



**Sile & another v Oloirien Group Ranch (Environment and Land Petition
6 of 2017) [2025] KEELC 5615 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5615 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND PETITION 6 OF 2017**

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

BETWEEN

KILUSU JULIUS SILE 1ST PETITIONER

DANIEL ODUPOI MASETO 2ND PETITIONER

AND

OLOIRIEN GROUP RANCH RESPONDENT

JUDGMENT

A. Introduction

1. This Petition arises from a dispute concerning membership and land rights within Oloirien Group Ranch, located in Transmara and registered under the now-repealed Land (Group Representatives) Act. The Petitioners, who claim to be children of original members of the Ranch and residents on the suit property known as LR NO. TRANSMARA/OLOIRIEN/1, seek constitutional redress for their alleged exclusion from the Ranch's membership and the consequential allocation of land.
2. They assert that their exclusion was discriminatory and violated various constitutional provisions, including Articles 10, 27, 40, and 47. The Petitioners seek declarations and judicial orders, including mandamus and conservatory reliefs, compelling their admission and halting any further subdivision or alienation of the Group Ranch land until their inclusion is lawfully considered.
3. The Respondent opposes the Petition, raising objections based on jurisdiction, res judicata, and the doctrine of exhaustion of statutory remedies. It argues that the Petitioners failed to pursue avenues available under the *Land Adjudication Act* and that the current proceedings are a restatement of claims previously determined by the Court in Kisii ELC Petition No. 47 of 2015.



B. Petitioners' Case

4. The Petitioners aver that they are the biological children of registered members of Oloirien Group Ranch and have resided on the ranch land for many years, deriving their entitlement to membership from this lineage and long-standing occupation. They claim that the Respondent undertook a recruitment process in which new members, primarily the children of existing members were admitted into the Group Ranch and consequently allocated shares of the suit property.
5. According to the Petitioners, this exercise resulted in the admission of more than 700 new individuals, including several minors who had neither attained the age of majority nor possessed national identification documents, in direct contravention of the Group Ranch Constitution, which sets minimum eligibility standards for admission.
6. The Petitioners allege that despite being similarly situated, they and 59 others were deliberately and unlawfully excluded from the recruitment process. They argue that this exclusion was not only arbitrary but also discriminatory, particularly when considered against the backdrop of the inclusion of minors and non-residents.
7. They submit that the recruitment process was not conducted transparently or in accordance with the Respondent's Constitution, which requires that admissions be approved through a properly convened Annual General Meeting. The Petitioners maintain that no such AGM was held, and there were no minutes or formal records confirming the legitimacy of the admissions.
8. To support their claim, the Petitioners rely on various exhibits, including a list of new members (Exhibit P5), some of whom are marked as minors, and correspondence from the Registrar of Group Representatives (Exhibit P6), who sought to inquire into the exclusion of the Petitioners but received no substantive response from the Respondent.
9. During the hearing, the 1st Petitioner, who testified on behalf of all 61 claimants, asserted that the refusal to admit them amounted to a violation of their right to equal treatment under Article 27 of *the Constitution* and a denial of their right to property under Article 40. The Petitioners assert that they met the eligibility criteria for membership under the Group Ranch's own Constitution but were overlooked without any rational or legal justification.
10. They further contend that the Respondent's actions violate Article 10 of *the Constitution*, which demands transparency, equity, and accountability in public decision-making. Given the public nature of the land and the Group Ranch's mandate to manage it for the benefit of all members including descendants of original allottees the Petitioners argue that the court must intervene to protect their constitutional rights.
11. The Petitioners insist that the administrative remedies under the *Land Adjudication Act* were unavailable or futile in the circumstances, as the Respondent had finalized its adjudication process and begun allocating land without addressing their complaint. They submit that the doctrine of exhaustion does not bar their claim and that this court is the appropriate forum to redress constitutional violations.

C. Respondent's Case

12. In response, the Respondent has mounted procedural objection to the Petition. It argues that the matter is res judicata, having been conclusively determined in Kisii ELC Petition No. 47 of 2015, in which the same Petitioners sued the same Respondent on similar grounds.



13. In that case, the court struck out the Petition for lack of jurisdiction, holding that the Petitioners had not complied with Section 30 of the [Land Adjudication Act](#), which requires the consent of the Land Adjudication Officer before filing a suit. The Respondent submits that the current Petition merely repackages the earlier claims with cosmetic changes and that no appeal was filed against the prior dismissal, making the current Petition an abuse of the court process.
14. The Respondent further argues that the court lacks jurisdiction because the issues raised fall squarely under the purview of the [Land Adjudication Act](#), which establishes a clear and exhaustive mechanism for resolving disputes arising during adjudication processes, including the filing of objections and appeals to the Minister. According to the Respondent, the Petitioners failed to utilize these statutory mechanisms, and as such, their claim is not ripe for constitutional adjudication. Citing judicial precedents, the Respondent contends that courts should not entertain constitutional petitions where alternative remedies exist and have not been exhausted.
15. Substantively, the Respondent denies that it conducted any recruitment exercise to admit new members. It maintains that membership to the Group Ranch is not automatic, even for children of existing members, and is instead a discretionary matter to be determined in accordance with the Group Ranch Constitution.
16. The Respondent states that any admission of members must be approved by the Annual General Meeting, which did not take place during the period in question. Furthermore, the Respondent challenges the authenticity of the list (Exhibit P5) relied upon by the Petitioners and denies that minors were admitted. It also disputes the credibility of the Petitioners' testimony, pointing to affidavits from some of the 59 purported co-petitioners who deny participating in or consenting to the Petition.
17. The Respondent submits that compelling it to admit the Petitioners would amount to the unconstitutional expropriation of land rights belonging to existing members, thereby violating Article 40 of [the Constitution](#). It argues that the reliefs sought—particularly the orders of mandamus and injunctive relief—would infringe upon the rights of bona fide members whose entitlements have already been adjudicated and finalized.
18. Ultimately, the Respondent prays for the dismissal of the Petition with costs, asserting that the Petition is both procedurally defective and substantively lacking in merit.

D. Issues for Determination

19. Having considered the pleadings, evidence, and submissions of both parties, the Court identifies the following as the key issues for determination:
 - a. Whether the Petition is res judicata and thus barred by law.
 - b. Whether this Court has jurisdiction to entertain the Petition in light of the dispute resolution mechanisms provided under the [Land Adjudication Act](#).
 - c. Whether the Petitioners' constitutional rights under Articles 10, 27, 40, and 47 of [the Constitution](#) have been violated by the Respondent.
 - d. Whether the Petitioners are entitled to the reliefs sought, including admission into the Group Ranch and conservatory orders restraining further subdivision of the land.



Legal Analysis and Determination

Issue No:1- Whether the Petition is Res Judicata

20. The first issue before this Court is whether the present Petition is barred by the doctrine of res judicata. which is defined in the Black's law Dictionary as:

“An issue that has been definitely settled by judicial decision; An affirmative defense barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transaction and that could have been but was not raised in the first suit. The three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties.”

21. In *Qayrat Foods Limited v Safiya Ahmed Mohamed & 6 others* the court cited *James Karanja alias James Kioi (Deceased)* which outlined the ingredients of res judicata as: -

“For the doctrine of Res Judicata to apply, three basic conditions must be satisfied. The party relying on it must show:

- a. That there was a former suit or proceeding in which the same parties as in the subsequent suit litigated;
- b. the matter in issue in the latter suit must have been directly and substantially in issue in the former suit;
- c. that a court competent to try it had heard and finally decided the matters in controversy between the parties.”

22. The Supreme Court in *Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another* stated the following regarding res judicata: -

“(52) Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights.”

23. In the matter now before this Court, the Respondent has submitted, and the Petitioners have not denied, that the same parties previously litigated the same subject matter in *Kisii ELC Petition No. 47 of 2015*. The issues then, as now, concerned the Petitioners' exclusion from membership of *Oloirien Group Ranch* and their claim to equitable entitlement in land held and administered by the *Group Ranch*.

24. That Petition was struck out by the Court for want of jurisdiction, specifically due to the Petitioners' failure to obtain the consent of the Land Adjudication Officer pursuant to Section 30 of the [Land Adjudication Act](#). Although the matter was dismissed on a jurisdictional ground, the order amounted to a final determination, particularly because the Petitioners did not seek to review or appeal that decision. The effect is that the Petitioners cannot now return to Court with the same claim, merely restated under slightly different language or framed as a new constitutional grievance.

25. As Stated above in the aforementioned case *Supreme Court in Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & Another* emphasized that res judicata is a doctrine of substantive



law. The Court noted that once the legal rights of parties have been judicially determined, such determination stands as a conclusive pronouncement of those rights.

26. While the Court acknowledges that exceptions to the rule exist as noted in the High Court of Kenya in *Benjamin Koech v Baringo County Government & 2 others; Joseph C. Koech (Interested Party)* after reviewing decided cases held that exceptional circumstances such as fraud, mistake or lack of jurisdiction may constitute special circumstances to remove the operation of the doctrine of res judicata.
27. In this case, the Petitioners have not pointed to any such exceptional circumstances. There are no claims of fraud, lack of capacity, procedural unfairness, or any other defect in the prior proceedings that would warrant re-litigation. In the absence of such circumstances, the principle must apply with full force. The Petitioners have made no such allegation here. On the contrary, their attempt to reopen the same issues that were already struck out in a prior proceeding, involving the same parties and subject matter, is a textbook case of an abuse of the court process.
28. In light of the foregoing, this Court finds that the current Petition is caught by the doctrine of res judicata. The elements outlined in statute, case law, and common law all converge in this matter, and no exceptional circumstance has been demonstrated to justify departing from the principle. The Petition is therefore barred in law and cannot proceed further on the same issues that have already been litigated and conclusively disposed of.

IssueNo:2- Whether the Court Has Jurisdiction in Light of the *Land Adjudication Act*

29. The second issue for determination concerns whether this Court has jurisdiction to entertain the Petition in view of the dispute resolution framework established under the *Land Adjudication Act*, Cap. 284. That statute governs the ascertainment and recording of rights and interests in community land, formerly known as Trust land. It also establishes an elaborate adjudication and dispute resolution procedure meant to bring finality and certainty to land ownership before registration under the *Land Registration Act*.
30. Jurisdiction in matters concerning land under adjudication is not automatic. The legal framework governing such disputes is not only specific but also mandatory. The preamble to the *Land Adjudication Act* states that it is

“ An Act of Parliament to provide for the ascertainment and recording of rights and interests in community land... and for purposes connected therewith and purposes incidental thereto.”
31. Therefore, the Act’s primary focus is on a non-judicial process that enables communities to determine land rights through fieldwork, administrative hearings, objections, and appeals before court intervention is triggered.
32. Sections 13 through 29 of the Act lay out the procedural roadmap. During adjudication, claimants present their interests to the Recording Officer, who records and maps them. If a dispute arises, the Recording Officer refers it to the Adjudication Committee as provided under Section 19(2) and (3). Thereafter, dissatisfied parties may escalate the matter to the Arbitration Board pursuant to Section 21(3). Upon conclusion, the adjudication register is compiled and published. Section 26 then grants any aggrieved person sixty days to file an objection with the Adjudication Officer, stating how and why the register is incorrect. The final stage, under Section 29(3), is the closure and certification of the adjudication register. Only then does the matter progress to registration.



33. Until that register becomes final, Section 30(1) of the Act bars any judicial proceedings, stating:
- “Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3).”
34. This section is expressed in mandatory language. It is both a procedural bar and a jurisdictional constraint. Its purpose is to preserve the integrity of the administrative process and prevent the premature judicialization of claims that have not been sifted through the mechanisms set up under the Act.
35. The Court of Appeal in *Bhaijee & Another v Nondi & Another* [2022] KECA 119 held that the effect of Section 30 is to conditionally limit judicial jurisdiction. It emphasized that
- “the rationale for Section 30 was that there exists an elaborate process under the [Land Adjudication Act](#) on how to determine persons entitled to interests in land under adjudication... and where such a mechanism exists, it must be exhausted before invoking the court's jurisdiction.”
36. The judicial consensus is that the court must not usurp the roles assigned to the Adjudication Committee, Arbitration Board, or the Minister. The Court of Appeal reiterated this in *Stanley Gitonga v Gerald Mwithia* [2013] eKLR, where it upheld the jurisdiction of a trial court only after confirming that the adjudication officer had granted written consent pursuant to Section 30. That decision made clear that once consent is validly issued, jurisdiction can shift to the courts. However, in the absence of that consent, courts are barred from entertaining the matter, regardless of its merits.
37. The importance of following the statutory dispute resolution path was also underscored in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, where the Court of Appeal warned that
- “where there is a clear procedure for the redress of any particular grievance prescribed by [the Constitution](#) or an Act of Parliament, that procedure must be strictly followed.”
38. The [Land Adjudication Act](#), being such a statute, is therefore a code unto itself with a built-in dispute resolution framework that cannot be bypassed at a party's convenience.
39. While the doctrine of exhaustion is not absolute and may admit exceptions, such exceptions are rare and must be substantiated. The High Court in *Republic v IEBC Ex Parte NASA Kenya & 6 Others* [2017] eKLR elaborated that
- “courts must evaluate the facts, the nature of the regulatory scheme, and whether the statutory forum can accommodate the constitutional or legal issues raised, before granting an exception.”
40. Thus, it is not sufficient to allege frustration or delay within the administrative process. A petitioner must show that the statutory mechanism is plainly unavailable, inadequate, or that the claim raises novel constitutional questions that cannot be determined by the adjudication bodies.
41. This Court finds that the [Land Adjudication Act](#) provides a detailed and effective framework for resolving land disputes arising during the adjudication process. The availability of committee hearings, arbitration, objections, and ministerial appeals provides ample opportunity for parties to vindicate



their rights. The intention of the legislature is to ensure that land claims are filtered through local adjudicative structures rooted in custom, geography, and public participation before the formal court system is invoked. This process respects the administrative autonomy of the adjudication authorities and minimizes forum shopping and premature litigation.

42. Unless it is demonstrated that the adjudication register has been finalized under Section 29(3), or that written consent has been obtained from the Adjudication Officer in line with Section 30(1), any proceedings instituted in court are premature and incompetent. Further, the mere labeling of a dispute as a constitutional claim does not exempt it from the exhaustion principle, especially when the alleged violations are inseparable from the land rights being adjudicated.
43. In the absence of any valid written consent and without exhaustion of the internal mechanisms under the Act, this Court lacks jurisdiction to entertain the Petition. The Petition, as framed, prematurely invites the Court to intervene in a process that is ongoing and structured by statute. This Court, therefore, must decline that invitation and defer to the statutory processes established under Cap. 284.

Issue No:3- Whether the Petitioners' Constitutional Rights Were Violated

44. The Petitioners rely on Articles 10, 27, 40, and 47 of *the Constitution*. They allege that their exclusion from membership of the Group Ranch, while others, some allegedly minors, were admitted, amounted to discrimination, arbitrary deprivation of property, and lack of fair administrative action.
45. While *the Constitution* guarantees the rights cited, a party alleging violation of constitutional rights must satisfy the requirements set out in *Anarita Karimi Njeru v Republic* [1979] eKLR, namely that:

“We would however, again stress that if a person in seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important that (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”

46. In this case, the Petitioners have not proved that there was an official recruitment exercise sanctioned by the Respondent's governing organs. There is no resolution of the Annual General Meeting nor any documented decision-making process approving new membership. The Petitioners' reliance on Exhibit P5 (list of minors) is not conclusive evidence of wrongful admissions. Even if such admissions occurred, it does not entitle others to automatic inclusion.
47. *The Constitution* protects property and association rights of registered members, and this Court cannot issue orders compelling a private group to expand membership against its internal policies and due process.
48. Subsequently, The Petitioners did not show that they formally applied for membership, nor that they were denied through any identifiable decision-making process that they could challenge. Their rights under Article 47 were therefore not triggered, and their claim under Article 27 fails for lack of comparators and proof of unequal treatment.

Issue No:4- Whether the Reliefs Sought Are Grantable

49. The Petitioners seek declarations, orders of mandamus, injunctions, and conservatory reliefs. These are remedies available under Article 23(3) of *the Constitution* but are not granted as of right. They must be predicated on proof of violation of a constitutional right, jurisdiction, and proper procedure.



50. An order of mandamus compels a public authority to perform a statutory duty. However, the decision whether to admit members to a group ranch is not a statutory duty enforceable by mandamus; it is an internal discretionary function governed by the Ranch's constitution and group dynamics.
51. In addition, the reliefs sought would, if granted, affect existing registered members many of whom are not parties to this suit. That would offend the principles of fair hearing and due process under Article 50(1) of *the Constitution*.
52. Further, issuing such orders would infringe on the rights of those whose titles have already been registered following final adjudication. The sanctity of title and first registration is protected under Section 26 of the *Land Registration Act* and Article 40(2) of *the Constitution*.

Final Disposition

53. For the reasons elaborated above, the Court finds as follows:
 - i. The Petition is res judicata.
 - ii. This Court lacks jurisdiction due to non-exhaustion of the *Land Adjudication Act* mechanisms and failure to obtain statutory consent.
 - iii. No constitutional violations have been established.
 - iv. The reliefs sought are not grantable in law or fact.
54. Accordingly, the Petition dated 9th November 2016 and amended on 21st March 2019 is hereby dismissed with costs to the Respondent, as against the 1st and 2nd Petitioners.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 25TH DAY OF JULY, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A for the Petitioner

N/A for the Respondent

Philomena W. Court Assistant

