



**Turere v Thindu & 6 others (Environment and Land Petition
158 of 2018) [2025] KEELC 5443 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5443 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENT AND LAND PETITION 158 OF 2018

LC KOMINGOI, J

JULY 17, 2025

**IN THE MATTER OF ARTICLE 3(1), 10(2)(C), 22(1) & (4), 23 (1) & (3), 40(1),
(3) & (6), 47(1) & (2), 60(1) (B), 64 (A) AND 68 OF THE CONSTITUTION**

AND

IN THE MATTER OF THE FIFTH SCHEDULE OF THE CONSTITUTION

AND

**IN THE MATTER OF SECTION 7, 8 AND 22 OF
THE SIXTH SCHEDULE OF THE CONSTITUTION**

AND

**IN THE MATTER OF RULES 11, 13, 20 AND 21 OF CONSTITUTION OF KENYA
(SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS OF THE INDIVIDUAL) PRACTICE AND PROCEDURE RULES, 2006**

AND

**IN THE MATTER OF SECTION 68, 80, 83, 106(3) (A),
107(1), 2, 4 AND 108 OF THE LAND REGISTRATION ACT**

AND

IN THE MATTER OF SECTION 162(1) OF THE LAND ACT

AND

**IN THE MATTER OF SECTION 128 AND 143
OF THE REGISTERED LAND ACT (REPEALED)**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION AND/OR APPREHENDED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLE 3(1), 10(2)(C), 22(1) & (4), 23 (1) & (3), 40(1), (3) &
(6), 47(1) & (2), 60(1) (B), 64 (A) AND 68 OF THE CONSTITUTION**



BETWEEN

TOBIKO OLE TURERE PETITIONER

AND

JAMES NJENGA THINDU 1ST RESPONDENT

**GRACE NYAKIO NJUGUNA (SUING AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF THE LATE HARRISON NJUGUNA
NGUGI) 2ND RESPONDENT**

PAUL CHEGE MUNGE 3RD RESPONDENT

RICHARD WAINAINA GITHANGA 4TH RESPONDENT

THE HON. ATTORNEY GENERAL 5TH RESPONDENT

THE COMMISSIONER OF LANDS 6TH RESPONDENT

REGISTRAR OF LANDS KAJIADO 7TH RESPONDENT

JUDGMENT

1. The Petition before Court dated 9th October 2012 is brought under Article 3, 22(1) & (4), 23 (1) & (3), 40(1), (3) & (6), 47(1) & (2), 60(1) (b), 64 (a) and 68 of *the Constitution*. It was first filed at the High Court Constitutional and Human Rights Division in Nairobi before being moved to his Court.
2. It is supported by the Affidavit sworn by Tobiko Ole Turere, the Petitioner herein. The Petitioner avers that he is the owner of parcel of land known as Kitengela/Ololotikoshi/1809 measuring approximately 136.6 hectares. Sometime in the year 1985, he was desirous of selling a portion of that land and was approached by the 1st, 2nd, 3rd and 4th Respondents as prospective buyers. He visited the 7th Respondent to seek consent to subdivide parcel 1809. In one of the visits, the 7th Respondent gave him a document to sign on the guise that it would be used to expedite issuance of the consent. Being uneducated and could not read or write, he affixed his left hand thumbprint on the document and handed it back to the 7th respondent. While still at the 7th Respondent offices, he was informed by a secretary that the document he had signed was a transfer document consenting to the transfer of approximately 17.541 hectares to the 1st- 4th Respondents and not a consent form. He forcefully gained entry to the 7th Respondent's office to retrieve the document, unsuccessfully. Parcels Kajiado / Kitengela/3451, Kajiado / Kitengela /3452, Kajiado / Kitengela/3453 and Kajiado/ Kitengela /3454 measuring approximately 3.78ha, 9.713ha, 2.024ha and 2.024 registered to the 1st, 2nd, 3rd and 4th Respondents respectively were then illegally hived off from his parcel and. He denies getting into a sale agreement with the 1st – 4th Respondents or agreeing to transfer it to them arguing that the transfer was illegally and fraudulently undertaken.
3. He claims that he attempted to reclaim his land over the years with no success until after the promulgation of the current Constitution, when he filed a complaint with the Kajiado Central Land Disputes Tribunal LDT No. 102/2011 complaining of the fraudulent transfer of his land to the Respondents. Following this complaint, a restriction was registered against parcels 3451-3454 on 18th October 2011. The Tribunal made a determination in his favour, and the Ruling was confirmed by the Kajiado Principal Magistrate's Court on 28th February 2012. This notwithstanding, the 1st to 4th



Respondents continued developing the parcels in total disregard of the said Ruling and restriction in breach the Petitioner's right to his land contrary to Article 40 and 60 of *the Constitution*. This is also contrary to his fundamental freedoms and fair administrative action as enshrined under Article 22 and 47 of *the Constitution*.

4. The Petitioner therefore sought that:
 - a. A declaration that the division and subsequent transfer of Land Kajiado/ Kitengela/3451, Kajiado/ Kitengela/3452, Kajiado/ Kitengela/3453 and Kajiado/ Kitengela/3454 from Land Registration No. Kitengela/Ololoitikoshi/1809 by the 5th, 6th, 7th and 8th Respondents to the 1st, 2nd, 3rd and 4th Respondents breached the Petitioner's Constitutional rights under Articles 3 (1), 10(2) (c), 22 (1) & (4), 23 (1) & (3), 40(1), (3) & (6), 47(1) & (2), 60(1) (b), 64 (a) and 68 of *the Constitution* of Kenya, and were null and void for all intents and purposes;
 - b. A mandatory injunction compelling the 5th, 6th, 7th and 8th Respondents jointly and severally to forthwith cancel the titles issued over Land Registration No. Kajiado/ Kitengela/3451, Kajiado/ Kitengela/3452, Kajiado/ Kitengela/3453 and Kajiado/ Kitengela/3454 so as to preserve the title over Land Registration Kitengela/Ololoitikoshi/1809 in the name of Tobiko Ole Turere, the Petitioner herein.
 - c. General damages;
 - d. Interest on the foregoing paragraphs b), c) and d) herein.
 - e. Costs of and incidental to this Petition; and
 - f. Any other orders that this Hon. Court deems fit and just to grant in the circumstances.
5. The 1st Respondent, James Njenga Thindu, in his Replying Affidavit dated 24th June 2013, opposed the Petition on grounds that he was the registered owner of parcel Kajiado/Kitengela/3451 which he acquired from the Petitioner for valuable consideration in the year 1985. He averred that sometime in 1985, the 2nd Respondent met the Petitioner in Kiserian, where he indicated his desire to sell a portion of his land. At the end of this meeting, the 2nd Respondent gave the petitioner Kshs. 1,000 as a sign of goodwill. The 2nd Respondent informed the 1st Respondent who was equally interested and were later joined by the 3rd and 4th Respondents. The Petitioner was to sell twenty five (25) acres of his land and it was agreed that the land would be sold to the 2nd Respondent, who would then subdivide and issue each of them with their individual titles. He claims that the following documents were executed for this purchase: A sale agreement dated 1st July 1986; Acknowledgement of receipt of funds dated 30th October 1985, 13th December 1985, 16th November 1987 and 15th September 1995.
6. He further stated that in the year 1990, the Petitioner agreed to increase the land he was selling to 36 acres and a further sale agreement dated 11th December 1990 was executed. In 1991, the Petitioner transferred the 36 acres to the 1st and 2nd Respondents as per the agreement. He stated that the process took time due to a caution placed by one David Ng'ang'a Munene who was claiming a portion of land sold to him by the Petitioner. However, the caution was lifted as per the ruling of the Land Registrar dated 20th June 1991 and a mutation filed on 23rd November 1991. The following revenue receipts dated 23rd July 1991, 20th August 1991 and 27th November 1991 were obtained. The Petitioner subsequently sold to them an additional 8 acres bringing the total land purchased to 44 acres.
7. The Respondents' case is that the Petitioner started demanding for extra payment and this dispute was reported at the Chief Kitengela Location and summons issued on 10th July 1995. On 16th August 1995, a dispute resolution meeting was held where they agreed to pay an extra Kshs. 3,000 for every acre.



In the year 2000, the Petitioner once again made a report to the Assistant Chief seeking payment of more money as per the letter dated 18th April 2000 but the Respondents refused to pay extra money. This Petition was therefore the Petitioner's attempt to get back the land already sold which amounts to unjust enrichment.

8. The Respondents claimed that the Kajiado Land Disputes Tribunal did not have jurisdiction to make the determination made on 14th September 2011. Further that this suit was time barred since the Respondents had been in possession of the suit properties from 1985 and the alleged violation took place in 1991. This Petition had therefore been filed inordinately late and was an abuse of the Court process and it ought to be dismissed.
9. The 5th, 6th and 7th Respondents in their Grounds of Opposition dated 18th June 2013 contested the Petition on the grounds that the dispute should have been brought by way of a Plaint and not as a Petition. It is their case that the Kajiado Land Dispute Tribunal acted in excess of jurisdiction and their decision could therefore not be used as proof of ownership of the suit property.

Evidence of the Petitioner

10. PW1, Tobiko Ole Turere, the Petitioner adopted his Supporting Affidavit as his evidence in chief and produced documents which were marked as P. Exhibit 1-4. He acknowledged to having entered into a transaction with the 1st and 2nd Respondents but due to a misunderstanding, they refused to pay the agreed Kshs. 100,000. He also acknowledged that there was a caution registered by one David Ng'ang'a. He denied that he obtained consent from the Land Control Board to transfer the suit property and that he was coerced into signing the transfer. He confirmed that he filed a dispute with the Kajiado Land Disputes Tribunal which award meant the suit property reverted to his name.
11. On cross examination, he stated that he was aware that the 2nd Respondent had passed on confirming that a meeting was held between him and the 2nd Respondent at Kiserian, where he received Kshs. 1,000. He also confirmed that it was the 2nd Respondent who had shown interest in purchasing his land. He did not know the other three Respondents. He denied ever signing a sale agreement before P.C. Shompole, but confirmed that he was taken to a Lawyer in Nairobi where he was paid Kshs. 100,000. He denied that he was paid the entire purchase price. He acknowledged that it was the purchasers who were to remove the caution stating that he gave them his title in an attempt to settle the matter amicably. He also confirmed that there was a caution put by David Ng'ang'a Munene which was later lifted. He stated that when he went to the Land Registrar's office, in the company of his son but his son was denied entry.
12. He further stated that he visited the District Officer Kitengela accompanied by his wives, but they did not reach any settlement with the purchasers. He acknowledged that he received money from the Respondents after one of the dispute resolution meetings although they did not agree on the purchase price.
13. On further cross examination he stated that he did not know his parcel number and at the time the agreement entered with the four purchasers, he was to sell 20 acres of his land. He however contradicted this statement by denying that he entered into any agreement with the purchasers. He however stated that each acre was going for 3,000 but he was not paid the full purchase price. He also stated that the Respondents took over 70 acres of land instead of 20 acres. He further stated that he only had a title for the portion of land he was residing on.
14. On re-examination, he denied ever selling the land to anyone. He stated that he was only informed that he had sold 20 acres of his land. He also contested the signatures on the sale agreements.



Evidence of the Respondents

15. DW1 James Njenga Thindu the 1st Respondent adopted his Replying Affidavit as his evidence in chief and produced his documents which were marked as D. Exhibit 1-13. He stated that he met the Petitioner in 1985 through the late Harrison Njuguna Ngugi and Munge. The petitioner was selling land. He stated that he paid the whole purchase price in cash while the 2nd Respondent paid in instalments. He stated that the Petitioner asked them to accompany him to the Land Registrar to lift a caveat that had been placed against the title. He then informed them that he had two additional buyers, the 3rd and 4th Respondents and they all went to the Land Control Board Control Board to seek consent for the purchase of 44 acres of his land. The Petitioner was accompanied by his wives. It was agreed that the title deed would be in the 2nd Respondent's name who would then subdivide according to the portions of each buyer.
16. He went on to state that a dispute arose between them and the Petitioner who wanted the purchase price to increase to Kshs. 100,000 per acre. The District Officer asked them to pay the difference so as to peacefully co-exist and they all paid the difference. He indicated that the four of them paid a total of Kshs. 130,000 to the Petitioner and he promised he would not ask for more money from them. He added that the 3rd and 4th Respondents were in occupation and had developed their portions. He had not developed his.
17. DW2 Paul Chege Munge, the 3rd Respondent adopted his Replying Affidavit as his evidence in chief. He stated that he met the Petitioner in the year 1987, visited the property that was being sold and purchased 10 acres at Kshs. 7,000 per acre. The 10 acres were divided between him and the 4th Defendant. The purchase price was paid to the Petitioner in presence of his nephew, one Samuel Turere at a lawyer's office in Nairobi. In 1988 the Petitioner paid for survey, subdivided the land, and showed them the beacons for their individual parcels. He then gave them titles to their properties in 1991. He (DW2) then planted trees, took possession and resides thereon to date.
18. DW3 Richard Wainaina Githanga, the 4th Respondent also adopted his Replying Affidavit as his evidence in chief. He stated that he purchased 5 acres of land from the Petitioner in the year 1988 and paid Kshs. 7,000 per acre as the purchase price. He was issued with a title deed in 1991. He stated that later, the Petitioner asked them to pay more than Kshs.3,000/= per acre.
19. DW4 Grace Nyakio Njuguna, the late Harrison Njuguna's (2nd Respondent) wife adopted the late Harrison's Affidavit as her evidence in chief together with the documents produced by the 1st Respondent. She stated that a sale agreement for purchase of the land was entered into between her husband and the Petitioner. She stated that though they were not in physical occupation of the land, they had fenced it.
20. On cross examination, she stated confirmed that the signature on the sale agreement was the Petitioner's and the sale was procedurally carried out. That consent from Land Control Board was obtained.
21. On re-examination, she confirmed that it was her husband's signature on the sale agreement and was not aware if spousal consent was required at the time. She stated that the Petitioner's wife was aware of the transaction because she was present at the meeting held at the Chief's office.
22. DW5 Rosemary Wamuyu Mwangi, the Land Registrar Kajiado Central relied on her bundle of documents as exhibit. She stated that she was in Court to produce documents relating to parcels Kajiado/Kitengela/3451 to 3454 (original parcel 1809). She stated that the register for parcel 1809 measuring 162 hectares was opened on 22nd February 1989 by the Kitengela Group Ranch and transferred to the Petitioner on 4th April 1989 and a title deed issued. On 5th June 1989 a caution



was placed by one David Ng'ang'a Munene claiming purchaser's interest. On 23rd July 1991, the caution was removed through a letter dated 20th June 1991. On 23rd July 1991 the parcel was closed on subdivision into parcels 2517-2519 respectively. The mutation used to close parcel 1809 was prepared by a licensed surveyor under the registered owner –Tobiko Turere's instructions and the mutation registered. A title deed for parcel 2517 measuring 110.72 hectares was issued on 10th September 1991. On 4th March 1996 a caution was placed by one Aggrey Omole claiming purchaser's interest of 18 acres. On 5th June 2000 the caution was removed.

23. Parcel 2518 measuring 17.81 hectares registered in the names of Harrison Njuguna, James Chege and two others and title deed issued on 23rd July 1991. The title was closed on subdivision to give rise to parcels 3451-3454 on 11th December 1991. She confirmed that parcels 3451-3454 were registered in the 1st to the 4th Respondents' names. She further stated that there were no complaints made relating to these parcels until 2nd August 2010 when a restriction was placed owing to the Land Disputes Tribunal Case No. 554/4/2010
24. Parcel 2519 measuring 8.09 hectares was registered in the names of Tobiko Turere and a title was issued in July 1991. The same was closed on 10th September 1992 on subdivision into parcels 4087-4089.
25. On cross examination she stated that as per their record, the Petitioner transferred his parcel to the 1st – 4th Respondents. She stated that from the Green Card she could not tell if the Petitioner visited the Land Registry in respect of parcel 1809. She stated that there was a transfer from parcel 2518 to parcels 3451-3454. She stated that from the record she could not tell whether the Petitioner was illiterate or not because the Land Registrar deals with documents presented such as transfer forms, consent, valuation receipts, stamp duty, surrender of titles etc. Before executing a transfer, these documents ought to be seen.
26. She indicated that her testimony was based on the entries on the Green card and she had not encountered a situation where transfer was registered instead of a subdivision and would not know what the remedy would be. She also stated that the decree following the award from the Tribunal showed that the title was fraudulently acquired.
27. On re-examination she stated that she was not aware of the Petitioner' intention regarding parcels 3451-3454 but the entries were self-explanatory. She added that the decree issued did not issue any specific order or action.
28. At the close of the oral testimonies, parties tendered final written submissions.

The Petitioner's Submissions

29. Counsel submitted that the 1st – 4th Respondents obtained titles to parcels Kajiado/Kitengela 3451-3454 fraudulently and could not be protected by Section 26 of the *Land Registration Act* with reference to Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another. It was contested that the Petitioner never entered a sale agreement with the Respondents nor caused the subdivision or transfer of these parcels and this was done with collusion with the 7th Respondent. These titles should therefore be cancelled as stipulated under Section 80 *Land registration Act*. It was also submitted that a land transaction should be in writing as per Section 3(3) of the *Law of Contract Act*, and no such agreement had been entered between the parties. It was also submitted that the Disputes Tribunal in Case No. 102/2011 found that the parcels were fraudulently transferred to the Respondents. As such, his rights had been infringed and the Petition should be allowed with costs.



The 1st – 4th Respondents submissions

30. Counsel for the Respondents submitted on the following issues outlined and summarised hereunder.
31. On whether the petition offends the doctrine of constitutional avoidance, it was submitted that the Petitioner's allegation of fraud and collusion, as well as prayers for the cancellation of the titles, are matters that could be addressed in an ordinary suit and was guised as a Constitutional Petition. The doctrine of constitutional avoidance prevents the court from determining ordinary civil issues disguised as constitutional questions as held in *Sports and Recreation Commission vs Sagittarius Wrestling Club and Anor* 2001 (2) ZLR 501 (S) and the Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR where it held: The principle of avoidance entails that a Court will not determine a constitutional issue when a matter may properly be decided on another basis. Reference was also made to these other cases on the same: *KKB v SCM & 5 others* [2022] KEHC 289 (KLR), *Uhuru Muigai Kenyatta v Nairobi Star Publications Limited* [2013] eKLR, and *Grays Jepkemoi Kiplagat – Versus - Zakayo Chepkoga Cheruiyot* [2021] eKLR.
32. On whether the Petitioner's claim is time barred, counsel submitted that, the Petitioner was seeking to assert his claim over the Suit Properties following a transaction for sale of land that took place between 1985 and 1990 and titles issued in 1991. As per Section 7 of the *Limitation of Actions Act*, the Plaintiff ought to have filed a suit for recovery of land within 12 years, and this suit was filed almost 27 years as a Petition was trying to circumvent the limitation time and should be dismissed. Reference was made to: *Mlewa & another v Githinji & 14 others (Petition 18 of 2022)* [2023] KEELC 18947 (KLR) which held: ...A constitutional petition, or for that matter judicial review proceedings, is not meant to circumvent the law on limitation of actions...
33. On whether the Petitioner is entitled to the relief sought, counsel submitted that the Petitioner had failed to demonstrate the existence of any false representation or undue influence capable of vitiating the sale agreements and a Court cannot rewrite a contract unless there is evidence of fraud or coercion as held in *National Bank Kenya Limited vs Pipeplastic Samsolit (K) Limited and Another* [2002] 2 EA 503.
34. On the issue of fraud, it was argued that the Petitioner did not lead any evidence showing that that the 1st - 4th Respondents participated or were aware of any fraud in relation to the subdivision of the Original Land, transfer, and registration of the Suit Properties in their respective names. He had not demonstrated that they had any notice of any irregularity on how the original land was subdivided and eventually titles registered in their respective names in 1991 and this was echoed by the Land Registrar's evidence. The resultant titles were therefore, neither fraudulent nor irregular citing *Bruce Joseph Bockle vs Coquero Limited* [2014] eKLR.
35. As such, the Petition should be dismissed with costs.

Analysis and Determination

36. I have considered the Petition, affidavits in support, the responses thereto, the evidence on record, the rival submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether this petition offends the doctrine of constitutional avoidance.
 - ii. Whether the Petitioner has established that his right to property has been violated.
 - iii. Whether the Petitioner is entitled to the reliefs sought.



- iv. What orders should be granted?.
 - v. Who should bear costs of the Petition?
37. Does this Petition offend the doctrine of Constitutional avoidance?

This dispute was brought to Court as a Constitutional Petition. Constitutional avoidance is a well-established principle of constitutional interpretation. It holds that courts should refrain from determining constitutional issues where a matter can be resolved through non-constitutional means. The Supreme Court of Kenya in the case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR) held as follows on the issue of Constitutional avoidance:

“... I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

38. Looking at the above summary, I find that this Petition offends the doctrine of constitutional avoidance. However, this suit having been in Court for over a decade, this Court shall breathe life to the Petition through the oxygen principle and determine it on its merit as espoused under Article 159 of *the Constitution* and Section 1A and 1B of the *Civil Procedure Act*.
39. Whether the Petitioner has established that his right to property has been violated.
- The Petitioner approached Court claiming that his right to property Kitengela/Ololoitkoshi/1809 had been infringed contrary to Article 40 of *the Constitution* when it was illegally and fraudulently subdivided and transferred to the 1st – 4th Respondents as parcels; Kajiado/Kitengela/3451-3454. He therefore sought a declaration that the transfer was null and void and the titles should be cancelled.
40. During his testimony, the Petitioner acknowledged to having sold part of his parcel of land to the 1st – 4th Respondents. He acknowledged that he met the 2nd Respondent in Kiserian and received Kshs. 1,000 and that he also visited a lawyer’s office in Nairobi where he was given Kshs. 100,000. He also acknowledged to have given the Respondents his title deed to lift the caution placed by another buyer one David Ng’ang’a. He however maintained that he only sold 20 acres of land and not 70 as claimed.
41. He produced a mutation form dated 23rd July 1991 sub-dividing parcel 1809 to parcels 2517, 2518 and 2519 measuring 110.72ha, 17.81ha and 8.09ha respectively. He also produced the title deeds in favour of the 1st-4th Respondents.
42. A handwritten decision from Kajiado Central Land Disputes Tribunal shows that the dispute was dealt with vide Case No. 654/05/2010 (it is worth noting that there is a cancellation on this case number). It does not show who the complainant or objectors were and or who was present at the hearing. A forwarding letter dated 14th September 2011 to the Senior Resident Magistrate makes reference of the Land Disputes tribunal case as Case No. T.C 554/05/2010. In the Petition, the Land Disputes Tribunal case was referenced as Case No. 102/2011. This Court wonders how one case filed at the Land Disputes Tribunal can have three different case numbers.
43. The 1st -4th Respondents contested this allegation on the grounds that they purchased the suit properties for valuable consideration from the Petitioner and a subdivision and transfer procedurally undertaken. They claimed that a dispute with the Petitioner arose when he kept asking for more money from them which they declined to give. They gave a chronology of how the land was subdivided from parcel Kitengela/Ololoitkoshi/1809 to Kajiado/Kitengela/3451-3454 respectively.



44. Counsel for the Petitioner argued that an interest in land ought to be disposed through a written contract as espoused under Section 3(3) *Law of Contract Act*. The Respondents produced;

A handwritten sale agreement dated 30th October 1985 where the Petitioner as the vendor agrees to sell 25 acres of his parcel of land to the 1st and 2nd Respondents. It shows that each acre was being sold for Kshs. 4,750 and he had received Kshs. 36,750 as down payment and the remaining 82,000 would be paid in two instalments of Kshs. 40,000 and Kshs. 42,000 on 13th December 1985 and 30th June 1986 respectively. This agreement is duly signed and witnessed by all parties. On 13th December 1985, the Petitioner in a handwritten acknowledgement, accepted having received an additional Kshs. 31,000 as payment and that the balance of the purchase price was Kshs. 51,000. A sale agreement dated 1st July 1986 between the 1st and 2nd Respondents as the purchasers and the Petitioner as the vendor. This agreement indicates that he sold 25 acres to the purchasers. The agreement is duly attested by the vendor, the purchasers and an advocate.

45. The Petitioner did not question authenticity of the thumb print appearing on this agreement. Therefore, evidence that there was a valid sale agreement between the vendor and purchasers remains uncontroverted.
46. In a schedule of payments dated 15th November 1987, the Petitioner acknowledged selling an additional 10 acres to the 2nd Respondent at Kshs. 5,300 per acre. The schedule shows that the Petitioner received payment for this parcel between the date of signing the agreement until payment in full on 15th June 1988.
47. Another agreement dated 11th December 1990 between the Petitioner and the 1st and 2nd Respondents, shows that 25 acres were purchased for Kshs. 4,750 per acre; 10 acres purchased for Kshs. 5,300 per acre and an additional 1 acre purchased for Kshs. 20,000. The agreement shows that the vendor would subdivide and transfer 26 acres to the 2nd Respondent and 10 acres to the 1st Respondent. This agreement is duly signed and witnessed.
48. On 20th June 1991 the decision to lift the caution placed by David Ng'ang'a Munene at the Petitioner's request was confirmed by the Land Registrar.
49. The Mutation form dated 23rd November 1991 for parcel known as Kajiado/Kitengela/2518 in the 1st-4th Respondents' names giving rise to parcels 3451, 3452, 2453 and 3454 respectively.
50. On the 16th August 1995 there was a meeting between the 1st-4th Respondents, the Petitioner, the District Officer (D.O.) and the chief. At this meeting it was resolved that each of the purchasers pay the vendor an additional Kshs. 3,000 per acre for their portions of land.
51. On 15th September 1995, the Petitioner acknowledged having received an additional Kshs. 72,000 from the 2nd Respondent in respect to title 3452; Kshs. 30,000 from the 1st Respondent in respect to title 3451 as agreed in the meeting chaired by the D.O Kitengela Central and the Chief Kitengela on 16th August 1995.
- The authenticity of these documents was not disputed by the Petitioner.
52. The Court wishes to point out the discrepancy in the writings on the Green Cards produced by the Petitioner in Court, and the Green Cards produced by the Land Registrar. The Green cards presented by the Petitioner do not bear the Land Registrar's signatures after the entries.



53. From the above documents and evidence of the Petitioner, this Court is not convinced that the subdivision and transfer of Kitengela/Ololoitikoshi/1809 was undertaken illegally and or fraudulently. This position was also affirmed by the Kajiado Land Registrar in her testimony.
54. I am satisfied that the evidence presented shows that the Petitioner agreed to sell the portion of his land and went ahead to execute the requisite documents.
55. Even assuming that the Petitioner did not know of the transfers, which took place in early 1990's, is it remotely possible that it took him more than two (2) decades to decide to file a case at the Land Disputes Tribunal and later this Petition? Is this allegation remotely valid on a balance of probability? Certainly Not.
56. It is my view that this suit was couched as a Constitutional Petition addressing a question of infringement of rights so as to evade the statute of limitation for bringing a suit for recovery of land after a period of 12 years. But even this, could not save the Petitioner from the obvious web of untruths in a quest to recover land that he already disposed of over three decades ago.
57. I therefore find that the Petitioner has not established a case that his right to property was violated warranting the grant of the reliefs sought. All the documents produced confirm that the 1st, 2nd, 3rd and 4th Respondents legally acquired their respective portions from the Petitioner. The orders sought by the Petitioner are hereby declined.
58. In conclusion, I find Petitioner is unmerited, is therefore dismissed.
59. Each party shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF JULY 2025.

L. KOMINGOI

JUDGE.

In The Presence Of;

Ms. Ojienda for Prof Ojienda (SC) for the Petitioner.

Ms. Mwangi for Ms. Macharia for the 1st to 4th Respondents.

N/A for the 5th to 7th Respondents.

Court Assistant – Mateli.

