



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchiri & 2 others v M'ribu & 4 others (Environment & Land Petition  
E001 of 2022) [2024] KEELC 1126 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1126 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND PETITION E001 OF 2022**

**CK YANO, J**

**FEBRUARY 29, 2024**

**IN THE MATTER OF CONTRAVENTION OF THE CONSTITUTION  
PURSUANT TO ARTICLES 23(1) & (3), 27(1) & (2), 40(1) & (2), 47(1) &  
2, 47(1) & (3) 50(1), 159(2) (D) 162(2), 165(3) (B), 165(3) (D) (III) & 165(6)**

**AND**

**IN THE MATTER OF SECTIONS 3(1), 7 & 8 OF THE LAND  
DISPUTES TRIBUNAL ACT NO.18 OF 1990 (REPEALED)**

**BETWEEN**

**MARGRET NGIIRI MUCHIRI ..... 1<sup>ST</sup> PETITIONER  
ERNEST MICHENI MUCHIRI (BOTH SUIING AS THE ADMINISTRATORS OF  
THE ESTATE OF MUCHIRI RITHARA - DECEASED) ..... 2<sup>ND</sup> PETITIONER  
BILDAD NJAGI KIRUGA ..... 3<sup>RD</sup> PETITIONER**

**AND**

**ELIPHAS NYAGA M'RIBU ..... 1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATE, CHUKA LAW COURTS ..... 2<sup>ND</sup> RESPONDENT  
LAND REGISTRAR, CHUKA ..... 3<sup>RD</sup> RESPONDENT  
NATIONAL COUNTY SURVEYOR, CHUKA ..... 4<sup>TH</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. By a petition dated 20<sup>th</sup> September, 2022, the petitioners are seeking the following orders: -



- a. A declaration the petitioner’s Constitutional right as enshrined in Articles 27 (1) & (2), 40 (1) & (2), 47(1) & (3) and 50 (1) of the Constitution have been violated and/or likely to be violated by the actions of the Respondents.
  - b. A declaration that the order issued on 11<sup>th</sup> December 2018 substituting the deceased plaintiff with the 1<sup>st</sup> petitioner is un-procedural, unlawful and of no legal effect.
  - c. A declaration that the rectification of the decree issued in Chuka P.M. LDT No. 10 of 2011 by the 2<sup>nd</sup> respondent on 17<sup>th</sup> December 2018 and 9<sup>th</sup> June 2022 through an order made in Chuka C.M LDT No.1 of 2011 is ultra vires, null and void.
  - d. An order of permanent injunction do issue restraining the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents from implementing the orders issued on 17<sup>th</sup> December 2018 and 9<sup>th</sup> June, 2022.
  - e. Cost of the Petition.
2. The petitioners aver that their constitutional right to property has been infringed in that the proceedings in Chuka C.M LDT Case No. 1 of 2011 arbitrarily deprived them of the property in the nature of land.
  3. The petitioners further aver that the petitioners’ Constitutional right to fair administrative action has been violated as the proceedings in Chuka C.M LDT Case No.1 of 2011 of 17<sup>th</sup> December 2018 where the 2<sup>nd</sup> respondent directed the alteration and/or amendment of the decree in essence altered the award of the Tribunal and is hence irregular and un-procedural.
  4. The petitioners state that the 2<sup>nd</sup> respondent usurped the powers of the Tribunal in rectifying the award which action they say is ultra vires, null and void.

**The Petitioners’ Case**

5. The petition is supported by an affidavit sworn by Margaret Ngiiri Muchiri, the 1<sup>st</sup> Petitioner on 20<sup>th</sup> September, 2022 and the annexures thereto. The 1<sup>st</sup> and 2<sup>nd</sup> petitions are the legal representatives of the estate of Muchiri Rithara (deceased) who died on 2/8/2014, and the 1<sup>st</sup> and 2<sup>nd</sup> petitioners obtained a limited grant of letters of administration on 19/7/2022 in Chuka CM Misc. Succession Cause No. E054 of 2022 a copy of which has been annexed and marked “MNM 1”.
6. The petitioners’ case is that in the year 2010, the late Muchiri Rithara (deceased) instituted a claim for trespass on parcel of land registration number Muthambi/gatua/911 before the Land Disputes Tribunal Muthambi Division, Maara District being case No. 20 of 2010 against the 1<sup>st</sup> respondent. That the Tribunal heard the case and rendered its decision on 4/11/2010 requiring the district surveyor to fix the boundaries relating to L.R No. Muthambi/gatua/911 registered in the name of the deceased and L.R No. Muthambi/gatua/435 registered in the name of the 1<sup>st</sup> respondent.
7. The Tribunal forwarded the award to the Magistrate’s Court at Chuka for adoption and was duly adopted as a judgment of the court in L.D.T Case No. 10 of 2011 and a decree issued on 18/3/2011. That the District Land Surveyor and the District Land Registrar implemented the decree on 7/3/2017 in the presence of the parties. That thereafter, on 23/7/2014 the 1<sup>st</sup> respondent instituted an application being Chuka LDT No. 1 of 2011 dated 30/6/2014 seeking to amend and/or rectify the decree issued in Chuka LDT Case No. 10 of 2011 and that the said application proceeded in a different court.



8. The petitioners further aver that the 1<sup>st</sup> respondent instituted another application dated 4/11/2011 seeking to have the 1<sup>st</sup> petitioner enjoined in the suit as a legal representative of her deceased husband. That the said application was prosecuted on 28/11/2018 without being served upon the 1<sup>st</sup> petitioner. That by 28/11/2018 the suit by the deceased had abated by operation of the law since he had died on 2/8/2014.
9. The petitioners aver that application dated 30/6/2014 seeking to alter the decree was granted on 17/12/2018 and an order to that effect issued. That the amendment of the decree introduced L.R No. Muthambi/gatua/587 which was registered in the name of the 3<sup>rd</sup> petitioner but has since been subdivided. That the 3<sup>rd</sup> petitioner was not a party in the proceedings both before the Land Disputes Tribunal and the Magistrate's Court proceedings. The petitioners aver that the 3<sup>rd</sup> petitioner will be adversely affected by the said court order despite having not participated in the court proceedings.
10. The petitioners further aver that being dissatisfied with the order of 17/11/2018, the 1<sup>st</sup> petitioner moved the Lower Court through an application date 4/1/2019 to have the same set aside, but the application was dismissed on 24/4/2019. That the 1<sup>st</sup> petitioner was aggrieved by the said order and preferred an appeal in Chuka ELC Appeal No. 6 of 2019 which, however, was found to be without merit and dismissed on 5/5/2020.
11. The petitioners aver that on 20/9/2022, the 1<sup>st</sup> and 3<sup>rd</sup> petitioners were served with a letter authored by the National County Surveyor indicating that she would visit the three parcels of land to implement a court order dated 9/6/2022. The petitioners state that they were not heard prior to the said order being granted.
12. It is the petitioners' contention that their constitutional protection or right to property has been infringed in that the proceedings in Chuka CM LDT Case No. 1 of 2011 have arbitrarily deprived them of their property. That their constitutional right to fair administrative action has been violated as the proceedings in the said case directing alteration and/or amendment of the decree which in essence altered the award of the Tribunal is irregular and un-procedural. That the 2<sup>nd</sup> Respondent usurped the powers of the tribunal in rectifying the award which action is ultra vires, null and void. The 1<sup>st</sup> petitioner avers that her right to be heard was violated when the 2<sup>nd</sup> Respondent allowed an application to join her in proceedings that already abated by operation of the Law and without according her an opportunity to be heard. That the 3<sup>rd</sup> petitioner's constitutional right to a fair administrative action and to be accorded an opportunity to be heard have been severally infringed in that he stands to lose his land whereas he was not a party to the proceedings before the Lower Court.
13. The petitioners have annexed copies of the documents referred which include title deed, certificate of search, proceedings and award of the Tribunal, the decree, correspondence, the proceedings, ruling, judgment, letter, order and green card.

### **1<sup>st</sup> Respondent's Case**

14. The 1<sup>st</sup> respondent filed a Replying Affidavit dated 7/10/2022, and avers that the genesis of the petition can be traced back to Chuka Chief Magistrates Court Ldt 1 of 2011. He attached copies of the proceedings & decree marked "ENM 1 a & b".
15. The 1<sup>st</sup> respondent states that he is the registered owner of land parcel Muthambi/gatua/435 which borders the 1<sup>st</sup> petitioner's land parcel Muthambi/gatua/911 and has attached a copy of the searches marked "ENM 2 a, b".



16. The 1<sup>st</sup> respondent further states that there arose a boundary dispute at the Land Dispute Tribunal (LDT) way back in 2010 between himself and the family of the 1<sup>st</sup> and 2<sup>nd</sup> petitioners whereby he won and was given back the access road that had been illegally grabbed. That since the award would not be implemented because of some discrepancy, he sought prayers to review and correct the error and decrees were issued to that effect. He has attached a copy of an order marked “ENM 3.” That he was in the process of implementing the orders of the court when the 1<sup>st</sup> and 2<sup>nd</sup> petitioners moved to court again to appeal the Ruling delivered on 24<sup>th</sup> April, 2019 and he attached a copy of the Ruling marked “ENM 4.”
17. The 1<sup>st</sup> respondent avers that the petitioners filed an Appeal being Chuka High Court ELC Appeal No. 6 of 2019 having sought leave to appeal out of time and the court also dismissed the appeal. He has attached a copy of the Memorandum of Appeal marked “ENM 5.” Upon the dismissal of the appeal, he moved to court with an application for the Executive officer and the District Surveyor to implement the court’s orders and he has attached a copy of the Application marked “ENM 6”. That the petitioners moved to court again through an application by certificate of urgency dated 2<sup>nd</sup> August, 2021 seeking to vacate the orders that had earlier been issued by the Honourable Court which aimed to block the implementation of the court’s orders which was also not allowed on ground of res judicata and he has attached a copy of the application marked “ENM 7”. That on the 9<sup>th</sup> June, 2022 the Honourable Chief Magistrate J. M. Gandani issued an order which authorized the Surveyor and the Executive Officer to sign and visit the land parcels to implement the court orders. A copy of the order marked “ENM 8” has been annexed.
18. The 1<sup>st</sup> respondent states that he has been in court since the year 2011 and it is only fair that litigation comes to an end. That the 1<sup>st</sup> and 2<sup>nd</sup> petitioners have been involved in prosecuting the Chuka Chief Magistrate LDT 1 of 2011 and they cannot allege that failure for the issuance of the conservatory orders by the court violated any of their rights. That the petitioners have been taking him in circles since 2011 maliciously so that he cannot enjoy the fruits of his judgment and ignoring the fact that they have never paid him any costs despite previous courts orders.
19. The 1<sup>st</sup> respondent avers that the petitioners have come running back to the court when they realized that the District Surveyor was going to implement the order. He has attached a copy of a letter marked “ENM 9”. That in fact the Petitioners have just colluded with the 3<sup>rd</sup> Petitioner as a delaying tactic since he was in the process of implementing the decree in LDT 1 OF 2011. That what the Petitioners are seeking for in their petition has already been dealt with in LDT 1 of 2011 and also in the appeal at Chuka ELC Appeal No. 6 of 2019.
20. The 1<sup>st</sup> respondent contends that the petitioners shall not suffer any danger and none of their rights have been violated.

#### **2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents’ Case**

21. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed grounds of opposition dated 16<sup>th</sup> February, 2023 premised on the following grounds;
  - a. That the application and petition are fatally defective, misconceived, and mischievous or otherwise an abuse of the court process and therefore, is unsustainable in the obtaining circumstances.
  - b. That the petition does not meet the threshold of a constitutional petition as set out in the case of Anarita Karimi Njeru –vs- Republic (1979) ECLR as the Petitioners have not demonstrated



the violation or threatened violation of their fundamental rights and the manner in which their rights have been violated by the Respondents.

- c. That the petitioners' Constitutional rights are subject to statutory limitations and are thus not absolute.
  - d. That the application and petition are otherwise frivolous vexatious and an abuse of the court process and ought to be dismissed with costs to the Respondents.
22. The petition was canvassed by way of written submissions.

### **Petitioners Submissions**

23. In their submissions dated 25<sup>th</sup> October 2023 filed through the firm of M/s Basilio Gitonga, Muriithi & Associates Advocates, who summarized the facts of the case, the petitioners identified the issues for determination to be whether the petition satisfies the threshold for a constitutional petition, and whether the petitioners' rights have been violated.
24. It is the petitioners' submission that the petition is properly drawn and accurately demonstrates the constitutional violations levelled against the respondents. It is also submitted that the petitioners' constitutional rights to fair administrative action were violated. Learned counsel for the petitioners relied on the case of Anarita Karimi Njeru –vs- Republic (1979) eKLR, Trust Society of Human Rights Alliance –vs- Attorney General & 2 Others (2012) eKLR, Republic –vs- Chonyi Division Land Dispute Tribunal & 2 Others Ex-parte Maugia Njagi & Another (2018) eKLR, Peter Ouma Mitai –vs- John Nyarara Kisii HCCCA No. 297 of 2005 and Republic –vs- Attorney General & 3 Others Ex-Parte Peter Mungai Kimani & Another (2014) eKLR. Learned counsel for the petitioners also relied on the case of Mary Kerubo Ogoti –vs- Chief Magistrate's Court Kisii Law Courts & 5 Others (2017) eKLR and submitted that this is an appropriate situation for this court to exercise its supervisory powers as donated by the constitution to remedy the irregularities undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

### **2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents' Submissions**

25. In their submissions dated 20<sup>th</sup> June 2023 filed through the Honourable Attorney General, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents identified the issues for determination to be whether the petition meets threshold of a constitutional petition and whether the petition is frivolous and vexatious and an abuse of court process.
26. Regarding the first issue, learned counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents cited Rule 10 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, 2013. Learned counsel also relied on the case of James Gacheru Kariuki & 19 others –vs- County Government of Mombasa & 56 Others (2019) eKLR, Anarita case (Supra), and East Africa Pentecostal Churches Registered Trustees & 1754 others (2015) eKLR and submitted that the petitioners herein have failed to set out and show how the Respondents have violated or infringed their rights. That this is a court of law and should not be used to handle frivolous and vexatious petitions whose sole intention is to engage in fishing expedition. It is their submission that the matters at hand were heard and determined by the 2<sup>nd</sup> to 4<sup>th</sup> respondents in exercise of their statutory mandate and as such the exercise of their legal mandate which have not been challenged either through an appeal or judicial review proceedings cannot be said to be infringing rights of the petitioners.



27. On whether the petition is frivolous, vexatious and an abuse of court process, the respondents' counsel relied on the case of Transcend Media Group Limited –vs- Independent Electoral & Boundaries Commission (IEBC) [2015] eKLR and submitted that the petition herein is ambiguous as it fails to discharge provisions of *the constitution* that have been violated and demonstrate how such rights have been infringed by the Respondents. Further, that the petition is evasive and is concealing the issues between the petitioners and the 1<sup>st</sup> Respondent which is a boundary dispute which falls within the jurisdiction of the 3<sup>rd</sup> Respondent. That there is no indication that the petitioners are challenging the decision of the surveyor and the Land Registrar. That the Petitioners have failed to appeal the ruling of the court and/or file a judicial review application and have not demonstrated that an appeal or judicial review application would be inadequate or give reasons why they are avoiding those remedies. The Respondents' counsel also relied on the case of Revital Health (EP 2) Limited & Another –vs- Ministry of Health & 5 Others [2015] EKLR and Beckey Supplies Limited & Another –vs- Attorney General & Another (2017) eKLR. It is their submission that the court must guard against transmission of normal disputes and frivolous and vexatious matters into constitutional petitions. It is the respondents' submission that this petition does not meet the threshold and is an abuse of the court process and ought to be dismissed with costs to the respondents.

### **Analysis and Determination**

28. Having considered the petition, the responses and the submissions filed, I find that the issues for determination are:
- i. Whether the petitioners are entitled to the orders sought.
  - ii. Who bears the costs of the petition.
29. From the material on record, it is not in dispute that the dispute herein originated from the Land Disputes Tribunal in Muthambi Divisional Tribunal Case No. 20 of 2010. The Tribunal forwarded its award to the Magistrate's Court at Chuka which adopted the award as judgment of the court in Chuka LDT Case No. 10 of 2011. The dispute escalated to this court by way of an appeal in Chuka ELC Appeal No. E06 of 2019. This court, differently constituted, considered the said appeal and on 5<sup>th</sup> May 2020 dismissed it for being without merit. The petitioners have now filed this petition alleging that their constitutional rights have been violated and seeking declarations that the orders issued by the previous courts are un-procedural, unlawful, of no legal effect, ultra vires and null and void.
30. The judgment entered by this court on 5<sup>th</sup> May, 2020 was never reviewed or set aside and remains in force. There was no appeal on the said judgment. In view of that judgment, it is my view that this court cannot revisit the issues. If I were to do so, I would be sitting on appeal over the decision of a court of concurrent jurisdiction, and I am afraid I cannot do that. The issue is already settled by the judgment of this court delivered on 5<sup>th</sup> May, 2020 and if the petitioners were dissatisfied with that judgment, they ought to have filed an appeal in the Court of Appeal or apply for review of the same. If anything, the issues being raised now by the petitioners are res judicata as it raises issues which had been substantially adjudicated upon by a court of competent jurisdiction. I am not persuaded that the petitioners' constitutional rights have been violated since the dispute went through a judicial process from the then Land Disputes Tribunal, the Magistrate's Court and finally this court. I have not heard the petitioners allege that the Judge who heard and delivered judgment in ELCA NO. 6 OF 2020 had no jurisdiction to do so. Therefore, I agree with the respondents' submissions that the petition is fatally defective, misconceived, mischievous and otherwise an abuse of the court process.
31. I find that the petition has no merit and I dismiss it with costs to the respondents.



**DATED, SIGNED AND DELIVERED AT CHUKA THIS 29<sup>TH</sup> FEBRUARY, 2024**

In the presence of:

Court Assistant – Martha

Muriithi for Petitioners

Ms. Kendi for 2<sup>nd</sup> to 5<sup>th</sup> Respondents

No appearance for Kijaru for 1<sup>st</sup> Respondent

**C.K YANO,**

**JUDGE**

