



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELCL PETITION NO. E011 OF 2024

**SILAS MWENDA1ST
PETITIONER**

**HENRY MWITHALII NTONJIRA (*Suing as the
Legal Representative of JADIEL NTONJIRA
M’KINYILI alias NTONJIRA M’KINYILI alias
M’NJIRA M’KINYILI*).....2ND
PETITIONER**

=VERSUS=

**STANLEY MUNG’ATHIA1ST
RESPONDENT**

**DIRECTOR, LAND ADJUDICATION AND
SETTLEMENT.....2ND
RESPONDENT**

**DEPUTY COUNTY COMMISSIONER,
IGEMBE CENTRAL (*Sued for and on behalf of the
Cabinet Secretary in Charge, Lands*).....3RD
RESPONDENT**

**THE LAND REGISTRAR, IGEMBE CENTRAL ..4TH
RESPONDENT**

**THE HON ATTORNEY GENERAL.....5TH
RESPONDENT**

RULING

- 1.** This petition was lodged in July 2024. Through it, the petitioners sought, inter alia, orders quashing/annulling the ruling/award of the Cabinet Secretary [*acting through a delegatee - the Deputy County Commissioner, Igembe Central*], rendered on 20/11/2020 in **Appeal Case No 421 of 2015** and all the proceedings culminating into the said ruling. They alleged that on 4/11/2011, the District Land Adjudication and Settlement Officer rendered a decision in **A/R Objection** Nos 369; 370; 371; 372; and 12011 relating to land parcel numbers **1371; 1372; and 1817 Athiru Ruujine Ndoleli Adjudication Section**. The 1st respondent had 60 days to lodge an appeal to the Cabinet Secretary but never did so until 2015. The Cabinet Secretary purported to admit the statute-barred appeal and exercised jurisdiction over the appeal. They contended that the Cabinet Secretary acted ultra vires because the 60 days period having lapsed without the 1st respondent filing an appeal, the Cabinet Secretary had no jurisdiction to entertain an appeal after 5 years.
- 2.** The petition came up for directions on 28/4/2025. On that day, counsel for the petitioners urged the court to hear the petition through viva voce evidence. Counsel for the 1st respondent and the Hon Attorney General's representative opposed the plea, contending that the issues had been fully ventilated in the petition and in the supporting affidavits and had been responded to through the replying affidavits.

3. Upon considering the oral submissions tendered by the parties, the court rendered an order on 14/5/2025 in the following terms:

“The court has looked at the petition brought under the Bill of Rights and is satisfied that the constitutional issues in the petition can be adequately ventilated through various categories of affidavits. If the petitioners wish to controvert any assertion, they will have leave to file supplementary/rejoinder affidavits to fully controvert the respondents’ evidence. Consequently, the directions of the court are that:

- 1. The petition shall be canvassed through affidavit evidence and written submissions.***
- 2. Upon all the respondents filing their responses, the petitioners shall have leave to file and serve supplementary/rejoinder affidavits.***
- 3. Parties will thereafter file and exchange brief written submissions***
- 4. At the hearing of the petition, parties will have time to highlight key aspects of their submissions.***
- 5. Hearing of the petition shall be on 29/9/2025.”***

4. Hearing did not take off on 29/9/2025 because the petitioners did not file and serve their submissions on time. Counsel for the petitioners explained that he had lost contact with the petitioners. Hearing of the petition was adjourned to 1/12/2025. Come 1/12/2025, counsel for the petitioners informed the court that the petitioners had filed a notice of motion dated 26/11/2025 and urged the court to first give disposal directions on the application and dispose it. The said application is the subject of this ruling.

5. Through the application dated 26/11/2025, the petitioners seek the following verbatim orders: -

a. Spent

b. That this Honourable Court be pleased to issue an order directed to the Land Registrar, Igembe Central, to visit the locus in quo i.e Athiru/Ruuujine/Ndoleli/1372,1371,1817 and Athiru/Ruuujine/Ndoleli/2016 to ascertain ground size occupation of the respective suit lands vis-a vis the existing registry index maps in Athiru/Ruuujine/Ndoleli Registration Section.

c. That this Honourable Court be pleased to order the Sub-County Land Surveyor, Igembe Central, to prepare a ground verification report and file it with court within seven (7) days upon such visit.

d. That the cost of this application be provided for.

6. The application was premised on the grounds outlined in the motion and in the 1st applicant's two affidavits dated 26/11/2025 and 7/1/2026 respectively. It was canvassed through written submissions dated 14/1/2026, filed by **M/s Njindo Matiba & Co Advocates**. In summary, the case of the applicants is that the court should direct the Land Registrar [the 4th respondent] to visit the *locus-in-quo* [the parcels that are the subject matters of this petition] to ascertain the ground size occupation of the respective parcels vis-à-vis the existing registry index maps in the Adjudication Section. The applicants also want the court to order the Sub County Land Surveyor to prepare a ground verification report and file it in court. The applicants contend that the Minister's delegatee made the impugned ruling without a ground verification report and therefore infringed on their right to property by coming to the finding that the land that was purportedly sold to the applicant is the 1st respondent's parcel which had been demarcated as parcel number 2016.
7. The applicants add that there is real danger that the land registers belonging to their parcels will be closed and deleted from the records if the above orders are not granted. It is their case that despite requesting for the survey through several letters, the Sub County Surveyor declined to accede to their requests.
8. The 1st respondent opposed the application through an affidavit sworn by **Stanley Mung'athia** on 9/12/2025 and through written submissions dated 20/1/2025, filed through **M/s Maore Kambura & Co & Advocates**. The case of

the 1st respondent is that there are no special circumstances that justify a site visit. He contends that the issue before this court relates to constitutional rights and not acreage, adding that the applicant seeks to fill gaps in his case.

- 9.** The 1st respondent states that the application is meant to delay the suit. He argues that directing the Sub-County Land Surveyor to prepare a verification report would amount to the court collecting evidence for the applicants, thereby undermining the court's impartiality. He adds that if expert reports were necessary, the applicants should have sought leave earlier and obtained them himself.
- 10.** The 1st respondent contends that the applicant should have hired a private surveyor instead of involving the sub-county surveyor. He maintains that evidence should have been filed prior to pre-trial and that the proposed site visit would waste judicial time without aiding in the resolution of the dispute. He urges the court to dismiss the application.
- 11.** The Attorney General did not file a formal response to the application.
- 12.** The court has considered the application, the response to the application and the submissions tendered on the application. The court has also considered the relevant legal frameworks and jurisprudence. The single question to be answered in this ruling is whether a proper case has been made to warrant the orders sought in the application under consideration.

13. This is a petition brought under the Bill of Rights. This court's exercise of jurisdiction under the Bill of Rights is governed by the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013. Rule 20** contains the following framework on how this court is required to conduct hearing of petitions under the Bill of Rights.

“20(1) The hearing of the petition shall, unless the court otherwise directs, be by way of:

- (a) Affidavits***
- (b) Written submissions; or***
- (c) Oral evidence***

(2) The court may limit the time for oral submissions by the parties.

(3) The court may upon application or on its own motion direct that the petition or part thereof be heard by oral evidence.

(4) The court may on its own motion, examine any witness or call and examine or recall any witness if the court is of the opinion that the evidence is likely to assist the court to arrive at a decision.

(5) A person summoned as a witness by the court may be cross-examined by the parties to the petition.”

14. Secondly, the right to a fair hearing is a key component of the Bill of Rights and is expressly provided for under Article 50 in the following terms:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate another independent and impartial tribunal or body.”

15. The tenor and import of Article 50 is that, Kenya’s courts and tribunals are expected to be independent and impartial. Put differently, when hearing and disposing a petition such as the this one, this court is expected to be an impartial umpire.

16. In the application under consideration, the court is invited to step out of the seat of an impartial umpire and embark on the partisan role of gathering evidence that would assist the petitioner’s case. The responsibility to gather evidence and place the evidence before a court seized of a constitutional petition is that of the parties to the petition; it is not within the province of the court to undertake the partisan role of gathering evidence that would bolster or weaken the case of a party to a petition. Regrettably, the petitioners want the court to undertake that partisan role. The court will not do that.

17. For the above reasons, the court comes to the finding that no proper case has been made to warrant issuance of the orders sought in the application dated 26/11/2025. The

result is that the said application is rejected and dismissed for lack of merit. The applicants shall bear costs of the application

DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF APRIL, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Njindo for the Petitioner/Applicant.

Ms. Maore for the 1st Respondent

Ms. Wairimu for the 2nd - 5th Respondents

Mr. Tupet - Court Assistant