



Masenke & 116 others v National Land Commission & 4 others (Environment and Land Petition 18 of 2017) [2025] KEELC 5606 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5606 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND PETITION 18 OF 2017**

**MN KULLOW, J
JULY 25, 2025**

IN THE MATTER OF: ARTICLES 2, 19, 22(1), 23, 27, 28, 40(1)(A)(B), 60, 61, 62(1) (D), 63(1)(2)(3)(4), AND 67(2)(E) OF THE CONSTITUTION OF KENYA 2010;

AND

IN THE MATTER OF: SECTIONS 3 AND 4 OF THE LAND ACT 2012

BETWEEN

JOSEPH J OLE MASENKE & 116 OTHERS PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

COUNTY GOVERNMENT OF NAROK 3RD RESPONDENT

MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 4TH RESPONDENT

NAROK COUNTY LAND REGISTRAR 5TH RESPONDENT

JUDGMENT

A. Introduction

1. This Petition was filed by James Sankale Ole Masenke and 116 others, adult Kenyan citizens of the Keekonyokie Maasai community, who allege constitutional violations arising from the adjudication and allocation of land within the Sintakara Adjudication Section, located in Nairegie Enkare, Narok East District.



2. The Petitioners aver that they were originally allocated land between 1968 and 1972 by an adjudication committee established under the then Ministry of Lands. The process was stalled following the outbreak of politically instigated tribal clashes in 1993, which led to their violent displacement.
3. After calm was restored, and despite multiple petitions and correspondences to various government agencies, a new adjudication committee was established in 2009. According to the Petitioners, this committee abandoned the earlier adjudication framework and irregularly allocated land to other individuals, most of whom were unrelated to the original occupants.
4. The Petitioners allege that this conduct violated their constitutional rights to property, dignity, equality, and protection against cruel, inhuman, and degrading treatment. They seek various reliefs including compensation, cancellation of the new adjudication, and restoration of their land rights.
5. The Petitioners rely on documentary evidence, witness testimonies, and correspondences with public authorities to demonstrate their prior occupation, the interruptions caused by tribal clashes, and the subsequent exclusion from the 2009 adjudication process.

B. Petitioners' Case

6. The Petitioners allege that between 1968 and 1972, the Narok County Council (then administering the land as Trust Land) commenced an adjudication process in the Nairagie Enkare area, particularly within the Sintakara Adjudication Section. An adjudication committee was purportedly appointed in 1972, which began allocating land to members of the Keekonyokie clan, including the Petitioners. They claim that by the early 1990s, the Petitioners had settled, developed, and occupied their parcels for over 20 years.
7. However, during the 1993 tribal clashes in the neighboring Enosupukia area, they were violently displaced and could not return due to security concerns. The Petitioners argue that this did not extinguish their legitimate expectation to be included in the final land registration process. They contend that when peace returned, and a new adjudication was declared in 2009, a new committee was established, which unlawfully excluded them and allocated the land to new individuals, including members of the adjudication committee itself.
8. They rely on various correspondences from government offices including the Narok County Council and the Ministry of Lands which, they claim, acknowledged the stalled adjudication process and affirmed the Petitioners' presence on the land before the clashes. They also allege that the 2009 adjudication was marred by fraud, nepotism, and irregular allocations, citing multiple letters from the committee chairperson and community members.
9. The Petitioners maintain that they had a legitimate expectation that the initial adjudication process would be completed in their favour and now seek cancellation of the 2009 titles, reinstatement to the land, compensation, and constitutional redress for alleged violations of their rights under Articles 27, 28, 29, and 40 of *the Constitution*.

C. Respondents Case

10. The 2nd, 4th, and 5th Respondents deny the existence of any adjudication process in the 1970s concerning the Sintakara area. They argue that the land was formally declared an adjudication section only on 14th October 2009, through Gazette Notice No. LA/9/5/VOL. III/57.



11. They maintain that the adjudication process conducted in 2009 was in compliance with the [Land Adjudication Act](#), and included public notices, barazas, publication of the adjudication register, and a formal objection process.
12. The Respondents assert that the Petitioners failed to make any formal claims, file objections within the stipulated period, or follow the appellate procedure outlined in Sections 26 and 29 of the [Land Adjudication Act](#).
13. They further argue that the Petitioners have failed to demonstrate any legal title or interest in the land, and that no evidence of allocation or occupation has been provided that predates the 2009 adjudication.
14. Additionally, the Respondents contend that this Petition does not meet the threshold of a constitutional matter under the principle established in *Anarita Karimi Njeru*, and urge the Court to dismiss it for failure to exhaust alternative remedies and for lack of specificity in alleged constitutional violations.

D. Issues for Determination and Analysis

15. Having carefully reviewed the pleadings, affidavits, oral and documentary evidence, as well as the submissions by both parties, the court identifies the following issues for determination:
 - a. Whether the Petitioners had any legal or equitable interest in the land within the Sintakara Adjudication Section prior to the 2009 adjudication process.
 - b. Whether the 2009 adjudication process in the Sintakara Adjudication Section was lawfully conducted in compliance with the [Land Adjudication Act](#) and principles of procedural fairness.
 - c. Whether the Respondents violated the Petitioners' constitutional rights under Articles 27, 28, 29, and 40 of [the Constitution](#).
 - d. Whether the Petitioners are entitled to the reliefs sought, including cancellation of titles, compensation, reinstatement to the land, or any other appropriate remedy.

The Court shall now proceed to analyze each issue in detail.

Issue 1: Whether the Petitioners had any legal or equitable interest in the land within the Sintakara Adjudication Section prior to the 2009 adjudication process

16. The Petitioners claim to be members of the Keekonyokie Maasai community who were settled in the area now comprising the Sintakara Adjudication Section between 1968 and 1972. They allege that this land was allocated through a community led process involving the then Narok County Council and a committee purportedly appointed in 1972. It is their case that they occupied, cultivated, and developed the land for over two decades before being violently displaced during the 1993 Enoosupukia tribal clashes. They argue that this prolonged occupation, combined with tacit government recognition, conferred upon them either legally enforceable property rights or, at minimum, an equitable interest that should have been acknowledged during the 2009 adjudication.
17. However, the statutory framework governing land rights in areas subject to adjudication is clear. Under Section 5(1) of the [Land Adjudication Act](#) (Cap. 284), an area must be declared an adjudication section by way of Gazette Notice before any lawful process of land adjudication can commence.
18. No such declaration was made in respect of the Sintakara Adjudication Section until 14th October 2009, as evidenced by Gazette Notice No. LA/9/5/Vol.III/57. The Petitioners have not produced



any gazettelement, register, or demarcation documents demonstrating that an adjudication process took place in Sintakara prior to 2009. While they refer to a 1972 letter appointing an adjudication committee for “Nairagie Enkare,” this area is administratively and legally distinct from Sintakara.

19. In addition, the Act requires that interests in land be determined and recorded through a formal process, including demarcation, adjudication, and registration, as set out in Sections 13 to 20. Under Section 23, no interest in land is legally recognized unless and until it is recorded in the adjudication register. It follows that any informal or undocumented claims made before this statutory process has occurred cannot amount to a legal interest in land.

20. The Petitioners also appear to assert a form of customary or equitable interest based on historical occupation. It is not in doubt that he who alleges must prove. See Section 107 of the *Evidence Act*, which states;

“ 1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

21. Again sections 108 and 109 of the *Evidence Act* provide;

“ 108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

22. In the present case, no specific parcels were identified, no evidence of allocation or community approval was submitted, and the Petitioners had vacated the land for over a decade prior to the 2009 adjudication, due to displacement. These facts undermine their claim of continuity and constructive possession.

23. Accordingly, this Court finds that the Petitioners did not acquire any legally cognizable or equitably enforceable interest in the land in question under the *Land Adjudication Act*, *the Constitution*, or recognized customary law. Their historical occupation, though sympathetic, does not meet the legal threshold required to sustain a claim to land rights.

Issue 2: Whether the 2009 adjudication process in the Sintakara Adjudication Section was lawfully conducted in compliance with the *Land Adjudication Act* and principles of procedural fairness

24. The Petitioners assert that the 2009 adjudication process was flawed, unlawful, and deliberately exclusionary. They allege that the process did not consider or invite former residents, many of whom were displaced in 1993, and that land was irregularly allocated to individuals with no historical connection to the area some of whom allegedly served on the adjudication committee itself. They further assert that the process was marred by nepotism, bias, and administrative impropriety.

25. On the other hand, the Respondents maintain that the adjudication was conducted lawfully and in strict conformity with the *Land Adjudication Act*. The area was formally declared an adjudication section through Gazette Notice dated 14th October 2009 pursuant to Section 5 of the Act. The



appointed Adjudication Officer convened a public baraza on 25th September 2009 at Olendeem Primary School, informing residents of the initiation of the process. Claims were then received, demarcation carried out, and an adjudication register prepared and published on 29th September 2010, in line with Section 25 of the Act.

26. Objections to the register were allowed under Section 26(1), and the evidence shows that 1,288 objections were filed, including 489 by the Narok County Council. All objections were heard and determined by the Adjudication Officer. Parties dissatisfied with the decisions were entitled to file an appeal to the Minister under Section 29.

27. The Petitioners, however, failed to demonstrate that they availed themselves of this statutory remedy. Only PW1 is said to have filed an objection, which was dismissed. He conceded in cross-examination that he did not pursue an appeal, despite being advised to do so.

28. It is well established in law that where a statute provides a dispute resolution mechanism, such procedure must be followed before invoking the jurisdiction of this Court. See John Harun Mwau Vs Peter Gastrol & 3 others [2014] eKLR, where it was held-;

“courts will not normally consider a constitutional question unless the existence of a remedy is dependent on it... It is an established practice that where a matter can be disposed of without recourse to the constitution, the constitution should not be invoked at all.”

29. The Petitioners’ failure to utilize the available statutory remedies is fatal to their claim.

30. With respect to the allegations of corruption, abuse of office, and irregular allocation, the Petitioners submitted various internal letters and complaints by community members and leaders. However, these allegations were never reported to competent investigatory authorities such as the Ethics and Anti-Corruption Commission (EACC) or the police, and no judicial review proceedings were instituted to challenge the conduct of the adjudication committee.

31. Fraud must be specifically pleaded and strictly proved, as reiterated by the Court in the case of Vijay Morjaria -Vs- Nansingh Madhusingh Darbar& another [2000] eKLR (Civil Appeal No. 106 of 2000) Tunoi JA (as he then was) stated as follows: -

“...It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

32. This decision was upheld by the Court of Appeal in Nairobi in the case of Kinyanjui Kamau -Vs- George Kamau Njoroge [2015] eKLR(Civil Appeal No 132 of 2005) where it was stated that;

“to succeed in the claim for fraud, the appellant needed to not only plead and particularize it, but also lay a basis by way of evidence, upon which the court would make a finding.”

33. In the totality of the evidence presented, this Court finds that the 2009 adjudication process in the Sintakara Adjudication Section complied with the legal framework set out in the Land Adjudication Act, and that the Petitioners were not denied an opportunity to participate. Their exclusion arose not from any unlawful conduct on the part of the Respondents, but rather from their own failure to assert their claims through the proper statutory channels.



Issue 3: Whether the Respondents violated the Petitioners' constitutional rights under Articles 27, 28, 29, and 40 of *the Constitution*

34. The Petitioners allege that the Respondents, by undertaking the 2009 adjudication process without considering their historical occupation or prior claims, violated several of their rights under *the Constitution*. Specifically, they cite violations of Article 27 (equality and freedom from discrimination), Article 28 (inherent dignity), Article 29 (freedom from cruel, inhuman or degrading treatment), and Article 40 (protection of the right to property). They further argue that the conduct of the adjudication committee, particularly the alleged self-allocation of land and exclusion of former residents, amounted to administrative injustice, arbitrariness, and abuse of public power.
35. The foundation of the Petitioners' claim under Article 40 rests on the assumption that they held a cognizable interest in the land either legal, customary, or equitable. However, as already found under Issue 1, the Petitioners did not possess any recognized or registrable interest in land within the meaning of the *Land Adjudication Act*. They were not recorded in any previous adjudication register, nor did they identify specific parcels or file objections or appeals during the 2009 adjudication process. In the absence of a proven legal or beneficial interest, the protection accorded under Article 40(1) does not arise.
36. Moreover, Article 40(6) of *the Constitution* expressly provides that:
- “The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”
37. This provision affirms the principle that one cannot seek constitutional protection for land that has not been lawfully acquired through established procedures. Since the Petitioners did not prove that they acquired any formal rights or underwent any recognized adjudication prior to 2009, their claim under Article 40 must necessarily fail.
38. Regarding the claim under Article 27, the Petitioners did not present evidence showing that they were treated differently from other similarly situated claimants. The adjudication process was publicized through gazette notices and public barazas, as required by the *Land Adjudication Act*, and was open to all persons claiming interests in land within the declared section. A total of 1,288 objections were lodged during the process, indicating broad public participation. The Petitioners' non-participation was not shown to be the result of targeted exclusion or discrimination based on ethnicity, social status, or any other constitutionally protected ground.
39. The jurisprudence of the courts has made clear that for a claim of discrimination to succeed under Article 27, the complainant must show differential treatment, a comparator, and a lack of justification for such treatment. In *Barclays Bank of Kenya LTD & Another vs Gladys Muthoni & 20 Others* [2018] eKLR held as follows;
- “.....Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions... whereby persons of one such description are subjected to ...
40. No such differential treatment was established in this case.
41. The claims under Articles 28 and 29, which relate to human dignity and protection from inhuman treatment, were similarly unsupported by concrete evidence. While the Petitioners understandably feel aggrieved by the outcome of the adjudication, and perhaps by their historical displacement, such



grievances however deeply felt do not automatically translate into constitutional violations. There is no evidence that the Respondents engaged in any conduct that demeaned the Petitioners' dignity, exposed them to degrading treatment, or arbitrarily exercised coercive power against them. No forced evictions, threats, or acts of violence attributable to the state were pleaded or proved.

42. The constitutional threshold for establishing rights violations is well articulated in *Anarita Karimi Njeru -Vs- Republic* [1979] eKLR, which requires that violations be pleaded with "reasonable precision," and in *Mumo Matemu -Vs- Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, where the Court of Appeal reaffirmed that constitutional petitions must show with clarity the nature of the violation, the provisions allegedly infringed, and the manner of infringement.
43. In the present case, the Petitioners' allegations were largely general and unsupported by evidence of specific conduct attributable to the Respondents that would rise to the level of a constitutional violation.
44. Accordingly, the Court finds that the Petitioners have not proved, on a balance of probabilities, that their rights under Articles 27, 28, 29, or 40 of *the Constitution* were violated by the Respondents.

Issue 4: Whether the Petitioners are entitled to the reliefs sought

45. The Petitioners seek a range of remedies, including: (i) cancellation of titles issued pursuant to the 2009 adjudication process; (ii) eviction of the current allottees or occupants; (iii) a declaration that the Petitioners are the rightful owners of the land within the Sintakara Adjudication Section; (iv) an order of mandamus compelling the Respondents to allocate them land or conduct a fresh adjudication; and (v) general compensation for the loss of land and historical injustice.
46. The determination of whether such remedies are available turns on two considerations: first, whether any of the Petitioners' constitutional or legal rights were violated, and second, whether the remedies sought are legally available, appropriate, and proportionate in the circumstances.
47. Having carefully considered the evidence and applicable law, this Court has already found that the Petitioners did not have a legally recognizable or equitable interest in the subject land. They were not registered as claimants, did not participate meaningfully in the adjudication process, and did not exhaust the administrative dispute mechanisms available under the *Land Adjudication Act* (Cap. 284). It has also been found that the 2009 adjudication process was conducted lawfully, and that no constitutional rights of the Petitioners were violated.
48. In constitutional litigation, remedies are not issued in the abstract. Under Article 23(3) of *the Constitution*, courts are empowered to grant appropriate reliefs only upon a finding that a constitutional right has been infringed or is threatened.
49. The Petitioners' request for cancellation of titles implicates third parties who were not joined to these proceedings. Granting such a remedy would offend the principles of natural justice, particularly the right to be heard. As held in *Kariuki -Vs- Karanja & Another* [1986] KLR 556, no person can be adversely affected by judicial proceedings to which they were not a party.
50. The prayer for an order compelling a fresh adjudication is equally untenable. As adjudication has already been concluded in accordance with law, and no illegality or fraud has been proved, the Court lacks jurisdiction to nullify or restart the process. This would amount to interfering with an otherwise regular administrative exercise absent any demonstrated constitutional or statutory breach.
51. With regard to compensation, no evidence was tendered to show the quantum of loss, valuation of land, or direct causation between any act of the Respondents and the harm alleged. Compensation in



constitutional matters cannot be granted in the abstract; it must be based on proof of violation and actual loss. The Petitioners in this case have not met that threshold.

52. In the final analysis, therefore, none of the reliefs sought can be sustained in law or fact.

E. Final Disposition and Orders

53. Having considered the pleadings, the oral and documentary evidence presented, and the written submissions of the parties, and having applied the relevant constitutional and statutory provisions as well as judicial precedent, this Court reaches the following findings:

- a. The Petitioners have not established any legally enforceable or equitable interest in the land comprising the Sintakara Adjudication Section prior to the 2009 adjudication process.
- b. The 2009 adjudication process was conducted in accordance with the *Land Adjudication Act* (Cap. 284) and afforded all legally required procedural safeguards.
- c. The Petitioners have not proved, on a balance of probabilities, that their constitutional rights under Articles 27, 28, 29, or 40 of *the Constitution* were violated by the Respondents.
- d. The Petitioners are not entitled to the reliefs sought, or any part thereof.

54. Accordingly, the Petition dated 10th May 2019 is hereby dismissed in its entirety. In view of the nature of the dispute and the passage of time,

55. the Court orders that each party shall bear their own costs.

It is so ordered!

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A for the Petitioner

N/A for the Respondent

Philomena W. Court Assistant

