

**REPUBLIC OF KENYA**  
**INT THE ENVIRONMENT AND LAND COURT AT MERU**  
**ELC PETITION E001 OF 2026**

**PETER MURUTHII .....PETITIONER**

**VERSUS**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER -  
AMUNG'ENTIA ADJUDICATION SECTION .....1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**VERONICA CIOMAROO.....INTERESTED PARTY**

**RULING**

1. The Petitioner/Applicant filed the petition dated the 05.01.2026; and wherein the Petitioner has sought various relief[s]. The reliefs sought at the foot of the petition are as hereunder:

- i. A declaration that the erasure of Land Parcel 3590 Amung'enti A Adjudication Section from the map by the 1<sup>st</sup> Respondent infringed the Petitioner's right under Article 40 of the Constitution.*
- ii. A declaration that the Land Adjudication Officer's Decision in AR Objection No. 158 w.r.t land parcel 3590 Amung'enti A Adjudication section was substantively and procedurally regular, legal and binding.*
- iii. The proceedings and decision in Maua CMCC 278 of 2015 was irregular, null and void.*
- iv. The court do order the 1<sup>st</sup> Respondent to restore land parcel number 3590 Amung'enti A Adjudication Section on the map, in the same position and size as it was previously.*

- v. ***Costs of this petition.***
  - vi. ***Any other relief the court may deem fit in the interest of justice.***
2. Contemporaneous with the petition, the Petitioner filed the Notice of Motion Application dated 05.01.2026, brought pursuant to [*non-disclosed provisions of the law*] and wherein the Respondent has sought various reliefs.
  3. The reliefs sought *vide* the application are reproduced as hereunder:
    - i. ***That the Honourable court be pleased to certify this matter as urgent and be heard on priority basis.***
    - ii. ***That pending the hearing and determination of this application, the court be pleased to stay further implementation of decree MAUA CMCC 278 of 2015.***
    - iii. ***The pending the hearing and determination of this application, the court be pleased to grant an order of interim injunction restraining the Respondent by herself, her families, her agents, employees, assigns and/or any person acting on her behest from evicting or interfering with the Respondent 's quiet user and occupation of land parcel number 3590 AMUNG'ENTI 'A' Adjudication section.***
    - iv. ***That pending the hearing and determination of the petition, the court be pleased to stay further implementation of decree in MAUA CMCC 278 of 2015.***
    - v. ***That pending the hearing and determination of the petition, the court be pleased to grant an order of temporary injunction restraining the respondent by herself, her families, her agents, employees, assigns and/or servants and/or any person acting on her behest from evicting or interfering with the Respondent***

***'s quiet user and occupation of land parcel number  
3590AMUNGENTI 'A' ADJUDICATION Section.***

***vi. Costs to this Application be in the cause.***

***vii. Any other relief or further relief as the Honourable court  
deem fit and just to grant.***

4. The application is premised on various grounds which have been highlighted in the body thereof. In particular, the Applicant has contended that the suit property lawfully belongs to and is registered in his name; that the interested party lodged an objection against the Respondent's title during the adjudication process; the adjudication officer determined the adjudication *vide* ruling rendered on 14.07.2022; the interested party herein filed civil proceedings before the Chief Magistrate's Court at Maua, the court heard and disposed of the proceedings; the court issued a decree and directed the deletion of the name of the Respondent from the records; the court also decreed that the Respondent be evicted from the suit property; and the court also granted an order of permanent injunction.

5. Furthermore, the Applicant has posited that the decision of the Chief Magistrate's Court at Maua is contrary to and at variance with the ruling of the Adjudication Officer. In any event, it has been averred that the adjudication officer decreed that the suit property belongs to the Respondent.

6. Notwithstanding the foregoing, the Petitioner averred that the interested party has since invoked and deployed the decree of the Magistrate's Court and thereby entered upon the suit property.
7. Moreover, it has been contended that the interested party has since occasioned damage worth Kshs. 1,728,400/= only. In addition, it has been posited that the interested party is still keen to perpetrate the offensive activities and thus there is need for the intervention of the court.
8. The application is supported by the affidavit of Peter Muriithi [the deponent] sworn on even date and wherein the deponent has reiterated the grounds adverted to at the foot of the application. Furthermore, the deponent has also annexed assorted documents including, copy of the letter by District Land Adjudication and Settlement Officer dated 12/06/2006; copy of the objection case; and copy of the decree issued vide Maua CMC No. 278 of 2015.
9. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents [represented by the Hon. Attorney General] filed grounds of opposition dated 04.02.2026 and wherein the Hon. Attorney General has contended that both the petition and the subject application are misconceived, premature and legally untenable. To this end, the court has been invited to find and hold that the petition and the application do not lie.
10. The application beforehand came up for hearing on the 09.02.2026 and whereupon the advocates for the parties covenanted to canvass and dispose of the application vide oral submissions. The court thereafter

issued directions and the application was duly heard. The submissions by the respective advocates are on record.

11. Having considered the petition; the supporting affidavit thereto; the notice of motion application; the supporting affidavit thereto; the grounds of opposition; and having taken into account the oral submissions ventilated by/ on behalf of the parties, I come to the conclusion that the determination of the subject matter turns on three [3] key issues. The issues are: Whether the court is seized of the requisite jurisdiction to grant the orders sought at the foot of the petition and by extension the application; whether the petition is defeated by the doctrine of exhaustion; and whether the petition and the application constitute an abuse of the due process of the court or otherwise.

12. Regarding the first issue, it is important to recall and reiterate that the Applicant herein is before the court in an endeavor to challenge, impugn, impeach and or invalidate the decree that was issued vide Maua Chief Magistrate's court in CMC No. 278 of 2015. For coherence, the magistrate's court directed that the name of the Respondent be removed from the adjudication records and that the map be amended. In addition, the court also directed that the Applicant be evicted from the suit property. Moreover, an order of permanent injunction was equally issued.

13. Following the issuance of the various [diverse] orders by the chief magistrate's court, it appears that the interested party has since commenced the process of execution, leading to the destruction of the crops on the suit property. It is the said execution, which has culminated into what the Applicant contends to be damages and infringement of his property rights.

14. Arising from the foregoing, the Applicant is now seeking *inter alia*; an order of stay of implementation of the decree and an order of injunction, to avert the eviction that was issued. To my mind, what the Respondent is seeking to achieve is to impugn the Decree; and the execution process that is being undertaken on the basis of the decree of the chief magistrate's court. Simply put, the Respondent is unhappy with the execution process.

15. Other than the execution process, which is being impugned, the Petitioner is also seeking to challenge the validity of the decree. Suffice it to state that a decree of a court, can only be challenged *vide* an appeal in the prescribed manner. Surely, one cannot file a constitutional petition in lieu of an appeal.

16. Be that as it may, the question that does arise is whether a person who is aggrieved with the orders of the court and the execution proceedings, can file a fresh suit/proceeding [whether an ordinary suit or a constitutional petition]?

17. My answer to the question under reference is to the effect that a party keen to challenge or impeach the decree/order /execution proceedings, issued in a particular suit, is enjoined to file the consequential proceedings/applications [which is apposite] in the said suit; and not otherwise. However, such a party cannot file and or commence a separate suit, save for an appeal, where appropriate.

18. The provisions of **Section 34 of the Civil Procedure Act, Chapter 21 Laws Of Kenya** are apt. Given the significance of the said provisions, it suffices to reproduce the text thereof.

19. Same are reproduced as hereunder:

*“34. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.*

*(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.*

*(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.*

*Explanation.—*

*For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.”*

20. What has aggrieved the Applicant herein are the execution proceedings. Despite being aggrieved by the said execution proceedings, the Applicant has chosen to approach this court and not to address his grievances in the suit that birthed the impugned orders. Such a process is alien to the judicial process and same is antithetical to the rule of law.

21. In the case of **Kuronya Auctioneers v Maurice O. Odhoch & another [2003] KECA 4 (KLR)** the Court of Appeal considered the legal import, tenor and implications of the provisions of section 34 of the civil procedure Act.

22. The court stated thus:

***“In his first ground of appeal the auctioneer takes issue with the learned Judge that he erred in failing to find that Maurice's suit was barred by Section 34 of the Civil Procedure Act, which section reads as follows: -***

*"34(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.*

*(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.*

*(3) Where a question arises as to whether any person is or is not the representative of a Party, such question shall, for the purposes of this section, be determined by the court."*

*Section 34 allows the parties to a suit in which the decree was passed to have determined, in that suit, all questions relating to execution, discharge or satisfaction of the decree. It does not talk of damages payable to a person against whom a decree is executed when he is not the judgment — debtor. For the purposes of compensation for the torts of wrongful execution or trespass the wronged party cannot be said to be a party to the original suit as such a claim does not relate to execution, discharge, or satisfaction of the decree. The first ground of appeal therefore fails*

23. In my humble, albeit view and upon taking into consideration the nature of issues that underpin the petition and the consequential application, I come to the conclusion that this court is divested of jurisdiction to entertain and adjudicate upon the petition. Quite clearly, the issues being canvassed herein are issues that ought to have been canvassed in the suit before the chief magistrate's court subject to and in accordance with the prescription of the law.

24. Turning to the second issue, it is imperative to highlight that where a party, the Applicant not *excepted*, is aggrieved by the decree, or orders of the chief magistrate's court, such a party is enjoined to either file an application for review or an appeal, whichever is applicable.

25. In this regard, there is no gainsaying that there exists a prescribed statutory mechanism for challenging a decree or order of the chief magistrate's court. Certainly, such a decree or order can not be challenged by filing a constitutional petition.

26. Moreover, it is common ground that where there exists a prescribed mode/mechanism for challenging a decision, then the aggrieved party is obligated and enjoined to exhaust the prescribed mechanism before approaching a court of law. Further, and in addition, it is imperative to observe that the constitution ought to be invoked and deployed only in appropriate cases. The constitution ought not to be invoked for the mere asking and in lieu of the ordinary/prescribed mechanism.

27. The legal import and remit of the doctrine of exhaustion and constitution avoidance has been the subject of various court decisions. In the case of **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR)**, the Supreme Court of Kenya [the apex court] highlighted the significance of the doctrine.

28. The court stated thus:

[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.”*

29. In the **case of Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions) v Munyao & 148 others (Suing on their own behalf and on behalf of the plaintiffs and other members/beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] KESC 83 (KLR)** the Supreme Court revisited the doctrine of exhaustion.

30. The court held thus:

*“116. The foregoing verdict also finds support in an adage principle in administrative law of “Exhaustion of Administrative Remedies” and from the jurisprudence emanating from this court and the lower Courts, which has been restated with notoriety to the effect that, where there exists an*

alternative method of dispute resolution established by legislation, the courts must exercise restraint in exercising their Jurisdiction conferred by the constitution and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance. see Alphonse Mwangemi Munga & 10 Others v African Safari Club Ltd [2008] eKLR Narok County Council case v Trans Mara County Council [2000] 1 EA 161 Kones vs Republic & Another ex parte Kimani wa Nyoike & 4 Others (2008)3 KLR (EP); Speaker of the National Assembly vs Njenga Karume (2008)1 KLR (EP) 425, Francis Mutuku vs Wiper Democratic Movement - Kenya & others [2015] eKLR David Ochieng Babu v Lorna Achieng Ochieng & 2 others [2017] eKLR among other cases not referred to. The Court of Appeal in Geoffrey Muthinja & another vs Emanuel Muguna Henry & 1756 others [2015] eKLR held that: “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 mechanism 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.”

117 .Of precise relevance to this case is **Bethwell Allan Omondi Okal v Telkom (K) Ltd (Founder) & 9 others** [2017] eKLR. In that case, the appellants who were former employees of Telkom (K) Ltd felt aggrieved and discriminated against following the implementation of what was referred to as “Trivial Pension Payout”, by the Authority which they accused of fraud, corruption and mismanagement and for paying some categories of retirees less increments in their pension payments than others. The trial court made a finding that since the complaints were against the Authority, that there were other statutory inbuilt administrative dispute resolution mechanisms under the RBA Act that ought to have been followed before recourse to the High Court. He opined that any dispute should have been referred to arbitration in the first instance pursuant to Rule 36 of the Consolidated Deed of Trust and Rules, made under the RBA Act and that if the appellant was dissatisfied with the decision of the arbitrator, then he could appeal to the Retirement Benefits Appeals Tribunal established under the RBA Act. On Appeal, the Court of Appeal dismissed the appeal stating that: “The Appellant might want to argue that he has a constitutional right of access to justice, and we agree that he does, but the High Court and this Court have pronounced themselves many times to the effect that a party must first

*exhaust the other processes availed by other statutory dispute resolution organs, which are by law established, before moving to the High court by way of constitutional petitions. See International Centre for Policy and Conflict & 4 others vs The Hon. Uhuru Kenyatta and others, Petition No 552 of 2012, and Speaker of National Assembly v Njenga Karume [2008] 1KLR 425. We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant's petition lacked merit and was for dismissal."*

*118. In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.*

*119. Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers,*

*but on the fact of a legal presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action”*

31. Insofar as there existed the prescribed mechanism for impeaching the decree of the chief magistrate’s court, the Petitioner/Applicant herein cannot bypass the established protocol and walk to this court by way of constitutional petition.
32. Consequently, and in this regard, the Petitioner/Applicant must be reminded of the doctrine of exhaustion. [ See the holding in the case of **Geoffrey Muthinja and others Versus Stanley Munga Henry and 1796 others [2015 eKLR; and Bethwell Allan Omondi Okal Versus Telcom K Limited [2018] eKLR**, respectively].
33. Moving to the last issue, namely; whether the subject petition constitutes an abuse of the due process of the court. It is important to underscore that parties must only approach the court where and when there exists a

reasonable cause of action. Furthermore, in approaching a court of law, a party is enjoined to ensure that the forum chosen is the appropriate one.

34. Additionally, there is no gainsaying that a party ought not to file/commence multiple suits or proceedings, relating to and concerning the subject dispute. Furthermore, where there is an existing suit or matter, wherein the issues can be canvassed, it behooves the parties to canvass all the issues in the existing suit. Such an endeavor enables the court to avoid issuance of conflicting and contradictory orders. Besides, it enables the court to avert judicial absurdity.

35. Be that as it may, where a party is seized and knowledgeable of the recourse to be followed and decides to file a fresh suit/proceedings [raising similar issues], the conduct in question amounts and constitutes an abuse of the due process of the court.

36. Regarding the subject matter, the petitioner/applicant is aware that the issues concerning the removal/deletion of his name from the adjudication register; and the determination of ownership rights was the subject of the suit in the Chief Magistrate's Court. However, instead of mounting an appeal in line with the provisions of law same has chosen to file a petition. Quite clearly, such unorthodox conduct cannot be countenanced.

37. The concept of abuse of the due process of the court was expounded on in the case of **Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] KEHC 6100 KLR [Per Mativo J]** – as he then was] where the court stated thus:

*“26. It’s settled law that a litigant has no right to pursue paripasu two processes which will have the same effect in two courts either at the same time or at different times with a view of obtaining victory in one of the process or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks.*

*27. It is not open for the Respondent herein to institute these Judicial Review proceedings after losing the Petition challenging the same criminal trial. The two processes are in law not available to the Respondent . He ought to have appealed against the above mentioned decision if he was dissatisfied. The Respondent cannot lawfully file this Judicial Review proceedings and seek similar reliefs relying on substantially the same grounds as the Petition referred to above. The pursuit of the second process, that is this Judicial Review Application constitutes and amounts to abuse of court/legal process.”[\[17\]](#)*

*28. Multiplicity of actions on the same matter between the same parties even where there exist a right to bring the action is regarded as an abuse.[\[18\]](#) The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person*

*exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.[19]I find no difficulty in concluding that this Judicial Review Application is based on similar grounds as the Petition referred to above.*

*29. This obstacle to the efficient administration of justice is not immovable. Courts need not and should not wait for lawyers and litigants to initiate proceedings where there is substantial reason to believe that the processes of the court have been abused. Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which such abuse cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception, fraud and blatant abuse of judicial processes.*

*30. All courts have an inherent or implied jurisdiction to prevent their processes from being used as an instrument of oppression. Courts are able to modify their procedures to avoid such prejudice and take any steps that are necessary to prevent an abuse of process.[20]The concept of abuse of process extends to the use of the court's processes in a way that is inconsistent with two fundamental requirements arising in Court proceedings. These are, first, that the Court protect its ability to function as a Court of law by ensuring that its processes are used fairly by State and citizen*

*alike. The second is that unless the Court protects its ability to function in that way, its failure will lead to an erosion of public confidence. The court's processes will be seen as lending themselves to oppression and injustice.[21]"*

38. In my humble view, the subject petition and by extension the application, fit within the parameters of what constitutes an abuse of the due process of the court. Pertinently, the reliefs sought, including declaration of ownership, [if granted], are likely to create judicial absurdity or judicial paralysis, insofar as there would exist two parallel sets of orders. For good measure, there would be the orders of the chief magistrate, which remain *in situ*; and [sic] the orders of this court. Courts of law must be on the watch-out lest same be converted to forum of Injustice and ridicule, for issuing contradictory orders.

#### **FINAL DISPOSITION**

39. From the foregoing analysis, it must have become crystal clear that the petition beforehand and by extension the application dated 05.01.2026, are not only premature and misconceived, but same constitute an abuse of the due process of the court.

40. Consequently, and in the premises, the final orders that commend themselves to the court are:

- i. The Petition be and is hereby struck out.***
- ii. The application dated 05.01.2026 be and is hereby struck out.***

***iii. Costs of the petition and the application shall be borne by the petitioner.***

41. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 09<sup>TH</sup> DAY  
OF FEBRUARY, 2026.**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].**

**JUDGE**

***In the presence of:-***

Hussein - court assistant

Mr. Koome for the Petitioner/Applicant.

Ms. Miranda [Senior litigation Counsel] for the Respondents

No appearance for the Interested Party.