



REPUBLIC OF KENYA



KENYA LAW
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Marisin v Naiguta (Sued as the Next of Kin and Legal Representative of the Estate of the Late Mepoe Ole Naiguta) & 4 others (Environment and Land Petition E006 of 2024) [2025] KEELC 5571 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5571 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND PETITION E006 OF 2024
MN MWANYALE, J
JULY 28, 2025

BETWEEN

KIPNGENY ARAP MARISIN APPLICANT

AND

WILLIAM OLE NAIGUTA (SUED AS THE NEXT OF KIN AND LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE MEPOE OLE NAIGUTA) 1ST RESPONDENT
THE DISTRICT LAND REGISTRAR 2ND RESPONDENT
DEPUTY COUNTY COMMISSIONER, TRANSMARA 3RD RESPONDENT
DIRECTOR OF LAND ADJUDICATION 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The Petitioner/Applicant filed an application dated 5th of July 2024 which application is subject of this Ruling and seeking the substantive relief to wit.
 - i. Spent.
 - ii. Pending the hearing and disposal of the Petition, the Honourable court may be pleased to grant a temporary order of stay of implementation of the Minister's decision in Land Appeal to the Minister Case No. 268/1998.
 - iii. Spent.



2. The application is based on Section 3A and 63e of the *Civil Procedure Act* and on the grounds inter alia that the decision of the Minister in Land Appeal No. 268/1998 might be implemented and will render the Petition futile as the Petitioner is likely to suffer irreparable loss if decision is implemented.
3. The Application is further supported by the supporting affidavit of Kipngeny Marisin who deposes that he has petitioned the court to annul the Minister's decision in Appeal No. 268/1998 and reiterates the ground in support of the Petition; and has annexed a copy of the decision, and of the search of Transmara/Olosakwana B/1117.
4. The Application was not certified as urgent when at the ex-parte stage, and it was served upon the Respondents.
5. In opposition to the application, the 1st Respondent filed a Replying affidavit, in which he deposes as follows; -
 - i. That the court herein made a determination in relation the same suit property in Kilgoris ELC JR E002 of 2021 between the same parties and rulings delivered on 5th November 2022 and 20th June 2023.
 - ii. The Petitioner proceeded to file an appeal which is pending before the Court of Appeal at Nakuru.
 - iii. That the Petitioner filed an application dated 9th October 2023 in the Court of Appeal seeking similar orders to the ones sought in this application, and vide a Ruling dated 7th June 2024 the said application was dismissed.
 - iv. In view of the active Appeal challenging the decision of this court at the Court of Appeal, this matter ought to await until the determination of the Appeal.
 - v. That the 1st Respondent is a son of the Original Allottee of parcel of land known as Transmara/Olosakwana B/72.
6. The 2nd to 6th Respondents being represented by the Attorney General's office Kisii, filed a Replying affidavit deposed by Mr. Justus M. Levu, the District Land Adjudication and Settlement Officer Transmara East, West and South who deposed that;
 - i. The Petitioner herein had filed an objection Case No. 442/81 over the parcel number Transmara/Olosakwana B/72 which was recorded in the name of Senteu Ole Naikuta (deceased) now represented by Meboe Olosiriri Naikuta.
 - ii. The objection was allowed by the Land Adjudication officer, with the result that the Applicant was allocated a new subdivision of Transmara/Olosakwana B/72, now known as Transmara/Olosakwana B/1117.
 - iii. The Defendant in the objection case filed an Appeal to the Minister being Appeal Case Number 268/1998 which Appeal was heard and determined by the Deputy County Commissioner Transmara West and the land was reverted back to the original owner.
 - iv. That under Regulations 4(4) of the Land Adjudication Regulations, an Appeal to the Minister could be heard by the Minister in person or a duly authorised agent, and the Deputy County Commissioner had jurisdiction to conduct the proceedings, and the Petitioner herein by way of this Petition alleges otherwise.
 - v. The Application was canvassed by way of written submissions.



Applicant's Submissions

7. The Applicant has framed and submitted two issues for determination to wit,
 - i. Whether a right or fundamental freedom in the Bill of Rights has been denied, violated and or infringed or is threatened.
 - ii. Whether the Honourable court has jurisdiction to enforce the Bill of Rights by issuing a conservatory order.
8. It is the Petitioner's submissions that his fundamental right and freedom under Article 40(1) and (2) and Article 47 and 50(1) have been denied, violated, infringed or threatened to be violated, due to the decision by the Deputy County Commissioner and that once the decision is implemented the same shall mean that the 1st Respondent shall become the Registered owner of the suit property to the detriment of the Petitioner/Applicant.
9. On the strength of the above the Applicant prays for the grant of the conservatory order sought in his application.

1st Respondent's Submission

10. The 1st Respondent submits that the application before court is *Resjudicata* as the same prayer was sought before the Court of Appeal in Nakuru Civil Appeal No. E126/2023 and it was dismissed.
11. The 1st Respondent further submits that since the dispute is live before the Court of Appeal, the Petition is thus subjudice. On the strength of the above the 1st Respondent submits for the dismissal of the Application.

2nd to 6th Respondent's Submission

12. The said Respondents have framed and submitted on four issues.
13. On issue number 1, the 2nd to 6th Respondents submit that the Petition herein offends the provisions of Section 29 of the *Land Adjudication Act* which provides specific procedures for challenging the disputes from a decision of the Minister.
14. A Ministerial decision is final and cannot be challenged by way of petition, as filed herein.
15. The Respondents cite the decision in the cases of *John Masiantet Sani v. Daniel Aramat Lolungiro and 3 Others* eKLR as well the case of *Corave Amratu (Suing on behalf of the late Amamatu Gupta) v. Patricial Kazungu and 2 Others*.
16. On issue number 2, the 2nd to 6th Respondents submit that under Section 7 of the *fair Administrative Action Act*, the only recourse that is available for the Petitioner to have filed a Judicial Review application, as that is the procedure envisaged under Section 29 of *Land Adjudication Act*.
17. In support of this submission, the Respondents place reliance on the decision in the case of Lepore *Ole Maito v. Letwat Kortom and 2 Others* as well as the *Speaker of the National Assembly v. Karume*.
18. On issue number 3, the 2nd to 6th Respondents submit that the Petitioners Constitutional rights were not breached.
19. The court shall not consider this limb of submissions as the same relate to the main petition as opposed to the application before court.



Issues for Determination

20. Having analysed the application, the rival affidavits, the submissions and considered the law, the court frames the issue for determination as
 - i. Whether or not the application is merited?
 - ii. Who bears the costs of the application?

Analysis and Determination

21. The Applicant herein seeks a conservatory order, in the nature of a stay of implementation of the Ministerial decision. This same relief was sought by the same Applicant before the Court of Appeal and the Court of Appeal considered the same and rendered a Ruling.
22. The 1st Respondent submits that having already sought and denied that relief before the Court of Appeal, renders this Application as *Resjudicata*.
23. The doctrine of *Resjudicata* is founded on Section 7 of the [Civil Procedure Act](#); and in its decision the Supreme Court of Kenya in [John Maritime Florence services Ltd and Another v. Cabinet Secretary and Transport and Infrastructure](#) 2001 (KESC) 39 where the court held interalia; -
 - “ 59. for *Resjudicata* to be invoked in a civil matter the following elements must be demonstrated;
 - a. There is a former judgment or order which is final;
 - b. The judgment or order was on merit;
 - c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties and
 - d. There must be between the first and second action identical parties, subject matter and cause of action....”
24. Analysing the above elements to the current application, it is evident that the Court of Appeal before which the stay application was filed is a court of having jurisdiction over the subject matter and the parties, and a Ruling which resulted in the dismissal order was issued and the same is final and was issued on merit.
25. On parties, the parties in the present application were the same before the application before the Court of Appeal.
26. The issue in both applications being a stay of the implementation of the decision of the Minister’s decision in Land Appeal Case No. 268/1998, and the subject matter in both applications being Transmara/Olosakwana B/1117.
27. From the above analysis, all the elements of *Resjudicata* have been proven, and the court finds that the application being *Resjudicata* and hence it is not merited as the same is destined to fail as it is hereby struck out, with costs to the Respondents.

DATED AT KILGORIS THIS 28TH DAY OF JULY, 2025.

HON. M.N MWANYALE

JUDGE



In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Rono for Petitioner/Applicant

Mr. Shira for 1st Respondent

Ms. Wanjiru for 2nd to 6th Respondent

