



**Kimuyu v Attorney General & 3 others (Environment and Land Petition  
E010 of 2020) [2025] KEELC 5683 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5683 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND PETITION E010 OF 2020**

**NA MATHEKA, J**

**JULY 29, 2025**

**BETWEEN**

**JONATHAN MWOLOLO KIMUYU ..... PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MACHAKOS ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**MANZA “B” WATER SHG (SUED THROUGH ZIPPORAH MUMO NDUNDA  
(CHAIRLADY) PIUS KATUMO KITHENDU (SECRETARY) AND DANIEL  
MUTUKU MISI (TREASURER) ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner avers that he inherited land parcel consisting of land parcel registration title number Iveti/Mung’ala/1135 and Iveti/Mung’ala/235 from his late mother, Nthuki Kimuyu, who is now deceased. The ownership of the late Nthuki Kimuyu was confirmed during adjudication process, specifically in case no. ARB/B/AGL/35/75. When the title deeds were processed, two title deeds were processed for the two portions with portion which was subject to the adjudication proceedings being title registration number Iveti/Mung’ala/231 which was registered in the name of Masaku County Council while the undisputed portion was registered in the name of the Petitioner’s mother, Nthuki Kimuyu, as land registration title number Iveti/Mung’ala/1135. Nthuki Kimuyu transferred land parcel title number Iveti/Mung’ala/1135 to the Petitioner and the Petitioner was issued with a title deed on 13<sup>th</sup> October, 2008.
2. That without consent from the Petitioner or his mother, the office of the Assistant Chief for Mung’ala sub-location was constructed in land parcel registration title number Iveti/Mung’ala/1135. Without consent from the Petitioner or his mother the 4<sup>th</sup> Respondent started operating a well within land



- parcel registration title number Iveti/Mung'ala/231. The Petitioner lodged his complaint with the Land Registrar who in his Ruling of 13<sup>th</sup> August, 2013 indicated that there was encroachment. That no compensation was paid to the Petitioner for the land which was taken, allegedly for public use, without his consent.
3. The Petitioner avers that the hiving of a portion from his ancestral land and registration of the same as land title no. Iveti/Mung'ala/231 in the name of Masaku County Council amounted to infringement of his constitutional right to the property. The construction of the Assistant Chief's office in land parcel title no. Iveti/Mung'ala/1135 was done against the law as the process of compulsory acquisition as envisaged under the Constitution and the Land Act were not followed. The use of the borehole in land parcel number Iveti/Mung'ala/1135 by the 4<sup>th</sup> Respondent amounted to deprivation of the constitutional right to the property which denied the Petitioner the right to use his land as he would wish. The finding by the Land Registrar that the Petitioner seeks compensation, if he had not been compensated, is not supported by law as the process of compensation ought to have been initiated by the Government Department that was interested in the Petitioner's land.
  4. The Petitioner therefore prays for the following orders;
    - a. A declaration that the registration of land parcel title number Iveti/Mung'ala/231 in the name of Masaku County Council amounted to deprivation of property lawfully belonging to an individual and an order do issue compelling the Land Registrar to cancel the said registration and register the land parcel in the name of the Petitioner.
    - b. A declaration that the taking over of the well within land parcel number Iveti/Mung'ala/1135 and designation of the same as a public well run and managed by the 5<sup>th</sup> Respondent was amounted to deprivation of the Petitioner's right to property which is protected by the Constitution.
    - c. A declaration that the construction of the office of the Assistant Chief for Mung'ala Sub-location within land parcel title number Iveti/Mung'ala/1135 was done in violation to the Petitioner's constitutional right to property.
    - d. An order compelling the Assistant Chief for Mung'ala and the 4<sup>th</sup> Respondent to vacate the Petitioner's land and grant him vacant possession.
    - e. An order directing the Respondents to compensate the Petitioner by way of general damages for the period they have been in occupation of the Petitioner's land.
    - f. The costs of the Petition be awarded to the Petitioner.
  5. The 2<sup>nd</sup> Respondent submitted that the Petitioner did not exhaust the remedies set out in section 26 of the Land Consolidation Act Cap 283 and section 26 and 29 of the Land Adjudication Act Cap 284 to challenge or object to the adjudication of the said property. That the Petitioner has not filed any documents to demonstrate that he or his late mother exhausted the mechanisms provided in law and within the stipulated timelines to register his dissatisfaction to the adjudication register over the land parcel title number Iveti/Mung'ala/231 in the name of Masaku County Council and/ or appeal the decision to adjudicate the said land which is reserved for public use.
  6. This court has considered the submissions therein and found that the issues for determination is whether the petition has merit or not?



7. In *Anarita Karimi Njeru vs Republic* (1979) eKLR the court stated follows;

“We would, however, again stress that if a person is seeking redress from the High court on a matter which involves a reference to the Constitution, it is important (if any to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

8. The Petitioner has enumerated Articles 22(1), 23(1) and 40 stating that there has been a violation of his constitutional rights. This was achieved by the hiving off his ancestral land and registration of the same as land title no. Iveti/Mung’ala/231 in the name of Masaku County Council Construction of the Assistant Chief’s office and a borehole in the land parcel registration title no. Iveti/Mung’ala/1135 contrary to the process of compulsory acquisition.

9. That the Land Adjudication Officer made a decision after they Appealed in case No. ARB/B/AGL/35/75 is that the said land parcel title no. Iveti/Mung’ala/231 in the name of Masaku County Council belonged to the Petitioner’s mother. However, from the proceedings on record the Respondent seems to be one Musyoki and not the 2<sup>nd</sup> Respondent. The land parcel number is also not indicated therein. The Petitioners case is the fraudulent transfer of part of his land to the 2<sup>nd</sup> Respondent.

10. The Petitioner submitted that, the office of the Assistant Chief for Mung’ala sub-location was constructed in land parcel registration title number Iveti/Mung’ala/1135. And also, without consent from the Petitioner or his mother the 4<sup>th</sup> Respondent started operating a well within land parcel registration title number Iveti/Mung’ala/231. The Petitioner lodged his complaint with the Land Registrar who in his Ruling of 13<sup>th</sup> August, 2013 indicated that there was encroachment. That no compensation was paid to the Petitioner for the land which was taken, allegedly for public use, without his consent. This seems to be a case of trespass. The Petitioner avers that the hiving of a portion from his ancestral land and registration of the same as land title no. Iveti/Mung’ala/231 in the name of Masaku County Council amounted to infringement of his constitutional right to the property. I find that the petitioner in filing this petition has not fully complied and thus offend the doctrine of ripeness and constitutional avoidance.

11. In *John Harun Mwau vs Peter Gastrol & 3 others* (2014) eKLR, the court discussed the principle of constitutional avoidance as follows-;

“Courts will not normally consider a constitutional question unless the existence of a remedy is dependent on it... It is an established practice that where a matter can be disposed of without recourse to the Constitution, the Constitution should not be invoked at all.”

12. Further, in *I Currie & J De Waal The Bill of Rights Handbook* (2013) 72 the author stated that the exceptions to the above doctrine are: The exceptions to the application of the doctrine of constitutional avoidance are: -

- i. where the constitutional violation is so clear and of direct relevance to the matter,
- ii. in the absence of an apparent alternative form of ordinary relief and
- iii. where it is found that it would be a waste of effort to seek a non-constitutional resolution of the dispute.



13. This suit has failed in all three exceptions as the petitioner did not comply with the first step and secondly this is a claim which can be instituted as a civil suit. Consequently, I find that this petition is not merited and I dismiss it with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF JULY 2025.**

**N.A. MATHEKA**

**JUDGE**

