



**Losirwa Women Multi-Purposes Co-operative Society Limited v County Director of Physical & Land Use Planning Uasin Gishu County & 4 others (Environment and Land Petition E001 of 2022) [2025] KEELC 5543 (KLR) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5543 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**ENVIRONMENT AND LAND PETITION E001 OF 2022**

**EM WASHE, J**

**JULY 28, 2025**

**IN THE MATTER OF ARTICLES 2(2),10,12(1)**

**(A),19,20,21,22,23,27,28,31,40,47,60,61,64,162(2),(B)**

**AND 191 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THAT PARCEL OF LAND KNOWN**

**AS KAPTAGAT/KAPTAGAT BLOCK 1 (LOSIRWA)/137**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL**

**RIGHTS AND FREEDOMS UNDER ARTICLE 2(2), 10,12(1)**

**(A),19,20,21,22,23,27,28,31,40 & 47 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**LOSIRWA WOMEN MULTI-PURPOSES CO-OPERATIVE SOCIETY**

**LIMITED ..... PETITIONER**

**AND**

**COUNTY DIRECTOR OF PHYSICAL & LAND USE PLANNING UASIN GISHU**

**COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF SURVEY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY LAND REGISTRAR, UASIN GISHU COUNTY .... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JOSEPH MAIYO ON BEHALF OF NAIBERI TRADING CENTRE**

**COMMITTEE ..... 5<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. The Petitioner filed a Petition dated 19.01.2022 (hereinafter referred to as “the present Petition”) against the 1<sup>st</sup> to 5<sup>th</sup> Respondents (hereinafter referred to as “the Respondents”) seeking for the following Orders; -
  - a. Protection of land parcel Kaptagat/Kaptagat Block 1 (Losirwa)/137 as enshrined under Article 40 of *the Constitution* of Kenya, 2010 and their right to fair Administrative Action under Article 47 of *the Constitution* of Kenya, 2010.
  - b. A declaration that the Petitioner is the registered owner of Freehold interest over land parcel Kaptagat/Kaptagat Block 1 (Losirwa)/137 and that title being the title Kaptagat/Kaptagat Block 1 (Losirwa)/137 is valid regular and legal.
  - c. The Order of Certiorari to quash the decision of the Respondents to cancel the title deed for land parcel number Kaptagat/Kaptagat Block 1 (Losirwa)/137 and the decision to issue Leases to the 5<sup>th</sup> Respondent contrary to the rights of the Petitioner and to alter, vary and/or change the record of land parcel Kaptagat/Kaptagat Block 1 (Losirwa)/137 at the Lands Registry in favour of the 5<sup>th</sup> Respondent.
  - d. The Order of Certiorari to quash amendment of the Registry Index Map for land parcel Kaptagat/Kaptagat Block 1 (Losirwa)/137 by the 2<sup>nd</sup> Respondent in favour of the 5<sup>th</sup> Respondent.
  - e. An Order of Mandamus against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to restore the Petitioner as the registered proprietor of Freehold interest over land parcel Kaptagat/Kaptagat Block 1 (Losirwa)/137 and to reconstruct of land Register to reflect the Petitioner as the registered proprietor of the suit property.
  - f. An Order of a Permanent Injunction to issue restraining the 5<sup>th</sup> Respondent by itself, servants and/or agents from alienating, transferring, charging, leasing, sub-dividing, taking possession, continuing to occupy or in any other way dealing or interfering with the land parcel number Kaptagat/Kaptagat Block 1 (Losirwa)/137.
2. The facts pleaded by the Petitioner in support of the above prayers are contained in the body of the Present Petition and can be summarised as follows; -
  - i. The Petitioner was registered as the legal proprietor of the property known as Kaptagat/Kaptagat Block 1 (Losirwa)/137 measuring 0.098 Hectares which was freehold (hereinafter referred to as “the suit property”).
  - ii. Upon the Petitioner’s registration, they took occupation thereof and developed the same with permanent structures that are in place to date.
  - iii. However, during the demarcation and registration of the entire property, there was a variation of where the suit property should be located.
  - iv. The Petitioner discovering this error proceeded to seek for a rectification of the Registered Index Map and/or Mutation so that their property would be situated at the correct position but the said Rectified Registered Index Map and/or Mutation has never been registered.



- v. Unfortunately, the location of the Petitioner's suit property was allocated to the 5<sup>th</sup> Respondent who intends to encroach into the suit property to the detriment of the Petitioner.
  - vi. The Petitioner further averred that the location which is now earmarked for the suit property is in a riparian area and its allocation and occupation is contrary to law.
  - vii. Similarly, the Petitioner states that the relocation of the suit property from its original position to the new position in the Registered Index Map and/or Mutation will convert the same before Freehold to Leasehold.
  - viii. As such, the decision by the 1<sup>st</sup> to 4<sup>th</sup> Respondents to alter the location of the suit property from where it was originally to the new position provided by the Registered Index Map and/or Mutation did not follow the provisions of Article 47 of *the Constitution* of Kenya as read with the *Fair Administrative Action Act*, 2015.
  - ix. Consequently, the actions of the 1<sup>st</sup> to 4<sup>th</sup> Respondent to change the location of the suit property as well as the tenure of ownership from freehold to leasehold infringed on the Petitioner's rights under Article 40 and Article 47 as read with the Fair Administrative Act, 2015.
  - x. Based on the foregoing infringements, the Petitioner sought this Court to quash the decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents to relocate the suit property in accordance to the Registered Index Map and/or Mutation and also the decision to change and/or alter the tenure of the suit property from Freehold to Leasehold.
  - xi. The Petitioner also sought for an Order of cancellation of the Leases issued to the 5<sup>th</sup> Respondent and restoration of the original ownership documents of the suit property which recognised the Petitioner as the lawful registered owner of the same.
3. In addition to the facts pleaded in the present Petition, the Petitioner filed witness statements of Wilson Kibiwot Tuwei, Elizabeth Chepchirchir Sang & Paul Kibiego Saminas well as the bundle of Documents dated 09.09.2024.
  4. The present Petition was then served on the 1<sup>st</sup> to 5<sup>th</sup> Respondents herein.
  5. However, it is only the 5<sup>th</sup> Respondent that responded to the present Petition by filing a Replying Affidavit sworn by one Joseph Kipchirchir Miayo on the 23.03.2022.
  6. The 5<sup>th</sup> Respondent's response to the present Petition is premised on the following grounds; -
    - i. The present Petition is an abuse of the Court process, misconceived and bad in law and should be dismissed forthwith.
    - ii. The 5<sup>th</sup> Respondent admitted that the Petitioner herein is the lawful and registered owner of the suit property herein having been issued with a Title Deed on the 28.09.2018.
    - iii. Based on the Title Deed issued on the 28.09.2018, the Petitioner was entitled to all the rights and privileges provided by Section 24 and 25 of the *Land Registration Act*, No. 3 of 2012.
    - iv. The 5<sup>th</sup> Respondent informed the Court that the Green Card recognising the Petitioner's ownership rights was opened way back in the year 1995.
    - v. According to the 5<sup>th</sup> Respondent, prior to issuance of Title Deeds, there was an exercise of demarcation and sub-division undertaken by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents herein.



- vi. The 5<sup>th</sup> Respondent on the hand confirmed that it is the legal owner of two properties namely Plot. No..53 and Plot. No..54 commonly known as Naiberi Trading Centre plots.
  - vii. The 5<sup>th</sup> Respondent was of the view that if there was any encroachment into the suit property which is denied, then no evidence has been presented before the Court.
  - viii. The 5<sup>th</sup> Respondent averred that the dispute on the location of the suit property can easily be resolved by way of a ground visit by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to re-establish the boundaries of the suit property and/or its actual position on the ground.
  - ix. The 5<sup>th</sup> Respondent indicated that after the demarcation and sub-division, there was need to engage the 1<sup>st</sup> Respondent for purposes of Physical and Urban Planning in line with the Physical & Land Use Planning act, No. 13 of 2019.
  - x. Consequently, the allegation that the 5<sup>th</sup> Respondents engaged the 1<sup>st</sup> Respondent with a view of altering the Registered Index Map and/or Mutation and relocate the Petitioner's suit property to a riparian area is not legitimate and true.
  - xi. The 5<sup>th</sup> Respondent informed the Court that on the 13.08.2020, the Complete Survey Map and the proposed Physical Planning Map were presented to all members who had plots within Naiberi Trading Centre for verification before the same was presented for registration in Nairobi.
  - xii. In essence therefore, the 5<sup>th</sup> Respondent pleaded that there was no infringement of the Petitioner's suit property by the Physical Planning Map undertaken by the 1<sup>st</sup> Respondent which is yet to be approved and registered.
  - xiii. The 5<sup>th</sup> Respondent stated that the present Petition is actually pre-mature and does not disclose any Constitutional Rights to the Petitioner which have been infringed through the Physical Planning exercise that has been done within Naiberi Trading Centre plots.
  - xiv. As such, if the Applicant had any objection, challenge and/or misgivings of the Physical Planning Exercise done by the 1<sup>st</sup> Respondent and the 5<sup>th</sup> Respondents over Naiberi Shopping Centre plots, then the right forum would be to file a normal suit so that the procedure and/or manner in which the said exercise was done can be evaluated.
  - xv. In conclusion, the 5<sup>th</sup> Respondent sought to have the present Petition dismissed with costs.
7. To assist the Court appreciate the facts on the ground, the Court directed that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents do undertake a Ground visit and present a written report of the location of the Petitioner's suit property and the status of occupation therein.
  8. Indeed, the County Land Surveyor visited the Petitioner's suit property on the 18.11.2022 and filed its Written Report on the 01.12.2022 together with the appropriate Registered Index Map and/or Mutation.
  9. On the 06.04.2023, the 5<sup>th</sup> Respondent filed a Response to the Written Ground Report done by the County Land Surveyor dated 01.12.2022.
  10. In the 5<sup>th</sup> Respondent's Response dated 06.04.2023, the 5<sup>th</sup> Respondent accepted the contents of the Written Ground Report and further pointed out that in fact, the Petitioner's suit property was vacant and not interfered with.



11. The 5<sup>th</sup> Respondent stated that based on the Written Ground Report, it was the Petitioner who has erected structures on the 5<sup>th</sup> Respondent's Plot No. 54 within Naiberi Trading Centre.
12. Consequently, the 5<sup>th</sup> Respondent sought the present Petition to be dismissed and an eviction order be issued to the Petitioner directing him to vacate the 5<sup>th</sup> Respondent's property known as Plot. No..54 within Naiberi Trading Centre.
13. The present Petition was canvassed by way of written submissions with the Petitioner filing his submissions dated 09.06.2022 while the 5<sup>th</sup> Respondents filed their submissions dated 15.06.2022.
14. The Court has carefully gone through the present Petition, the Response by the 5<sup>th</sup> Respondent, the List of Documents filed by the parties, the witness statements thereof and the submissions.
15. The issues for determination in the present Petition can be summarised as follows; -  
Issue No. 1- Does The Present Petition Raise An Constitutional Issue For Determination?  
Issue No. 2- Who Is The Lawful Registered Owner Of The Suit Property?  
Issue No. 3- Has There Been Any Infringement Of The Petitioner's Constitutional Rights Over The Suit Property By The Respondents?  
Issue No. 4- Is The Present Petition Merited?  
Issue No. 5- Who Bears The Costs Of The Present Petition?
16. The issues for determination having been duly identified hereinabove, the same will now be discussed and determined below.

**Issue No. 1- Does The Present Petition Raise An Constitutional Issue For Determination?**

17. The first issue for determination is whether or not the present Petition raises any Constitutional issues.
18. According to the Petitioner, the present Petition has been brought pursuant to the provisions of Article 40 and 47 of *the Constitution* of Kenya, 2010.
19. The Petitioner pleaded that the suit property was registered in his name and is therefore entitled to the protection of Article 40 of *the Constitution* of Kenya,2010.
20. Similarly, the Petitioner was of the view that the 1<sup>st</sup> to 5<sup>th</sup> Respondents actions against his ownership of the suit property as provided under Article 40 of *the Constitution* of Kenya did not follow the provisions of Article 47 of *the constitution* of Kenya.
21. The 5<sup>th</sup> Respondent on the other hand was of the considered view that the present Petition did not disclose any infringement of a constitutional right.
22. The 5<sup>th</sup> Respondent was of the considered view that the Petitioners grievances emanate from an allegation that the suit property was relocated to a different location.
23. The 5<sup>th</sup> Respondent's submission was that such an allegation does not amount a Constitutional issue but one that can be dealt with through a normal suit.
24. The Court is of the considered view that once the Petitioner presented an ownership document which in this case was the Title Deed of the suit property in their name, then this Court is under a duty to recognise the Constitutional rights provided under Article 40 of the Kenya Constitution, 2010 and protect the same.



25. As such, the Court is of the finding that the issues raised in the present Petition deal with the ownership rights of the suit property registered in the name of the Petitioner and the Court has the jurisdiction and legal mandate to evaluate if the same have been infringed by the Defendants and/or not.

**Issue No. 2- Who Is The Lawful Registered Owner Of The Suit Property?**

26. The second issue for determination is who is the registered owner of the suit property in issue.
27. The Petitioners in the present Petition have clearly pleaded that the suit property was registered in their name way back in the year 2018.
28. To support this allegation, the Petitioners produced a Title Deed issued on the 28.09.2018.
29. The Respondents on the other hand did not challenge the Petitioners ownership over the suit property.
30. In essence, this Court hereby makes a finding that the suit property is the lawful and legitimate property of the Petitioner.

**Issue No. 3- Has There Been Any Infringement Of The Petitioner's Constitutional Rights Over The Suit Property By The Respondents?**

31. The third issue is whether or not the Respondents herein have infringed on the Petitioner's ownership of the suit property.
32. According to the Petitioner, the 1<sup>st</sup> and 5<sup>th</sup> Respondents herein undertook a Physical Planning exercise within the place known as Naiberi Trading Centre.
33. The Petitioner alleged in Paragraph 12 of the present Petition that it has now come to their knowledge that there was an error on the location of the suit property emanating from the Cadastral Map held by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
34. The Petitioner further pleaded that the Cadastral Map held by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was subsequently amended but the same has never been registered to effect the correct position of the suit property.
35. As such, the 5<sup>th</sup> Respondent has now encroached into the suit property owned by the Petitioner with the assistance of the 1<sup>st</sup> Respondent and as a result of this encroachment, the suit property is now located on a River Riparian.
36. The Petitioners therefore insisted that the actions of encroachment and the relocation of the suit property from its lawful position was unlawful and infringed their constitutional right under Article 40.
37. The 5<sup>th</sup> Respondent on the other hand disputed the allegation that the Petitioners' suit property has been encroached and/or unlawfully relocated to any other place.
38. The 5<sup>th</sup> Respondent informed the Court through its pleadings that it is the beneficial owner of the area known as Naiberi Trading Centre.
39. In an effort to process the relevant ownership documents of the plots within the area demarcated as Naiberi Trading Centre, it required a proposed Physical Development Plan to be done through the 1<sup>st</sup> Respondent.



40. The 5<sup>th</sup> Respondent stated that the said exercise was undertaken by the 1<sup>st</sup> Respondent and thereafter a proposed Physical Development Plan presented to the beneficial owners of the plots within Naiberi Trading Centre.
41. The Petitioner upon being aware of the proposed Physical Development Plan of Naiberi Trading Centre filed the present Petition alleging that the suit property has been relocated to a different location based on the proposed Physical Development Plan by the 1<sup>st</sup> Respondent.
42. In an effort to locate the actual and true position of the suit property, the Court made an Order directing the County Land Registrar Uasin Gishu and County Land Surveyor Uasin Gishu to go on the ground and locate the same.
43. Indeed, both the County Land Registrar Uasin Gishu and County Land Surveyor Uasin Gishu visited the suit property and filed their Ground Report dated 01.12.2021.
44. According to the present Petition, the infringement alleged to have been unlawfully undertaken is the relocation on the suit property based on the proposed Physical Development Plan by the 5<sup>th</sup> Respondents.
45. Section 15 of the *Land Registration Act*, No. 3 of 2012 places the responsibility and authority of keeping all maps known as Cadastral Map for every registrable unit with the offices of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
46. It is not in despite that the Petitioners herein are the registered owners of the suit property.
47. Similarly, the 5<sup>th</sup> Respondent confirmed that it does not have any ownership claims on the suit property.
48. In effort to locate the Petitioner's suit property and confirm if the same has since been relocated in any manner, the Court directed the County Land Registrar and the County Land Surveyor to visit the ground and file their report.
49. According to the Ground Report dated 01.12.2021 received in Court on the 05.12.2022, it is clear that the Petitioner's suit property was clearly identified on the Cadastral Map attached to the Ground Report.
50. The Petitioner's suit property was demarcated to be along the main tarmac Road along the Eldoret-Eldama Ravine Road.
51. Based on the Ground Report dated 01.12.2021, there was no evidence that the Petitioner's suit property had in any way been tampered with or relocated from its original location prior to the issuance of the Title Deed on 28.09.2018.
52. The County Land Registrar and the County Land Surveyor in fact noted that the Petitioner's suit property was actually vacant and empty.
53. In addition to the above, the Petitioner's allegation that the suit property had been relocated to a riparian area by either the 5<sup>th</sup> Respondent and/or the 1<sup>st</sup> Respondent is in the Court's view misguided and incorrect.
54. It is unfortunate that the Petitioner's Entire Shop and temporary structures are on Plot. No. 54 within Naiberi Shopping Centre instead of the suit property but that is something that this Court does not wish to comment further.
55. The Petitioners allegation that the proposed Physical Development Plan of Naiberi Trading Centre is going to interfere with the suit property is to say the least pre-mature because the applicable Cadastral



Map is the one used by the County Land Registrar and the County Land Surveyor when they visited the ground on the 18.11.2022.

56. Be as it may, this Court hereby makes a finding that the Petitioner's suit property was properly located on the ground and has never been tempered with in terms of its location as alleged by either the 1<sup>st</sup> Respondent and/or the 5<sup>th</sup> Respondent.
57. In fact, the Cadastral Map that created the suit property registered in the name of the Petitioners as never been tempered with and/or amended to either relocated and/or renumber any properties within the area known as Naiberi Trading Centre.
58. In other words, the Petitioners allegation that its ownership rights were ever interfered with by any of the Respondents is unwarranted and unjustified hence denied.

#### **Issue No. 4- Is The Present Petition Merited?**

59. Based on Issue No. 3 hereinabove, the Court hereby makes a finding that the present Petition is not merited and cannot be granted.
60. As regards the issue of an Eviction Order against the Petitioners from occupying Plot. No. 54 within Naiberi Trading Centre, the 5<sup>th</sup> Respondent is directed the Court seek the said orders through the appropriate proceedings.

#### **Issue No. 5- Who Bears The Costs Of The Present Petition?**

61. The present Petition having been found not to be merited, the Petitioner is condemned to pay costs.

#### **Conclusion**

62. In conclusion, the Court hereby makes the following Orders in determination of the Petition dated 19.01.2022; -
  - A. The Petition Dated 19.01.2022 Is Not Merited And Therefore Dismissed.
  - B. The Petitioner Is Condemned To Pay Costs Of This Petition To The 5<sup>th</sup> Respondent Only.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 28<sup>TH</sup> DAY OF JULY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Brian

Petitioner: Mr. Mathai For The Petitioners

Respondents: Mr. Kutei For The 1<sup>st</sup> – 4<sup>th</sup> Defendants

Ms. Aketch for the 5<sup>th</sup> Defendant

