



Kapyemit & 4 others v Ministry of Lands, Public Works, Housing and Urban Development & 6 others (Environment and Land Petition E001 of 2024) [2026] KEELC 1840 (KLR) (25 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1840 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND PETITION E001 OF 2024**

L WAITHAKA, J

MARCH 25, 2026

IN THE MATTER OF CONSTITUTIONAL INTERPRETATION, PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 1, 2(1), 2(4), 3(1), 19, 20(1)(2)(3)(B) 4(A) (B), 21(1), 22(1), 23, 27, 159, 162(A), 165(B) 259 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF CONSTITUTIONAL INTERPRETATION AND THE ALLEGED CONTRAVENTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 27, 40(1) (2), 47 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF SECTION 8 OF THE COMMUNITY LAND ACT, 2016 AND IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

**HARUN KIPRUTO KAPYEMIT 1ST PETITIONER
SAMUEL MARIGAT CHEBELIENY 2ND PETITIONER
ANN JEMUTAI CHEPSAITA 3RD PETITIONER
JUSTICE KIPTOO CHEBELIENY 4TH PETITIONER
JACKSON CHELAL (SUING ON BEHALF OF THEMSELVES AND ON BEHALF OF KAPCHEBELIENY CLAN) 5TH PETITIONER**

AND

**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT 1ST RESPONDENT
THE NATIONAL LAND COMMISSION 2ND RESPONDENT
THE CHIEF LAND REGISTRAR 3RD RESPONDENT
COUNTY GOVERNMENT OF BARINGO 4TH RESPONDENT**



THE HON ATTORNEY GENERAL 5TH RESPONDENT
MARIGAT GROUP RANCH 6TH RESPONDENT
ALVIN KOCHIL SINGOROCH 7TH RESPONDENT

JUDGMENT

Introduction

1. The petitioners herein, instituted this suit/petition seeking the following orders:
 - a. A declaration that the respondents' actions as aforesaid are unconstitutional and a violation of their rights under Article 40(1) (2) of *the Constitution*;
 - b. An order declaring the suit property un surveyed and unregistered land which should be marked for adjudication by the 1st respondent;
 - c. An order directing the 1st - 6th respondents to jointly and severally proceed with survey, demarcation and allocation of the disputed parcel to the Kapchebelieny clan;
 - d. A declaration that the title deed issued to the 7th respondent for the parcel of land known as Baringo/Marigat/437 by the 3rd respondent was issued irregularly without following laid down procedures as required by law and the same should be revoked;
 - e. An order of eviction against the 7th respondent from the suit property;
 - f. An order of permanent injunction restraining the respondents, their servants, agents and/or representatives from interfering with, trespassing and/or disposing of any part of the suit property;
 - g. General damages
 - h. Costs
 - i. Any other relief that the court may issue to protect the petitioners' proprietary and constitutional rights.
2. As can be discerned from the averments in the petition and the affidavit sworn in support thereof, the petition/suit is premised on the grounds that the parcel of land known as Baringo/Marigat/437 measuring 60 hectares or thereabout (hereinafter referred to as the suit property) belongs to the petitioners and/or the petitioner's clan Kapchebelieny clan; that the 7th respondent was fraudulently registered as the owner of the suit property and that the suit property was illegally surveyed, demarcated and allocated by the respondents without their consent/involvement; that they are in actual occupation of the suit property and that the actions/omissions of the respondents complained of have left them at the verge of losing their ancestral land.
3. The petitioners complain that the 7th respondent trespassed into the suit property and un procedurally obtained a title deed in respect thereof in that the suit property has never been surveyed, demarcated or allocated to anyone and is held in trust for them by the 4th respondent.
4. Maintaining that the impugned dealings with the suit property are illegal, un procedural and unlawful for among other reasons want of public participation, the petitioners have pleaded that they have suffered loss, namely loss of part of the suit property to unknown individuals and the 7th respondent.



5. In reply and opposition to the petition, the 1st, 3rd and 5th respondents filed the grounds of opposition dated 10th March, 2025 in which they contend as follows: -
- a. That the petition is misconceived, unmeritorious and an abuse of the court process;
 - b. That the petition discloses no cause of action against them;
 - c. That the petition fails to establish any specific constitutional violation or illegality attributable to them;
 - d. That the allegations against them are vague, generalized and unsupported by evidence contrary to the principles set out in *Anarita Karimi Njeru v. Republic* (No.1) (1979) e KLR and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (2013) e KLR, which require specificity in pleading constitutional violations;
 - e. That the petition is fatally defective for failure to exhaust statutory remedies;
 - f. That the National Land Commission (the 2nd respondent) is the constitutionally mandated body for addressing historical land injustices under Article 67(2)(e) of *the Constitution* and Section 15 of the *National Land Commission Act, 2012*;
 - g. That the petitioners have not demonstrated that they exhausted the available statutory mechanisms before seeking relief from this Court;
 - h. That where an alternative remedy exists in statute, it must be pursued first before invoking the Court's jurisdiction;
 - i. That the petition is based on mere speculation and lacks evidentiary support. The petitioners have not provided any title documents, survey reports or official communications to substantiate their claims;
 - j. That mere assertions without verifiable documentary proof cannot be a basis for granting constitutional relief;
 - k. That the Ministry of Lands and the Chief Land Registrar are administrative entities that do not adjudicate private land disputes;
 - l. That the 3rd respondent was well within his statutory mandate while executing his duties;
 - m. That the petition offends the principles of separation of powers;
 - n. That the orders sought seek to override statutory processes, including land adjudication, titling and registration, which are exclusively vested in designated bodies under the *Land Act, Land Registration Act* and *National Land Commission Act*;
 - o. That the petition is defective both in form and in substance and is therefore unmerited and brought in bad faith;
 - p. That the petition fails to comply with the constitutional petition rules and is couched in a manner that seeks to litigate matters that should be resolved administratively.
6. The 6th respondent, Marigat Group Ranch, filed the replying affidavit of its Chairman, Fredrick Killen, sworn on 12th October, 2024. Through the affidavit, the 6th respondent inter alia deposes/contends:
- i) That the petition is inept, frivolous, an afterthought, deceitful and an abuse of the constitutional provisions cited therein and the court process;



- ii. That it is the owner of the parcel of land known as Baringo/Marigat/1 from which the suit property was created;
- iii. That the 7th respondent, in collusion with the County Land Registrar without its consent got the suit land registered in his name;
- iv. That the alleged fraudulent acquisition of the suit property by the 7th respondent is subject of another court case between the 6th respondent, the 7th respondent and other beneficiaries of the suit land to wit Kabarnet ELC No. E004 of 2024;
- v. That the 6th respondent was established in accordance with the provisions of Cap 284 and repeal of the Laws of Kenya;
- vi. That it is clear that members of the 6th respondent were not registered on the basis of clan and/or that the land was not set aside and/or reserved for clans contrary to the petitioners' allegations that the un surveyed and unregistered land measuring about 800 acres was reserved for Kapchebelieny clan and placed under the custody of the 6th respondent;
- vii. That the entire land forming Marigat Adjudication Section was registered as Baringo/Marigat/1 in the name of the 6th respondent to hold in trust for its registered members as aforesaid contrary to the petitioners' allegation that the property the subject of the petition has not been surveyed and registered;
- viii. That it is clear from the petitioners' pleadings that their claim is based and/or hinged on a century migratory route through Marigat to Olkowe and not actual possession, occupation and/or settlement;
- ix. That the area purportedly claimed by the petitioners is occupied by several individuals members of the 6th respondents who ascribe to various clans.
- x. That the suit property is registered under the 6th respondent pursuant to the provisions of Cap 284 and the repealed Cap 287 hence the allegation of trust, fraud and/or breach of the constitutional provisions cited by the petitioners are unfounded.
- xi. That the provisions of Cap 284 pertaining to land adjudication and registration were adhered to and if the petitioners had any proprietary rights and/or interest on the adjudication section claimed then they ought to have expressed it to the LAO in 1980 and/or thereafter before the close of the register.
- xii. That the adjudication process under Cap 284 is an open and well published exercise which takes several years before it is completed and has several safety nets for redress to dissatisfied land owners and therefore if the petitioners were present during the adjudication as alleged they ought to have exercised their rights under the said Acts.
- xiii. That it is manifestly clear that the petitioners were aware of the adjudication process and the existence of the 6th respondent, however they chose not to ventilate their claim, if any, through the 6th respondent and/or take it up with the Land adjudication officer (LAO) at any given time;
- xiv. That the orders sought by the petitioners in the petition have been overtaken by events as the suit property is registered and can only be allocated to the members of the 6th respondent as directed by the 3rd respondent on 1st December 1994.



7. The 7th respondent, through the replying affidavit he swore on 3rd October, 2024 inter alia contends as follows:-
- i. That the petition does not qualify the test set forth in the case of Anarita Karimi Njeru vs Republic (1979) eKLR;
 - ii. That his interest in the suit property is tied to the fact his father was a member of the 6th respondent, Marigat Group Ranch, member No. 30;
 - iii. That the petitioners have not demonstrated that they are members of the 6th respondent, who is the owner of the suit land;
 - iv. That he approached the relevant authorities who identified him as the legitimate owner of the suit land;
 - v. That he has been in occupation and possession of the suit land since he was born;
 - vi. That after he was issued with a title deed for the suit land, he fenced his portion to deter land grabbers from laying claim to it;
 - vii. That the suit offends the provisions of section 6 of the Civil Procedure Act as it is sub judice Karbanet ELC Case No. E004 of 2024.
8. Pursuant to directions given on 1st April, 2025 the petition was disposed of by way of viva voce evidence. The 1st, 3rd and 5th respondents informed the court that they would rely on their grounds of opposition dated 10th March 2025 and would not call any witnesses. They requested that they be discharged from the hearing which was allowed.

Evidence

The Petitioner's Case

9. PW1 Haron Kipruto Kapyemit, informed the court that he had built a house on the suit property but his building was demolished by the 7th respondent.
10. In cross examination, PW1 admitted that the suit property belongs to the 6th respondent, Marigat Group Ranch. He also admitted that neither he nor the other members of his clan/family on whose behalf he claims entitlement to the suit property, are members of the 6th respondent, Marigat Group Ranch.
11. PW1 informed the court that they did not become members of the 6th respondent because the leadership of the 6th respondent demanded Kshs. 70,000/- from them, which they were unable to raise.
12. PW1 admitted/acknowledged that they did not complain to the Land Adjudication Officer about the land being given to Marigat Group Ranch, during land adjudication.
13. PW2 Elijah Kiprotich Koech, informed the court that they are claiming their grandfather's farm located within Marigat Group Ranch, measuring approximately 800 acres.
14. Like PW1, PW2 admitted that they are not members of Marigat Group Ranch.
15. PW2 informed the court that they are aware that Marigat was declared an adjudication section and gazetted as such in 1970. He admitted that they did not register their interest in the suit property during land adjudication and gave the reason for their failure to register their interest in the suit property as



being absent (they were not living in the area) and that they did not have the Kshs. 70,000/- demanded for the exercise.

16. PW2 admitted that other than PW1, their family members were not living in the suit property.
17. According to PW2, they got information concerning their interest in the suit property from Kapkoskei family.
18. PW3 Ann Jemutai Chepsaita, informed the court that she is not a member of Kapchebelieny clan; that despite being one of the petitioners, she has no claim to the suit property; that she was merely assisting the family of Kapchebelieny and that she is the one who told the petitioners that their family had land in Marigat Group Ranch.
19. PW3 informed the court that the information she gave to the petitioners concerning their interest in the land belonging to Marigat Group Ranch is based on information given to her by an old lady known as Kimoi who lived in the land claimed by the petitioners.
20. PW4 Wilson Chesang, informed the court that Mama Kimoi was living in the land belonging to the family of Kapchebelieny (the petitioners' family). He admitted and/or acknowledged that no member of Kapchebelieny family is currently living in the suit property and that only PW1 had erected a house therein in 2007.
21. PW5 Samuel Marigat Chebelieny, acknowledged that they were not registered as members of Marigat Group Ranch and stated as follows concerning their failure to be registered as members of Marigat Group Ranch: -

“...I was sent by our family to the group ranch in 2007 to register as members. The group ranch asked us to pay Kshs. 70,000/=, which we did not have. Therefore, we were not registered as members.”

22. As to whether they complained to the relevant authorities, PW5 stated as follows: -

“We did not complain to the land adjudication officer that we were left out by the group ranch”.

23. In further cross examination, PW 5 stated as follows: -

“When registration of group ranch members was done in 1983-84 our parents were alive. They could have been registered as members if they wanted. He never wrote a letter complaining to the Group Ranch that he was not registered as a member of the Group Ranch....

I concede that the land we are claiming belonged to Marigat Group Ranch. Alvin's father was a member of the Group Ranch. As a member he was entitled to land from the Group Ranch.”

24. In re-examination PW5 stated as follows: -

“...We have complained to the Group Ranch about our land. We have nothing in writing. Before Harun entered the suit property and erected a house, our family members never settled on the land but could graze on the land and harvest honey. Alvin did not obtain title through the group. I do not know how he obtained it.”



6th Respondent's Case

25. When the matter came for hearing of the 6th respondent's case, Fredrick Killen chairman of Marigat Group Ranch, relied on his replying affidavit sworn on 12th October 2024 which was adopted as his evidence in chief. He produced a register of members of the group ranch as Exhibit 1, minutes of the annual general meeting held on 28th August, 2010 as Exhibit 2 and dissolution of the group ranch as Exhibit 3. He informed the court that the petitioners are not members of the group ranch and they do not live on the suit property; that the land belonging to the group ranch was adjudicated between 1983 and 1986 by the Land Adjudication Officer (LAO) assisted by the elders. He stated that the original members of the group ranch were 330 but after some people raised objections, the number increased to 394. He informed the court that the petitioners never raised any objection during the land adjudication process like others did therefore, the group ranch officials cannot incorporate them as members of the group ranch at this stage; that currently the group ranch stood dissolved and the only outstanding task left for the officials, is to subdivide the land among the registered members.
26. In cross examination, he stated that he did not know the petitioners as they were not their members and they were not living on the land belonging to the 6th respondent. He stated that he knew the 7th respondent whose father was member No. 30 in the group ranch.

7th Respondent's Case

27. The 7th respondent Alvin Kochil, relied on his replying affidavit which he swore on 3rd October 2024 as his evidence in chief. He produced letters of administration showing he was the legal representative of his father's estate as his Exhibit No. 1 and a list of members of the group ranch showing his father was member No. 30 as Exhibit 2. He informed the court that his family lives on the land in Maoui measuring 60 hectares and a number of their relatives are buried there. He stated that he did not obtain his title deed through the group ranch because the treasurer of the group ranch demanded that they give him part of the land before he could sign the documents; that he approached the LAO for assistance and the LAO processed their documents and they were issued with the title deed.
28. He informed the court that he learnt about the petitioners after they sued him and stated that none of the members of Kapchebelieny clan live on the suit property although the 1st petitioner has attempted to build a house thereat but they took him to court and he left.
29. On cross examination, he stated that although he had been sued in his personal capacity, he was in court on behalf of his father's estate as administrator of his estate. He explained how he processed the title deed through the LAO instead of the group ranch because the group ranch treasurer had interest in the land. He reiterated that none of the petitioners live on the suit property and the photographs produced by the 1st petitioner are of his (7th respondent's) houses and his bother Thomas. He informed the court that the 1st petitioner had attempted to build a house in the suit property but after they sued him, he moved away.
30. He was surprised to learn that the chairman of the group ranch had stated that the suit property did not belong to them but he maintained that the land belonged to them and that he obtained the title deed through a lawful process
31. At close of hearing, the petitioners filed submissions dated 17th February 2026 and the 6th respondents filed theirs dated 16th February 2026. The 1st, 2nd, 3rd, 4th, 5th and 7th respondents did not file submissions.



Analysis and determination

32. Having heard the petition on its merit, I will proceed to determine the substantive issue arising therefrom, which is, whether the petitioners' have made up a case for being granted the orders sought. Regarding that issue, it is common ground that the suit property belongs to Marigat Group Ranch. The petitioners admit or acknowledge that they are not members of the group ranch and that apart from PW1, none of them or their family members is living in the suit property or ever lived in the suit property. The petitioners' claim to entitlement to the suit property appears to be tied to information given to them by PW3 that they had an interest in the suit property.
33. In her evidence before court, PW3 confirmed that she is the one who informed the petitioners of their interest in the suit property. Concerning the basis of her claim that the petitioners were entitled to the suit property, PW3 stated that she had gotten the information from an old lady called Kimoi. In effect, PW3 confirmed to the court that her basis of claiming that the petitioners are entitled to the suit property is unverifiable hearsay evidence.
34. The petitioners led evidence to the effect that they made attempts to be registered as members of Marigat Group Ranch, which attempts were futile.
35. Based on the petitioners' admission/acknowledgement that the suit property belongs to the 6th respondent, Marigat Group Ranch, and that they are not members of the group ranch, I find their claim to entitlement to a share of the suit property to be unsustainable as by operation of law only members of a group ranch may lay a claim of entitlement to a share of land/or property belonging to a group ranch.
36. Regarding the claim that the 6th respondent refused to admit them as members of the group ranch because of their failure to pay the admission fees of Kshs. 70,000/-, I do find that claim to be unsubstantiated and hasten to point to the petitioners that the Community Land Act 2016, which applies to the suit property, has an elaborate dispute resolution mechanism, which they needed to avail themselves to before filing a suit before this court. In that regard see the provisions of Part VIII of the Community Land Act 2016, which provides as follows:-

“ 39

- (1) A registered community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land.
2. Any dispute arising between members of registered community, a registered community and another registered community shall, at first instance, be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws.
3. Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution.
4. subject to the provisions of this Act, a court or any other dispute resolution body shall apply the customary law prevailing in the



area of jurisdiction of the parties to a dispute or binding on the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

40.

- (1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to mediation.
2. The mediation shall take place in private or informal setting where the parties participate in the negotiation and design the format of the settlement.
3. The mediator shall have the power to bring together persons to a dispute and settle the dispute by-
 - a. convening meetings for the hearing of disputes from parties and keep record of proceedings;
 - b. establishing ground rules for the rules conduct of parties; structuring and managing the negotiation process and helping to clarify the facts and the issues; and
 - c. helping the parties to resolve their dispute.
4. If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.

41.

- (1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to arbitration.
2. Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the arbitration Act (Cap. 49) relating to the appointment of arbitrators shall apply.

42. Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.

2. The Court may-
 - a. confirm, set aside, amend or review the decision which is the subject of the appeal; or
 - b. make any order in connection therewith as it may deem fit.”

37. By dint of the provisions of Section 42 of the Community Land Act, parties to a dispute involving community land may only take their dispute to court after all efforts of resolving a dispute under the Act fail.



38. My reading of the provisions of Section 42 of the *Community Land Act*, aforementioned, vis-à-vis the other provisions of Part III is that it ousts the jurisdiction of the court to entertain matters relating to Community Land as a court of first instance. In arriving at that legal position, I am persuaded by the decision in the case of *Mwasighwa & 55 others vs. Mbulia Community Land & 3 others (2024) e KLR* where the Court stated/held: -

“The said Petitioners ought to have demonstrated that they have complied with the applicable provisions of Section 39, 42 of the *Community Land Act* 2016, Regulation 25 of the Community Land Regulations 2017 and Clause 27 of the Mbulia Community constitution. It is with noting that the *Community Land Act* is a post- 2010 constitution statute which was enacted being alive to the applicable provisions of the Kenyan Constitution by requiring disputes between members of a registered community land under the Act to be resolved by alternative mechanisms before moving to this Court.

29. The court’s jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute before approaching the court. Parties cannot veer off, waive or forfeit these dispute resolution mechanisms as they do not exist in vain. The Court cannot close its eye and overlook the undisputed fact that the dispute should be considered through the provided mechanisms in the first instance. The mere fact that a party pleads constitutional violation doesn’t automatically imply that the Court should proceed and determine the Petition as it is in the first instance since the doctrine of exhaustion spells otherwise. The Petitioners cannot take advantage of the court’s constitutional jurisdiction over the matter herein without applying the doctrine of exhaustion and adhered to the guiding principles therein”

39. Having approached this court as the court of first instance to resolve the dispute touching on their interest in the suit property, which property is community land belonging to Marigat Group Ranch, and there being no exceptional circumstances for doing so, I do find the petitioners suit to be bad in law and I dismiss it with costs to the respondents.

40. Orders accordingly.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 25TH DAY OF MARCH, 2026

L. N. WAITHAKA

JUDGE

In the presence of;

Ms Kipruto for the Petitioners

N/A for the 1-5 the Respondents

Mr Chebii for the 6th Respondent

Mr Kiptoo for the 7th Respondent

Court Assistant; Tracy

