have been made on the 28<sup>th</sup> May 2018. Furthermore, the witness added that the decision was in favour of his father [now deceased].

44. With the foregoing testimony, the 1<sup>st</sup> Respondent's case was closed.

45. The case for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents revolves around the evidence of one witness, *namely*; Mary Maina. Same RW2.

46. It was the testimony of the witness that same is the Sub-county land adjudication and settlement officer -Meru Central. Moreover, the witness averred that same has attended court to give evidence pertaining to plot

number 321 and 10075 Ruri Rwarera Adjudication Section. Furthermore, the witness pointed out that same is conversant with the facts of the case beforehand.

47. It was the further testimony of the witness that same has since recorded and filed a replying affidavit sworn on the 10<sup>th</sup> July 2025. Furthermore, the witness also adverted to the witness statement dated the 30<sup>th</sup> July 2025. Thereafter, the witness sought to adopt and rely on the contents of the replying affidavit and the witness statement as her evidence in chief.

48. In this regard, the replying affidavit and the witness statement under reference were duly adopted and constituted as the evidence in chief of the witness.

49. On cross examination, by learned counsel for the 1<sup>st</sup> Respondent, the witness averred that same participated in the objection proceedings. Moreover, the witness confirms that the objector was Rufus Mbaya Mugwika – the Petitioner herein.

50. It was the further testimony of the witness that the objector also had a witness namely; Jane Karuru Mworira. On the contrary, the witness averred that the Respondent to the objection was Samuel Imangángá Twerangi. Moreover, the witness averred that the Respondent also had witnesses including: Ali Hamisi; Rebere Kiunga and Mwenda Muguna, respectively.

51. Whilst still under cross examination, the witness averred that same captured the names of the parties as well as their I.D Card Numbers. In particular, it was the testimony of the witness that the I.D Card Numbers were captured upon the production thereof by the parties. Furthermore, the witness testified that the adjudication office does not keep/maintain a data bank for I.D Card Numbers for the parties. For good measure, the witness reiterated that the I.D Card Numbers are recorded when the parties appear/show up during the objection proceedings.

52. It was the further testimony of the witness, that other than the identity card numbers, the adjudication department also requires the parties to

thumbprint the proceedings. In this case, the witness averred that the objector duly thumb-printed during the proceedings at the close of his [objector's] testimony. In addition, the witness posited that the objector also gave out two cell-phone numbers which are also indicated at the foot of the proceedings.

53. It was the further testimony of the witness that the objection proceedings were heard and determined and a decision was thereafter rendered. To this end, the witness posited that suit property was partitioned into two and a portion measuring 12 acres, which was awarded to the objector whereas the remainder was awarded to Samuel Imangángá [now deceased].

54. Moreover, the witness added that the portion which was awarded to Samuel Imangángá was assigned new number, namely; 10075.

55. On cross examination by learned counsel for the Petitioner, the witness averred that same is privy to and knowledgeable of the complaints by the Petitioner. In particular, the witness stated that same is aware that the Petitioner is contending that he [Petitioner] did not participate in the objection proceedings.

56. It was the further testimony of the witness that whenever an objection is filed/lodged, the department of adjudication would issue a revenue receipt. The witness further added that lodgement of objection attracts a fee. Moreover, the witness averred that same is also aware that a revenue receipt was indeed issued to the petitioner when he filed the objection.

57. Whilst still under cross examination, the witness averred that even though a revenue receipt was issued to the Petitioner no such revenue receipt has been tendered and produced before the court. Moreover, the witness also admitted that the duplicate copy which ordinarily remains with the department of adjudication has not been tendered before the court.

58. On further cross examination, the witness averred that the adjudication department does not keep photocopies for the I.D card for the parties. In particular, the witness testified that the adjudication department only

extracts and record the identity card numbers when the parties appears/show up during the objection proceedings.

59.It was the further testimony of the witness that plot number 321 was recorded and registered in the name of the Petitioner. Furthermore, the witness testified that the notice summoning the parties for the hearing of the objection were duly issued and served on all the parties. Moreover, the witness added that the parties appeared and attended the objection proceedings as testament to the fact that the notices had been duly served and received.

60.Whilst still under cross examination, the witness testified that exhibit D3 [tendered on behalf of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents] confirms that the land is registered in the name of the Petitioner. Moreover, the witness clarified that the objection proceedings were disposed of *vide* decision made on the 28<sup>th</sup> May 2018.

61.Regarding exhibit D1; the witness averred that same is a copy of the adjudication record. Moreover, the witness clarified that the adjudication record is dated the 26<sup>th</sup> August 1999. Nevertheless, it was the testimony of the witness that the decision as pertains to the objection was made on the 28<sup>th</sup> May 2018. Furthermore, the witness clarified that once the decision was made same was to be reflected in part 14 of the adjudication records.

62.It was the further testimony of the witness that the decision arising from the objection proceedings was subsequently implemented. In particular, the witness intimated that the implementation has resulted into the creation of two plots inter-alia plot number 10075 registered in the name of Samuel Imangángá [now deceased].

63.With the foregoing testimony, the case for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents was closed.

64.Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to

issue directions pertaining to the filing and exchange of the written submissions. Moreover, the court also circumscribed the timeline[s] for the filing and exchange of the written submissions.

65. The Petitioner filed written submissions dated the 4<sup>th</sup> November 2025 and wherein same has highlighted two [2] issues for consideration and determination by the court. The issues highlighted by and on behalf of the Petitioner are namely; whether the Petition meets/satisfies the threshold as pertains to the rule of reasonable precision or otherwise; and whether the Petitioner's rights have been violated and [if so] what reliefs ought to be granted.

66. The 1<sup>st</sup> Respondent filed written submissions dated the 25<sup>th</sup> November 2025 and wherein same has highlighted three [3] key issues, *namely*; whether the petition is wanting in form, structure and substance and whether the prayers sought thereunder can practically be granted; whether the honourable court should interfere with the decision of the land adjudication officer and whether the government proceedings are presumed to be authentic or otherwise.

67. The Honourable attorney general filed written submissions dated [sic] the 29<sup>th</sup> October 2025 and wherein same have highlighted and canvassed two key issues namely; whether the Petitioner's constitutional rights were violated and whether the Petitioner is entitled to the reliefs sought or otherwise.

68. Having reviewed the amended petition; the supporting affidavit thereto; the responses filed on behalf of the Respondents and upon consideration of the written submissions, three [3] key issues crystalize for determination by the court. The issues that crystalize for determination are: whether the petition meets/satisfies the threshold as pertains to the rule of reasonable precision or otherwise; whether the petition is defeated by the doctrine of exhaustion or otherwise; and whether the Petitioner has established/proved the violations/infringements complained of or otherwise.

- 69.Regarding the first issue: learned counsel for the 1<sup>st</sup> Respondent has submitted that the Petition beforehand does not satisfy the rule as pertains to reasonable precision which requires that every petition must implead the constitutional provisions that are said to have been violated; the manner in which the provisions have been violated; and the persons/bodies [if at all] who are contended to have violated the cited provisions of the constitution.
- 70.Learned counsel for the 1<sup>st</sup> Respondent has submitted that the amended petition dated the 25<sup>th</sup> June 2025 does not meet the threshold. In particular, learned counsel has referenced the provision[s] of Rule 10[2] [c][d] of the Mutunga Rules and thereafter contended that where a Petition does not satisfy the minimum threshold highlighted under the said provision, the Petition ought to be struck out.
- 71.Additionally, learned counsel for the 1<sup>st</sup> Respondent has cited and referenced the decision in **Annarita Karimi Njeru v Republic [1979]eKLR and Anti-Counterfeit Authority v Wanyange & 4 Others [2015]KECA 1540** wherein the rule of reasonable precision was highlighted and reiterated. To this end, learned counsel has invited the court to find and hold that the Petition is premature, incompetent and thus legally untenable.
- 72.The Petitioner did not respond to the said submissions. Notably, no rejoinder submission[s] were filed by the Petitioner. Nevertheless, there is no gainsaying that being a question of law, this court is well disposed to review the impugned petition and to discern whether or not the petition meets/satisfies the rule of reasonable precision and specificity.
- 73.I beg to state that I have reviewed and examined the amended petition dated the 25<sup>th</sup> June 2025 and I can confirm that the Petitioner has clearly highlighted the various provisions of the constitution which are contended to have been violated/infringed upon by the Respondents. In particular, the Petitioner has singled out Articles 27; 40; 47 and 50 of the Constitution 2010. For good measure, paragraph 28 of the amended petition is apt and succinct.

74. Additionally, it is not lost on me that the Petitioner has also highlighted and supplied the particulars pertaining to the manner in which the various provisions of the Constitution have been breached. The particulars of violation and the persons chargeable with [sic] the violations are duly illuminated at the foot of paragraph 27 of the amended petition.

75. To my mind, the amended petition has enumerated the provisions of the constitution 2010 which are contended to have been breached/violated. Furthermore, the amended petition has also supplied the particulars of the violation[s] and the manner in which the violations are contended to have been undertaken. Moreover, there is no gainsaying that the persons who are contended to have violated the rights and fundamental freedoms have also been duly highlighted.

76. It is important to underscore that whereas the rule of reasonable precision underscores the necessity for particularity and specificity, the rule does not stipulate that the particulars be supplied with mathematical accuracy or scientific precision. Moreover, the rule does not equate reasonable precision with exactitude; or mathematical *nicety*.

77. In the case of **County Government of Bungoma & 2 others v JOO & 2 others (Civil Appeal 61 of 2018) [2024] KECA 1377 (KLR) (23 February 2024) (Judgment)**, the Court of Appeal considered the legal implication of the rule of reasonable precision and stated thus;

*26. In the [Mumo Matemu](#) case, this court reformulated the test in AKN case thus:*

*“We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak*

*particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.”*

*27 .It seems to me that the appellants’ reliance on this line of authorities is misplaced. The appellants do not seem to question whether the petition presented complied with the principle requiring that constitutional petitions are pleaded with reasonable precision. They, instead, seem to make the argument that the material contradictions in the evidence presented by the petitioner definitionally violates the principle enunciated in [AKN](#) case. Whether the evidence was contradictory or not is an evidentiary question of fact not a question of law to be determined on the crucible of the principle requiring that constitutional petitions be pleaded with reasonable precision. In fact, a perusal of the petition and the supporting affidavit belie the complaint that it was not pleaded with reasonable precision. The petition is quite detailed both in terms of the factual claims and the constitutional provisions the petitioner alleged had been breached.*

78. The observation by the Court of Appeal in the decision [supra] applies to the matter beforehand in equal force. Simply put, the petition by the Petitioner is detailed and has highlighted the key areas for deliberation by the court. As to whether the complaints and assertions thereunder shall be proved, is a different matter altogether. Notably, the burden of proof lays on shoulder of the Petitioner.

79. Turning to the second issue; whether the petition is defeated by the doctrine of exhaustion or otherwise? To start with, evidence was tendered before the court that the suit plot was adjudicated and registered in the name of the Petitioner. However, it was posited that on the 8<sup>th</sup> March 2018 the Petitioner lodged/mounted objection number 2097 in respect of the suit property.

80. Moreover, evidence was also tendered before the court that the said objection, namely; objection number 2097 was heard and determined *vide* decision rendered on the 28<sup>th</sup> August 2018, whereupon the 2<sup>nd</sup> Respondent decreed that the suit property be partitioned into two. One portion which remained with plot number 321 was given 12 acres and the remainder portion was assigned a new number, namely; plot number 10075. Moreover, the said plot number 10075 was registered in the name of Samuel Imangángá [now deceased].

81. I am aware that the validity and propriety of the objection proceedings has been impugned. However, I shall return to the question of validity or propriety shortly.

82. For now, what is of concern to me is the fact that the objection proceedings bear the identity card number for the Petitioner; bears the thumbprint of the Petitioner; and bears two cell phone number[s], which RW2 [Mary Maina] indicated were supplied by the Petitioner during the objection proceedings.

83. Additionally, it is also important to point out that the decision arising out of the Objection proceeding was delivered to the parties and more particularly in the presence of the Petitioner. For coherence, the 2<sup>nd</sup> Respondent also explained to the parties the right of appeal to the minister [now Cabinet Secretary] in terms of Section 29 of the Land Adjudication Act.

84. To my mind, the Petitioner herein who was present during the delivery of the ruling in respect of objection number 2097 [as confirmed *vide* his Identity Card Number] was at liberty to mount an appeal to the minister for land [now cabinet secretary] in accordance with the law. Nevertheless, there is no gainsaying that no appeal was ever filed and/or mounted by the Petitioner. Notably, the Petitioner [who testified as PW1] admitted and confirmed that no appeal was ever mounted against the objection proceedings and the decision thereunder.

85. To the extent that the Petitioner did not file and/or lodge any appeal, it is common ground that the Petitioner divested himself of the stipulated and

circumscribed mechanism available for impugning the decision of the 2<sup>nd</sup> Respondent. Insofar as the Petitioner failed to exhaust the statutory mechanism provided for under the Land Consolidation Act and the Land Adjudication Act, the subject petition is prohibited by the doctrine of exhaustion.

86. The significance of the doctrine of exhaustion was expounded in the case of **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment)**; where the Supreme court stated as hereunder;

*[256] The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in S v. Mhlungu, 1995 (3) SA 867 (CC) the Constitutional Court. Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]: I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”*

*[257] Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of [Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936)].*

*[258] From the foundation of principle well developed in the comparative practice, we hold that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents’ claim in the High Court, regarding infringement of intellectual property rights, was a plain copyright- infringement claim, and it was not properly laid before that Court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court.*

87. In the case of **Muthinja & another v Henry & 1756 others (Civil Appeal 10 of 2015) [2015] KECA 304 (KLR) (30 October 2015) (Judgment)**, the Court of Appeal highlighted the doctrine of exhaustion in the following manner;

*We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.*

88. In my humble, albeit considered view, the Petitioner herein was provided with a statutory mechanism for challenging or impeaching the objection proceeding and the decision arising therefrom. The Petitioner was enjoined to invoke and deploy the stated mechanism in an endeavour to vindicate his rights. Nevertheless, there is no gainsaying that the Petitioner did not appropriate the mechanism provided for in terms of **Section 29 of the Land Adjudication Act**.

89. Flowing from the failure to appropriate the statutorily provided mechanism, the Petitioner herein cannot now seek to approach the court by way of a constitutional petition. To my mind, the failure to mount an appeal striped the petitioner of the right and liberty to approach the court. Moreover, there is no gainsaying that the failure to file an Appeal rendered the Adjudication Register Final in term of Section 26 of the Land Adjudication Act, Chapter 284, Laws of Kenya.

90. *In a nutshell*, it is my finding that the petitioner is *non-suited* on the basis of the doctrine of exhaustion, which enjoined same to invoke and appropriate the statutorily prescribed mechanism for impeaching the objection proceedings and the decision arising therefrom.

91. Next is the issue as to whether the Petitioner has established and proved the violations/infringements complained of. To start with, the petitioner contended that the objection number 2097 was never lodged by himself. In addition, the Petitioner averred that same did not attend or participate in the objection proceedings culminating into the impugned decision rendered on the 28<sup>th</sup> May 2018.

92. Despite the contention by the Petitioner, namely; that same did not participate in the objection proceedings, certain salient features arise and stand out. Moreover, same were never controverted by the Petitioner.

93. The key features are as hereunder;

- i. The Petitioner is shown and is reflected as the Objector.***
- ii. The Petitioner's Identity Card Number [whose details were admitted] are shown at the foot of the objection proceedings.***
- iii. The Petitioner's thumbprint are also affixed and contained at the foot of the objection proceedings.***
- iv. The Petitioner's two cell phone numbers are also reflected and captured at the foot of the objection proceedings.***
- v. The Petitioner is indicated to have brought a witness, namely; Jane Karuro Mworio.***

94. It is instructive to recall that the Petitioner admitted that same has never lodged any criminal complaint against the Land Adjudication officials or any one at all seeking to have the veracity or propriety of the objection

proceedings investigated. Moreover, the Petitioner herein did not explain how his own identity card number; and the two [2] cell-phone Numbers found themselves[s] to the objection proceedings.

95. The Petitioner may have denied the validity and propriety of the objection proceedings, but what is not lost on me is that the denial by the Petitioner was a feeble one.

96. In my view and assessment, the Petitioner herein was less than candid. Simply put, there is much more that the Petitioner did not want to disclose. Additionally, it suffice[s] to recall that RW2 [Mary Maina] testified that same is the one who recorded the Petitioner's Identity Card Number; and the Cell-phone Numbers on the Objection Proceeding[s] and this bit of the Evidence was not controverted by the Petitioner.

97. Be that as it may, it is common ground that the Petitioner bore the burden of proving the various assertions contained in the body of the petition. The assertions could only be proven on the basis of plausible; cogent; concrete; and credible evidence in the manner known to the Evidence Act, Chapter 80 Laws of Kenya.

98. Unfortunately, the Petitioner herein failed to discharge the burden of proof. Suffice it to state that the assertions by and on behalf of the Petitioner remained on the level of mere allegation. Nothing more.

99. In the case of **Gwer & 5 others v Kenya Medical Research Institute & 3 others (Petition 12 of 2019) [2020] KESC 66 (KLR) (Civ) (10 January 2020) (Judgment)**, the Supreme Court [The Apex Court] highlighted the legal question [incidence] of burden and standard of proof in civil matters.

100. For coherence, the court stated thus;

*49. Section 108 of the [Evidence Act](#) provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and section 109 of the [Act](#) declares that, “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.”*

*50. This Court in [Raila Odinga & others v Independent Electoral & Boundaries Commission & others](#), Petition No 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:...a petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”*

*51 .In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1<sup>st</sup> respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1<sup>st</sup> respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1<sup>st</sup> respondent.*

101. The determination of this last issue would not be complete without mentioning the presumption of validity/authenticity of record[s] kept by the Government. It is instructive to underscore that there is a presumption that the public records duly certified are presumed to be *prima facie* correct and to have been kept in accordance with the provisions of the law.

102. In this regard, it is worthy to recall that the objection proceedings were duly certified by the 2<sup>nd</sup> Respondent; and the certification thereof was neither challenged nor impugned.

103. In the absence of any challenge, and taking into account the provisions of **Sections 83 and 84 of the Evidence Act, Chapter 80 Laws of Kenya**, I come to the conclusion that the objection proceedings are indeed authentic and reflect the true position as pertains to the suit plot.

104. The provisions of Section 83 and 84 of the Evidence Act [supra] stipulate thus;

**83. Certified documents**

**(1) The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is—**

**(a) declared by law to be admissible as evidence of any particular fact; and**

**(b) substantially in the form, and purporting to be executed in the manner, directed by law in that behalf; and**

**(c) purporting to be duly certified by a public officer.**

**(2) The court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such document.**

**84. Records of evidence.**

**Whenever any document is produced before any court, purporting to be a record or memorandum of any evidence given in a judicial proceeding or before any officer authorized by law to take such evidence, and purporting to be signed by a judge or magistrate or any such officer as aforesaid, the court shall presume—**

**(a) that the document is genuine;**

**(b) that any statements as to the circumstances in which it was taken, purporting to be made by the person signing it, are true; and**

**(c) that such evidence was duly taken.**

105. Finally, and as pertains to the presumption of authenticity, it is imperative to reference the decision in the case of **Chief Land Registrar & 5 others v Koech & 3 others (Civil Appeal 51 & 58 of 2016 (Consolidated)[2018] KECA 27 (KLR)(6 December 2018)**

**(Judgment)**, where the Court of Appeal discussed the scope and tenor of presumption of authenticity of the record[s] kept in accordance with the provision[s] of the Law.

106. All in all, it is my finding and holding that the Petitioner herein did not endeavour to impugn the authenticity of the objection proceedings which were duly certified and tendered before the court.

107. Moreover, it is not lost on me that the Petitioner has himself conceded that same lodged the objection number 2097, before same beat a hasty retreat and thereafter denied having lodged the said objection proceedings.

108. For ease of reference, the Petitioner stated thus whilst under cross examination by learned counsel for the 1<sup>st</sup> Respondent;

***“I have filed/lodged objection number 2097. I now wish to say that I have not lodged objection number 2097. I don’t know about objection number 2097”***

#### **SUMMARY OF FINDINGS:**

109. Flowing from the analysis highlighted in the body of the Judgment herein, various finding[s] have arisen and accrued. The findings are summarised as hereunder;

- i. The Petition meets and satisfies the threshold as pertains to the rule of reasonable precision.***
- ii. The Petition is defeated by the doctrine of exhaustion.***
- iii. The Petitioner is non- suited for having failed to appropriate the established statutory mechanism stipulated***

*under the Land Adjudication Act, Chapter 284, Laws of Kenya.*

- iv. The Objection proceeding[s] which were duly certified and presented before the court attract the presumption of authenticity in line with Section 83 of the Evidence Act.*
- v. The Petitioner has failed to prove or justify the allegations of violation/infringement*

**FINAL DISPOSITION.**

110. In the upshot and for the reasons that have been highlighted elsewhere herein before, I come to the conclusion that the petition meritless. In this regard, the petition court[s] dismissal.

111. Consequently, and in the end, the final orders that commend themselves to the court are as hereunder;

- i. The Petition be and is hereby dismissed.*
- ii. Costs of the Petition be and are hereby awarded to the Respondents.*
- iii. The Costs in terms of clause [ii] shall be agreed upon; and in default be taxed in the conventional manner.*

112. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS  
4<sup>TH</sup> DAY OF DECEMBER 2025.**

**OGUTTU MBOYA, FCI Arb, CPM [MTI].**

**JUDGE.**

**In the presence of:**

***Hussein – Court Assistants***

***Mr. Kuria Karatu for the Petitioner***

***Mr. Kariuki for the 1<sup>st</sup> Respondent***

***Ms. Miranda [Senior Litigation Counsel] for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents***