



**Kantai v Kinampu & 5 others (Environment & Land Petition
E003 of 2022) [2024] KEELC 4357 (KLR) (28 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND PETITION E003 OF 2022
EM WASHE, J
MAY 28, 2024
IN THE MATTER OF ARTICLES 28,40,47 & 50 OF THE
CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF: FAIR ADMINISTRATIVE ACT, 2015
AND
IN THE MATTER OF: LAND ADJUDICATION ACT, CAP 284
LAWS OF KENYA
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE RULES, 2013**

BETWEEN

MOSES OLE KANTAI PETITIONER

AND

CHARLES MBASIO KINAMPU 1ST RESPONDENT

**DEPUTY COUNTY COMMISSIONER TRANSMARA WEST SUB-
COUNTY 2ND RESPONDENT**

**THE CABINET SECRETARY LAND, SETTLEMENT & PHYSICAL
PLANNING 3RD RESPONDENT**

**THE DIRECTOR LAND ADJUDICATION & SETTLEMENT ... 4TH
RESPONDENT**



**THE LAND REGISTRAR TRANSMARA EAST/WEST SUB- 5TH
RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 6TH RESPONDENT

JUDGMENT

1. The Petitioner herein filed a Constitutional Petition dated 05.08.2022 (hereinafter referred to as “the present Petition”) against the 1st to 6th Defendants seeking for the following Orders; -
 - a. A declaration be issued to the effect that the actions by the 2nd Respondent to admit and register Appeal Case to the Minister No. 360 of 2012 several months outside the period stipulated under Section 29 of the *Land Adjudication Act* was illegal and unconstitutional to the extent that the null and void process was used as a basis for depriving the Petitioner his property which had crystalized.
 - b. A declaration that the decision of the Respondents to deprive the Petitioner of his property and transfer and register the same in the name of the 1st Respondent was unconstitutional, illegal, null and void and thus be set-aside and the Respondent directed to forthwith rectify the register of the land parcel number Transmara/oldanyati/411 and revert or restore the name of the Petitioner as the owner thereof and the 6th Respondent to issue title deed in the name of the Petitioner.
 - c. That the 1st Respondent do return the title deed in respect of the suit property to the Land Registrar forthwith, for cancellation.
 - d. The Respondents be compelled to pay the costs of these proceedings.
 - e. Any further and/or such orders that the Honourable Court may deem fit and just to grant in the circumstances.
2. The facts in support of the present Petition can be summarised as follows; -
 - a. The Petitioner herein is a resident of Oldanyati Adjudication Section which was gazetted for demarcation and adjudication by the 3rd Respondent herein.
 - b. That upon declaration of Oldanyati Adjudication Section, the Petitioner being a resident of the said area was demarcated a piece of land measuring 2.21 Hectares which was recorded as Plot.no.411 Within Oldanyari Adjudication Section.
 - c. The Petitioner therefore took possession of the said property known as Plot.no.411 Within Oldanyati Adjudication Section and has been in occupation of the same with his family to date.
 - d. However, the 1st Respondent herein filed an Objection against the Petitioner’s registration as the beneficial owner of the property known as Plot.no.411 Within Oldanyati Adjudication Section pursuant to Section 26 of the Land Adjudication Section and the said Objection was recorded as Objection No. 138.
 - e. The Petitioner confirms that the Objection No. 138 filed by the 1st Respondent was duly heard on its merits and the Land Adjudication Officer pronounced the determination on the 24.11.2011 dismissing the said Objection.



- f. Upon pronouncement of the determination by the Land Adjudication Officer on the 24.11.2011, the 1st Respondent was required by the provisions of Section 29 of the [Land Adjudication Act](#), Cap 284 to prefer any Appeal to the 3rd Respondent within 60 days from the date of the determination.
- g. However, the 1st Respondent delayed and/or failed to prefer any Appeal to the 3rd Respondent within the prescribed 60 days provided by law until the year 2012 when he lodged the Appeal To The Minister Case No.360 Of 2012.
- h. In essence therefore, the Petitioner pleads that the Appeal To The Minister Case No.360 OF 2012 was filed way out of the prescribed 60 days period from the 24.11.2011 and therefore the admission and/or registering of the said Appeal to the Minister was illegal and ultra vires the provisions of the [Land Adjudication Act](#) hence null and void-abinitio.
- i. Despite this illegality, the Petitioner and the 1st Respondent on their own volition proceeded to discuss and resolve the dispute between them thereby recording a settlement Agreement dated 23.05.2013.
- j. The Petitioner and the 1st Respondent upon reaching the Settlement Agreement dated 23.05.2013 proceeded to the Offices of the 2nd Respondent on the same day 23.05.2012 and recorded the contents of the said Settlement Agreement thereby compromising the entire Appeal by having the same marked as settled.
- k. On or about March 2021, the Petitioner was then informed that the Adjudication of Oldanyati Adjudication Section was now finalized and the relevant Title documents to individual owners were ready for collection.
- l. The Petitioner therefore proceeded to the offices of the 5th Respondent with a view of collection his Title Deed for the property known as Lr.no.transmara/oldanyati/411 but was shocked to learn that the same had been issued in the name of the 1st Respondent and in fact already collected on the 10.03.2021.
- m. The Petitioner in an effort to understand how the 1st Respondent procured the Title for the property known as Lr.no.transmara/oldanyati/411 requested and was supplied which a Certified Copy of the Adjudication Records on the 11.11.2021 through the offices the 5th Respondent.
- n. According to the Records held by the 5th Respondent, the Petitioner learnt that after the recording of the Settlement Agreement dated 23.05.2013 before the 3rd Respondent, the 1st Respondent in co-operation with the 2nd and 3rd Respondents proceeded to undertake an illegitimate and/or unlawful hearing of the Appeal To The Minister Case No.320 Of 2012 and thereafter vacated the Settlement Agreement recorded on the 23.05.2013 altogether.
- o. The Petitioner further discovered that the 2nd Respondent after vacating the terms of the Settlement Agreement dated 23.05.2013 proceeded to award the property known as Plot.no.411 Within Oldanyati Adjudication Section to the 1st Respondent without notifying the Petitioner of such a determination.
- p. Consequently therefore, the Adjudication Record of the property known as Plot.no.411 within Oldanyati Adjudication Section were fraudulently altered and the name of the Petitioner removed and replaced with that of the 1st Respondent.



- q. The Petitioner is of the view that the actions of the 1st, 2nd and 3rd Respondents were unlawful, fraudulent, null and void having been undertaken with a clear intention to deny the him of his lawful property known as Plot.no.411 within Oldanyatu Adjudication Section contrary to Article 40 of the Kenyan Constitution, 2010.
 - r. The Petitioner thereafter in Paragraph 20 has outlined various Particulars of infringement of his rights under Articles 40,47,48 & 50 of the Kenyan Constitution, 2010 by the 2nd Respondent.
 - s. In essence therefore, the Petitioner is seeking this Court's protection of his ownership rights under Section 40 of the Kenyan Constitution,2010 by a declaration that the 2nd Respondents actions of admitting, registering and/or entertaining the Appeal To The Minist'r's Case No.360 Of 2012 outside the prescribed time was illegal and unconstitutional hence the entire process was null and void including the alteration of the Adjudication Records thereof.
3. The present Petition was served on all the Respondents but only the 1st Respondent opposed the same.
 4. The 1st Respondent filed a Replying Affidavit sworn on the 03.11.2022 and opposed the present Petition on the following grounds;-
 - a. The 1st Respondent stated that he is the registered and lawful owner of the property known as Lr.no.transmara/oldanyati/411.
 - b. The Title known as Lr.no.transmara/oldanyati/411 was procured through an Adjudication process.
 - c. Indeed, the property known as Plot.no.411 within Oldanyati Adjudication Section was recorded in the name of the Petitioner.
 - d. However, the 1st Respondent proceeded to file an Objection against the registration of the Petitioner as the owner of the property known as Plot.no.411 within Oldanyati Adjudication Section which was recorded as Objection No. 138.
 - e. The 1st Respondent pleaded that the Objection No. 138 was heard on merit and with the participation of the Petitioner and a determination was pronounced on the 24.03.2011 dismissing the same.
 - f. The 1st Respondent being aggrieved by the determination of the Land Adjudication Officer pronounced on the 24.03.2011 in the proceedings known as Objection No.138 proceeded to file an Appeal to the 3rd Respondent.
 - g. The 1st Respondent stated that the Appeal to the 3rd Respondent was filed on the 20.05.2011 which was within the 60 days prescribed under Section 29 of the [Land Adjudication Act](#), Cap 284.
 - h. The 1st Respondent further stated that the lodging of an Appeal is done at the time of paying for the same at the Minister's office and issuance of a receipt.
 - i. In essence therefore, the Appeal To The Minister Case No. 360 OF 2012 was filed within time and lawful in the eyes of the law.
 - j. The 1st Respondent proceeded to plead that the Petitioner has been all through aware of the existence of the Appeal To The Minister Case No.360 Of 2012 and even participated in the hearing of the same until its conclusion before the 2nd Respondent.



- k. The 1st Respondent was of the view that the Petitioner was simply misrepresenting the true facts of this matter for his own benefit.
 - l. The 1st Respondent further pleaded that there was no Settlement Agreement dated 23.05.2013 and/or any form of compromise entered between the Petitioner and the 1st Respondent that settled the Appeal To The Minister Case No.380 Of 2012 and therefore the copy filed in the present Petition was a strange document to him.
 - m. In essence the 1st Respondent stated that the decision of the 2nd Respondent acting on delegated powers of the 3rd Respondent was lawful and had in fact been implemented by the 3rd to 5th Respondents and a title issued in his favour.
 - n. Lastly, the 1st Respondent pleaded that the present Petition was actually not raising any constitutional issues but simply challenging and/or appealing against the decision of the 3rd Respondent through the back door.
 - o. The 1st Respondent sought this Honourable Court to dismiss the present Petition with costs.
5. At the close of the pleadings, the Honourable Court directed that the present Petition be canvassed by way of a hearing so that parties may be able to ventilate their issues and where necessary the documents produced by the different parties cross-examined by the parties.

Petitioner's Case.

- 6. The first witness in the Petitioner's case was the Petitioner himself and was marked as PW 1.
- 7. The Petitioner introduced himself as a resident of Oldanyati and a farmer by occupation.
- 8. The Petitioner informed the Court that he was currently occupying the property known as Lr.no.transmara/oldanyati/411.
- 9. According to the Petitioner, he has been in occupation of the property known as Lr.no.transmara/oldanyati/411 since the year 2001.
- 10. The Petitioner stated that before 2001, the property known as Lr.no.transmara/oldanyati/411 was vacate and belonged to no one.
- 11. At the time when the Adjudication process was pronounced, the Petitioner was already in occupation and as a result of this, the Adjudication Committee duly demarcated and allocated the Plot.no.411 within Oldanyati Adjudication Section to him.
- 12. The Petitioner then confirmed that he had prepared and filed a witness statement dated 05.08.2022 which he adopted as his evidence in chief.
- 13. In addition to the witness statement dated 05.08.2022, the Petitioner also produced the following documents in support of his case;-
 - Petitioner's Exhibit 1- Copy of the Adjudication Record No. 263811 relating to Plot.no.411 within Oldanyati Adjudication Section.
 - Petitioner's Exhibit 2- Copy of proceedings in respect of Objection No. 138 dated 24.03.2011.
 - Petitioner's Exhibit 3- A sketch map in respect to the property known as Plot.no.411 within Oldanyati Adjudication Section.
 - Petitioner's Exhibit 4- A copy of the Letter dated 23.05.2013.



Petitioner's Exhibit 5- Copy of the Amended Adjudication Record No. 263811 relating to Plot.no. 411 within Oldanyati Adjudication Section.

Petitioner's Exhibit 6- Copy of the Letter dated 07.10.2021 from the Land Adjudication Officer.

Petitioner's Exhibit 7- Copy of Letter dated 27.01.2021 from the Chief Land Registrar accompanied by the decision of the 3rd Respondent dated and certified on 18.12.2020.

Petitioner's Exhibit 8- Copy of Letter dated 18.12.2020 from the Director of Land Adjudication.

Petitioner's Exhibit 9- Copy of the Official Search of Lr.no.transmara/oldanyati/411 dated 03.11.2021.

Petitioner's Exhibit 10(a) & (b) - Copy of the letter dated 17.01.2019 from the 2nd Respondent and the Receipt No. 1360311.

14. The Petitioner at the end of this production informed the Court that he is aggrieved by the fact that the Petitioner has taken the entire property known as Lr.no.transmara/oldanyati/411.
15. The Petitioner admitted both the 1st Respondent and himself have separate and distinct properties although there was a boundary issue that existed.
16. The Petitioner stated that the 1st Respondent was allocated Plot.no.128 while the Petitioner was allocated Plot.no.411.
17. According to the Petitioner, the properties known as Plot.no.128 and Plot.no.411 share a boundary and in fact the dispute in the Objection No. 138 was where the boundary should be demarcated.
18. The Petitioner testified that after the determination of the Objection No. 138, the 1st Respondent informed him that he was no longer interested in any litigant and therefore the issue of the boundary was settled.
19. The Petitioner's testimony is that both the 1st Respondent and himself visited the offices of the 5th Respondent whereby the settlement was communicated.
20. The Petitioner confirmed to the Court that the decision by the Land Adjudication Officer had been pronounced on the 24.03.2011.
21. By the time the Petitioner and the 1st Respondent visited the offices of the 5th Respondent, the 1st Respondent had not served him with any Appeal to the 3rd Respondent.
22. However, later on, the 1st Respondent informed the Petitioner that there was a pending Appeal before the 3rd Respondent which required to be withdrawn before the 2nd Respondent.
23. On the basis of this information, the Petitioner made a visit to Kilgoris where he met with the 1st Respondent and they proceeded to the office of the 2nd Respondent with an intention to also have the Appeal to the 3rd Respondent withdrawn.
24. The Petitioner informed the Court that it was the letter produced as Petitioner's Exhibit 4 that was handed over to the 2nd Respondent as the settlement agreement and/or letter of withdrawal.
25. The Petitioner therefore informed the Honourable Court that the 2nd Respondent proceeded to hear and determine the Appeal after it was withdrawn and award the entire property known as Plot.no.411 within Oldanyati Adjudication Section to the Petitioner.



26. At the end of this evidence in chief, the Petitioner stated that the issue at hand was a boundary issue and not the ownership of the property known as Plot.no.411 within Oldanyati Adjudication Section.
27. On cross-examination, the Petitioner reiterated that he resides on the property known as Lr.no.transmara/oldanyati/411.
28. The Petitioner also confirmed that he participated in the proceedings of Objection No. 138.
29. According to the Petitioner, the Objection proceedings related to a boundary dispute of which it was ruled in his favour and not ownership of the property known as Plot.no.411 within Nkararo Adjudication Section.
30. The Petitioner admitted that he did not know the date of when the Appeal to the 3rd Respondent was filed.
31. However, the Petitioner confirmed that he visited the offices of the 2nd Respondent to deal with the Appeal raised by the 1st Respondent.
32. The Petitioner stated that according to his recollection, it was only the 1st Respondent and him that went to the offices of the 2nd Respondent.
33. On being referred to the Petitioner's Exhibit 7, the Petitioner denied knowledge that the decision by the 2nd Respondent was final.
34. The Petitioner therefore informed the Court that he had come to challenge the same.
35. The Petitioner confirmed that the property known as Lr.no.transmara/oldanyati/411 was currently registered in the name of the 1st Respondent.
36. On being referred to the Petitioner's Exhibit 7, the Petitioner denied ever being served with any summons appertaining the hearing of the Appeal before the 2nd Respondent.
37. According to the Petitioner, if the 5th Respondent visited the property known as Lr.no.transmara/oldanyati/411, he would find that it's the Petitioner who was on the ground.
38. The Petitioner reiterated that the dispute which resulted to the Objection being filed was a boundary dispute and not ownership.
39. On being referred to Petitioner's Exhibit 4, the Petitioner admitted that he had no stamped copy of the Letter to confirm receipt of the same in any Government office.
40. The Petitioner indicated that when they delivered the Petitioner's Exhibit 4, the 2nd Defendant did not receive the same but simply placed it on his table.
41. The Petitioner could not also remember when they delivered the Petitioner's Exhibit 4 to the 2nd Respondent because it was not taken on the same date.
42. The Petitioner stated that the settlement agreement was reached at home but the same was recorded in the offices of the 5th Respondent.
43. In conclusion of the cross-examination, the Petitioner insisted that he never participated in the proceedings before the 2nd Respondents relating to the Appeal To The Minister Case No.360 Of 2021.
44. On re-examination, the Petitioner stated that when they delivered the Petitioner's Exhibit 4, the 2nd Respondent simply placed it on the table and did not receive it.



45. The Petitioner informed the court that there were not proceedings that were undertaken by the 2nd Defendant on that day.
46. The Petitioner insisted that it was the 1st Respondent that addressed the 2nd Respondent and he only signed what was given to him with the understanding that it related to the Settlement agreement they had gone to record.
47. It was only later on that the Petitioner discovered that the Appeal proceeded for full hearing without his knowledge and/or participation.
48. At the end of this re-examination, the Petitioner was discharged from the witness box.
49. The second Petitioner's witness was one Kiminisi Ole Belesa who was marked as PW 2.
50. PW 2 introduced him as a resident of Oldanyati and a farmer by occupation.
51. PW 2 informed the Court that he was one of the Adjudication Committee members of Oldanyati Adjudication Section and therefore familiar with the Petitioner herein.
52. Similarly, PW 2 confirmed that he is familiar with the 1st Respondent as well.
53. PW 2 averred that the Petitioner and the 1st Respondents were neighbours and both were allocated their own individual properties.
54. After the adjudication process was completed, the Adjudication Committee handed over the records to the Land Adjudication Officer.
55. The recording of the parcel numbers was done by the Land Adjudication Officer.
56. PW 2 informed the Court that he had prepared and filed a witness statement dated 06.06.2023 which he then adopted as his evidence in chief.
57. On cross-examination, PW 2 could not remember the parcel number of the Petitioner because he was not the one that assigned the same.
58. What the Petitioner confirmed was that both the Petitioner and the 1st Respondent had their own properties.
59. PW 2 clarified that the property allocated to the 1st Respondent was recorded in the name of his father on behalf of the entire family.
60. On re-examination, PW 2 reiterated that the Petitioner was allocated a property.
61. PW 2 stated that the property allocated to the 1st Respondent was recorded in the name of his father.
62. At the end of this re-examination, PW 2 was accordingly discharged from the witness box.
63. The third witness by the Petitioner was Parsiat Ole Semeyioi who was marked as PW 3.
64. PW 3 introduced himself as a resident of Oldanyati and a farmer by occupation.
65. PW 3 stated that he was the Area Chief of Sikawa location within which Oldanyati is a sub-location.
66. PW 3 confirmed that he had prepared and signed a witness statement dated 06.06.2023 and of which he adopted as his evidence in chief.
67. PW 3 confirmed to be familiar with the Petitioner who was living within his jurisdiction as well as his neighbour.



68. PW 3 further stated that he was one of the Adjudication Committee members of Oldanyati Adjudication Section.
69. PW 3 averred that indeed, the Petitioner was allocated a property within the Adjudication Section and he knows where it is.
70. Similarly, PW 3 affirmed that the 1st Respondent is also living within Oldanyati Adjudication Section and was in fact a neighbour to the 1st Respondent.
71. However, it was only until recently that PW 3 became aware of the dispute between the Petitioner and the 1st Respondent.
72. According to PW 3, both the Petitioner and the 1st Respondent had their own individual properties.
73. On cross-examination, PW 3 denied knowledge of any Objection proceedings and/or Appeal that was filed between the Petitioner and the 1st Respondent.
74. PW 3 reiterated that he was one of the Adjudication Committee members of Oldanyati Adjudication Section.
75. However, he resigned from the membership of the Adjudication Committee when he was appointed as the Area Chief.
76. Consequently therefore, PW 3 did not participate during the demarcation and allocation of the individual properties within Oldanyati Adjudication Section.
77. PW 3 informed the Court that the present Petition was challenging the determination by the 3rd Respondent.
78. PW 3 confirmed that the Petitioner currently was not residing on the property known as Lr.no.transmara/oldanyati/411 but had cultivated some sugar cane on the same.
79. On being referred to 1st Respondents Bundle of Documents and in particular Item No.8, PW 3 could not recollect whose house it was.
80. However, PW 3 insisted that both the Petitioner and the 1st Respondents had built homes on their individual properties.
81. On re-examination, PW 3 averred that he does not stay very far away from the Petitioner and the 1st Respondent.
82. According to PW 3, the Petitioner had developed a house on the property that he had been allocated.
83. Nevertheless, PW 3 concluded his testimony by stating that he does not know if the Petitioner's house was still on the ground.
84. At the end of this re-examination, PW 3 was discharged from the witness box and the Petitioner closed his case thereafter.

1st Respondent's Case.

85. The 1st Respondent's case commenced on 19.09.2023 with the first witness being the 1st Respondent who was marked as DW 1.
86. The 1st Respondent introduced himself as a resident of Oldonyati.



87. The 1st Respondent stated that he was duly served with the present Petition which he has gone through and fully appreciated the facts and reliefs sought therein.
88. In reply to the present Petition, the 1st Respondent confirmed to have filed a Replying Affidavit sworn on the 03.11.2022 of which he adopted as his evidence in chief.
89. In support of the averments on the Replying Affidavit sworn on the 03.11.2022, the 1st Respondent also produced the following documents;-
- Defence Exhibit 1- A copy of an Official Search for the property known as Lr.no.transmara/oldanyati/411 dated 01.09.2022.
- Defence Exhibit 2- Two Photographs
- Defence Exhibit 3- Copies of the proceedings of the Objection No. 138 including the Ruling dated 24.03.2011.
- Defence Exhibit 4- A Copy of the Receipt from the Minister dated 20.05.2011.
- Defence Exhibit 5- A copy of the proceedings of the Appeal to the Minister No. 360 of 2012.
- Defence Exhibit 6- A copy of a letter dated 18.12.2020 by the Director of Land Adjudication & Settlement.
- Defence Exhibit 7- A copy of a letter dated 27.01.2021 by the Chief Land Registrar.
- Defence Exhibit 8- Copy of an Adjudication Record of the property known as Plot.no.411 within Oldanyati Adjudication Section.
90. The 1st Respondent thereafter informed the Court that he was the one in occupation of the property known as Lr.no.transmara/oldanyati/411 and indicated that the photographs produced as Respondent's Exhibit 2 confirm this position.
91. The 1st Respondent insisted that even during adjudication, he was already on the ground and has never lost possession of the same.
92. However, the 1st Respondent was not recorded as the beneficial owner of the property that was demarcated as Plot.no.411 within Oldanyati Adjudication Section and this is why he filed an Objection against the Petitioner.
93. The Objection filed by the 1st Respondent was assigned No. 138 and after being heard on merit, the same was dismissed on the 24.03.2011.
94. The 1st Respondent being aggrieved with the said determination by the Land Adjudication Officer proceeded to lodge an Appeal to the 3rd Respondent which we duly paid for on the 20.05.2011.
95. Consequently therefore, the 1st Respondent testified that the period of 60 days had not lapsed by the time the Appeal was filed before the 3rd Respondent and the Appeal was therefore valid and lawful.
96. The 1st Respondent confirmed that the Appeal to the Minister was assigned Appeal To The Minister Case No.360 Of 2012 and the same was heard on its merits and determined in favour of the 1st Respondent.
97. Based on the determination of the 2nd Respondent on delegated powers by the 3rd Respondent, the 4th and 5th Respondents proceeded to implement the said decision and rectified the Adjudication Record of Plot.no.411 within Oldanyati Adjudication Section by deleting the name of the Petitioner and recording the 1st Respondent as the lawful owner.



98. The 1st Respondent concluded his evidence in chief by affirming that the relevant title was subsequently issued to him as Lr.no.transmara/oldanyati/411 and he is currently in occupation of the same.
99. On cross-examination, the 1st Respondent confirmed that he did not have a copy of the Memorandum of Appeal filed before the 3rd Respondent.
100. However, the 1st Respondent confirmed that the Appeal filed was assigned as Appeal To The Minister Case No. 360 Of 2012.
101. The 1st Respondent denied knowledge of any other Appeal filed in the year 2011.
102. On being referred to the Petitioner's Exhibit 4, the 1st Respondent denied knowledge of the said document and/or its contents therein.
103. The 1st Respondent however stated that he had not filed any complaint about the said letter to the police.
104. The 1st Respondent further denied ever entering into any Settlement Agreement with the Petitioner to withdraw his Appeal before the 3rd Respondent.
105. On being referred to the Respondent's Exhibit 4, the 1st Respondent indicated that he did not have any confirmation that the Appeal was filed in the year 2011.
106. On again being referred to Respondent's Exhibit 2 (a) (b), the 1st Respondent could also not confirm which property the houses were located.
107. On re-examination, the 1st Respondent clarified that when one is seeking to file an Appeal, he/she goes to the offices of the 2nd Respondent and pays for the Appeal and is issued with a receipt.
108. Thereafter, the Appeal is sent to Nairobi where it is assigned with a number.
109. On being referred to the Petitioner's Exhibit 4, the 1st Respondent again denied knowledge of the said letter or having signed the same.
110. The 1st Respondent further denied having presented the said letter contained in the Petitioner's Exhibit 4 to either the 5th Respondent and/or the 2nd Respondent.
111. The 1st Respondent on being referred to the Respondent's Exhibit 4 confirmed that the Appeal to be over the property known as Plot.no.411 within Oldanyati Adjudication Section and the receipt was issued on the 20.05.2011.
112. On being referred to the Respondent's Exhibit 2, the 1st Respondent reiterated that the houses contained in the photographs are his and located on Lr.no.transmara/oldanyati/411.
113. In conclusion therefore, the 1st Respondent sought this Honourable Court to dismiss the present Petition with costs.
114. At the end of this re-examination, the 1st Respondent was discharged from the witness box.
115. The second Defence witness was one Oreu Ole Kemei Kisoroa (dw2).
116. DW 2 began his testimony by confirming that he was familiar with both the Petitioner and the 1st Respondent.



117. DW 2 informed the Honourable Court that he was able to prepare and file a witness statement dated 11.07.2023 of which he adopted the same as his evidence in chief.
118. DW 2 confirmed before the Court that the 1st Respondent is the one that resides on the property known as Lr.no.transmara/oldanyati/411.
119. DW 2 further stated that the Petitioner does not reside on the property known as Lr.no.transmara/oldanyati/411.
120. On cross-examination, DW 2 averred that he was not present during the Objection proceedings.
121. However, later on, he came to learn that there was an Appeal that had been filed relating to Plot.no.411 within Oldanyati Adjudication Section.
122. DW 2 stated that he was not a Surveyor but he knew where the boundaries were.
123. On re-examination, DW 2 admitted that he knows the boundaries of the 1st Defendant's property.
124. DW 2 averred that he was not present during the hearing of the Appeal but insisted that the 1st Respondent was the person on the ground within Lr.no.transmara/oldanyati/411.
125. At the end of this re-examination, DW 2 was duly discharged from the witness box and 1st Respondent closed their case.
126. The Court thereafter directed parties to file their written submissions.
127. The Petitioner duly filed his submissions on the 29.01.2024 while the 1st Respondent filed his submissions on the 16.02.2024.
128. The Court has carefully perused the pleadings herein, considered the testimonies of the witnesses and the documentary evidence placed before it as well as the submissions by the parties and identify the following issues for determination.

Issue No. 1- Whether Or Not The 1st Respondent's Appeal Was Filed Out Of Time Thereby Rendering The Determination Unconstitutional And Infringing On The Petitioner's Under Article 40 Of The Kenyan Constitution,2010?

Issue No. 2- If The Answer To Issue No.1 Is To The Positive, Whether Or Not The Hearing & Determination Of The 1st Respondent's Appeal Before The 2nd & 3rd Respondents Denied The Petitioner A Right Of Hearing As Enshrined In Article 47 Of The Kenyan Constitution,2010?

Issue No. 3- Whether Or Not The Petitioner Is Entitled To The Prayers Sought In The Present Petition?

Issue No. 4- Who Bears The Costs Of This Petition?

129. The Honourable Court having identified the above-mentioned issues for determination, the same will now be discussed as below.

Issue No. 1- Whether Or Not The 1st Respondent's Appeal Was Filed Out Of Time Thereby Rendering The Determination Unconstitutional And Infringing On The Petitioner's Under Article 40 Of The Kenyan Constitution,2010?

130. The first issue for determination in the present Petition is whether or not the Appeal filed by the 1st Respondent before the 2nd and 3rd Respondents was done within the prescribed time under the [Land Adjudication Act](#), Cap 284.



131. The Petitioner herein admits that the 1st Respondent filed an Objection against the Adjudication Record No. 263811 of Plot.no.411 within Oldanyati Adjudication Section which had recorded him as the beneficial owner of the said property.
132. The Petitioner and the 1st Respondent confirmed that the Objection filed by the 1st Respondent was assigned Objection No. 138 by the Land Adjudication Officer.
133. Thereafter, Objection No. 138 was duly heard on its merits with the participation of both the Petitioner and the 1st Respondent and the determination pronounced on the 24.03.2011.
134. The determination of the Land Adjudication Officer relating to the Objection No. 138 was a dismissal of the same.
135. The Petitioner is of the view that the 1st Respondent was granted 60 days right of Appeal.
136. However, the 1st Respondent herein did not file any Appeal before the 3rd Respondent until in the year 2012.
137. According to the Petitioner, the number assigned on the proceedings of the Appeal To The Minister Case No.360 Of 2012 clearly confirms that the 1st Respondent appeal was filed in the year 2012 and not within the 60 days after the determination by the Land Adjudication Officer.
138. In essence therefore, the actions of the 2nd and 3rd Respondents in receiving the 1st Respondent's Appeal out of time and thereafter proceeding to entertain the same was ultra-vires, illegal and unconstitutional hence the resultant outcome interfered with the Petitioner's right of ownership over the property known as Plot.no.411 within Oldanyati Adjudication Section and infringed on the Petitioner's right under Article 40 of the Kenyan Constitution, 2010.
139. The 1st Respondent on the other hand despites the Petitioner's action of events.
140. The 1st Respondent pleaded that indeed there was an Objection No. 138 before the Land Adjudication Officer over the property known as Plot.no.411 within Oldanyati Adjudication Section which was heard and determined on the 24.03.2011.
141. The 1st Respondent being aggrieved with the determination of the Land Adjudication Officer pronounced on the 24.03.2011 proceeded to file an Appeal against the same.
142. The 1st Respondent's testimony is that the Appeal preferred to the 3rd Respondent was lodged on the 20.05.2011.
143. The 1st Respondent produced a Government Receipt No.1360236 dated 20.05.2011 as Defence Exhibit 4.
144. The 1st Respondent's submission was that once a party pays for the Appeal in the 2nd Respondent's office, the Appeal is forwarded to the offices of the 3rd Respondent in Nairobi to assign the number and thereafter the 2nd Respondent is delegated to heard and determine the same.
145. Consequently therefore, the allegation that the Appeal was filed in the year 2012 because of the number assigned to the proceedings before the 2nd Respondent was misleading and incorrect.
146. The 1st Respondent submitted that the correct date upon which the Appeal to the 3rd Respondent was received was the 20.05.2011 which was within 60 days from 24.03.2011.
147. In essence therefore, the 1st Respondent's position was that the Appeal before the 3rd Respondent was indeed filed within the prescribed time provided in law.



148. To begin with, it is not in dispute that the period within which an aggrieved party should prefer an Appeal under Section 29 of the [Land Adjudication Act](#), Cap 284 is 60 days from the pronouncement of the decision by the Land Adjudication Officer handling the Objection.
149. The debate before this Court therefore is which date should be applied by the Court to compute the 60 days period provided under Section 29 of the [Land Adjudication Act](#), Cap 284 to resolve this issue.
150. According to the Petitioner, the date applicable should be derived from the number assigned on the proceedings known as Appeal To The Minister Case No. 360/2012.
151. The Petitioner's submission is that the Case No. 360/2012 clearly shows that the Appeal was filed in the year 2012 which was over 9 months after the determination pronounced on the 24.03.2011 and way out of the prescribed period of 60 days under Section 29 of the [Land Adjudication Act](#), Cap 284.
152. On the other hand, the 1st Respondent submitted that the actual date of filing the Appeal was 20.05.2011 when he paid for the Appeal as provided in the Defence Exhibit 4.
153. The 1st Respondent explained that the assignment of the numbers for the Appeals is done in Nairobi by the 3rd Respondent after the same are forwarded by the 2nd Respondent.
154. Section 29 (1) of the [Land Adjudication Act](#), Cap 284 provides as follows;-

“

“(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within 60 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 other shall be final.”

155. In the Land Adjudication Regulations created under Section 35 of the substantive [Land Adjudication Act](#), Cap 284, Regulation 4 (1) and (2) provides as follows;-

“

“(1) Any person submitting an appeal to the Minister under Section 29 of the Act shall attach to his appeal a tracing from the demarcation map of the boundaries of the holdings in dispute.

- (2) A fee shall be payable in respect of each appeal at the rate specified in the second schedule of these regulations

Provided that the Minister may, in his discretion, waive part of the fees or the whole of the fees payable under this paragraph.”



156. Similarly, Section 107 of the Evidence Act, Cap 80 states as follows; -

- “(1) whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”

157. In this issue, the Petitioner is alleging that the Appeal filed by the 1st Respondent was filed after the lapse of the 60 days period provided under Section 29 of the Land Adjudication Act, Cap 284.

158. Section 107 of the Evidence Act, Cap 80 places the obligation of proving these facts on the Petitioner and not the 1st Respondent.

159. With the guidance of Section 29 (1) of the Land Adjudication Act, Cap 284 as read with Regulation 4 (1) and (2) of the 1st Schedule under the Land Adjudication Act, Cap 284, the Petitioner was first required to present the following documents to confirm whether or not the Appeal was filed out of time;-

- a. A copy of the written Appeal filed by the 1st Respondent before the 3rd Respondent.
- b. A copy of the fee payable receipt issued by the 3rd Respondent to the 1st Respondent.

160. These two documents hereinabove would give the clear date of when the 1st Respondent filed the disputed Appeal before the 3rd Respondent and whether it was filed within time and/or outside of the prescribed time.

161. Unfortunately, in the present Petition, the Petitioner did not present any of the two documents specified hereinabove in Paragraph 159 but instead sought to rely on the number assigned on the proceedings of the Appeal only.

162. During the Cross-examination of the 1st Respondent by Counsel for the Petitioner, the Petitioner also tried to shift the burden of proving when the Appeal was filed to the 1st Respondent.

163. With tremendous respect to the Petitioner, Section 107 of the Evidence Act expressly provides that this burden lies squarely of the person who alleges.

164. Consequently therefore, in absence of both the written appeal and the receipt of payment for the said Appeal, the Petitioner can not be said to have proved that the Appeal was filed outside the prescribed time of 60 days from 24.03.2011.

165. The Petitioner’s reliance of the number assigned on the Appeal as Case No.360 of 2012 is not enough to persuade this Court that indeed the Appeal was filed in the year 2012.

166. The assignment of the Case Number by the 3rd Respondent in the Court’s view is an exercise that is undertaken after the written Appeal is filed and paid for under Regulation 4 in the Land Adjudication Regulations.

167. There is no specific time that the 3rd Respondent has been directed to register and assign the Appeals under the substantive Land Adjudication Act and/or the Regulations therein.

168. For example an Appeal filed in the year 2010 can be assigned a case number in the year 2015 depending on the date upon which the 3rd Respondents received the said Appeals and acted on them.



169. In essence therefore, a copy of the written Appeal and the requisite payment receipt thereof would be the crucial documents in proving whether or not an appeal was filed within the prescribed time and/or outside the prescribed time.
170. In other words, this Court is of the considered finding that the Petitioner did not table any evidence to show that the Appeal filed by the 1st Respondent was outside the prescribed time of 60 days and as such, this 1st Respondent's Appeal to the 3rd Respondent assigned Appeal To The Minister Case No. 360 Of 2012 is legitimate and lawful.
171. An Appeal under Section 29 of the *Land Adjudication Act*, Cap 284 is one of the dispute resolution mechanisms under the Statute and therefore the application of such an avenue cannot be deemed to infringe the Petitioner's right to own property as enshrined under Article 40 of the Kenyan Constitution, 2010 before all the internal dispute resolution mechanisms under the Act have been exhausted.
172. In conclusion therefore, this Court is of the considered opinion that the Petitioner's right to own property as enshrined under Article 40 of the Kenyan Constitution, 2010 were not infringed by the filing of the APPEAL CASE NO. 360 OF 2012 by the 1st Respondent as alleged.

Issue No. 2- If The Answer To Issue No.1 Is To The Positive, Whether Or Not The Hearing & Determination Of The 1st Respondent's Appeal Before The 2nd & 3rd Respondents Denied The Petitioner A Right Of Hearing As Enshrined In Article 47 Of The Kenyan Constitution,2010?

173. The Court having made a finding that the 1st Respondent's Appeal to the Minister was filed within the prescribed time, the next issue was the manner in which the Appeal before the 3rd Respondent was undertaken by the 2nd Respondent.
174. To begin this exercise, the Petitioner has pleaded that the Appeal to the 3rd Respondent filed by the 1st Respondent was in fact withdrawn and/or settled through a letter dated 23.05.2013 produced as Petitioner's Exhibit 4.
175. The Petitioner testified that the letter dated 23.05.2013 was prepared after the Petitioner and the 1st Respondent mutually agreed that whatever dispute was their between them should be amicably settled.
176. The Petitioner informed the Honourable Court that the letter dated 23.05.2013 was drawn and delivered to the offices of the 2nd Respondent on the same day.
177. However, the Petitioner admitted that the letter dated 23.05.2013 was never stamped officially by the 2nd Respondent but he simply placed it on the table.
178. The Petitioner's position therefore was that in fact there was no Appeal before the 2nd Respondent capable of being heard and determined.
179. The 1st Respondent on the other hand disputed both the existence of the letter dated 23.05.2013 and/or the contents thereof.
180. The 1st Respondent testified before the Court that the Appeal before the 2nd Respondent was indeed heard in the year 2021 with the participation of the Petitioner herein.
181. In other words, the Petitioner was aware at all times of the pending Appeal before the 2nd Respondent and even participated at the hearing by giving evidence before the determination was pronounced.



182. On this aspect of whether the Appeal before the 2nd Respondent was withdrawn or not, this Court takes note that the letter dated 23.05.2013 is in dispute.
183. However, regardless of the contents of the letter dated 23.05.2013, the issue is if the same ever reached the offices of the 2nd Respondent and was acknowledged.
184. The Court has carefully perused the Letter dated 23.05.2013 and confirm that the same has no acknowledgement stamp and/or receipt from the 2nd Respondent's office.
185. In essence therefore, there is no evidence that the letter dated 23.05.2013 was ever received by the 2nd Respondent to necessitate his action of withdrawing the Appeal filed by the 1st Respondent.
186. However, what is more interesting about this letter dated 23.05.2013 is that even after its purported delivery to the 2nd Respondent's office, the proceedings that were undertaken in the year 2020 in the same offices of the 2nd Respondent show that the Petitioner duly participated in the Appeal.
187. The question that begs to be answered is why did the Petitioner participate in the proceedings relating to the Appeal filed by the 1st Respondent if a Notice of Withdrawn of the same had been served on the 2nd Respondent in the year 2013?
188. The only viable answer to this question is that the letter dated 23.05.2013 was either never delivered and/or the parties rescinded their resolution to have the Appeal withdrawn.
189. The truth about this letter dated 23.05.2013 and whether or not it was received in the offices of the 2nd Respondent will remain with the Petitioner and/or the 1st Respondent herein.
190. However, as far as this Court is concerned and the evidence tabled before it, there is no proof that the letter dated 23.05.2013 reflected the true position between the parties and/or was ever delivered and/or acknowledged by the 2nd Respondent to mark the Appeal as withdrawn.
191. The second aspect of this issue to be determined is if the Petitioner was granted a fair hearing during the Appeal hearing by the 2nd Respondent.
192. In the Petitioner's pleadings and in particular Paragraph 11 and 12 of the Petition, the Petitioner states that he was never informed that the Appeal filed by the 1st Respondent was never terminated and/or withdrawn.
193. The Petitioner pleaded that he only came to know of the Proceedings before the 2nd Respondent appertaining the Appeal by the 1st Respondent from the offices of the 5th Respondent when he went to collect the Title but found the same already released to the 1st Respondent.
194. Consequently, the 2nd Respondent actions of proceeding with the hearing and determination of the Appeal To The Minister Case No.360 OF 2012 without his knowledge and/or participation denied him a chance to be heard and access justice as provided under Article 48 and 50 of the Kenyan Constitution, 2010.
195. The 1st Respondent disputed the Petitioner's pleadings and stated in his Replying Affidavit that the Petitioner was duly informed of the hearing relating to the Appeal To The Minister Case No.360 OF 2012.
196. The 1st Respondent testified that the Summons to attend the hearing were served upon him by the Area Chief.



197. Based on the Summons served by the Area Chief, the Petitioner attended the 2nd Respondent's office in the year 2021 and duly participated in the hearing of the Appeal To The Minister Case No.360 of 2012 as contained in the Respondent's Exhibit No.5.
198. The 1st Respondent's submission is that the Petitioner was well informed of the proceedings of the Appeal To The Minister Case No. 360 Of 2012 and his right to access justice and/or to be heard duly adhered to by the 2nd Respondent before the determination was pronounced.
199. Indeed, the question at hand is whether the Petitioner ever participated in the proceedings relating to the Appeal To The Minister Case No.360 Of 2012 or not.
200. As stated hereinabove, the Petitioner's pleadings confirm that he was never aware of any proceedings before the 2nd Respondent after the letter dated 23.05.2013 was delivered.
201. In the Petitioner's pleadings, his understanding was that the Appeal To The Minister Case No.360 Of 2012 had been withdrawn and all that he was waiting for was the registration and issuance of the title Lr.no.transmara/oldanyati/411 in his name.
202. It was only until the 10.03.2021 that the Petitioner discovered that the property known as Lr.no.transmara/oldanyati/411 had actually be registered in the name of the 1st Respondent pursuant to a determination by the 2nd Respondent in the proceedings known as Appeal To The Minister Case No.360 Of 2012.
203. The 1st Respondent through the Respondent's Exhibit 5 has denied these facts and placed before the Court the certified proceedings and determination of the 2nd Respondent relating to the Appeal To The Minister Case No. 360 Of 2012.
204. A perusal of the Certified copies of the proceedings and determination of the Appeal To The Minister Case No. 360 Of 2012 confirms that the Petitioner was actually aware of the hearing on that material date and fully participated in the proceedings.
205. The Petitioner in fact extensively raised the issue that he thought the Appeal and been withdrawn.
206. The Petitioner however testified that the proceedings and determination of the 2nd Respondent in the Appeal To The Minister Case No. 360 Of 2012 were fraudulent and/or forged with an intention of denying him the right to access justice and/or enjoy a fair hearing as enshrined in the Kenyan Constitution,2010.
207. Section 83 (1) of the Evidence Act, Cap 80 provides as follows about Certified Public Documents; -
- “(1) The Court shall presume to be genuine every document purporting to be certificate, certified copy or other document which is;-
- a. Declared by law to be admissible as evidence of any particular fact; and
 - b. Substantially in the form, and purporting to be executed in the manner, directed by law in that behalf; and
 - c. Purporting to be duly certified by a public officer.
- (2) The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such a document.”



208. The proceedings and determination of the Appeal To The Minister Case No 360 Of 2012 having been duly certified as a true record by the Director of Land Adjudication on the 18.12.2020, this Court hereby makes a finding that the said proceedings and determination are genuine in line with the provisions of Section 83 (1) of the *Evidence Act*, Cap 80.
209. The Court having arrived at the finding that the proceedings and determinations relating to the Appeal To The Minister Case No.360 Of 2012 are genuine and correct as produced by the 1st Respondent, then a careful perusal of the same confirms the attendance and participation of the Petitioner during the said hearing before the 2nd Respondent.
210. The proceedings produced as Respondent's Exhibit 5 capture the testimony and evidence of the Petitioner during the hearing of the Appeal To The Minister Case No. 360 Of 2012 before the 2nd Respondent and therefore this Court is of the considered opinion that the Petitioner was granted a fair hearing and access to justice as provided under Article 48 and 50 of the Kenyan Constitution, 2010.
211. Similarly, the 2nd Respondent undertook his statutory duties within the principles provided under Article 48 of the Kenyan Constitution, 2010 by recording his findings and/or reasons that resulted to the issuance of the verdict therein.
212. In conclusion therefore, this Court hereby makes a finding that the 2nd Respondent herein did not in any way infringe the Petitioner's rights as provided in Article 47,48 and 50 of the Kenyan Constitution, 2010 as pleaded in the present Petition.
213. In addition to the above, the proceedings and determination by the 2nd Respondent in Appeal To The Minister Case No. 360 Of 2012 were not fraudulent and/or intended to infringe the Petitioner's right to own property as envisaged under Article 40 of the Kenyan Constitution, 2010 but were simply undertaking and/or exhausting the Internal Dispute Resolution Mechanisms that are provided for under the *Land Adjudication Act*, Cap 284.

Issue No. 3- Whether Or Not The Petitioner Is Entitled To The Prayers Sought In The Present Petition?

214. The third issue for determination in the present Petition is whether or not the Petitioner is entitled to the prayers sought therein.
215. Based on the finding made in Issue No. 1 and 2, this Honourable Court is satisfied that the 2nd Respondent did not infringe on any of the Petitioner's rights as provided under Article 40,47,48 & 50 of the Kenyan Constitution, 2010.
216. Further to that, the Court on the guidance of Section 83 (1) of the *Evidence Act*, Cap 80 has confirmed that the proceedings and determination by the 2nd Respondent contained in the Respondent's Exhibit 5 are the true and genuine records by the office of the Director of Land Adjudication.
217. As such, the determination made by the 2nd Respondent to the effect that the 1st Respondent is the lawful beneficial owner of the property known as Plot.no.411 within Oldanyati Adjudication Section Now Titled As Lr.no.transmara/oldanyati/411 is final and this Honourable Court does not have the powers to the alter such a decision made under Section 29 of the *Land Adjudication Act*, Cap 284.
218. In essence therefore, the prayers sought in the present Petition cannot be granted.

Issue No. 4- Who Bears The Costs Of This Petition?

219. The last issue for determination is who should bear the costs of the present Appeal.



220. Costs usually follow the event and, in this instance, the Petition has failed hence the costs should be to the Petitioner.

Conclusion

221. In conclusion therefore, this Court hereby makes the following Orders in determination of the Petition dated 05.08.2022; -

- A. The Petition Dated 05.08.2022 Be And Is Hereby Dismissed.
- B. The Petitioner Shall Bear The Costs Of This Petition.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 28TH OF MAY 2024.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

Court Assistant: Mr. Ngeno

Advocates For The Petitioner: Mr. O. M. Otieno (n/a)

Advocates For The 1st Respondent: Mr.shira For The 1st Respondent

