

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT IN ISIOLO**  
**PETITION E004 OF 2025**

GUYO BONAYA BORU.....PETITIONER

VERSUS

KADIRO OCHE.....1<sup>ST</sup> RESPONDENT

THE DISTRICT LAND

ADJUDICATION & SETTLEMENT OFFICER.....2<sup>ND</sup>

RESPONDENT

SAGANTE 1 ADJUDICATION SECTION MARSABIT....2<sup>ND</sup>

RESPONDENT

THE DISTRICT LAND REGISTRAR ISIOLO.....3<sup>RD</sup>

RESPONDENT

THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT

**RULING**

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1. The Petitioner, Guyo Bonaya Boru, has approached the court *vide* Petition dated 27.10.2026. The Petitioner contends that LR NO Marsabit/Sagate 1/960, Marsabit area, was duly and lawfully adjudicated in his name during the Adjudication Process.
2. In addition, the Petitioner avers that upon the land in question being adjudicated in his name, the same entered upon, took possession of and has remained in occupation thereof. However, it has been contended that the 1<sup>st</sup> Respondent lodged an objection against the adjudication process, which objection was thereafter heard and determined by the 2<sup>nd</sup> Respondent. The

Petitioner contends that the objection was lodged without due notice to him, and that he was neither notified nor involved in the hearing of the objection.

3. Furthermore, it has been contended that upon the hearing and determination of the objection, the 2<sup>nd</sup> Respondent proceeded to and created LR No Marsabit/ Sagante 1/ 1317 [ *herein after referred to as the suit property*].
4. It is the creation of the suit property which has offended the petitioner and thus precipitated the petition before the court. The Petitioner now contends that the filing of the objection; the hearing of the objection; and the ultimate creation and registration of the suit property in the name of the 1<sup>st</sup> respondent were fraudulent, illegal and unlawful.
5. Flowing from the averments contained in the body of the Petition, the Petitioner has sought a plethora of relief[s]. The reliefs sought are: Declaration that the *ex- parte* land adjudication objection proceedings touching on and concerning **LR. Marsabit/Sagante 1/960**; are null and void; the Petitioner is the *bona-fide* owner of the suit property; an order for rectification of the records relating to the suit property to reflect the name of the petitioner and an order of permanent injunction to restrain the 1<sup>st</sup> respondent from *inter alia* entering upon and developing the suit property. The petitioner has also sought costs.
6. Upon being served with the petition, the 1<sup>st</sup> respondent duly entered an appearance and thereafter filed a Notice of preliminary objection. The preliminary objection is dated 14.11.2025. The grounds underpinning the preliminary objection are: (a) The Honourable court lacks jurisdiction to hear and determine this petition as the petitioner has not exhausted other administrative avenues of dispute resolution in relation to the dispute arising

from the decision of the adjudication officer pursuant to **Section 29 of the Land Adjudication Act, Cap 284.**

7. The Preliminary objection came up for directions before the court, whereupon the parties agreed to canvass the same by way of written submissions. To this end, the court proceeded to issue directions for the filing and exchange of written submissions. The court also circumscribed the timelines for filing and exchange of the submissions.
8. The 1<sup>st</sup> respondent filed written submissions dated 13<sup>th</sup> March, 2026, wherein same has highlighted and canvassed two [2] key issues. The issues are: whether the Honourable court has jurisdiction to entertain the petition despite the failure of the petitioner to appeal to the Minister [Cabinet Secretary]in accordance with **section 29 of The Land Adjudication Act;** and whether the petitioner can use a constitutional petition to circumvent the mandatory statutory dispute resolution procedure under the adjudication Act.
9. In brief, learned counsel for the 1<sup>st</sup> respondent has contended that this court is divested of the requisite jurisdiction to entertain and adjudicate upon the subject petition based on the doctrine of exhaustion. In particular, it has been contended that where there exists an established statutory dispute resolution mechanism, then the claimant is enjoined to appropriate the established mechanism before invoking the jurisdiction of the court. The provisions of section 29 of the Land Adjudication Act have thereafter been referenced.
10. Additionally, Learned counsel for the 1<sup>st</sup> respondent has referenced various decisions *inter alia* **Pembe as Legal representative of Kaingu Pembe mwajaka vs Ngonyo & 2 others 2024 KECA 562 and Geoffrey Muthinja Kabiru & 2 others vs Samuel Munga Henry & 1756 Others 2015 eKLR.**

11. *In a nutshell*, the court has been invited to find and hold that the petition before the court is premature, misconceived and legally untenable. The court has been implored to strike out the petition and to award costs to the 1<sup>st</sup> respondent.
12. The Petitioner filed written submissions dated 17<sup>th</sup> March, 2026, wherein same has highlighted three [3] issues. The issues are: the time within which the petitioner could mount the appeal envisaged under **Section 29 of the Land Adjudication Act** had lapsed; the Honourable court is seized of the requisite jurisdiction to entertain and adjudicate upon the petition; and the petitioner was neither notified of the objection nor invited to participate in the objection proceedings.
13. The learned counsel for the petitioner has therefore contended that the petition before the court is lawful and legitimate and that the court has the requisite jurisdiction to entertain the same and grant the reliefs sought. Conversely, it has been posited that the preliminary objection is misconceived. The court has been invited to dismiss the same.
14. Having reviewed the petition; the Notice of preliminary objection; the written submissions by the 1<sup>st</sup> respondent and the submissions on behalf of the petitioner, two issues crystallize for determination.
15. The issues are: Whether the court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject Petition or otherwise; and Whether the reliefs sought are legally tenable in light of the provisions of the Land Adjudication Act.

16.Regarding the first issue, it is apparent that the Petitioner is indeed aggrieved by the objection which was lodged against plot No Marsabit/ Sagante 1/960 and the resultant proceedings culminating in the creation of the suit property. The petitioner posits that the lodgment of the objection was secretive, fraudulent and unlawful.

17.In addition, the petitioner has contended that the objection proceedings which birthed the suit property were heard and undertaken without due notice to him. In this regard, the petitioner averred that the objection proceedings were therefore unlawful, null and void.

18.The long and short of the complaints by the petitioner is to the effect that the objection was heard and determined by the 2<sup>nd</sup> respondent, and that the outcome thereof did not bode well with the petitioner. In short, the petitioner is seeking to have the court quash the objection proceedings; and to return a finding [sic] that the suit property lawfully belongs to the petitioner.

19.The question that does arise is whether this court is seized of the requisite jurisdiction to entertain the subject petition or otherwise. I beg to state that the court is indeed seized of jurisdiction to entertain and adjudicate any matter that touches on and concerns the violation of the fundamental right of the petitioner as pertains to a property dispute. That is the import of Article 40 of the Constitution, 2010.

20. However, it must be stated that where the law has provided a statutory dispute resolution mechanism for the determination of a particular kind of dispute, then it behooves every claimant, the Petitioner not to be exempted,

to first and foremost approach the established Internal Dispute Resolution Mechanism/ Forum, before approaching the Court.

21. Ostensibly, the existence of the statutory dispute resolution mechanism does not oust the jurisdiction of the court. However, the statutory dispute resolution mechanism postpones the assumption of jurisdiction by the court. In particular, though the court has jurisdiction, the assumption of that jurisdiction is deferred to allow the established statutory forum to deal with and determine the dispute in the first instance.

22. Pertinently, the established statutory dispute resolution mechanism becomes the first port of call when a dispute does arise. The jurisdiction of the court becomes the port of last call. To this end, it therefore means that one cannot jump the gun; bypass the statutory forum; and invoke the jurisdiction of the court. Such an endeavour, if at all, would contravene and is frowned upon by the doctrine of exhaustion.

23. In the case of **Muthinja & another v Henry & 1756 others [2015] KECA 304 (KLR)**, the Court of Appeal addressed the doctrine of exhaustion and highlighted its legal implications.

24. The Court stated thus:

*38..... It is imperative that, where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement*

*of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of their own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution, which commands Courts to encourage alternative means of dispute resolution.*

25. Moreover, the doctrine of exhaustion was also emphasized by the Court of Appeal in the case of **Bethwell Allan Omondi Okal v Telkom (K) Ltd (Founder) & 9 others [2017] KECA 743 (KLR)**.

26. The Court affirmed the importance of the doctrine, thus:

*The Appellant might want to argue that he has a constitutional right of access to justice, and we agree that he does, but the High Court and this Court have pronounced themselves many times to the effect that a party must first exhaust the other processes availed by other statutory dispute resolution organs, which are by law established, before moving to the High Court by way of constitutional petitions. See International Centre for Policy and Conflict & 4 others vs The Hon. Uhuru Kenyatta and others, Petition No. 552 of 2012, and Speaker of National Assembly vs Njenga Karume [2008] 1KLR 425.*

27. Back to the facts of this matter. The Petitioner is aggrieved and dissatisfied with the filing/lodgment of the objection, and the outcome of the objection proceedings.

28. Where a claimant is dissatisfied with the objection proceedings in whatever manner, it behooves the claimant to avail him/ herself of the prescribed statutory mechanism. The prescribed mechanism is by way of an appeal to

the minister [Cabinet Secretary] in line with the provisions of **Section 29 of the Land Adjudication Act.**

29. **Section 29 of the Land Adjudication Act chapter 284 laws of Kenya** stipulate[s] 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.*

30. In respect of the instant matter, the petitioner has availed and referred to a copy of the adjudication record in respect of plot No 960, which record shows and contains the outcome of the objection. Insofar as the petitioner was dissatisfied with the outcome of the objection proceedings, it was incumbent upon the Petitioner to appropriate the statutory mechanism by way of an appeal.

31. To the extent that the petitioner did not avail himself of the established statutory dispute resolution mechanism, the petitioner cannot now come before this court and seek to overturn the objection and the objection proceedings. By failing to mount and lodge the requisite Appeal, the

Petitioner is deemed to have waived his right to challenge the Objection and the Consequential proceeding[s].

32. Simply put, it is my finding and holding that the Petition by the petitioner is defeated/negated by the doctrine of exhaustion.

33. Other than the doctrine of exhaustion and its legal implications on the jurisdiction of the court, there are two other sub-issues which merit mention and short discussion.

34. The first sub-issue relates to the competence of the constitutional petition and whether the same meets the requisite threshold, namely, the Rule of specificity and particularity, in line with the evergreen decision in the case **Anarita Karimi Njeru v Republic [1979] KEHC 30 (KLR)**. The second sub-issue touches on and concerns whether [sic] the cause of action adverted to in the petition espouses constitutional concerns/violations.

35. As pertains to the first sub-issue, it is common ground that every petitioner, the current petitioner not excepted, is obligated to implead the requisite provisions of the constitution, namely; the articles of the constitution that are said to have been infringed upon or are threatened with infringement. In addition, the petitioner is also obligated to supply the particulars of infringement, and thereafter substantiate the person or body chargeable with the violation complained of.

36. It is only where a Petitioner has highlighted the articles of the constitution alleged to have been violated; provided the particulars of [sic] the violation/infringements; and disclosed the bodies chargeable with the violation, that

he [The Petitioner] is called upon to tender cogent evidence in an endeavour to demonstrate the infringements/ violations complained of.

37. In the absence of the requisite pleadings that meet the constitutional threshold/ muster, a petitioner cannot be heard to contend that his/ her human rights and fundamental freedoms have been violated or threatened with violation. The requirement under reference is commonly referred to as the rule of particularity/ specificity in constitutional pleadings. Suffice it to state that the pleadings must capture the requisite particular[s].

38. The need to satisfy the rule on specificity and particularity was revisited and elucidated in the case of **Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**.

39. The Court of Appeal stated thus:

*41. We cannot emphasise the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are functions of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.*

*42. However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim, as has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of the just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.*

40. Bearing in mind the *ratio decidendi* in the decision [supra], it is now appropriate to revert to the subject matter and to discern whether the petition contains the requisite articles of the constitution contended to have been violated or threatened with violations; and whether the necessary particulars have been supplied.

41. I have reviewed the petition beforehand, and I am afraid that it does not pass the constitutional muster. For coherence, the petition does not advert to the articles of the constitution, and neither does it supply the requisite particulars of the Violation[s]/ Infringements complained of.

42. *In a nutshell*, the Petition before the court is not only premature and deficient, but same is incompetent. Suffice it to state that the failure to comply with the rule on specificity impacts on the jurisdiction of the court. In addition, it is apposite to underscore that the jurisdiction of the court has not been properly invoked.

43. Regarding the second sub-issue. it is worthy to highlight that whereas every person is vested with the locus standi to approach the court in the event of breach/ violation of human rights and fundamental freedoms, there is no gainsaying that the petitioner approaching the court must clearly canvass a constitutional issue. Simply put, the avenue of constitutional petition ought not to be invoked and deployed in an endeavour to propagate an ordinary civil claim. For good measure, the ordinary civil claim[s], like one where the claimant impleads fraud and claims ownership of land, ought to be pursued in the ordinary manner of pleadings. **[See Order 3 Rule 2 of the Civil Procedure Rules 2010].**

44. The importance of pursuing ordinary claims in the prescribed manner was underscored in the case of **Gabriel Mutava & 2 Others -Vs- Managing Director Kenya Ports Authority & Another [2016] eKLR.**

45. The Court of Appeal stated thus:

*In saying all these, we are not oblivious to the fact that a party is entitled to sue under the Constitution even if there is an alternative remedy, and or other mechanism for the resolution of the dispute. However, it has since emerged that constitutional*

litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional Litigation is not a panacea for all manner of litigation, where it is reiterated that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.” (Emphasis added)

46. Additionally, I wish to reference the ratio in the case of **Kennedy Odoyo Okello v District Land Registrar, Migori & 2 others** [2015] KECA 553 (KLR).

47. The Court of Appeal stated as follows:

38. .... In such circumstances, it amounts to crying wolf for the appellant to allege that his constitutional right to property and those of his family members have been breached.

In our view, the petition did not raise any constitutional issues and whatever complaint the appellant had squarely lay in the domain of private law.

48. In respect of the subject matter, the petitioners' complaint touches on and concerns fraud and illegality in the lodgment of the objection and the objection proceedings arising therefrom. Furthermore, the petitioner also claims to be declared as the *bona fide* owner of the suit property. The claims that color the body of the petition squarely lie in the domain of private law. There is nothing constitutional to warrant the invocation of the provisions of **Articles 22 and 258 of the Constitution 2010.**

49. *In a nutshell*, I am satisfied that the jurisdiction of the court has not been properly invoked. Simply put, this court is divested of the jurisdiction to adjudicate upon the instant Petition.

50. Turning to the second issue, *namely*; whether the court can grant the reliefs sought at the foot of the petition. The Petitioner herein has sought various reliefs. Most importantly, the petitioner is seeking rectification of the adjudication record relative to the suit property; a declaration that the petitioner is the *bona fide* owner of the suit property; and an order of permanent injunction to restrain the 1<sup>st</sup> respondent from *inter alia* entering upon and developing the suit property.

51. It is not lost on me that rectification and correction of the adjudication record can only be undertaken by the adjudication officers or the minister [Cabinet minister] in exercise of the powers stipulated *vide* the Land Adjudication Act. Moreover, it is common knowledge that even when the designated officers under the Land Adjudication Act have made a mistake or committed an error, the court can only quash the resultant decision and remit the matter back to the established forum.

52. To my mind, the court cannot assume, appropriate or usurp the mandate of the designated officer[s] under the Land Judication Act and purport to rectify the record and award the land to the petitioner. Such an endeavour would constitute usurpation of the powers of other established bodies.

53. The petitioner has also sought to be declared as the owner of the suit property. The declaration of ownership under the Land Adjudication Act can

only be undertaken by hearing and determining the objection or the appeal, if any.

54. However, in respect of the instant matter, the Petitioner is seeking to be declared as the owner of the suit property even though there was an objection and objection proceedings that were never appealed against, and whose outcome confirms that the suit property belongs to the first respondent.

55. Finally, there is the prayer for an order of permanent injunction to be issued against the 1st respondent. I beg to state that an order of permanent injunction is intended to protect and vindicate the rights of the property owner, or anyone who can demonstrate the existence of a lawful/ equitable interest in the designated property.

56. Regarding the subject matter, the Petitioner seeks an order of permanent injunction, yet the suit property remains registered in the name of the 1<sup>st</sup> respondent. Barring the nullification of the objection [which can only be heard and determined] by the land adjudication office, the petitioner herein does not appear[ I repeat, appear] to have any rights capable of being protected by an order of permanent injunction.

57. In the case of **Nguruman Limited v Nielsen & 2 others [2014] KECA 606 (KLR)**. The Court of Appeal considered the legal implications of an order of injunction and, more particularly, whether the same can issue against the registered owner.

58. The court stated as follows:

*52.It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.*

**Summary of findings:**

59.Flowing from the analysis contained in the body of the ruling, certain findings crystallize. The findings that have crystallized are:

- (i) There exists an established statutory dispute resolution mechanism provided for under the Land Adjudication Act, Cap 284, Laws of Kenya.*
- (ii) The established dispute resolution mechanism ought to have been invoked.*
- (iii) The subject Petition is prohibited by the doctrine of Exhaustion.*
- (iv) The Petition before the court does not meet/ satisfy the threshold pertaining to specificity/particularity.*
- (v) The Cause of action espoused vide the Petition relates to ordinary civil claims and not violation of human rights and fundamental freedoms*
- (vi) The dispute beforehand [if at all] fell within the private law domain.*
- (vii) The remedy sought vide the petition is not maintainable*

**Conclusion**

60.From the foregoing, I come to the conclusion that the petition by/ and on behalf of the petitioner is defeated by the doctrine of exhaustion. The doctrine of exhaustion is sound, insofar as it enables the established statutory forum to interrogate the designated complaint and to provide an expert

decision. The doctrine also facilitates access to justice and enables the courts of law to intervene only in appropriate situations and not otherwise.

**Final orders-**

61. Having considered the issues that were highlighted by the parties, I find that the Notice of the Preliminary Objection dated **14<sup>th</sup> November, 2025**, is merited.

62. In this regard, the final orders that commend themselves to the court are-

**I. The Preliminary objection is hereby allowed.**

**II. The Petition date d27.10.2025 be and is hereby struck out.**

**III. Cost of the preliminary objection and of the petition be and are hereby awarded to the 1<sup>st</sup> Respondent only.**

63. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO LAW COURT THIS  
5<sup>TH</sup> MAY, 2026.**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].  
JUDGE**

In the presence of -:

Mr. Nelko Misati for the Petitioner

Mr. Behailu h/b for Maingi Kamau for -1<sup>st</sup> Respondent.

Ms. Nkirote Kinuu, Senior Litigation Counsel- For 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent.  
C/A Mukami