



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KABARNET

CONSTITUTIONAL PETITION NO. E004 OF 2025

**IN THE MATTER OF ARTICLES 2, 10, 27, 28, 40, 47 OF THE
CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF THE CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES
27(1), 47(2), 40 & 50(1) OF THE CONSTITUTION**

AND

**IN THE MATTER OF ARTICLES 2(2), 21(1), 22 & 23 OF THE
CONSTITUTION**

AND

IN THE MATTER OF FAIR ADMINISTRATION ACTIONS ACT

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT

BETWEEN

JACKSON CHERUTICH KIPTALA PETITIONER

= VERSUS =

**CABINET SECRETARY
FOR LANDS & HOUSING1ST
RESPONDENT**

**DEPUTY COUNTY COMMISSIONER
BARINGO NORTH 2ND
RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL3RD
RESPONDENT**

ORIGINAL

JUDGMENT

Introduction

1. The petitioner herein, instituted this suit/petition seeking the following orders: -
 - a) A declaration that the 1st and 2nd respondent's decision in Appeal to the Minister Case No.73 of 2010 rendered on 30th May 2018 violated his rights under **Articles 27(1), 47(2), 40 and 50(1)** of the Constitution;
 - b) A declaration that failure by the 1st and 2nd respondent to notify him (petitioner) of the decision rendered on 30th May 2018 in Appeal to the Minister Case No. 73 of 2010 violated his right to fair administrative action under **Article 47** of the Constitution and **section 4** of the Fair Administrative Actions Act;
 - c) A declaration that the proceedings in Appeal Case No.73 of 2010 conducted by the "Chairman" without any authority or jurisdiction are illegal, ultra vires, null and void;

- d) Damages for (a) and (b) above;
- e) An order of Certiorari to remove and bring to this honourable court and to quash the decision of the 1st & 2nd respondent rendered on 30th May, 2018 in Appeal Case No.73 of 2010;
- f) Any other order that this Honourable Court may deem fit to grant in the circumstances;
- g) Costs of the petition.

2. As can be discerned from the averments/contentions on the face of the petition and the affidavit sworn in support thereof, the suit is premised on the grounds that the petitioner is the beneficial owner of the parcel of land known as Baringo/Kapkoivo/3912 (hereinafter referred to as the suit property); that the petitioner gained his beneficial interest in the suit property through objection proceedings filed by his father Willy Aengwo Cheron; that the 1st interested party filed an appeal against the decision of the Land Adjudication Officer that culminated in the petitioner's interest in the suit property out of time stipulated in the

Land Adjudication Act for appealing against the decision of the Land Adjudication Officer; that the 1st and 2nd respondents heard the appeal and allowed it thereby prejudicially affecting the petitioner's right to the suit property.

3. The petitioner avers that he was not a party to the appeal and contends that by hearing the appeal and making a decision prejudicial to him when he was not a party to the appeal, the 1st and the 2nd respondents violated his right to property, right to a fair administrative action and the right to a fair hearing enshrined in the Constitution of Kenya 2010.
4. The petitioner further contends that the Appeal to the Minister was heard by a person who did not have authority or jurisdiction to hear an Appeal to the Minister under the Land Adjudication Act.
5. In reply and opposition to the petition, the 1st interested party swore and filed a replying affidavit on 3rd June, 2025.

Through the affidavit, the 1st interested party inter alia contends that: -

- i) The petition is inept, incompetent, frivolous, an afterthought and an abuse of the court process;
- ii) That there is no violation of the petitioners right to property and/or to a fair hearing by the 1st and 2nd respondents in that it was determined as a matter of fact that the suit property was fraudulently excised during the pendency of an appeal;
- iii) That the petitioner was aware of the 1st respondent's judgment as they are litigating jointly with the 2nd interested party in an attempt to frustrate the 1st respondent's judgment aforesaid;
- iv) That it is clear that the petitioner has filed this petition on behalf of the 2nd interested party merely to frustrate the 1st respondent;
- v) That furthermore, it is clear that the petitioner has filed this petition on the basis that he cannot access and/or process his title deed which is

distinct from the allegation of breach of his fundamental rights as alleged.

6. The 2nd interested party filed a response to the petition vide a replying affidavit sworn on 22nd July 2025, in which he deposed as follows: -

- i) That he was the respondent in Appeal case No.78 of 2010;
- ii) That he was the original owner of the parcel of land Baringo/Kakoiwo/247 which was subject of the dispute before the 3rd interested party in objection cases 23 and 998 between himself, David Kimosop Sumukwo and Cherono Kimosop;
- iii) That on 8th February 2007, the 3rd interested party made a decision to hive of Baringo/Kapkoivo/3885 and 3912 from Parcel Baringo/Kapkoivo/247 and gave the two parcels to David Kimosop Sumukwo and the petitioner herein;
- iv) That 11 years later on April, 2018 he was issued with summons by the then Chief Isaac Kimosop

Tobolee (Kipkata Location) informing him that Cherono Kimosop had filed an appeal and it was coming up for hearing on 20th May, 2018;

- v) That on 20th May, 2018 he attended the hearing of the said appeal filed in 2010 at Baringo North Sub County offices at Kabartonjo Division with his witnesses which was presided over by two Assistant County Commissioners;
- vi) That at the hearing, no witnesses were asked to step out while the others were testifying and he raised the issue but Samuel Wanjigi ignored his concerns;
- vii) That he was not aware if the petitioner was ever summoned to attend the hearing as he was not present or whether David Kimosop Sumukwo was ever summoned or served with the appeal as he did not participate despite being a party in the objection before the 3rd respondent;
- viii) That he only saw the Deputy County Commissioner (Mr. Obwocha) on 7th May 2019

when he read to them the ruling after they were summoned; that to date, he does not understand how the two Assistant County Commissioners sat and heard an appeal filed after 3 years when the Land Adjudication Officer had indicated that the appeal was to be filed within 60 days.

7. In a rejoinder, the 1st interested party filed a further replying affidavit sworn on 10th September 2025, in which he *inter alia* deponed as follows: -

i) That the appeal to the Minister Case No.73 of 2010 was heard and determined by the Deputy County Commissioner duly gazetted by the 1st respondent contrary to the 2nd interested party's allegation that it was heard by two Assistant County Commissioners;

ii) That David Kimosop Sumukwo, the other objector with his deceased father, could not have been summoned as he had not filed any appeal; that at any rate, his objection was successful hence he

had no appeal to ventilate at the Minister's hearing contrary to the 2nd interested party's allegation that he was not summoned;

- iii) That the petition does not raise any valid issue. Save that it has been filed by the petitioner on behalf of the 2nd interested party to circumvent and/or prevent the implementation of the Minister's Appeal decision;
- iv) That the petitioner's capricious acts are clearly captured in his replying affidavit in response to the 1st interested party's preliminary objection in Kabarnet ELC No.E012 of 2024;
- v) That it is his contention that this petition was filed by the petitioner to aid and abet the 2nd interested party's quest to obstruct and/or defeat the implementation of the Minister's judgment.

8. Pursuant to directions given on 23rd October 2025, that the petition would be disposed of by written submissions, parties filed submissions.

ORIGINAL

SUBMISSIONS

Petitioner's submissions

9. The petitioner gives a background of circumstances leading to filing of the petition and submits that he was allocated the suit property that is Baringo/Kapkoivo/3912 by the 3rd interested party in 2007 and has been in occupation since then to 2023 when the 1st interested party entered and occupied the land claiming ownership of the same. The petitioner submits that he filed a case in Kabarnet that is Kabarnet PM ELC Case No. E012 of 2024 where he sought eviction orders against the 1st interested party. He opposes the decision that was delivered by the 2nd respondent on 30th May 2018 which reallocated part of the land to the 1st interested party. He submits that the he was not aware of the same and the decision was made without notice to him or affording him a hearing, and consequently without giving reasons, thereby violating his constitutional rights.

10. The petitioner identified the issues for determination as follows;

i) Whether the petition is properly before Court

The petitioner submits that his constitutional rights were adversely violated and therefore that is why he petitioned this Honourable court. The petitioner avers that the petition filed meets the threshold set out in **Anarita Karimi Njeru v Republic (1979) eKLR** case and reiterated in **Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR**, in that it clearly sets out the facts relied upon, the constitutional provisions alleged to have been violated, and the manner of violation.

ii) Whether the petitioner's rights were violated

The petitioner submits that the basis of his petition is anchored in **Article 22 (1)** and further that the divergent decision violated his rights under **Articles 27, 40, 47 and 50** of the Constitution. It is submitted that the failure to notify him of the proceedings and the decision denied him the right to be heard and the right to fair administrative action. Further, it is argued that the decision arbitrarily deprived him of his property.

The petitioner further submits that the respondents who undertook the hearing have not responded to the petition. No proof has been produced to show that the petitioner was made aware of the decision delivered on 7th May 2019 and neither was he given a chance to challenge it since it affected him. Relying on **Article 47** of the Constitution and relevant jurisprudence, the petitioner submits that administrative action must be lawful, reasonable and procedurally fair. He argues that the respondents failed to meet this constitutional standard by making a decision affecting his rights without notice, hearing, or written reasons. The petitioner further challenges the legality of the proceedings on the basis that they were conducted by a person referred to as a 'Chairman' whose authority and jurisdiction were not established. It is submitted that the proceedings were conducted without jurisdiction and are therefore null and void ab initio.

iii) Whether the orders sought should be granted

The petitioner relies on **Article 23** which sets out the reliefs available to a party. The petitioner submits that he has established a case for grant of the reliefs sought, including declarations of violation of rights, an order of certiorari to quash the impugned decision, and an award of damages. He submits that the proceedings before “chairman” were not valid as he lacked jurisdiction and the same to be declared illegal, ultra vires and null and void. He further proposes a sum of Kshs. 1,000,000 as reasonable compensation for the violation of his constitutional rights. In conclusion, the petitioner urges the Court to find that his constitutional rights were violated, to quash the challenged decision, and to grant the orders sought with costs.

1st Interested Party’s submissions

11. I have carefully considered the submissions of the 1st interested party, the pleadings on record, and the applicable law. I find the issues arising for determination to be;

i) Whether the petitioner’s constitutional rights were violated

The 1st interested party contends that the petitioner's claim to the suit property is founded on an irregular and fraudulent process. It is submitted that the petitioner was unlawfully inserted as a beneficiary in objection proceedings despite not having lodged any objection as required under the Land Adjudication Act. Further, that the decision of the Minister did not deprive the petitioner of any lawful proprietary interest but merely rectified an illegality by restoring the disputed portion to its rightful owner. The alleged prejudice arising from discrepancies in the petitioner's names is administrative in nature and curable under statute, and does not amount to a constitutional violation.

ii) Whether the petition meets the constitutional threshold

It is submitted that the petition does not meet the threshold for a constitutional petition as it fails to specifically demonstrate the manner in which the petitioner's rights under the Constitution were violated. The allegations are

general and lack the precision required in constitutional litigation.

The 1st interested party maintains that the petitioner's proprietary rights were neither extinguished nor directly affected by the disputed decision, and thus no basis exists for constitutional relief.

iii) Whether the 2nd Respondent had Jurisdiction

The 1st interested party submits that the 1st respondent's appellate jurisdiction is derived from **Section 29** of the Land Adjudication Act (Cap 284), which allows delegation of such authority to a duly gazetted officer. It is contended that the 2nd respondent lawfully exercised delegated authority and that the petitioner has not provided any evidence to demonstrate lack of jurisdiction. Accordingly, the proceedings and decisions are valid.

iv) Whether the Petition is an Abuse of the Court Process

The 1st interested party argues that the petition is an abuse of the court process as it seeks to indirectly challenge the 2nd respondent's decision which was not appealed through the proper legal process. It is further submitted that the petitioner and the 2nd interested party are pursuing parallel and overlapping claims over the same parcel of land in two suits that is Kabarnet ELC NO E012 OF 2024 and E007 of 2021, thereby demonstrating a concerted effort to frustrate the implementation of the 1st respondent's judgment.

Additionally, the issues raised, including differences in names, are matters capable of resolution through other mechanisms and do not warrant the petitioner to file a constitutional petition. In view of the foregoing, the 1st interested party urges the Court to find that the petition lacks merit, fails to meet the constitutional threshold, and constitutes an abuse of the court process. Consequently, the petition ought to be dismissed with costs.

Analysis and determination

12. As can be discerned from the pleadings and documentary evidence filed in this suit, the suit property was the subject matter of the process of ascertaining rights to entitlement to the suit property provided for under the Land Adjudication Act, Cap 284 Laws of Kenya.
13. The evidence adduced in this suit comprised in the sworn affidavits of the petitioner and the interested parties, shows that the suit property was created from the parcel of land known as P/No. 247 belonging to the 2nd interested party.
14. The circumstances surrounding creation of the suit property are that upon hearing the objection presented before him, the LAO decided as follows: -

“Objection No.23 allowed. A portion awarded to the first plaintiff and the son of the defendant Jackson Kiprotich Kiptala each to get new number 3885 and 3912 respectively...”

15. It is common ground that an appeal was filed to the Minister, *to wit* Appeal to Minister Case No.73 of 2010 over plot No. 247-Kapkoivo Adjudication Section which plot was also the subject matter of the objection proceedings before the Land Adjudication Officer.
16. The parties to the Appeal to the Minister were Cherono Kimosop-deceased, whose Estate in these proceedings is represented by Samson Kipkulei Ayabei, the 1st interested party and Willy Aengo Cherono, the 2nd interested party. It is noteworthy that the petitioner was neither a party in the objection proceedings nor a party in the appeal.
17. The decision in the objection proceedings clearly shows that the interest of the petitioner, being a son of the 2nd respondent (the original owner of the parcel of land in question, Plot No. 247 Kapkoivo Adjudication Section), is subsumed in the interest of the original owner of Plot No. 247. I say this because, the petitioner having not being a party to the proceedings that led to creation of the suit

property, can only hinge his claim to the suit property on his father/and representative for that matter.

18. The evidence adduced in this case shows that the 2nd interested party participated in the appeal to the Minister, which appeal resulted in reversal of the decision of the LAO awarding a portion of the original suit property, Plot No. 247 to the 2nd interested party's son, the petitioner herein.
19. By operation of the law, in particular **section 29** of the Land Adjudication Act, the decision of the Minister concerning ascertainment of interests in land under adjudication is final.
20. A person aggrieved by the decision of the Minister can only challenge the decision through judicial review and not an ordinary suit or by way of petition as the petitioner herein has done.
21. Whereas the petitioner claims that his right to property, fair administrative action and fair hearing were violated by the

1st and the 2nd respondents when they failed to accord him a right to be heard in the appeal and/or to notify him about the outcome of the appeal, having reviewed the circumstances of this case which show that the petitioner was not a party to the objection proceedings in which his right to the suit property arose and noting that his father was the respondent in the objection proceedings, I do find that the petitioner's interests in the suit property are subsumed in those of his father and that the petitioner was actually represented by his father in defending his rights to the suit property if any.

22. The upshot of the foregoing is that the petition herein has no merit as it seeks to appeal or challenge the decision of the Minister through the backdoor. Consequently, I dismiss it with costs to the 1st interested party.

23. Orders accordingly.

Judgment dated, signed and delivered virtually at Busia

this 26th day of March, 2026.

L. N. WAITHAKA

JUDGE

In the presence of;

Ms Bor H/B for Mr Mwangi for the Petitioner

N/A for the Respondents

Court Assistant; Tracy

ORIGINAL