



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC LAND PETITION NO. E003 OF 2024

**PATRICK KIMATHI MUTHAMIA.....1ST
PETITIONER**

**GABRIEL KIRIMI.....2ND
PETITIONER**

**DAVID MURANGIRI.....3RD
PETITIONER**

**JAPHET KABURU.....4TH
PETITIONER**

**JAMES BAUNI.....5TH
PETITIONER**

**RITHAA KIBAARA.....6TH
PETITIONER**

=VERSUS=

**THE DIRECTOR, LAND ADJUDICATION
AND SETTLEMENT.....1ST
RESPONDENT**

**THE DIRECTOR LAND ADJUDICATION
AND SETTLEMENT OFFICER, MERU SOUTH....2ND
RESPONDENT**

THE DISTRICT LAND REGISTRAR,

MERU SOUTH.....3RD
RESPONDENT

THE HON ATTORNEY GENERAL.....4TH
RESPONDENT

BENSON MUGAMBI KANAMPIU.....1ST INTERESTED
PARTY

FESTUS METHA NJAU.....2ND INTERESTED
PARTY

JACKIN NYAGA.....3RD INTERESTED
PARTY

MWARANIA MWIANDI.....4TH INTERESTED
PARTY

JUDGMENT

Introduction

1. Through a petition dated 29/7/2024, the petitioners allege that, while exercising appellate jurisdiction under **Section 29** of the **Land Adjudication Act**, the Cabinet Secretary (*hereinafter referred to as "the Minister"*) violated their constitutional rights under **Articles 40** and **47** of the **Constitution**. They contend that the Minister failed to visit the *locus-in-quo*. They further allege that the Minister rendered a decision in the appeal without notifying them that his decision on the appeal was to be rendered.
2. Consequently, the petitioners urge the court to grant them the following verbatim reliefs:

a) A declaration that the actions of the 1st and 2nd respondents of rendering a judgment at the appeal to the minister without visiting the suit lands Plot 1001, 1002, 1003, 1004,

1005, 956 & 957 Lower East Magutuni Adjudication Section and disregarding that the petitioners were in occupation was in contravention and violation of the petitioners' constitutional rights.

b) A declaration that the 1st and 2nd respondents rendering a judgment secretly without notifying the petitioners was an abuse of the court process and it amounts to the violation of their rights to be heard.

c) A declaration to the 1st and 2nd respondents to re-hear the appeal to the Minister Nos.447, 448, 449, 450 & 451 and the certificate of titles issued by the 3rd respondent to the interested parties be cancelled and reverted back to an adjudication section for fair determination.

d) Costs to be borne by the interested parties.

3. The respondents contest the petition and urge the court to reject and dismiss it on the grounds that: (i) the petition does not meet the threshold of a constitutional petition as outlined in the case of **Anarita Karimi Njeru v Republic (1979) eKLR**; and (ii) no breach of the petitioners' rights has been demonstrated. On their part, the interested parties oppose the petition and contend that the Minister heard all the parties in the appeal. They deny the allegation that the Minister refused to visit the *locus-in-quo*, adding that the petitioners never asked for the visit. They further state that

the Minister notified the parties on delivery date of his award/decision.

4. The three key issues that fall for determination in the petition are: (i) Whether the petition meets the threshold of a constitutional petition as stipulated under **rule 10 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**; (ii) Whether any of the respondents breached any of the petitioners' rights under **Article 40 of the Constitution**; and (iii) Whether any of the respondents breached any of the petitioners' rights under **Article 47 of the Constitution**. Before I analyse and dispose the three issues, I will briefly outline the parties' respective cases.

Petitioners' Case

5. Vide their petition dated 29/7/2024, the petitioners' state that they were the proprietors of land parcel number **1001 Lower East Magutuni Adjudication Section**. At the stage of hearing and disposing objections to the adjudication register, the said parcel was sub-divided to create parcel numbers **1001, 1002, 1003, 1004** and **1005** and the created parcels were awarded to the interested parties. Dissatisfied with the decision of the Adjudication Officer on the A/R Objection, the petitioners lodged an appeal to the Minister against the interested parties under **Section 29 of the Land Adjudication Act**. The appeal was slated for hearing by the Minister's delegatee and parties to the appeal were heard. The Minister's delegatee slated a day when he

would visit the parcels of land (the *locus-in-quo*) to determine who was in occupation and utilizing parcel numbers **1001, 1002, 1003, 1004, 1005, 956** and **957**.

6. The petitioners contend that they subsequently learnt, towards the end of 2023, that “a judgment” had already been rendered by the Minister’s delegatee (*the Deputy County Commissioner*) without conducting a visit to the *locus-in-quo*. Vide the said award of the Minister, parcel numbers **956** and **957 Lower East Magutuni Adjudication Section** were awarded to the 4th interested party while the other parcels were awarded to “the respondents” (sic).
7. The petitioners contend that their fundamental rights and freedoms have been contravened and grossly violated by the respondents in collusion with the interested parties. They argue that the “2nd respondent’s action and conduct and or refusal to visit the suit lands in question to find out who was in occupation, as he had informed them, prior to rendering the judgment in the appeal to the Minister, was unconstitutional and constituted a violation of their fundamental rights to property under **Article 40** and the right to fair administrative action under **Article 47** of the **Constitution**. They allege that “the 2nd respondent’s actions and failure” to visit the suit lands were an abuse of the “court process” and amounted to a violation of the right to fair administrative action under **Article 47** of the **Constitution**.

Respondents’ Case

8. The respondents opposed the petition through grounds of opposition dated 18/7/2025 and written submissions dated 21/11/2025, filed by **M/s E. Kendi**, a Senior Litigation Counsel in the **Office of the Attorney General**. They termed the petition as fatally defective, misconceived, mischievous, frivolous, vexatious and an abuse of the court process. They further faulted the petition for failure to meet the threshold outlined in the case of **Anarita Karimi Njeru v Republic (1979) eKLR**.
9. Making reference to the petitioners' exhibited proceedings relating to the appeals to the Minister, the respondents argue that the Land Adjudication Act did not obligate the Minister to carry out site visits when hearing or determining appeals. The respondents further argue that it is evident from the exhibited proceedings that the petitioners forcefully occupied the interested parties' land (the suit land) in succession in 1983, 2001 and 2007.
10. The respondents add that the petitioners were fully heard in the appeals and they were granted an opportunity to cross-examine the interested parties. They urge the court to reject and dismiss the petition.

Interested Parties' Case

11. The interested parties opposed the petition through a replying affidavit sworn on 21/3/2025 by **Mr. Jackin Nyaga** (the 3rd interested party) and written submissions dated 22/11/2025, filed by **M/s F J Mugambi & Company Advocates**. Their case is that land parcel numbers **1001 - 1005** belonged to **Kanampiu Mbiriga**, father to the 1st

interested party. They add that land parcel numbers **956** and **957** belonged to **Daniel Mathai M'Thathi** who inherited it from his father **Gichera s/o Biarago**, who bought the land from **M'Mbijiwe Kinyura** in 1934.

12. The interested parties state that during land adjudication, all parties were heard by the various organs established under the Land Adjudication Act, adding that at the committee stage, the Committee, in the company of the parties, visited the suit parcels and drew a sketch map. They add that, dissatisfied with the decision of the Committee, the 5th and 6th petitioners filed a case before the **Arbitration Board (A/B Case No 41/97)** relating only to parcel number **1001**. Upon hearing the case, the Arbitration Board made awards affecting parcel numbers **1002 -1005, 956** and **957** yet the case before it only concerned parcel number **1001**. Subsequent to that, there were objections to the adjudication register which were fully heard and disposed by the Adjudication Officer. Dissatisfied with the awards made in the A/R Objections, the petitioners filed **Appeal numbers 448, 449, 450, 451** and **447** of **2015** to the Minister.

13. The interested parties contend that the appeals came up for hearing on 26/2/2021 in the presence of all the parties and all the parties were accorded a chance to be heard, present witnesses and cross-examine witnesses. They contest the petitioners' allegation that they requested for a scene visit, adding that all that the petitioners requested was a traditional oath, which was declined by the Minister's delegatee and a proper reason was given. They further state

that prior to the filing of the appeals, several site visits had been done and the findings of the site visits were on record.

14. The interested parties add that the date of judgment/award was communicated to the parties in writing through notices delivered by the Area Chief. They urge the court to dismiss the petition.

Analysis and Determination

15. I have considered the petition, the response to the petition and the parties' respective submissions. As pointed out in one of the opening paragraphs of this judgment, the key issues to be determined in this petition are: (i) Whether the petition meets the threshold of a constitutional petition as stipulated under **rule 10 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**; (ii) Whether any of the respondents breached any of the petitioners' rights under **Article 40 of the Constitution**; and (iii) Whether any of the respondents breached any of the petitioners' rights under **Article 47 of the Constitution**. I will analyse and dispose the three issues sequentially in the above order.
16. Does this petition meet the threshold of a constitutional petition under the relevant law? Prior to the promulgation of **The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** (*hereinafter referred to as "the Rules"*), the threshold on the mandatory contents of a constitutional petition was outlined in the famous case of **Anarita Karimi Njeru v Republic (1979) eKLR**. The above rules, enacted in 2013,

provided a clear legislative framework on the essential contents of a petition brought to the court to enforce a provision of the **Bill of Rights**. The rules effectively replaced the criteria in Anarita case (supra).

17. Rule 10 provides as follows:

“10. Form of petition

(1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.

(2) The petition shall disclose the following—

(a) the petitioner’s name and address;

(b) the facts relied upon;

(c) the constitutional provision violated;

(d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;

(e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners,

which is related to the matters in issue in the petition;

(f) the petition shall be signed by the petitioner or the advocate of the petitioner; and

(g) the relief sought by the petitioner.

(3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.

(4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.”

- 18.** The court has read and considered the petition dated 29/7/2024 in the context of the requirements of **rule 10**. The name and address of the petitioners are disclosed in the opening paragraphs of the petition. The facts relied upon are outlined in paragraphs 8 to 15 of the petition. The constitutional provisions alleged to have been violated are disclosed in paragraphs 16, 17 and 18 of the petition. The petitioners alleged that the 2nd respondent breached **Articles 40 and 47** of the **Constitution**. The alleged injury caused or likely to be caused to the petitioners is also disclosed in paragraphs 16 to 18 of the petition. The reliefs which the petitioners seek have been outlined in the last paragraph of the petition. Lastly, the petition was signed by the petitioners' advocate.
- 19.** Suffice it to state that, an examination of the petition dated 29/7/2024 in the context of **rule 10** does not disclose any serious violation of rule 10 to warrant a summary rejection of the petition. The view of this court is that, by and large, the petition meets the requirements of rule 10. That is the finding of the court on the first issue.

20. Did any of the respondents breach any of the petitioners' rights under **Article 40** of the **Constitution** in the hearing and disposal of their appeals? **Article 40** of the **Constitution** provides a framework on the protection of the rights to property in the following terms:

"40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property –

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an

interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that— Constitution of Kenya, 2010

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya. (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

21. The petitioners allege that the 2nd respondent's refusal to visit the suit lands (the *locus-in-quo*) was unconstitutional and violated their rights to property. Did the petitioners prove the above allegation? First, the allegation of breach were levelled against the 2nd respondent. The 2nd respondent named in this petition is the **Director Land Adjudication**

and Settlement Officer, Meru South. This is not the person or officer who heard and determined the appeal. The appeal was heard and determined by the Minister through a delegatee. The delegatee was the **Deputy County Commissioner, Maara Sub-County.** The petitioners elected not to sue the Minister. They also elected not to sue the Minister's delegatee. They elected to attribute alleged violations to a party who neither heard nor disposed the appeal. No evidence was tendered to suggest that the 2nd respondent committed the violations that the petitioners alleged against him.

- 22.** Proceeding from the premise that joinder of the Attorney General was sufficient for the purpose of ventilating the petitioners' claim against the Minister, have the petitioners proved the allegation that there was refusal to visit the locus-in-quo? I do not think so. First, the petitioners exhibited the witness statement(s) and the evidence which they tendered before the Minister's delegatee. They also exhibited the proceedings relating to the appeals. The only request which the petitioners made to the Minister was a plea to have a traditional oath administered. The request was rejected and proper reasons were tendered for the rejection. There is no evidence to suggest that the petitioners requested for a visit to the *locus-in-quo* (the suit lands). There was no evidence to suggest that the Minister's delegatee promised to visit the *locus-in-quo*.
- 23.** The court has also looked at the Act. While exercising the appellate jurisdiction vested in him, the Minister is not obligated to visit the *locus-in-quo*. The duty to gather and

tender evidence is that of the parties to the appeal. A party desiring to have a visit to the *locus-in-quo* has the obligation to make an application and justify the visit. There is no evidence to suggest that the petitioners made any such application.

- 24.** On the allegation that the Minister's delegatee rendered a decision without issuing notice to the petitioners, the interested parties tendered evidence indicating that proper notices were issued and were served through the Area Chief. They exhibited a copy of the notice which was served on them. No attempt was made to controvert the interested parties' contention that notices were served through the Area Chief and that the notice exhibited by the interested parties is what was served on the parties.
- 25.** For the above reasons, the court comes to the finding that the petitioners failed to prove violation of their rights under **Articles 40** and **47** of the **Constitution**. The result is that the court has not found merit in this petition.
- 26.** On costs of the petition, the general principle on costs in a constitutional petition is contained in rule 26. Award of costs is at the discretion of the court. Secondly, when exercising the discretion, the court is required to take appropriate measures to ensure that every person has access to the court to determine disputes relating to their rights and fundamental freedoms. In the present petition, the court is expected to balance the right of the petitioners to access the court against the prejudice which the interested parties will be exposed to if they are not indemnified in terms of the

costs which they have incurred in defending the petition. Taking the above into account, the court comes to the finding that the petitioners should bear costs of the petition.

Disposal Orders

- 27.** For the above reasons, this petition is rejected and dismissed for lack of merit. The petitioners shall bear costs of the petition.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF FEBRUARY, 2026.

**B M EBOSO [MR]
ELC JUDGE**

In the Presence of:

Mr. Patrick Muthamia for the 1st Petitioner

Mr. Gabriel Kirimi - 2nd Petitioner present in person

David Murangiri - Absent

Japhet Kaburu - 4th Petitioner present in person

James Bauni - Absent

Rithaa Kibaara - Absent

Court Assistant - Nelly