



Sombesha v Land Adjudication and Settlement Officer, Trans Mara/West District & 3 others; Roiko & another (Interested Parties) (Constitutional Petition 381 of 2017) [2025] KEELC 5585 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5585 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
CONSTITUTIONAL PETITION 381 OF 2017
MN KULLOW, J
JULY 25, 2025
FORMERLY
ENVIRONMENT AND LAND COURT AT KISII
CONSTITUTIONAL PETITION NO.23 OF 2016
IN THE MATTER OF: THE ENVIRONMENT AND LAND COURT ACT
AND
IN THE MATTER OF THE SUCCESSION ACT, CAP 160 OF LAWS OF
KENYA
AND
IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA
AND
IN THE MATTER OF ALLEGED VIOLATION AND INFRINGEMENT OF THE
RIGHTS AND FREEDOMS IN ARTICLES 25 (C) 27,40,47,48& 50(1) OF
THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF ALLEGED VIOLATION AND INFRINGEMENT OF
SECTION 5,6,12,19,20,21,24,25,26,27& 28 OF THE LAND
ADJUDICATION ACT (CAP 254) LAWS OF KENYA (REPELEAD)

BETWEEN
PANYAKO OLE SOMBESHA PETITIONER

AND



LAND ADJUDICATION AND SETTLEMENT OFFICER, TRANS MARA/WEST DISTRICT 1ST RESPONDENT
THE CHIEF LAND REGISTRAR 2ND RESPONDENT
NAROK LAND REGISTRAR 3RD RESPONDENT
DIRECTOR OF SURVEY 4TH RESPONDENT

AND

JOHN OLORASHA ROIKO INTERESTED PARTY
JULIUS LEKAKENY OLE ROIKO INTERESTED PARTY

JUDGMENT

Introduction

1. This Petition is brought under Articles 22, 23, and 165(3)(b) of the *Constitution of Kenya, 2010*. The Petitioner challenges the decision of the Land Adjudication and Settlement Officer made on 28th November 2013 in relation to Plot No. Nkararu/545. He alleges his name was irregularly and unlawfully removed from the adjudication register and replaced with that of the Interested Parties, in contravention of procedural fairness and his constitutional rights. Infringement

Petitioner's Case

2. The Petitioner claims this decision was made without proper notice, without following due process, and was based on an objection filed by a deceased person, Salapei Ole Roiko, without locus standi being properly vested in the Interested Parties. He alleges a breach of his fundamental rights under the Constitution and various statutory provisions, including the *Land Adjudication Act* (Cap. 284).
3. The Petitioner avers that he was the original lawful allottee and registered owner of Plot No. 545 following the conclusion of the adjudication process in Nkararu Adjudication Section. He claims he was in occupation of the land since 1990 and was never served with an objection notice as contemplated under Section 26(1) of the *Land Adjudication Act*.
4. According to the Petitioner, he only became aware in 2015 two years after the fact that the adjudication officer had made a determination on Objection No. 339, allowing the Interested Parties to take over the land based on their father's claim. He was never afforded the opportunity to file an appeal under Section 29 of the Act, as he was unaware of the ruling.
5. He argues further that the Interested Parties had no standing to bring the objection as they did not possess a grant of representation, contrary to Section 80 of the *Law of Succession Act* and relevant case law. Therefore, all proceedings initiated or defended by them on behalf of their late father were legally void.
6. The Petitioner relies heavily on constitutional provisions, notably Articles 25(c) (non-derogable right to fair trial), Article 47 (fair administrative action), Article 50 (right to be heard), and Article 40 (protection of property rights), to contend that the process followed by the 1st Respondent was flawed, illegal, and unconstitutional.



Respondents' and Interested Parties' Case

7. The Respondents maintain that the land in question is located in an adjudication section that was not formally closed and that the objection process initiated by Salapei Ole Roiko was validly filed within time.
8. The 1st Respondent asserts that both the Petitioner and the Interested Parties were present at the hearing and even mutually agreed not to undertake a site visit, which would normally have helped resolve boundary questions.
9. The Interested Parties argue that the Petitioner's claim is an afterthought, as he did not appeal the adjudication officer's decision within 60 days as provided by Section 29 of the [Land Adjudication Act](#). They insist that they were in occupation of the land, that the adjudication register was improperly manipulated in 1990 by a biased committee, and that they followed due process.

Issues for Determination

10. Having considered the Petition, the responses from the Respondents, the respective submissions filed by parties, and the legal issues arising, the Court finds that the following four issues fall for determination:
 - a. Whether the objection proceedings and resultant decision were conducted in accordance with the [Land Adjudication Act](#) and constitutional guarantees of due process;
 - b. Whether the Interested Parties had locus standi to act on behalf of the deceased objector;
 - c. Whether the Petitioner's constitutional rights under Articles 25(c), 27, 40, 47, and 50 were violated;
 - d. Whether the Petitioner is entitled to the reliefs sought.

Analysis and Determination

Whether the objection proceedings and resultant decision were conducted in accordance with the [Land Adjudication Act](#) and constitutional guarantees of due process;

11. The dispute in this Petition arose within the context of land adjudication under the [Land Adjudication Act](#) (Cap. 284), a statute whose purpose and intent is provided in the preamble as follows: -

“An act of Parliament to provide for the ascertainment and recording of rights and interests in trust Land, and for purposes connected therewith and purposes incidental thereto.”
12. The Court in line with the above preamble has gone through the provisions of the said Statute in details. And it's the opinion of the Court as regards the provisions of the [Land Adjudication Act](#), Cap 284 is that it deals with the process of ascertaining rights and interests belonging to different claimants during adjudication of Trust Land (now referred to as Community Land).
13. Section 26(1) of the Act provides:

“Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer



in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.”

14. The record before the Court confirms that the adjudication process in Nkararu Adjudication Section was declared complete and published on 30th October 1990, thereby triggering the sixty-day window prescribed under section 26(1) of the [Land Adjudication Act](#) within which any person affected by the adjudication register could lodge an objection.
15. Objection No. 339 concerning Parcel No. 545 was filed by Salapei Ole Roiko. Although the objection was determined more than two decades later, the delay is adequately explained in the affidavit of the 1st Respondent, who avers that numerous objections were pending due to circumstances beyond administrative control, including insecurity. The Court takes judicial notice of such challenges within adjudication areas, especially in historically volatile regions.
16. More importantly, the Petitioner was duly notified of the objection and was present at the hearing. The adjudication proceedings indicate that both parties participated fully, presented their witnesses, cross-examined each other, and ultimately agreed to forgo a site visit due to prevailing insecurity.
17. The objection was determined on 28th November 2013, with both parties present, and a reasoned decision was delivered by the Land Adjudication Officer on the same day. Therefore, this Court finds that the proceedings adhered to the provisions of the [Land Adjudication Act](#) and respected the principles of natural justice, including the right to a fair hearing under Article 50(1) of the [Constitution](#). There is no evidence to support the claim that the process was conducted fraudulently or irregularly. The allegation that the Petitioner’s name was unlawfully removed from the adjudication register is not supported by the record. Rather, the process followed statutory requirements and culminated in a lawful administrative determination.

Whether the Interested Parties had locus standi to act on behalf of the deceased objector;

18. It is uncontested that Salapei Ole Roiko, the original objector, passed away prior to the hearing of Objection No. 339. His son, the 1st Interested Party, John Olorasha Roiko, prosecuted the objection in his stead.

“I am the son of the late Salapei who passed away after filing this objection. We have agreed as a family that I represent them.” As captured in the objection proceedings.

19. Section 13(5) of the [Land Adjudication Act](#) provides as follows:-

“ 13. Claims and attendance

- (5) Where several persons claim separately as successors of a deceased person, and one or more of those persons attends, his or their attendance shall be taken to be the attendance of all the successors unless the Adjudication Officer otherwise directs.”

20. The Act stipulates that the estate of a deceased person can be represented by any of his successors, not exclusively the deceased’s legal representatives. The statute therefore allows any person who is claiming a right or an interest in land to lodge or defend a claim. (see [Rose Kanini M’Atheru & another v District Land Adjudication & Settlement, Karama Adjudication Section & 2 others](#) (*supra*).
21. In the present case, the 1st Interested Party, being a direct son of the deceased objector and having been authorized by the family to act on their behalf, satisfied the requirement under Section 13(5) of the



Land Adjudication Act. His appearance and prosecution of the objection were therefore sufficient in law to constitute representation of the deceased's interests. There is no evidence that the Adjudication Officer directed otherwise, nor is there any indication that the representation was challenged by other successors. Accordingly, the locus standi of the 1st Interested Party to continue with the objection on behalf of the deceased was properly grounded in both fact and law.

Issue No: 3 and 4 Whether the Petitioner's constitutional rights under Articles 25(c), 27, 40, 47, and 50 were violated; and Whether the Petitioner is entitled to the reliefs sought.

22. The Petitioner anchors his claim on the assertion that he was denied a fair trial and that the administrative process resulting in his removal from the adjudication register was unconstitutional. However, the evidence demonstrates that the Petitioner was afforded notice of the objection, attended the proceedings, cross-examined the opposing party, and gave sworn testimony in defence of his claim. The hearing was conducted in accordance with the rules of natural justice, and the Petitioner did not contest the process at the time.
23. Furthermore, the Land Adjudication Act provides a clear appellate mechanism under section Section 29 provides thus:-
1. Any person who is aggrieved by the determination of an objection under Section 26 of this act may, within sixty days after the date of the determination, appeal against the determination to the Minister by -(a)delivering to the minister an appeal in writing specifying the grounds of appeal; and(b)sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
 2. The minister shall cause copies of the order to be sent to the director of Land Adjudication and to the Chief Land Registrar.
 3. When the appeals have been determined, the Director of Land Adjudication shall-(a)alter the duplicate adjudication register to conform with the determination and(b)certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.
 4. Notwithstanding the provisions of section 38(2) of the Interpretation and General Provisions Act (Cap 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”
24. In my considered view, the petitioner had a right to appeal to the Minister under Section 29 of the said Act. They did not do so. Instead, the petitioners are now seeking an escape route through this constitutional petition. The petitioners have not demonstrated that indeed they exhausted the available mechanisms before turning to this court for intervention. Where the constitution itself or vide statute provides an alternative mode of dispute resolution for specified disputes, then the court in the spirit of Article 159(2) of the Constitution, oblige and cede jurisdiction to such forums. There is a clear process established under the Land Adjudication Act for resolving disputes over land that is within an adjudication section. Parties are bound to follow that process before they resort to court.



25. Further, a reading of the issues presented in this petition leave no doubt that the petitioners' grievance, if any, can adequately be addressed by statute. The issues raised in the petition, in my humble opinion do not raise any constitutional issues. The petition raises issues of ownership over the suit land.
26. The threshold for a constitutional petition is clearly enunciated in the case of *Anarita Karimi Njeru (supra)* as follows-;
- “We would, however, again stress that if a person is seeking redress from the High court on a matter which involves a reference to the constitution, it is important (if any to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
27. The dispute herein is a private claim. It is also convenient to state that a constitutional question is an issue whose resolution requires the interpretation of the constitution or application of the Articles of the *Constitution*. This is not the case in this petition.
28. This court ought to discourage invocation of the constitutional process where there exist alternative statutory remedies. In *John Harun Mwau v Peter Gastrol & 3 others* [2014] eKLR, 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. From the facts before me, I find that this petition does not raise constitutional issues at all and on this ground, the petition fails. I also find that no contravention of constitutional rights have been proved at all. The evidence tendered on behalf of the petitioner in my view do not demonstrate the alleged violation.
30. Having carefully considered the petition before me and the evidence and submissions, I find that the petition does not raise any constitutional issues at all. Secondly, the petitioners have failed to prove the alleged infringement of constitutional rights to the required standard and are not entitled to the orders sought.
31. I find that the petition has no merit. I dismiss this petition with costs to the respondents.

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

