



**Nginyuru v Kamumo & 5 others (Petition E002 of 2023)  
[2024] KEELC 1133 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1133 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
PETITION E002 OF 2023**

**CK YANO, J**

**FEBRUARY 29, 2024**

**IN THE MATTER OF ARTICLES 10, 22, 23, 40, 47, 159 (2)  
(C), 162 (2) (B) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTION 7 (2) (D), (E), (F), (I), (J), (K), (L), (M), (N)  
& (O) OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF APPEAL TO THE MINISTER NO.196 OF 2019  
RELATING TO PARCEL NO. 1051 KAMWIMBI ADJUDICATION SECTION**

**BETWEEN**

**KIARAGO NGINYURU ..... PETITIONER**

**AND**

**JOSECK NJAGI KAMUMO ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL NJAGI ..... 2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER MERU  
SOUTH ..... 3<sup>RD</sup> RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER, MERU SOUTH .... 4<sup>TH</sup>  
RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION ..... 5<sup>TH</sup> RESPONDENT**

**LAND REGISTRAR, MERU SOUTH ..... 6<sup>TH</sup> RESPONDENT**



## JUDGMENT

### Petitioner's Case

1. By a petition dated 31<sup>st</sup> May, 2023, the petitioner is seeking the following orders: -
  - a. A declaration that the proceedings conducted by the Deputy County Commissioner, Meru South, Sub-County in Appeal number 196 of 2019 violates the provisions of Articles 10, 40, 47 and 159 (2) (c) of *the Constitution* and hence null and void.
  - b. A declaration that the petitioner's rights as guaranteed under Articles 10, 40, 47 & 159 (2) (c) of *the Constitution* have been infringed to the extent that the proceedings conducted by the Deputy County Commissioner, Meru South, Sub-County in Appeal number 196 of 2019 are null and void.
  - c. An order do issue directing the District Land Registrar, Meru South to cancel any title deed that has been issued pursuant to the decision of the minister in Appeal number 196 of 2019 in favour of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in respect of land parcel number 1051 Kamwimbi Adjudication Section.
  - d. The costs of the petition be borne by the Respondents.
2. The petition is supported by a supporting affidavit of Kiarago Nginyuri, the petitioner sworn on 31<sup>st</sup> May, 2023 and a supplementary affidavit sworn on 24<sup>th</sup> November 2023.
3. It is pleaded that the petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are cousins and members of Gatiri clan. That a dispute arose in mid 1990s between the petitioner and the 1<sup>st</sup> Respondent regarding a portion of a parcel of land demarcated adjacent to P/No. 606 Kamwimbi Adjudication Section. The petitioner alleged that during demarcation, a portion of his land was subsumed into parcel number 606 Kamwimbi Adjudication Section. That an error in the demarcation or extension of the boundary was as a result of the creation of an access road that cut off a portion of the petitioner's land leaving it adjoining the 1<sup>st</sup> Respondent's land.
4. The petitioner avers that he instituted a claim against the 1<sup>st</sup> Respondent before the Lands Committee being case No. 664 of 1994 claiming a portion of the disputed land. That upon hearing both parties, the members of the committee ruled in favour of the petitioner and directed that the disputed portion be included in the petitioner's land P/No. 390 Kamwimbi Adjudication Section. A copy of the decision marked "KN 1" is annexed. That, however, owing to the existence of the access road between P/No. 390 Kamwimbi Adjudication Section and the disputed portion, the lands office at the time decided to assign it a new number P/No. 1051 Kamwimbi Adjudication Section instead of including it to the original portion as directed by the Lands Committee.
5. The petitioner avers that being dissatisfied with the decision of the Land Committee, the 1<sup>st</sup> Respondent challenged the same before a panel of the Arbitration Board in case no. 180 of 1994, but the Arbitration Board dismissed the 1<sup>st</sup> Respondent's case and upheld the decision of the committee. A copy of the decision marked "KN 2" is annexed. That the 1<sup>st</sup> Respondent was again aggrieved by the decision of the Arbitration Board and together with his brother, the 2<sup>nd</sup> respondent herein, challenged the same before the District Land Adjudication and Settlement Officer in Objection number 939. That on 22/8/2016, the Land Adjudication Officer dismissed the said objection and ruled in favour of the petitioner. Still not satisfied, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents preferred an appeal number 196 of



- 2019 before the minister which was heard on 17/6/2021. That at the conclusion of the appeal, the Deputy County Commissioner, on behalf of the minister, allowed the appeal lodged by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 19/1/2023. A copy of the decision is annexed and marked “KN 3”.
6. The petitioner states that he is dissatisfied with the manner the appeal to the minister was adjudicated and the outcome thereof. The petitioner alleges that the protection of his right to property as provided in Article 40 of *the constitution* has been infringed in that the Deputy County Commissioner has caused the deprivation of land owned and occupied by the petitioner for long periods of time in a manner not envisaged by Chapter 5 of *the constitution*; that the petitioner’s constitutional right to a fair administrative action as provided in Article 47 of *the constitution* has been violated by the minister’s delegate by entertaining an appeal that was lodged outside the period limited by statute; arriving at a decision that was materially influenced by an error of law; failing and ignoring to take into account relevant considerations germane to the acquisitions of a proprietary right to land as provided under the *Land Adjudication Act* Cap 284, arriving at a decision that is unfair; unreasonable, irrational and removed from the reasons advanced in support of the same, making a finding that amounts to an outright abuse of discretion and power; delivering an award that is not proportionate to the interests and rights of the parties; arriving at a determination that violates the legitimate expectation of the petitioner who had litigated successfully before the Land Committee and the Arbitration Board; taking into account extraneous and mundane factors to influence his decision; deliberately neglecting to take into consideration the findings of fact of the tribunals below; and failing to advance the purpose and principles of *the constitution*.
  7. The petitioner further avers that he was able to reclaim P/No. 390 for Njuki matata through a decision of the minister in Appeal number 229 of 2019 whose copy has been annexed and marked “KN 4”.

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

8. Joseck Njagi Kamumi, the 1<sup>st</sup> Respondent herein filed a replying affidavit sworn by himself on 21<sup>st</sup> July 2023 wherein he disputed that the clan allocated the disputed portion of land to the petitioner. He denied encroaching on the petitioner’s land.
9. The 1<sup>st</sup> respondent states that the Petitioner did not bring any material evidence before the committee, the Arbitration Board or the minister to prove his claim that he had been allocated the disputed portion No. 1051 by the clan members together with P/No. 390 that is across the road. The 1<sup>st</sup> respondent avers that the disputed portion of land P/No. 1051 was hived from his portion of land P/No. 606 Kamwimbi Adjudication section since the two portions boarder each other. That the disputed portion P/No. 1051 and 390 have never shared a boundary because at all times, there has always been a road that separated P/No. 390 from 1051 and 606 which are both his portions of land.
10. The 1<sup>st</sup> respondent states that the orders given by the committee and Arbitration board were contrary to their own findings that the petitioner did not have any other portion of land, and states that the findings of the 4<sup>th</sup> respondent corresponded with the judgment that he delivered, and that he followed the proper procedure and heard both parties and made a decision based on the evidence provided before him. He states that the petitioner has never been the owner of the disputed portion of land and therefore cannot purport to claim to have been deprived of any proprietary rights over the same. The 1<sup>st</sup> respondent has also annexed copies of the committee proceedings, Arbitration Board proceedings and a letter dated 23<sup>rd</sup> October, 2008, all marked “JNK 1”, “JKN 2” AND “JKN 3” respectively. He states that the petitioner forcefully encroached and developed the disputed land during the time the same was being litigated upon so as to lay a claim on it, and accused him of coming to court with unclean hands and seeking to have the court legitimize his illegality. He prayed for the petition to be dismissed with costs to the respondents.



### 3<sup>rd</sup> to 7<sup>th</sup> Respondents' Case

11. The 3<sup>rd</sup> to 7<sup>th</sup> respondents filed grounds of opposition dated 12<sup>th</sup> July, 2023 in opposition to the petition on the grounds:
  1. That the petition is fatally defective, misconceived, and mischievous or otherwise an abuse of the court process and therefore, are unsustainable in the obtaining circumstances.
  2. 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) eKLR as the petitioner has not set out the specific provisions of *the constitution* that have been infringed neither has he demonstrated the violation or threatened violation of his fundamental rights and the manner in which his rights have been violated by the Respondents.
  3. That the *Land Adjudication Act* provides for a clear procedure for raising objection against any dealings in land that is subject to adjudication and also provides for appeals to the minister in case one is dissatisfied by the determination of an objection.
  4. That the issue raised and orders sought can only be determined and issued in an application for Judicial review or an appeal.
  5. That further, it is an established principle of law that where there is an alternative remedy and especially where parliament has provided a statutory appeal procedure, it is only in exceptional circumstances that an order would be granted by courts and the plaintiffs herein have not established the existence of any exceptional circumstances.
  6. That the plaintiff's petition is bad in law only meant to defeat the cause of justice.
  7. That the petition is otherwise frivolous vexatious and an abuse of the court process.
12. The petition was canvassed by way of written submissions which were duly filed by the parties through their Advocates on record.

### Petitioner's Submissions

13. The petitioner filed submissions dated 24<sup>th</sup> November 2023 through the firm of M/S Basilio Gitonga, Murithi & Associates Advocates who gave a brief introduction of the petition and identified the issues for determination to be whether the petition satisfies the threshold for a constitutional petition and whether the petitioner's constitutional rights have been violated.
14. Regarding the first issue, the petitioner's counsel considered the principle set out in the often cited case of Anarita Karimi Njeru –vs- Republic (1979) eKLR, and submitted that generally, it was established that since the fundamental rights and freedoms provided in *the constitution* are specific, then the petition should be pleaded with reasonable precision and must set out some level of particularity the specific right and how it is violated. That though this principle was laid out in relation to the repealed constitution, the same has been refined in such a way as to fit within the present constitutional dispensation. The petitioner's counsel relied on the case of Trust Society of Human Rights Alliance – vs- Attorney General & 2 Others (2012) eKLR.
15. The petitioner's counsel submitted that the petitioner has cited specific articles of *the Constitution* and a declaration that his rights as provided in Articles 40 and 47 of *the Constitution* have been violated. That at paragraph 2 of the petition, the petitioner has set out the various violations undertaken by the respondents.



16. The petitioner's counsel further submitted that Article 159 (2) (c) and 162 (2) (b) deal with the jurisdictional power of the court. It is submitted that the petition is properly drawn and accurately demonstrates the Constitutional violations levelled against the Respondents.
17. Regarding the 3<sup>rd</sup> to 7<sup>th</sup> respondents' contention that the impugned decision can only be challenged by way of judicial review or appeal and not through a Constitutional petition, the petitioner submitted that issues of violation of Articles of *the constitution* cannot be adequately addressed through judicial review proceedings as the same is restricted to addressing the procedure and not the merit of the decision made. The petitioner's counsel pointed out that there is no room for an appeal against the decision of the minister as suggested by the 3<sup>rd</sup> – 7<sup>th</sup> respondents.
18. With regard to the second issue, it is the petitioners' contention that his constitutionally guaranteed rights as espoused in articles 40 and 47 of *the constitution* as read with section 7(2) (d), (e), (f), (i), (j), (k), (l), (m), (n) and (o) of the Fair Administrative Act No. 4 of 2016 have been infringed by the actions of the Respondents. The Petitioner submitted that the 1<sup>st</sup> respondents contention that the petitioner is estopped from relying on Article 40 of *the constitution* since at the time the dispute was determined he was not the registered owner of P/No. 390 Kamwimbi Adjudication Section represents a wrong interpretation of the law since the petitioner's claim is premised on the unlawful recording of the resultant sub division of the parent land in the name of the 1<sup>st</sup> Respondent when the former was still in the petitioner's name. It is the petitioner's submission that he has demonstrated that he had obtained a favorable decision reverting the parent parcel of land (P/No. 390) to his name and hence the 1<sup>st</sup> respondent's argument is moot. That the fact that the petitioner had a legitimate claim on P/No. 390 renders any excision of a portion thereof illegal and the registration in the name of the 1<sup>st</sup> respondent the subject of a Constitutional protection under Article 40 of *the Constitution*. Further, that the petitioner pleaded that the appeal to the Minister was instituted outside the statutorily ordained period. The petitioner stated that the respondents in their responses chose not to address this claim and hence the same remains uncontroverted.
19. It is the petitioner's submission that it is clear from the record that the decision by the arbitration board was delivered on 20<sup>th</sup> March, 2010 while the appeal was instituted in 2019 as can be deduced from the registration number of the appeal. That this naturally meant that the appeal was instituted after lapse of nine (9) years, a fact not discounted by the respondents. The petitioner cited Section 29 of the *Land Adjudication Act*, and submitted that the respondents did not attempt to demonstrate that the appeal was instituted within he statutory period. The petitioner's counsel relied on the case of Johnstone Mdutisya Kiamba –vs- Cabinet Secretary, Ministry of Lands & Housing & Another, Batholomew Nguthi Makau (2020) eKLR and Cabinet Secretary Ministry of Lands & Physical Planning & 3 others Ex-parte Applicant: John Mbiri Njagi; Joseph Kaguura Mbugi (Interested Party) (2021) eKLR, and submitted that the petitioner's constitutional right to fair administrative action under Article 47 of *the Constitution* was violated when the Minister's representative entertained an appeal that was filed way out of time.
20. The petitioner's counsel also considered whether the 4<sup>th</sup> respondent conducted the appeal properly and in a judicious manner and submitted that there was evidence of outright impropriety in the manner the appeal was conducted. Learned counsel for the petitioner relied on the case of Matwanya Kilonzo –vs- District Commissioner, Kitui & Another (2021) eKLR and Johnstone Mutisya Kiamba (Supra). The petitioner further submitted that the introduction of the 2<sup>nd</sup> respondent at the appellate level is irregular and to proceed to grant him proprietary interest in the disputed land when his claim is not disclosed or litigated in the forums below is an express abuse of discretion and power by the 4<sup>th</sup> Respondent.



21. In conclusion, leaned counsel for the petitioner submitted that the petitioner's constitutional rights as encapsulated in Articles 40 and 47 of the Constitution and as given effect by Section 7 of the Fair Administrative Action Act have been severely violated and urged the court to allow the petition and grant the prayers sought therein. It is further submitted that this court is empowered by Article 162 (2) (b) of the Constitution to supervise the conduct of entities performing judicial functions like minister while discharging his duties under Section 29 of the Land Adjudication Act.

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

22. The 1<sup>st</sup> Respondent filed submissions dated 1<sup>st</sup> December, 2023 through the firm of M/S Angela Nyagah Advocates who gave an introduction of the case and submitted that it has been identified in various precedents that for a petition to meet constitutional threshold, a petitioner has to identify the constitutional entitlement threatened, infringed or violated and demonstrate with some level of precision on the manner of violation as to enable the respondent to mount a defense. The 1<sup>st</sup> respondent's counsel relied on the case of Imanyara –vs- Independent Electoral and Boundaries Commission; Orange Democratic Movement (interested Party) (Constitutional Petition E297 of 2022 (2022) KEHC 13341 (KLR) and identified the issue for determination to be whether the petitioner has properly identified his constitutional rights and whether he has demonstrated how those rights were threatened, infringed or violated.
23. It is the 1<sup>st</sup> Respondent's submission that the petitioner was not the rightful owner of P/No. 390 at the time of the hearing of the appeal. That the committee and arbitration board findings all stated that the petitioner did not have any land when they did a site visit to the disputed property.
24. It is the 1<sup>st</sup> respondent's contention that the 4<sup>th</sup> respondent (sic) did not have any proprietary rights to be protected as at the time of the hearing of the appeal to the minister and his rights over the said property P/No. 390 were later identified after the hearing of the appeal in regards to P/No. 1051. The 1<sup>st</sup> respondent pointed out that the decision by the 4<sup>th</sup> respondent was not only a preset on the fact that the petitioner was not the owner of P/No. 390 at the time of the hearing of the appeal, but also had the pleasure of visiting the suit land where he concluded that the land was a subdivision of the respondent's portion of land P/No. 606. It is the 1<sup>st</sup> respondent submission that the petitioner in the instant suit is seeking to review/revise and make the court sit as a court of appeal to the decision of the 4<sup>th</sup> respondent now that they have new evidence that was not in their knowledge at the time of the hearing of the appeal.
25. Regarding the issue by the petitioner that the appeal to the minister was registered out of time, the 1<sup>st</sup> Respondent submitted that he has not provided any proof to show that the allegation is true. The 1<sup>st</sup> respondent's counsel relied on the case of Japhet Nkubitu & Another –vs- Regina Thirindi (1998) eKLR. The 1<sup>st</sup> respondent submitted that they filed the appeal within 60 days after the decision by the Arbitration Committee was rendered and that this can be proven by the fact that the petitioner was not able to register the said land in his name in the time frame between the ruling by the Arbitration Board and the Appeal to the Minister. That the land had an inhibition registered against it until the matter was heard by the 4<sup>th</sup> respondent. The 1<sup>st</sup> respondent argued that the 4<sup>th</sup> respondent satisfied himself as to whether the appeal had been filed within the stipulated 60 days as provided for under section 29 of the Land Adjudication Act. That the petitioner who claims that the appeal was filed out of time should provide proof since the issue was not brought up during the appeal for the issue to be dealt with substantially.
26. Regarding the conduct of the minister during the hearing of the appeal, the 1<sup>st</sup> respondent submitted that the petitioner has not highlighted any of the issues he claims were raised but ignored by the 4<sup>th</sup>



Respondent. It was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were fully satisfied by the way the appeal was handled and that all their issues were properly heard and determined. Further, that the 4<sup>th</sup> Respondent is not limited to considering only matters that were dealt with by the adjudication officer but is also allowed to take new evidence for purposes of clarification of issues and proper determination of the appeal. The 1<sup>st</sup> respondent's counsel relied on the case of *Matwanga Kilonzo –vs District Commissioner, Kitui & Another (2021) eKLR*.

27. The 1<sup>st</sup> respondent submitted that the 4<sup>th</sup> respondent considered the findings of the committee and arbitration board and arrived at the same findings that they did, but arrived at a different decision as they did after hearing all the parties and considering all the evidence before him.
28. The 1<sup>st</sup> respondent submitted that the issues raised by the petitioner are issues that should have been dealt with in the Judicial Review case instead of the instant constitutional petition. That the petitioner has not properly identified which one of his rights was infringed upon at the time of the hearing of the Appeal by the 4<sup>th</sup> respondent. That at the time of the hearing, the petitioner could not prove ownership of the property that he claimed the disputed land P/No.1051 originated from. That he also did not demonstrate why he claims the appeal was filed out of time as he has not brought any evidence to support his claim and further that he has not properly shown how the 4<sup>th</sup> respondent conducted himself improperly and by taking in evidence except that he did not arrive at the same conclusion as the adjudicators before him did.
29. The 1<sup>st</sup> respondent urged the court to have the petition dismissed for not properly being before the court and costs be awarded to the respondents.

### **3<sup>rd</sup> to 7<sup>th</sup> Respondents' Submissions**

30. The Honourable Attorney General filed the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents' submissions dated 19<sup>th</sup> October, 2023. The only issue identified for determination is whether the petition meets the threshold of a Constitutional petition. The Honourable Attorney General 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 which provides that a petition should disclose the following: -
  - a. The petitioner's name and address;
  - b. The facts relied upon;
  - c. The constitutional provision violated;
  - d. The nature of the injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
  - e. Details regarding any Civil or Criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
  - f. The petition shall be signed by the petitioner or the advocate of the petitioner and
  - g. The relief sought by the petitioner.
31. Ms. Kendi, Senior Litigation Counsel for the Attorney General relied on the case of *James Gacheru Kariuki & 19 Others –vs- County Government of Mombasa & 56 Others (2019) eKLR*, and submitted that in the instant petition, the petitioner has failed to set out and show how the 4<sup>th</sup> Respondent and other respondents have violated or infringed his rights. That as set out in the *Anarita* case (*Supra*), the



petitioner is required to particularize the allegations of violation of *the constitution* as principal goal posts in drafting informed and well-considered petition. That the procedure set out in the Anarita case was meant for furtherance of justice. That it is imperative therefore to note that every petition is required to adhere to the set out procedure without undue departure from its tenets.

32. Learned counsel for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents also relied on the case of East Africa Pentecostal Churches Registered Trustees & 1754 Others –vs- Samuel Muguna Henry & 4 Others [2015] eKLR which stated that “procedure is also a handmaiden of just determination of cases, and that cases cannot be dealt justly unless the parties and the court know the issues in controversy.” Counsel for the 3<sup>rd</sup> to 7<sup>th</sup> Respondents submitted 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 in the high seas of constitutional litigation. That whereas in this petition, various Articles of *the constitution* have been cited, the petitioner has not provided particulars of the alleged violations of *the Constitution*. Further that no evidence has been produced or attached to demonstrate the petitioners’ rights have been infringed or threatened. That the petitioner has failed to set out and show how the 3<sup>rd</sup> to 7<sup>th</sup> respondents have infringed against his right to property and how fair administration has been infringed.
33. The 3<sup>rd</sup> to 7<sup>th</sup> respondents’ counsel submitted that as per the proceedings of the Appeal to the minister, it is clear that the petitioner was aware of the proceedings and even participated in the proceedings and did not object to the same. It is their submission that the matters at hand were heard and determined by the 4<sup>th</sup> respondent in exercise of their statutory mandate and as such the exercise of their legal mandate which has not been challenged either through an appeal or Judicial Review proceedings cannot be said to be infringing rights of an indolent petitioner. That the petitioner’s sole intention is to engage in fishing expedition and that the petition is imprecise and too general and has failed to meet the threshold of a constitutional petition to warrant any positive order from this court.
34. The 3<sup>rd</sup> to 7<sup>th</sup> respondents submitted that the petition does not satisfy the requisite threshold to warrant the court’s exercise of its discretion in favour of the petitioner and urged the court to find that the petition is incompetent, frivolous, vexatious and an abuse of the court process and dismiss it with costs to the Respondents.

### **Analysis and Determination**

35. I have perused the petition, the responses and the rival submissions. It is my considered view that the following issues arise for determination: -
  - i. Whether the petition meets the threshold of a constitutional petition.
  - ii. Whether the proceedings conducted by the Deputy County Commissioner, Meru South, the 4<sup>th</sup> Respondent herein in Appeal Case number 196 of 2019 were proper.
  - iii. Whether the registration of parcel number 1051 Kamwimbi Adjudication Section in the names of the 1<sup>st</sup> and 2<sup>nd</sup> respondents was proper.
  - iv. Which orders should the court issue.
36. Both the petitioner and the respondents are in agreement that the standards of the constitutional claim were set out in the case of Anarita Karimi Njeru (Supra). However, whereas the respondents have submitted that the petition does not satisfy the requisite threshold to warrant this court to exercise its discretion in favour of the petitioner, the petitioner on his part is of the view that the petition satisfies the said threshold.



37. In this case, the petitioner has cited various Articles of *the constitution* and has specifically set out the various violations allegedly committed by the Respondents. In particular, the petitioner avers that his rights as provided in Articles 40 and 47 of *the constitution* have been violated. The petitioner's claim is premised on the legality or otherwise of the registration of the suit property in the names of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The petitioner stated that he had obtained favorable decisions before the lands committee, the Arbitration Board and the Land Adjudication and Settlement Officer before the same was reversed by the appeal to the minister which was heard and determined by the 4<sup>th</sup> Respondent herein. The petitioner has faulted the 4<sup>th</sup> Respondent for entertaining an appeal that was filed outside the time stipulated under Section 29 of the *Land Adjudication Act*.
38. Article 40 of *the Constitution* provides for the protection of a right to property and states inter alia that parliament shall not enact a law that permits the state or any person to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description. Further, Article 47 of *the Constitution* provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. In my considered view, the petition is properly drawn and accurately demonstrates the constitutional violations levelled against the Respondents. The complaints levelled against the Respondents in *the constitution* petition herein are clearly fashioned in a way that gives proper notice to the respondents about the nature of the claims being made so that they could adequately prepare their case. Therefore, it is my finding that the petition meets the threshold set out in the case of Anarita Karimi Njeru (Supra).
39. In this case, it is not in dispute that there was a dispute between the 1<sup>st</sup> Respondent and the Petitioner dating back to mid-1990's regarding the suit property herein. From the material on record, the petitioner instituted case No. 644 of 1994 against the 1<sup>st</sup> Respondent before the Lands Committee claiming the suit property. The Lands Committee ruled in favour of the Petitioner on 11<sup>th</sup> January 1996. Being dissatisfied with that decision, the 1<sup>st</sup> Respondent challenged the said decision before the Arbitration Board in Case No. 180 of 1994, and the Arbitration Board upheld the decision of the committee. Still not satisfied, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents challenged that decision before the District Land Adjudication and Settlement Officer in Objection number 939 which was again dismissed on 22<sup>nd</sup> August 2016. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were still not satisfied with the outcome of that objection and they preferred Appeal No. 196 of 2019 before the Minister which was heard on 17<sup>th</sup> August, 2021 and decided in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by the 4<sup>th</sup> Respondent herein on 19<sup>th</sup> January, 2023.
40. Section 29 of the *Land Adjudication Act* provides as follows:
- “ Any person who is aggrieved by the determination of an objection under Section 26 (1) and (2) of this Act may within sixty days after the date of the determination appeal against the determination to the Minister...”
41. The objection having been dismissed on 22<sup>nd</sup> August, 2016, any appeal against it should have been filed by 22<sup>nd</sup> October 2016. The appeal is indicated as Appeal Case number 196 of 2019. The inference therefore is that the appeal was filed in 2019. Clearly, this was way out of time and nothing was exhibited to show that an extension was granted. Although the 1<sup>st</sup> Respondent submitted that the land had an inhibition, that does not explain the failure of not filing the appeal within the period stipulated by the Law. No doubt, the petitioner's constitutional right to property was infringed in the respondent's proceedings which were conducted outside the law.



42. The upshot of the foregoing is that the proceedings before the minister in Appeal case number 196 of 2019 were un-procedural, unlawful, illegal, unconstitutional, null and void. The same could not be a basis for ordering parcel No. 1051 to be registered by Joseck Njagi Kamumo and Samwel Njeru, the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein.
43. In the circumstances, I hereby proceed to enter judgment for the petitioner and against the Respondents as follows:
- a. A declaration is hereby issued that the proceedings conducted by the Deputy County Commissioner, Meru South Sub-County in Appeal No. 196 of 2019 violate the provisions of Articles 10, 40, 47 and 159 (2) (c) of *the constitution* and that the same are null and void for all purposes.
  - b. An order is hereby issued directing the District Land Registrar, Meru South to cancel any title deed that may have been issued pursuant to the decision of the Minister in Appeal Case Number 196 of 2019 in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in respect of land parcel number 1051 Kamwimbi Adjudication Section.
  - c. The costs of the petition are to be borne by the Respondents.
  - d. Orders accordingly.

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

In the presence of:

Court Assistant – Martha

Ms. Kendi for 1<sup>st</sup> – 7<sup>th</sup> Respondents

No appearance for Muriithi for Petitioner

**C.K YANO,**

**JUDGE**

