



**Leitich & 4 others v Attorney General & another (Environment & Land
Petition 2B of 2023) [2024] KEELC 4115 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4115 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND PETITION 2B OF 2023**

MC OUNDO, J

MAY 9, 2024

BETWEEN

**ESTHER CHERONO LEITICH 1ST PETITIONER
PRISCILA CHEMUTAI NGENO 2ND PETITIONER
JOSEPH KIPNGENO LANGAT 3RD PETITIONER
JULIANA CHEPKOECH NGENO 4TH PETITIONER
ELIZABETH CHEPKORIR NGENO 5TH PETITIONER**

AND

**ATTORNEY GENERAL 1ST RESPONDENT
COUNTY GOVERNMENT OF KERICHO 2ND RESPONDENT**

RULING

1. This matter was coming up for judgment on the Petitioners' manmade Petition dated the 17th February, 2023, but after due consideration of the same and in the best interest of justice, I chose to deliver a ruling instead so as to give the Petitioners', who are laymen, another bite at the cherry. The Petitioners are beneficiaries of the estate of Kipkurui Maina who was the proprietor of land parcel referred to as Kericho/Kapkatet/483 and wherein they had been awarded land parcels No. Kericho/Kapkatet/3272 to 3276. They had thus filed their Petition seeking for the following reliefs;
 - i. That an injunction be placed in accordance with the application certified urgent attached hereto.
 - ii. That an order from the court restrains any direction from any other such organization that might wish to take land from this property in question held by the petitioners.



- iii. That in the event such organization supersedes in right that of the Petitioner, that this honorable court offer compensation to said petitioners.
 - iv. That the court award loss of earnings at a court directed amount for the period the petitioners have been displaced.
 - v. General and specific damages for injury
2. The 1st Respondent vide its Grounds of Opposition dated 30th October, 2023, opposed the instant Petition on the following grounds:
 - i. That the Petition makes no allegation of any infringement or violation of the Petitioners' rights by the 1st Respondent while it was a well-developed principle that in Constitutional litigation, a party that allege violation of his or her rights must plead with reasonable precision in regard to the manner in which there has been such alleged violation as had been enumerated in the case of *Anarita Karimi Njeru v The Republic* (1976-1980) KLR 1272.
 - ii. That the Petitioners have failed to plead any particulars of such infringement as required for a petition to meet the Constitutional threshold. That it was a cardinal rule in the drafting of Petition that the Articles of *the Constitution* which entitles rights to the Petitioner must be precisely enumerated and the claim pleaded to demonstrate such violation with the violation being particularized in a precise manner. Furthermore, the manner in which the alleged violations were committed and to what extent must be shown by way of evidence based on the pleadings.
 - iii. That the Petition is otherwise incompetent, misconceived, misplaced and is an abuse of the process of the court as the Petitioners rights and fundamental freedoms had not been breached in any manner as alleged or at all and the same should be dismissed with costs.
 3. The 2nd Respondent did not participate in the instant Petition.
 4. Despite directions having been taken that the Petition be disposed of by way of written submissions, only the 1st Respondent complied and filed its written submissions dated 19th December, 2023.

1st Respondent's Submissions.

5. In summary, the 1st Respondent framed one issue for determination to wit; whether the Petitioners had met the threshold required to file a Constitutional Petition, and placed reliance in the decided cases of *Anarita Karimi Njeru v The Republic* (1976-19800 KLR 1272 and *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR to submit in the negative. That the Petitioners had failed to set out their complaint with a degree of precision, specific provisions of law alleged to have been infringed, and the manner in which they are alleged to be infringed.
6. Reliance was placed in the decided cases of *Leonard Otieno v Airtel Kenya Limited* [2018] e KLR, *Japheth Ododa Origa v Vice Chancellor, University of Nairobi & 2 Others* [2018] eKLR and *Manase Guyo & 260 Others v Kenya Forest Services* [2016] eKLR to submit that the nowhere in their Petition had the Petitioners pleaded the particulars of violation of their Constitutional rights by the Respondents and neither had there been any proof of the violation offered through a Supporting Affidavit. That the Respondent were at a loss as to what to respond to. That the Petitioners had thus left it to the court to guess what specific rights had been infringed by the Respondents.
7. Further submission was that the Petitioners had not disclosed to the court the exact location where the police station had been built and by whom. Further that the five title deeds numbers Kericho/



Kapkatet/3272-3276 were of no value if they did not aid the court in ascertaining the exact parcels alleged to have been illegally acquired and it was not adequate for the Petitioners to merely narrate events and make proclamations without providing specific provisions of the law that had been offended or a single affidavit in support their assertions. That indeed there had been no constitutional issues discernable in the entire petition to warrant its admission and adjudication before the court.

8. In conclusion, the 1st Respondent prayed that the court finds that the instant Petition had not met the threshold for Constitutional Petition, that the same was defective and proceed to dismiss it with costs to the Respondents.

Analyses and determination.

9. I have painstakingly considered the contents of the Petitioners' Petition which was not supported by any affidavit. I have also considered the 1st Respondents' Grounds of Opposition and its submissions herein, as well as the relevant provisions of the law and authorities herein cited. I must say that this Petition was dead on arrival in the first instance for the following reasons.

10. First, that the same was initially filed in the High Court sitting at Kericho as High Court Petition E001 of 2023 wherein the same was transferred to this court vide the Hon Judge's order of 13th March 2023. Section 18 of the [Civil Procedure Act](#) bestows upon the High Court (read ELC) the powers to transfer suits of a civil nature. The said provisions of the law provides as follows;

“(1) On the Application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.

11. It is now trite that if a matter is filed in a Court that has no jurisdiction to hear and determine the same, then it would mean that such matter is incompetent and the Court does not have jurisdiction to transfer it to a court of competent jurisdiction where it ought to have been filed in the first instance.



12. In the case of *Boniface Waweru Mbiyu vs. Mary Njeri & Another* [2005] eKLR the court had held that:
- “Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court”.
13. In *Wamathu Gichoya v Mary Wainoi Magu* [2015] eKLR the Court held that:-
- “Furthermore, according to *Kagenyi v Musiramo and Another*, supra, the power to transfer a case to the High Court for hearing may only be exercised if the court before which it is filed is a court vested with competent jurisdiction to try and dispose of the matter. In other words, if the suit filed is incompetent, the High Court lacks jurisdiction to effect a transfer.”
14. It is therefore clear that since this suit was instituted before the High Court which had no jurisdiction, such a suit, it is trite cannot be transferred, pursuant to the provisions of Section 18, to the Environment and Land Court, where it ought to have been instituted in the first instance, as the said directive was a nullity in law. There can therefore not be a determination on a non-existent suit as the court can only transfer a cause whose existence is recognized by law.
15. Secondly, it is trite that it was for the Petitioners to prove on a balance of probabilities that their fundamental freedoms and rights as protected by or under *the Constitution* had been violated. They ought to have established this by not only clearly identifying the relevant and specific Articles of *the Constitution* but availing evidence, through affidavit or otherwise of such violation as per the required standard set out in respect of the Constitutional Petitions as set out in the case of *Anarita Katimi Njeru vs The Republic* (196-1980) KLR 1272 where it was held, in the words of the Justices Trevelyan and Hancox that;
- “We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
16. Not only had the Petition not provided the relevant and specific Articles of *the Constitution* alleged to have been violated, but it was not also supported by any supporting affidavit and therefore did not provide adequate particulars of the claim relating to the alleged violations of *the Constitution* of Kenya, and thus did not meet the standard as enunciated in the *Anarita Karimi Njeru* case (supra).
17. Lastly, whereas the court had directed that the Petition be disposed of through written submissions, there had been no compliance with the said directions. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that since the Petitioners failed to file their submissions as ordered by the court is deemed that they had failed to prosecute the same and therefore the Petition was liable for dismissal as it demonstrated the Petitioners’ inertia, and inordinate delay, lack of interest and/or seriousness in the prosecution of the matter.



18. For the above reasons, and so as not to drive the Petitioners out of the seat of justice while keeping in mind that they are lay persons, their Petition dated 17th February 2023 is herein struck out with no costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 9TH DAY OF MAY 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

