



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC PETITION NO. E001 OF 2025

**IVIA MUTEMI.....1ST
PETITIONER**

**JACOB MUTHUI.....2ND
PETITIONER**

=VERSUS=

**AMOS MWOVE.....1ST
RESPONDENT**

**STEVEN MWENJI.....2ND
RESPONDENT**

**COUNTY GOVERNMENT OF THARAKA NITHI..3RD
RESPONDENT**

**LAND ADJUDICATION OFFICER, THARAKA....4TH
RESPONDENT**

**DIRECTOR LAND ADJUDICATION.....5TH
RESPONDENT**

**CHIEF LAND REGISTRAR.....6TH
RESPONDENT**

**ATTORNEY GENERAL.....7TH
RESPONDENT**

RULING

- 1.** This petition was initiated on 6/2/2025. Through it, the petitioners seek: (i) a declaration that the actions of the respondents, as set out in the petition, have violated their right to acquire and own property as guaranteed under **Article 40** of the **Constitution**; (ii) an order that registration of land parcel numbers **1741, 2211** and **273, Irunduni Adjudication Section** in favour of the 1st, 2nd and 3rd respondents, respectively, was unlawful and that the said parcels should be amalgamated with parcel number **233** and registered in the name of the 1st petitioner; (iii) an order directing the 6th respondent to effect registration of the above parcels in terms of the above order; (iv) an award of general damages against the respondents for breach of the petitioners' fundamental rights under the Constitution; (v) an award of punitive damages against the 1st, 2nd and 3rd respondents; and (vi) costs of the petition.
- 2.** Subsequent to filing the petition, the petitioners filed a notice of motion dated 2/5/2025, seeking temporary injunctive orders barring dealings in, alterations to, trespass on, or transactions relating to the three parcels of land, pending the hearing and disposal of this petition. The said application is one of the two items that fall for determination in this ruling. The other item that falls for determination is the 3rd respondent's preliminary objection dated 10/5/2024.
- 3.** The preliminary objection raises a jurisdictional question in relation to the suit against the 3rd respondent. For this reason, it will be disposed before the application is considered. Before I do that, I will briefly outline the petitioners' case to provide a clear context.

4. The case of the petitioners is that they are the lawful owners of land parcel number **233**, measuring approximately 75 acres. The said land was demarcated and registered in their names in 1996. They were violently evicted from the land in 1997 through a coordinated attack involving known individuals, including some of the respondents, leading to their displacement and abandonment of the land for reasons of safety. During their forced absence, the respondents fraudulently and unlawfully subdivided the land into parcel numbers **273**, **1741** and **2211** and caused the above parcels to be registered in the names of the 1st, 2nd and 3rd respondents, respectively.
5. The petitioners allege that the subdivision and registrations were effected without their knowledge, consent nor participation and were done in contravention of the **Land Adjudication Act**, adding that the adjudication records which were used were incomplete and unauthenticated. They contend that they were denied a fair opportunity to file objections due to conflicting dates and misinformation on the finalization and publication of the adjudication register.

Preliminary Objection dated 10/5/2025

6. Vide the preliminary objection dated 10/5/2024, the 3rd respondent invited this court to strike out the petition on the grounds that: (i) the court lacks jurisdiction to entertain the petition as framed insofar as it relates to the 3rd respondent; (ii) the petition against the 3rd respondent is fatally defective, incompetent and bad in law because the 3rd respondent lacks the legal mandate to alter adjudication records or to effect boundary changes; and (iii) the petition

does not disclose a reasonable cause of action against the 3rd respondent.

7. The preliminary objection was canvassed through written submissions dated 30/6/2025, filed by the **County Attorney**. The 3rd respondent cited **Section 3 (1)** of the **Land Adjudication Act** and submitted that the mandate to declare an adjudication area was at all material times vested in the Minister/Cabinet Secretary. The 3rd respondent added that under **Section 18(2)** of the **Land Registration Act**, the mandate to determine boundaries of registered land parcels are vested in the Land Registrar. The 3rd respondent argued that they were not involved in the land adjudication process nor in the determination of the acreage of parcel number **233**. On misjoinder, the 3rd respondent argued that the 3rd respondent was not and has never been a registered proprietor of any of the three suit parcels.
8. The petitioners opposed the preliminary objection through written submissions dated 19/6/2025, filed by **M/s Sarah Gikonyo & Associates**. The petitioners argued that the preliminary objection did not meet the threshold of a preliminary objection because it challenged the facts relating to the petitioners' claim. The 3rd respondent argued that the factual issues that were raised in the preliminary objection required interrogation through evidence.
9. On misjoinder, the petitioners cited **Order 1 rule 10 (2)** of the **Civil Procedure Rules** and submitted that the 3rd respondent ought to have brought a formal application, adding that **Sections 1A** and **1B** of the **Civil Procedure**

Act required that disputes be resolved justly and expeditiously. The 3rd respondent made reference to exhibits “**JM2**”, “**JM3**”, “**JM4**”, “**JM15**” and “**JM17**” and argued that the said evidence indicated that the 3rd respondent was the beneficiary and occupant of parcel number **273**. Citing **Article 162 (2) (b)** of the **Constitution**, the 3rd respondent submitted that the **Environment and Land Court** was the court vested with jurisdiction to hear and determine the dispute in this suit.

- 10.** The court has considered the preliminary objection together with the submissions tendered on it. The issues that fall for determination in the preliminary objection are: (i) Whether the grounds canvassed in the preliminary objection meet the threshold of a preliminary objection; (ii) Whether the court lacks jurisdiction to adjudicate the issues raised in the petition; and (iii) Whether the petition discloses a reasonable cause of action as against the 3rd respondent.
- 11.** Does the notice of preliminary objection dated 10/5/2024 meet the threshold of a preliminary objection? The threshold of a preliminary objection was outlined by the Court of Appeal for East Africa in ***Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969)EA 696*** as follows:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the

jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

- 12. Sir Charles Newbold, P,** rendered himself as follows in the same case:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

- 13. The Supreme Court of Kenya, in *Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others SCK Petition No 10 of 2013*,** reiterated the above threshold in the following words:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration...a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on

the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

- 14.** In their submissions advancing the grounds raised in the preliminary objection, the 3rd respondent submitted that they did not and could not have participated in any unlawful alteration of land adjudication records or boundary changes. They further submitted that they had never been the registered proprietors of the suit land nor any subdivision out of the suit land, adding that, to the best of their knowledge, the suit land was private land. They added that they had never been issued with a certificate of title relating to the suit parcels. All the above are factual issues that required the 3rd respondent to file a formal application and attach a supporting affidavit ventilating the above facts. A preliminary objection was not available as a platform on which to ventilate the above factual matters. For this reason, the court finds that the preliminary objection dated 10/5/2024 did not meet the threshold of a preliminary objection.
- 15.** Does this court lack jurisdiction to entertain this petition? Whereas the 3rd respondent raised this as a ground for striking out the petition, they did not submit on it. Consequently, the answer to the above question is that the 3rd respondent have not demonstrated that this court lacks jurisdiction to entertain this petition.

- 16.** Does the petition disclose a reasonable cause of action against the 3rd respondent? I have read the petition in its entirety. In prayer (b), the petitioners seek the invalidation of the registration of the 3rd respondent as proprietor of parcel number 273. The petitioners averred that the registration of the 1st - 3rd respondents as proprietors of parcel numbers 1741, 2211 and 273 was a violation of their constitutional rights under various Articles of the Constitution. At this stage, the court has no proper basis upon which to make a finding to the effect that the allegations by the petitioners do not disclose a reasonable cause of action. That is the finding of the court on the issue.
- 17.** The result is that the preliminary objection dated 10/5/2025 is rejected and dismissed for lack of merit. The objector shall bear costs of the preliminary objection.

Application dated 2/5/2025

- 18.** The application dated 2/5/2025 was premised on the grounds outlined in the motion and in the supporting affidavit sworn on 2/5/2025 by **Jacob Muthui** and in the same deponent's supplementary affidavit dated 19/6/2025. It was canvassed through written submissions dated 30/5/2025, filed by **M/s Sarah Gikonyo & Associates Advocates**. Through the application, the petitioners seek a temporary injunction to the effect that no further dealings, alterations, trespass or transactions shall be undertaken on parcel numbers **273, 1741 and 211, Urunduni**

Adjudication Section, pending the hearing and disposal of this petition.

- 19.** The substantive case of the petitioners has been summarized in the opening paragraphs of this ruling. Suffice it to add that, the petitioners contend that since the filing of this petition, there have been increased and suspicious activities on the suit land, including visits by unknown individuals, an indication of imminent development or disposal of the suit land. They add that they have reasonable apprehension that the respondents or third parties may proceed to alienate, transfer, develop or otherwise interfere with the suit land and thereby alter the subject matter of the petition irreversibly. They argue that the suit land is being prepared for development of a District Officer's Office and/or a construction site.
- 20.** There was no response by the 1st and 2nd respondents. The 3rd respondent filed a replying affidavit dated 7/5/2025. They denied altering adjudication records relating to the suit land. They also denied altering boundaries relating to parcel number 233. They contended that they lacked the mandate to alter adjudication records and/or boundaries, adding that their role was limited to physical planning and development as outlined in the **Fourth Schedule** to the **Constitution**. The 3rd respondent further denied the allegation that they obtained registration over part of the suit land fraudulently. They urged the court to dismiss the application.
- 21.** The court has considered the application, the response to the application, and the submissions tendered. This is a

petition under the Bill of Rights. Exercise of jurisdiction in a matter of this nature is governed by the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**. The **Civil Procedure Act** and the **Civil Procedure Rules** which the petitioners relied on do not avail jurisdiction to the court in a constitutional petition of this nature. Reliance on them is a clear misdirection.

22. The key issue to be determined in the application under consideration is whether the applicants have made out a case to warrant grant of a conservatory order or an interim order under **rule 23** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** (*hereinafter “the rules”*) in the nature of the order sought in the application.
23. The criteria upon which our courts exercise jurisdiction to grant conservatory or interim orders in constitutional petitions under **rule 23** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** was outlined by **Musinga J** (*as he was then*) in **Centre for Rights Education and Awareness and 7 Others v The Attorney General (HCCP No 16 of 2011)** as follows:

“At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that

he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

- 24.** Suffice it to add that, at this interlocutory stage, the court does not make conclusive or definitive pronouncements on the key issues in the petition.
- 25.** From the evidence presented to the court at this interlocutory stage, **Irunduni Adjudication Section** was declared an adjudication section on 11/1/1995. The title which the petitioners are waving, relating to parcel number **Tharaka/ Irunduni/233**, was issued to the 1st petitioner on 3/11/2014. The land register relating to **Irunduni Registration Section** was opened on 28/1/2014. Individual parcel registers were opened on or about the same date. This means that, as at 28/1/2014, all objections relating to the adjudication register had been disposed by the Land Adjudication Officer and the finalized adjudication register had been forwarded to the Chief Land Registrar to facilitate opening of individual parcel registers.
- 26.** Secondly, the petitioners contend that they fled from the suit land in 1997 after land parcel number 233 had been demarcated in the name of the 1st petitioner as measuring 75 acres. They have not given any proper explanation why they never objected to the adjudication register when it was ultimately published. The statute availed to them a redress mechanism by way of an appeal to the Minister/Cabinet Secretary. They elected to ignore the redress mechanism provided under the Land Adjudication Act.

- 27.** Thirdly, the petitioners have, at this point, not provided prima facie evidence that the parties alleged to be the registered proprietors of parcel numbers **1741, 2211** and **273** are indeed the respondents they have sued. The register for Irunduni Registration Section having been opened in or about 2014, the petitioners had the opportunity to avail certified copies of the registers to satisfy the court, prima facie, that they have sued the correct parties. They elected not to do so.
- 28.** Fourthly, at this stage, the 2nd petitioner has not demonstrated, prima facie, the basis of his claim against the respondents.
- 29.** For the above reasons, the court comes to the finding that the petitioners/applicants have not made out a prima facie case to warrant grant of an interim order under **rule 23 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**. Consequently, the application dated 2/5/2025 is rejected and dismissed for lack of merit. The applicants shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 8TH DAY OF DECEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Nderi for Petitioners

Respondents - Absent
Court Assistant - Makena

ORIGINAL