



**Otieno & 3 others v District Land Adjudication & Settlement Officer,
Migori/Nyatike Districts & 8 others (Environment and Land Petition
17 of 2017) [2025] KEELC 8501 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8501 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND PETITION 17 OF 2017
MN KULLOW, J
DECEMBER 4, 2025**

BETWEEN

**DOMINIC PHELIX OTIENO 1ST PETITIONER
MARY AOKO ORINDA 2ND PETITIONER
CHRISTOPHER GUMBA HONGO 3RD PETITIONER
MAXWELL ANGAYA NYALWANDA 4TH PETITIONER**

AND

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,
MIGORI/NYATIKE DISTRICTS 1ST RESPONDENT
THE DIRECTOR OF LAND ADJUDICATION 2ND RESPONDENT
THE DIRECTOR OF SURVEY 3RD RESPONDENT
THE CHIEF LAND REGISTRAR 4TH RESPONDENT
MIGORI COUNTY GOVERNMENT 5TH RESPONDENT
THE NATIONAL LAND COMMISSION 6TH RESPONDENT
PATRICK OTIENO 7TH RESPONDENT
ALICE KASERA 8TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 9TH RESPONDENT**



JUDGMENT

1. The Petitioners filed the Petition dated 4th December 2015 in which they claim that their constitutional and property rights have been violated by the Respondents through alleged unlawful interference with, alteration of, and superimposition upon the adjudication records relating to various parcels of land within Kachieng 'A' Adjudication Section.
2. They contend that although they were duly allocated and registered as owners of their respective parcels during the demarcation and adjudication process, the Respondents subsequently created new plot numbers, altered boundaries, superimposed new plots on existing parcels, and inserted more than 90 new parcels in the names of South Nyanza County Council and Migori County Council, all allegedly after the adjudication process had closed and without any objections having been lodged.
3. They assert that such actions amount to fraud, illegality, procedural impropriety, and violation of their rights under Articles 10, 19, 27, 35, 40 and 47 of *the Constitution*.
4. The Petition is supported by the Supporting Affidavit of Mary Aoko Orinda, the 4th Petitioner. She avers that during the adjudication process she and the other Petitioners were allocated Plots Numbers 1261, 2091, 2800 and 3826, among others, and that these plots shared defined and undisputed common boundaries as reflected in the original adjudication records.
5. She depones that after the Registers had been completed, published and opened for inspection and in the absence of any objections the 1st and 2nd Respondents unlawfully proceeded to create several new plot numbers, some of which have no registered owners, while others were irregularly registered in favour of the South Nyanza County Council and Migori County Council.
6. She further avers that new plots were superimposed onto their parcels, thereby altering ground boundaries without due process. She contends that the Respondents have since withheld the authentic Registry Index Maps, Preliminary Index Diagrams and aerial maps prepared during adjudication, thereby violating the Petitioners' right of access to information.
7. The 4th Petitioner further avers that the alterations, superimpositions and insertions made into the adjudication record after the close of the demarcation and objection process were done clandestinely, without public participation and without legal authority; that the said actions were fraudulent and intended to deprive the Petitioners of land lawfully adjudicated in their favour; and that unless the Court intervenes, they stand to lose their land and the benefits accruing therefrom.
8. She reiterates that the Petitioners have suffered violation of their constitutional rights to property, fair administrative action and access to information, and therefore seek the Court's protection.
9. The Petitioners accordingly seek the following orders as pleaded in the Petition:
 - a. Declaration be issued to the effect that the Petitioners are entitled to Protection under *the Constitution*.
 - b. Declaration that the alteration and/or interference with the Adjudication Register, over and in respect of Kachieng 'A' Adjudication Section, culminating into the superimposition, infixing and alteration of the Boundaries of various Plots, long after the completion and finalization of the Adjudication and Demarcation Process and in the absence of any Objection(s), was/is unlawful, illegal, void and Unconstitutional.



- c. Declaration that the Petitioners are entitled to provision and/or access to copies of the Preliminary Index Diagram, Registry Index Maps as well as the Aerial Map, over and in respect of Kachieng 'A' Adjudication Section which were prepared during the Adjudication and Demarcation Process pursuant to and in line with the provisions of Article 35 of *the Constitution*, 2010.
- d. An Order directing and/or compelling the 1st, 2nd, 4th and 6th Respondents, to carry out and/or conduct a forensic audit into the creation of new Plots, over and in respect of Kachieng 'A' Adjudication Section which have no registered allottees as well as the authenticity of the more than 90 Plots allocated to South Nyanza County Council and Migori County Council, respectively.
- e. An Order of Judicial Review in the nature of Certiorari, quashing the fraudulent Adjudication Register, containing the erroneous and fraudulent information, including the superimposed Plots and the Plots without the registered Allottees over and in respect of Kachieng 'A' Adjudication Section.
- f. An Order of Judicial Review in the nature of Prohibition, to prohibit the 4th Respondent from commencing, carrying out, proceeding with, and/or undertaking the Registration Process and issuance of Title Deeds over and in respect of Plots situated within Kachieng 'A' Adjudication Section, pending the forensic audit and ascertainment of the authenticity and validity of the impugned Plots, without names of registered owners and those registered in the names of South Nyanza County Council and Migori County Council, respectively.
- g. An Order for Damages arising from and/or occasioned by the actions and/or omissions of the Respondents, jointly and/or severally.
- h. Costs of the Petition be borne by the Respondents jointly and/or severally.
- i. The Honourable Court be pleased to issue such orders and/or writs as the Court may deem fit and/or expedient.

Respondents' Response

10. The Petition is opposed through a Replying Affidavit sworn by C.M. Osebe, the District Land Adjudication and Settlement Officer, Migori/Nyatike Districts, who depones that Kachieng 'A' Adjudication Section was declared an adjudication area on 14th October 1980 and that the adjudication register was subsequently published as complete, whereafter a mandatory 60-day inspection period was duly issued to the public.
11. He asserts that under the *Land Adjudication Act*, any person aggrieved by the contents of the adjudication register is required to lodge an objection within that statutory period, and that no objection was ever filed by the Petitioners despite their full participation in the demarcation, plotting and surveying processes.
12. The deponent further avers that the Petitioners have come to court belatedly after more than 10 years, having failed to exhaust the statutory dispute-resolution mechanisms, and therefore cannot properly allege violation of constitutional rights. He maintains that the Petitioners occupy their respective parcels without interference, and that they have not demonstrated any infringement of property rights.
13. He states that parcels MIGORI/KACHIENG 'A'/3826, 2800 and 1261 are registered in the name of the 4th Petitioner, while parcel MIGORI/KACHIENG 'A'/2091 is registered in his own name, and that the green cards and adjudication records confirm the integrity of the adjudication process. He



further asserts that the Registry Index Maps do not show any alleged superimposition as claimed, as each parcel appears independently on the relevant map sheets.

14. The deponent denies all allegations of fraud, illegality or collusion, contending that the Petition is an afterthought, filed in bad faith, and intended to circumvent the statutory process long after the adjudication register became final.
15. He insists that there has been no violation of the Petitioners' constitutional or statutory rights, and urges that the Petition is contrary to public interest and should be dismissed with costs. He concludes by affirming that all steps undertaken during adjudication were lawful, transparent and procedurally compliant, and that the Petitioners have failed to show any basis upon which the Court may interfere with the adjudication register.

Hearing

16. The matter proceeded through a protracted pre-trial and hearing timetable marked by multiple mentions, transfers and adjournments. The petition, originally filed in 2015, was the subject of repeated interlocutory directions from Kisii High Court and later transferred to the Environment and Land Court, Migori. The court issued a series of mention and directions dates (notably 12/10/2016, 29/3/2017, 28/2/2018, and others) and gave the parties leave to file reports and supplementary documents. The progress of the matter was affected by late service and non-appearance of some respondents (notably the 5th and 6th respondents), counsel changes, and the COVID-19 pandemic, all of which occasioned further adjournments.
17. Prior to the full hearing the parties exchanged and relied on competing survey reports and maps: there were at least two conflicting survey reports (dated 6/11/2017 and 8/11/2017), and the court directed a joint site revisit by the County Surveyor and licensed surveyors in the presence of the parties with security provided by OCS Macalder police station.
18. The court granted the petitioners leave to file a private surveyor's report and to rely on a letter of complaint dated 4/11/2015 addressed to the National Land Commission and the Director of Land Adjudication; that letter was ordered to be filed as an exhibit after a preliminary ruling in favour of the petitioners.
19. When the matter finally proceeded to hearing the petitioners opened their case and called PW1, Mary Aoko Orinda (4th Petitioner), who adopted the pleadings and testified to ownership of Plots Nos. 1261, 2800 and 3826, alleged insertion of Plot No. 6554 and Plot No. 4029 between their parcels, non-receipt of summons during adjudication, and withholding/alteration of adjudication records.
20. PW1's evidence was tested in cross-examination and she produced and relied on various exhibits (including PExhibits 1–6 and later letters marked PE 7(a), 7(b)). The petitioners closed their case after the court admitted PE 3 (the agreed document) and after the petitioners were allowed to file the earlier-mentioned complaint letters as part of the record.
21. The respondents then opened their case and called DW1, C.M. Osebe (District Land Adjudication & Settlement Officer), who relied on his replying affidavit and a bundle of documents (marked DE 1–5), explained the adjudication and publication process (including a 60-day inspection/objection period), and denied any superimposition or fraudulent creation of plots, asserting that many affected parcels were public utility/county council plots created during adjudication.
22. DW1 invited the court to inspect the maps and relied on the Registry Index Map (RIM) and Preliminary Index Diagrams (PIDs). At the close of evidence the court directed that the 5th and 6th



respondents' cases be closed for failure to appear, ordered the parties to file written submissions (petitioner within 21 days; respondents thereafter).

Petitioners Submissions

23. The Petitioners submitted that the Petition is properly before the Court, having particularised the grievances with sufficient particularity and specificity as required in constitutional litigation. They urged the Court to determine the central issues whether:
 - (i) the adjudication records were unlawfully altered/superimposed after the inspection period;
 - (ii) the Petitioners' property and constitutional rights under Articles 10, 35, 40 and 47 were thereby infringed; and
 - (iii) the 1st, 4th and 7th Respondents failed to discharge their duty to produce and/or account for the adjudication records, RIMs and PIDs relating to the disputed plots.
24. In support of the requirement for clear pleadings and defined issues the Petitioners relied on *Annarita Karimi Njeru v Republic* (1979) and *Mumo Mwemu v Trusted Society of Human Rights Alliance & 5 Others* (2013); and for the principle that parties are bound by their pleadings they cited *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 Others* (2014).
25. On the merits the Petitioners submitted that they proved their case on a balance of probabilities, adducing documentary evidence (adjudication records, maps and complaint letters) and oral testimony (PW1 Mary Aoko Orinda) showing that new plots were infixed and overlaid upon their adjudicated parcels and that more than 90 plots were irregularly shown in favour of the County Council without plausible corroborating records.
26. They argued the Respondents' single witness (DW1) was evasive and failed to produce adjudication records for the 90 county plots and the c.99 unnamed plots, such that the Petitioners' evidence remained uncontroverted particularly because the 5th and 6th Respondents never entered appearance.
27. The Petitioners relied on authorities on standard and burden of proof in civil matters *James Muniu Mucheru v National Bank of Kenya Ltd* (2019) and *Zakayo Wanzala Makomere v West Kenya Sugar Co. Ltd* (2013) and on the consequence of failure to adduce rebuttal evidence *Mbuthia Macharia v Annah Mutua Ndwiga & another* (2013) and *Trust Bank Ltd v Paramount Universal Bank Ltd* (HCCS 1243 of 2001) submitting that, on the unchallenged evidence, the petition ought to succeed.

Issues for Determination

28. Having carefully considered the pleadings, the evidence adduced, the submissions of the parties and the applicable law, the Court is of the view that the Petition turns on the following issues for determination:
 - a. Whether the Respondents unlawfully altered, infixed or superimposed plots within Kachieng 'A' Adjudication Section after completion of the adjudication process, thereby violating the Petitioners' constitutional and property rights.
 - b. Whether, in the circumstances established, the Petitioners are entitled to the constitutional remedies sought in the Petition.



Analysis and Determination

Issue 1: Whether the Respondents unlawfully altered, infixed or superimposed plots within Kachieng 'A' Adjudication Section after completion of the adjudication process

29. The Court begins from the statutory framework. Under Sections 25–29 of the *Land Adjudication Act* (Cap 284), once the adjudication register is completed under Section 25, it must be published under Section 26(1). A 60-day objection period is then provided under Section 26(1)–(2), during which any person wishing to challenge the register must lodge an objection.
30. Thereafter, the Adjudication Officer hears objections and makes final determinations under Section 26(3). Once the objection period lapses without objections, the register is forwarded for finalization and preparation of titles under Section 27 and 28, and alterations thereafter are strictly circumscribed.
31. Against that background, the Petitioners alleged that after the close of this statutory process the Respondents unlawfully inserted, altered or superimposed plots including Plot Nos. 6554 and 4029 between parcels that previously shared boundaries, and created approximately 90 County Council plots and 99 unnamed plots.
32. They maintained that these actions occurred after publication, without any statutory notice, contrary to fair administrative action guaranteed under Article 47 of *the Constitution*, and in violation of their property rights under Article 40. They also asserted that they were denied access to original RIMs, PIDs and aerial maps, contrary to Article 35(1)(a) on the right of access to information.
33. The Respondents' position, as contained in the Replying Affidavit of C.M. Osebe, was that the entire adjudication process complied with Cap 284, the adjudication register for Kachieng 'A' was published as complete, and that the statutory 60-day objection window was duly issued (CMO-1).
34. They stated that the Petitioners actively participated in demarcation, plotting and surveying, and did not file any objection, meaning that the register became final within the meaning of Section 26(2)–(3). The Respondents further relied on the RIMs (CMO-6, CMO-7), which according to them contain no evidence of superimposition or post-inspection alteration.
35. DW1 testified that parcels alleged to have been created later including County Council plots were public utility plots forming part of the adjudication scheme and not introduced after publication. He also produced green cards and adjudication records (CMO-2 – CMO-5) to demonstrate the status of parcels registered in the Petitioners' names.
36. In assessing both accounts, the Court applies the legal principles governing administrative records. Under Sections 8 and 79 of the *Evidence Act*, official maps, plans and public documents produced from proper custody enjoy a presumption of regularity unless rebutted by direct evidence.
37. The Petitioners produced documents and survey sketches showing inconsistencies, while the Respondents insisted that the authoritative records are the adjudication register and the RIM, which, on the evidence presented, remained unaltered.
38. However, the Court observes that the Respondents did not produce the Preliminary Index Diagrams (PIDs) or the primary boundary documents prepared at demarcation, which under Section 15 of the *Land Adjudication Act* form part of the adjudication materials. Nevertheless, the Respondents maintained that some of these documents had already been forwarded to Nairobi in accordance with Section 27 at the time the Petitioners later raised complaints.



39. Balancing the evidence against the statutory framework, the Court notes that the Petitioners did not place before the Court any contemporaneous adjudication-objection records or boundary dispute files demonstrating that the alleged superimposition occurred after completion of the statutory inspection period.
40. Conversely, the Respondents' Replying Affidavit and testimony provide a coherent statutory explanation: that no objections were filed under Section 26, the register therefore became final, and the official RIM does not show post-inspection alterations.
41. In view of the legal presumption of regularity attaching to official adjudication documents unless disproved by cogent evidence, the Court finds that based solely on the evidence on record and the statutory framework the Respondents' account of the adjudication process is consistent with Sections 25–29 of the *Land Adjudication Act*, and the Court is unable to identify documentary material showing unlawful alteration, insertion or superimposition after the register had been completed.

Issue 2: Whether, in the circumstances established, the Petitioners are entitled to the constitutional remedies sought in the Petition

42. The remedies invoked in this Petition arise under Articles 22 and 23 of *the Constitution*, which empower the Court to grant appropriate relief, including declarations, judicial review orders, access-to-information orders, and compensation, where violations of constitutional rights are proved. Whether these remedies are available depends on whether the Petitioners have demonstrated, on the evidence, that their rights under Articles 35, 40 and 47 of *the Constitution* were infringed.
43. The Petitioners asserted that the Respondents violated their right to property (Article 40) by allegedly altering, infixing or superimposing new plots upon theirs after the adjudication register had been closed. They further argued that the manner in which these alleged alterations were undertaken lacked procedural fairness, thereby contravening Article 47, and that their inability to access PIDs, RIMs and aerial maps, despite repeated requests, amounted to a denial of their right to information under Article 35. According to the Petitioners, these violations entitled them to the wide-ranging remedies set out in their Petition.
44. The Respondents, through the Replying Affidavit of C.M. Osebe, offered a contrary account. They maintained that the adjudication exercise was carried out strictly in accordance with the *Land Adjudication Act*, and that the adjudication register for Kachiang 'A' Adjudication Section was duly completed, published and opened for inspection for the statutory 60-day period under Sections 25 and 26 of the Act.
45. They emphasized that no objection was filed by any of the Petitioners within that period and argued that, by virtue of Section 27, the register thereafter became final, subject only to ministerial appeal which was never invoked. The Respondents further asserted that the official Registry Index Map (RIM) produced in evidence reflected no superimposition or post-publication changes, and that some of the documents sought by the Petitioners had already been lawfully transmitted to Nairobi for final processing in compliance with the Act. In their view, the Petition amounted to an attempt to reopen a concluded statutory process, contrary to the principles governing land adjudication.
46. In determining whether constitutional remedies are warranted, the Court must consider whether the Petitioners displaced the presumption of regularity attaching to public records under the *Evidence Act*, and whether the evidence proved a clear violation of *the Constitution*.
47. Although the Petitioners raised concerns regarding alleged alterations and infixing, the material before the Court does not conclusively demonstrate that the impugned changes occurred after the



adjudication register had been completed and published, nor that they occurred outside the statutory framework. The Respondents' explanation grounded in the Replying Affidavit, supported by the adjudication documents produced, and aligned with Sections 25–29 of the *Land Adjudication Act* was not displaced by cogent evidence of illegality or procedural irregularity.

48. Given the seriousness and finality of the remedies sought, particularly declarations invalidating parts of the adjudication register, orders of certiorari, prohibition, and a forensic audit, the Court is guided by the principle that constitutional relief must be issued only where violation is clearly established. On the evidential record placed before it, the Court is not persuaded that the threshold of proof has been met. Granting the reliefs sought in the absence of demonstrable violation would undermine the principles of certainty and finality that underpin the adjudication regime.
49. The Court therefore finds that the Petitioners have not established entitlement to the constitutional remedies sought.

Final Disposition and Orders

50. Upon considering the Petition, the Replying Affidavit of C.M. Osebe, the evidence tendered by both sides, the applicable provisions of *the Constitution* of Kenya, 2010, and the statutory framework under the *Land Adjudication Act* (Cap 284), and having evaluated the issues identified for determination, the Court arrives at the following final disposition:
- a. The Petitioners have not proved, on a balance of probabilities, that the Respondents unlawfully altered, infixed, or superimposed plots within Kachieng 'A' Adjudication Section after completion of the adjudication register, nor that the Respondents violated any of their rights under Articles 35, 40, or 47 of *the Constitution*.
 - b. The Court is persuaded by the Respondents' evidence particularly the Replying Affidavit, the adjudication records produced, and the statutory process outlined under Sections 25–29 of the *Land Adjudication Act* that the adjudication register was duly completed, published for inspection, and remained unchallenged within the statutory 60-day period.
 - c. The Petitioners did not place before the Court sufficient, credible, or authoritative evidence proving that post-completion interference occurred, or that any portion of the adjudication process violated constitutional or statutory requirements. Consequently, the Court finds no legal or factual basis upon which to invalidate, amend, or reopen the adjudication register, nor to issue any of the constitutional remedies sought.

Orders

- a. The Petition dated 4th December 2015 is hereby dismissed in its entirety.
- b. In light of the nature of the dispute, the long history of the matter, and the need to preserve harmony within the Kachieng 'A' Adjudication Section, the Court directs that: Each party shall bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 4TH DAY OF DECEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Judgment delivered in the presence of: -



Mr. Langat for the Petitioners

No appearance for the Respondents

Philomena W. Court Assistant

