



**Henry & another v M'Anampu & another (Petition E001 of 2022)
[2024] KEELC 5317 (KLR) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION E001 OF 2022
CK YANO, J
JULY 18, 2024
IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OF FUNDAMENTAL
FREEDOMS UNDER ARTICLE 40 AND 50 OF THE CONSTITUTION OF KENYA**

BETWEEN

**LOICE GACEKE HENRY 1ST PETITIONER
MICHAEL RIMBERIA 2ND PETITIONER**

AND

**SAMUEL KIRERIA M'ANAMPU 1ST RESPONDENT
THE LAND ADJUDICATION AND SETTLEMENT OFFICER, RUIRU/
RWARERA ADJUDICATION SECTION 2ND RESPONDENT**

JUDGMENT

The Petitioner's Case

1. The petitioners filed a petition dated 27th January, 2022 praying for judgment against the respondents that;
 1. The decision relating to the ownership of land parcel Number 529 within Ruiiri/rwarera/ adjudication Section by the 2nd respondent in objection number 520 be quashed.
 2. The 2nd respondent be directed to hear the objection relating to the ownership of land parcel number 529 within Ruiiri/rwarera/ adjudication section afresh.
 3. The petitioners be awarded the costs of this petition.



2. The petition is based on the grounds set out in the body of the petition and in the supporting affidavit of Michael Rimberia, the 2nd petitioner herein sworn on 27th January, 2022.
3. The petitioners aver that they are the legal representatives of the estate of their late father Girishon Rimberia Mugaine alias Gellishon M'Rimberia (deceased) and have exhibited a copy of the limited grant issued to them marked "MR 1". That the deceased is the registered owner of land parcel number 529 within Ruiri/rwarera adjudication Section (hereinafter "the suit property").
4. The petitioners aver that the deceased died on 19th October, 1986 before completion of the adjudication process in the said section. That prior to his death, the deceased was in exclusive possession of the said land and after his death, the petitioners continued utilizing the said land and were in possession as at the time of filing this petition.
5. The petitioners aver that it has come to their knowledge that an objection in respect to the ownership of the said land by the deceased was brought by the 1st respondent before the 2nd respondent. That the dispute was heard and determined by the 2nd respondent vide objection number 520. Copies of the proceedings and decision marked "MR II" are annexed. That the said record indicates that the deceased was represented by Douglas Kirimi Rimberia and Obadiah Thurania, who, although are sons of the deceased, had no authority to deal with the issue of ownership of the property of the deceased. That the family of the deceased had never settled on a representative of his estate and the purported representatives were on their own mission when they purported to attend the hearing of the dispute.
6. The petitioners aver that they and their other siblings, namely Naomi Mwitabi and Margret Murega were never informed of the institution of the dispute and are surprised that the same was heard without their involvement. The petitioners further aver that they have been appointed to represent the estate of the deceased for purposes of preserving the said land.
7. The petitioners aver that the 1st respondent knew that the registered owner of the land was deceased but chose the persons that he would deal with in pursuing his claim. That the estate of the deceased was disadvantaged as it was not properly represented at the hearing. It is the petitioner's contention that the estate of the deceased was not given a fair hearing by the 2nd respondent who ought to have ascertained the status of the persons purporting to represent him. The petitioners added that the estate of the deceased has been greatly prejudiced by the said hearing and now stands the risk of losing a huge chunk of the land.
8. The petitioners believe that had the respondents acted fairly, they would have first ascertained the status of the estate of the deceased before proceedings with the hearing of the dispute. The petitioners aver that their right to ownership of the land and fair hearing of the dispute have been contravened and seek this Honourable Court's intervention to quash the said decision.
9. Michael Rimberia testified on behalf of the petitioners and relied on his supporting affidavit as his evidence in chief and was cross-examined and re-examined. He stated that they were using about 10 acres of the suit land which measures about 22 acres.
10. The 2nd petitioner testified that the 1st respondent is their relative and was also a friend to their father. He stated that he was aware that their father had taken a loan with the Agricultural Finance Corporation. That he had seen a sale agreement between his father and the 1st respondent in which the 1st respondent purchased land from the petitioner's deceased father and paid Kshs. 70,000/=. He further stated that the 1st respondent has been using the suit land while the petitioners are using part of it. He confirmed that the 1st respondent entered the land when the petitioners' father was still alive and never made any attempts to evict him therefrom. He stated that he was not aware of any dispute between the 1st



respondent and the petitioners' father. He further stated that his father died in the year 1986 and that the 1st respondent has been using the land from then upto the year 2020 when a dispute arose between the family of the 1st respondent and that of the petitioners. That the dispute resulted in an objection in which the petitioners' brothers namely Douglas Kirimi Rimberia who is the first born and Obadiah Thurania participated in. the 2nd petitioner stated that summons could have been served, but he was not aware since he was living in Kisumu in 2020. That they were later informed about the decision made over the objection proceedings. He further stated that he was aware that they were given a right of appeal within 60 days, but they filed this petition after that period had expired. He stated that none of the parties has a title over the land.

Respondents' Case

11. The 1st respondent filed a replying affidavit dated 23rd February, 2022 in which he avers inter alia, that the late Gerishon M'rimberia Mugaine was a close relative being his first cousin. That in or about 1982, the deceased's ancestral land at Chugu area was being sold by public auction by Agricultural Finance Corporation due to an unpaid loan and as a family, they sat down and agreed to find a solution to stop the said land from being auctioned. That thereafter, the 1st respondent, M'thuranira Rukunga, the deceased and one Julius Kiunga discussed the matter and the deceased agreed to sell a portion of land to the 1st respondent to repay the loan and to stop the same from being auctioned.
12. The 1st respondent avers that on 18th October, 1982, they entered into an agreement for the sale of 15 acres out of land parcel Number RUIRI/RWARERA/529 at an agreed consideration of Kshs. 13,500/=. He attached copy of the agreement for sale marked SKN I1". That on the date of signing the agreement, he paid Kshs. 7,500/= to the petitioners' deceased father and it was agreed that the balance of the purchase price was to be paid on or before 31st July, 1983 and the same was paid on 14th July, 1983. A copy of the acknowledgment marked "SKM 2" has been annexed.
13. The 1st respondent states that upon executing the agreement, he took over possession of the said 15 acres and is still in actual occupation to date, a fact well known to the petitioners and other family members.
14. The 1st respondent avers that he connected water to his portion of land and has annexed copies of receipts marked "SKM 3a" and "SKM 3b" from Gaitenga water project. That in the year 2003, he applied to the 2nd respondent for the transfer of the said 15 acres and also filed an objection number 520 because the seller had died in 1996 before transferring the land. A Letter dated 18th March 2003 and a receipt marked "SKM 4a" and "SKM 4b" are annexed.
15. The 1st respondent further states that upon entering the land, he built a semi-permanent house thereon and also allowed his relative to utilize 3 acres out of the said portion.
16. The 1st respondent states that the said objection was heard on 1st July, 2020 and was determined in his favour as admitted by the petitioners. That during the hearing of the objection, the family of the deceased was duly served with summons and was fully represented and they tendered their evidence. A copy of the summons marked "SKM 5" is annexed. That during the hearing of the objection, it was established that the 1st respondent had entered into an agreement for sale of the land on 18th October, 1982 and had been in occupation of 15 acres for an uninterrupted period of over 35 years as at the year 2020.
17. The 1st respondent states that upon the conclusion of the said objection, he was awarded his 15 acres and a new parcel number 11312 was issued to him and what is pending is the issuance of a title deed. Copies of the proceedings and decision marked "SKM 6" are annexed. That upon the determination



- of the objection, the petitioners' family were informed of their right of appeal to the Minister but they never filed any and the period for filing appeal as per the law has since lapsed. The 1st respondent denied that the deceased was in exclusive possession of the portion measuring 15 acres which is well marked on the ground and which the 1st respondent stated he has been in actual occupation and possession pursuant to the agreement of 18th October, 1982. He accused the petitioners for failing to disclose the true status of the land and for swearing falsehoods by alleging that they were not aware of the objection proceedings. The 1st respondent reiterated that having been sold the land by the petitioners' father, the petitioners and their family are estopped from denying the contract entered into in 1982. That the purchase price paid to the petitioners' father saved the land from being auctioned.
18. Relying on advice, the 1st respondent contends that the petitioners having failed to follow the law have not demonstrated any constitutional issues and urged the court to dismiss the petition for being an abuse of the court process.
 19. The 1st respondent adopted his statement dated 6th October, 2022 as his evidence in chief and produced the annexures in his replying affidavit as D exhibits 1 -8 respectively. He was also cross-examined and re-examined. He basically reiterated the facts contained in his replying affidavit. The 1st respondent also called 4 witnesses John Kimaita M'Mukira, Samwel Maina Mathenge, Lucy Mwiriki Kinoti and Leah Nkirote who adopted their witness statements dated 6th October, 2022.
 20. The 2nd respondent filed a replying affidavit dated 11th October, 2023, sworn by J.N Kithinji, the Land Adjudication and Settlement Officer (DLASO) Imenti North. He avers inter alia, that the 2nd respondent is duly appointed and empowered to act in accordance with the laid down laws and procedures under the [Land Adjudication Act](#) Cap 284 Laws of Kenya.
 21. He states that land parcel No. 529 RUIRI/RWARERA measuring 22 acres or thereabout was demarcated and recorded to Gerishon Mberia. That the parcel was affected by an objection No. 520 by the 1st respondent claiming 15 acres which he had bought. That the objection was heard on 1st July, 2020 and judgment delivered in favour of the 1st respondent who was awarded 15 acres and issued with a new number 11312. A copy of the objection proceedings marked "JML 1" are annexed.
 22. The deponent states that in undertaking the said proceedings both at the objection stage and the appeal stage, the 1st and 2nd respondents were guided by [the Constitution](#) of Kenya 2010 and the [Land Adjudication Act](#) alongside the Rules of Natural Justice and due process of the law. That the implementation of the Adjudication Register Objection decision is pending because the petitioners have refused to allow the implementation of the same on the ground.
 23. Relying on legal advice, the 2nd respondent states that the petitioners have failed to exhaust all statutory obligations and remedies before filing this petition. That under the [Land Adjudication Act](#), any person who is aggrieved by the determination of an objection by the Land Adjudication Officer ought to appeal within 60 days to the minister whose decision is final. That the petitioners are yet to lodge any appeal to the minister as provided by Section 29 of the said Act. That the petitioners have not demonstrated that they lodged an appeal to the minister if they were not satisfied with the outcome of the objection proceedings. That the petitioners ought to exhaust all the remedies availed to them.
 24. The 2nd respondent further avers that the petitioners have not demonstrated with precision how their fundamental rights and freedoms under [the constitution](#) have been violated or threatened contrary to the principles espoused in the locus Classicus decision in Mumo Matemu V Trusted Society of Human Rights Alliance [2013] eKLR and Annarita Karimi Njeru (1979) KLR 154. That the petitioners have neither satisfied the conditions laid down by the law for the Honourable court to exercise its discretion in their favour, nor have they proved the grounds relied upon to warrant grant of the orders sought.



- It is also the 2nd respondent's contention that this court does not have jurisdiction to entertain this petition since the petitioners have not exhausted the remedies available to them before instituting this suit. The 2nd respondent prays for the dismissal of the petition as it lacks merit.
25. At the hearing, Joseph Njagi Kithinji adopted the facts and contents in his replying affidavit as his evidence in chief and produced the annexure thereto as an exhibit. He was cross-examined and re-examined.
 26. He stated that he was not the one who handled the dispute, but the office had all the records of the dispute. He stated that the area was declared an adjudication area in around 1983 and that the officer in charge must have given notice to the residents as required.
 27. The 2nd respondent testified that the only person who made a claim was Gerishon Mberia. That as per the record, there was no dispute brought to the Land Adjudication Committee constituted under the Act. That the Act provides that the AR objection can be made on the correctness of the register. That the register is based on the adjudication record passed to him by the committee.
 28. The 2nd respondent stated that in this case, there was a notice inviting objections. That once a notice is given, there is a time frame of 60 days. He did not know when that period of 60 days lapsed. He stated that the first dispute heard by the DLASO had not been heard by the recording officer and the Land Adjudication Committee. He stated that the dispute was purely a commercial one because of the agreement. He stated that there was no evidence to show that the persons who represented the registered owner in the case were his legal representatives.
 29. The 2nd respondent explained that after 60 days, the DLASO starts to hear and determine objections and that that was the procedure followed in this case. He further stated that notice was sent to Gerishon Mberia who was deceased, and was received by members of his family. That no appeal was filed against the decision.
 30. The 2nd respondent stated that Gerishon Mberia was represented by his two sons. He stated that due to the quasi judicial position of their function, they do not strictly require letters of administration. That once summons are sent to the family and a member of that family attends that would suffice.

Petitioners' Submissions

31. In their submissions dated 24th February, 2024 filed through the firm of Gatari Ringera & Co. Advocates, the petitioners gave a summary of the case and identified the issues for determination to be whether the 1st respondent (sic) had the jurisdiction to entertain the objection and whether the family of the registered proprietor of the land was legally represented during the proceedings.
32. It was submitted on behalf of the petitioners that the 1st respondent (sic) is conferred with the jurisdiction to determine objections made to him under the provisions of Section 26 of the Act relating to incorrectness or incompleteness of the adjudication register and is obliged to make further consultations and inquiries deemed necessary. It is submitted that it is not open to him to open a dispute that was never presented to the recording officer and the adjudication committee. That there must be a reason for the elaborate mechanism established for ascertainment of rights. That the 1st respondent proceeded to entertain a claim for enforcement of contract that was clearly time barred. It was submitted that this was a claim best left for determination by the courts.
33. It was further submitted on behalf of the petitioners that the persons who purported to represent the estate of the deceased proprietor of the land had no capacity to do so. That the 1st respondent (sic) erred in entertaining a claim based on contract in the absence of a deceased party thereto.



34. The petitioners counsel urged the court to find that the petitioners have established their claim to the required standards and allow the petition with costs. They relied on the case of Republic Vs the Deputy County Commissioner, Makueni sub-county & 3 others [2021] eKLR and Leonard Kamencu Kairima Vs Land Adjudication Officer Meru North District & 2 others [2009] eKLR.

1st Respondent's Submissions

35. The 1st respondent filed his submissions dated 4th March 2024 through the firm of Kiogora Ariithi & Associates who cited the provisions of Article 1(3) of *the Constitution* of Kenya which donates power to public institutions to conduct various duties as stipulated by law. It was submitted on behalf of the 1st respondent that the *Land Adjudication Act* establishes various mechanisms to be followed and donates power to specific officers in the case of land adjudication matters. The 1st respondent's counsel cited Sections 26, 27 (3) and 29 of the *Land Adjudication Act* and submitted that the petitioners herein having been aggrieved by the decision of the land adjudication officer in objection No. 520 ought to have filed an appeal to the Minister within 60 days, which they never did. The petitioners were accused for being indolent and failing to follow the laid down mechanisms provided. Learned counsel for the 1st respondent relied on the case of Francis Murungi M'Ibaya Vs Paul Kigea Nabea (deceased & 4 others [2020] eKLR and submitted that the petitioners having failed to exhaust all available mechanisms are barred from seeking any interest through this suit.
36. It is further submitted that the petition is an afterthought and an abuse of the court process. That the petitioners have approached this court two years after the decision of the 2nd respondent and have failed to give a plausible explanation or reason for their delay. Consequently, it is submitted that the suit herein is frivolous and vexatious in its entirety.
37. It is submitted on behalf of the 1st respondent that the principle of constitutional avoidance holds that where it is possible to decide a case without invoking *the constitution*, then that should be done. That the principle restricts a court from determining a constitutional issue when the matter may be properly decided on other basis. It is therefore submitted that there exists other sufficient and adequate avenue to resolve this dispute and therefore the petitioners ought not to trivialize the jurisdiction of this court by bringing this action that could very well and effectively be dealt with under judicial review. That *the constitution* should not be turned to passage for resolution of every kind of common grievance. The 1st respondent's counsel relied on the case of Daniel N. Mugendi V Kenyatta University & 3 others [2015] eKLR.
38. The 1st respondent's counsel also cited Section 26 of the *Land Registration Act* which explicitly provides that certificate of title shall be held as conclusive evidence of proprietorship except on grounds of fraud or misrepresentation to which the person is proved to be a party, or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. They relied on the case of Kuria Greens Limited Vs Registrar of Titles & another [2011] eKLR. It is submitted that the petitioners herein have not adduced any evidence to indicate that there was any fraud or misrepresentation in the decision of the 2nd respondent. Further, that the 2nd respondent by virtue of Section 26 stated above has no power to revoke or cancel existing titles to land. Further, that the petitioners are guilty of non-disclosure of the fact that they were fully aware of objection proceedings No. 520.
39. It is submitted that the purpose of the adjudication process is to ascertain the rights and interests on land in trust land areas and the transformation of ownership from customary tenure to individual/group ownership through demarcation, survey and registration. That this ensures a secured and reliable form of proprietorship of land for future generations.



40. It is the 1st respondent's submission that the petition herein is defective, frivolous and lacks merit and should be dismissed with costs to the respondents. The 1st respondent's counsel relied on the case of Attorney General of Uganda Vs Omar Awadh & 6 others [2013] eKLR and submitted that this petition is an afterthought and an abuse of the court process.
41. It is also the 1st respondent's submission that the court has no jurisdiction to entertain this case. The 1st respondent relied on the case of Owners of Motor Vessel "Lilian S" Vs Caltex Oil (Kenya) Ltd [1989] KLR 1.

2nd Respondent's Submissions

42. The Honourable Attorney General filed submissions dated 27th March, 2024 on behalf of the 2nd respondent and a brief background of the case was given. The 2nd respondent identified the issues for determination to be whether the petitioners have met the threshold required of a constitutional petition, whether the 2nd respondent had jurisdiction to hear the objection, whether the deceased's estate was properly represented in the objection proceedings, and whether the petitioners are entitled to the orders sought.
43. It was submitted on behalf of the 2nd respondent that the petition has not met the threshold required of a constitutional petition within the principles set out in Mumo Matemo case (supra). It was submitted that the petitioners have not demonstrated with a degree of precision how the alleged right accrues, provisions of *the constitution* infringed, the nature of injuries caused and how the respondents have infringed on their rights.
44. It is further submitted that no constitutional issues are discernable in the entire petition to warrant its admission and adjudication before this court. That the issues in this matter calls for the interpretation of the *Land Adjudication Act* Cap 284 Laws of Kenya. That the right to property is contingent upon conclusive determination of ownership in accordance with the relevant laws, in this case Cap 284 which provides sufficient mechanisms for the ascertainment of rights and interests in land subject to the land adjudication process. Learned counsel for the 2nd respondent relied on the case of Godfrey Paul Okutoyi & others Vs Habil Olaka & another [2018] eKLR.
45. On the petitioners' assertion that the 2nd respondent lacked jurisdiction to adjudicate the objection filed before him by the 1st respondent, it was submitted on behalf of the 2nd respondent that Section 10 of Cap 284 which was cited confers jurisdiction upon the 2nd respondent for all claims made under the Act relating to interests in land in the adjudication area. The 2nd respondent's counsel relied on the case of *Tobias Achola Osindi & 13 others Vs Cypriano Otieno Ogalo & 6 others HCCC NO. 4 of 2011*. It is submitted that the 2nd respondent possessed jurisdiction to determine objection No. 520 over parcel No. 529 as it necessitated the ascertainment of rights and interests of the suit land. That the suit land falls within the RUIRI/RWARERA Adjudication area, a fact not contested by the petitioners, and consequently, all claims arising from the suit land after it was declared an adjudication record upto its registration fell within the purview of the 2nd respondent's authority to determine. Further, that section 26 of Cap 284 provides that any person who considers the adjudication register to be incorrect may object to the adjudication within the prerequisite timelines.
46. On whether the estate of the deceased was properly represented in the objection proceedings, it was submitted that the deceased's estate was properly represented in the objection proceedings as per section 13(5) of Cap 284. That the petitioners confirm that the deceased was represented in the impugned objection proceedings by his sons, and that in the absence of any evidence to the contrary, the sons are legally successors of the deceased. It was submitted that upon the summons being served



upon the deceased's last known address, and the subsequent attendance by the deceased's sons to the proceedings representing the deceased's interests therein as evidenced by the objection proceedings, the estate of the deceased is estopped from claiming that it was not adequately represented. It was submitted that the Act stipulates that the estate of a deceased person can be represented by any of his successors, not exclusively the deceased's legal representative. The 2nd respondent relied on the case of *Rose Kanini M'Atheru & another Vs District Land Adjudication & Settlement, Karama Adjudication Section & 2 others* [2018] eKLR.

47. It was submitted on behalf of the 2nd respondent that the petitioners are not entitled to the orders sought. That the petitioners had a right to appeal to the Minister under Section 29 of the Act but failed to exhaust the available remedies under the Act. It is submitted that the petition herein lacks merit and therefore the petitioners are not entitled to the orders sought. The 2nd respondent's counsel relied on the case of *Justus Mugaa M'Impwi Vs District Land Adjudication & Settlement Officer, Tigania West/East District & another* [2018] eKLR.

Determination

48. Having analyzed the pleadings and submissions filed, I find the following issues for determination-;
- i. whether the court has jurisdiction over the matter.
 - ii. Whether the respondents violated the petitioners' constitutional rights to ownership of the suit land.
 - iii. whether the objection proceedings in objection No. 520 was in violation of the applicable statutory provisions.
 - iv. Whether the petitioners are entitled to the reliefs sought.
49. The 1st respondent submitted that this court lacks jurisdiction to hear and determine the matter while the petitioners maintained that the court has jurisdiction. It therefore behooves me to address the issue of jurisdiction before I consider the other issues, for without jurisdiction the court would have no power to make one more step in the matter.
50. In the petition, the petitioners have cited Article 22(1) of *the Constitution* of Kenya and alleged contravention of rights or fundamental freedoms under Articles 40 and 50. Article 22(1) of *the Constitution* provides that "every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened." Among the orders sought by the petitioners is an order to quash the decision by the 2nd respondent in objection No. 520 relating to the suit property. Since that order is in the nature of judicial review, in my view, the same may be granted in a constitutional petition. Article 23 of *the constitution* gives the court authority to uphold and enforce the bill of rights. Among the reliefs a court may grant include a declaration of rights and injunction, a conservatory order, and an order of judicial review. In addition, section 13 of the *Environment and Land Court Act* gives this court jurisdiction to grant prerogative orders. It cannot therefore be said that the court does not have jurisdiction to deal with the instant petition. It is therefore my finding that the court has the requisite jurisdiction to deal with the matter.
51. The next issues to consider are whether the respondents violated the petitioners' constitutional rights to ownership of property and whether the impugned objection proceedings were in violation of the applicable statutory provisions. In order to be able to appreciate the issues raised in the petition, one has to go through all the paragraphs in the petition and responses. What I can deduce from the pleadings is that the petitioners' deceased father, Girishon Rimberia Mugaine alias Gellishon M'Rimberia is the



owner of land parcel No. 529 within RUIRI/RWARERA Adjudication Section. That the deceased died on 19th October, 1986 before the adjudication process in the said section was completed. On his part, the 1st respondent's case is that in or about the year 1982, the suit land which belonged to the petitioners' father who was his first cousin and therefore a close relative, was under the threat of being auctioned by Agricultural Finance Corporation due to unpaid loan owed by the deceased. That the deceased agreed to sell a portion of the land to the 1st respondent in order to repay the said loan and save the land from being auctioned. The 1st respondent produced the agreement dated 18th October, 1982 for sale of 15 acres out of land parcel No. RUIRI/RWARERA/529. The 1st respondent testified that he took possession immediately upon the execution of the agreement. However, the deceased passed away before he could transfer the land to the 1st respondent, and the 1st respondent filed objection No. 520 before the 2nd respondent who decided in favour of the 1st respondent. It is not in dispute that at the hearing of the said objection, the family of the deceased was represented by Douglas Kiriimi Rimberia and Obadiah Thurania both being sons of the deceased and brothers to the petitioners herein. According to the petitioners, their said brothers had no authority to represent the family. The main issue therefore is whether 2nd respondent followed the laid down procedures in the dispute resolution mechanisms as provided by the relevant statute. From the pleadings herein, it is apparent that the suit land is within an adjudication section. The petitioners are not challenging the jurisdiction of the 2nd respondent to hear the objection. Indeed, prayer (2) in the petition is for an order directing the 2nd respondent to hear the objection afresh.

52. Section 26 of the *Land Adjudication Act*, Cap 284 provides as follows:-

“Objection to adjudication register

- (1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing saying in what respect he considers the adjudication register to be incorrect or incomplete.
- (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”

53. Section 29 provides thus:-

29. Appeal

- (1) Any person who is aggrieved by the determination of an objection under Section 26 of this act may, within sixty 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 order shall be final.
- (2) The minister shall cause copies of the order to be sent to the director of Land Adjudication and to the Chief Land Registrar.



- (3) When the appeals have been determined, the Director of Land Adjudication shall-
 - (a) alter the duplicate adjudication register to conform with the determination and
 - (b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.
- (4) Notwithstanding the provisions of section 38(2) of the *Interpretation and General Provisions Act* (Cap 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”

54. By filing the objection case, the 1st respondent indeed followed the dispute resolution mechanisms provided in the *Land Adjudication Act*. The petitioners admit that the family of the deceased was represented in the said objection proceedings by sons of the deceased and brothers to the petitioners. Section 13(5) of the *Land Adjudication Act* provides as follows:-

“ 13. Claims and attendance

- (5) Where several persons claim separately as successors of a deceased person, and one or more of those persons attends, his or their attendance shall be taken to be the attendance of all the successors unless the Adjudication Officer otherwise directs.”

55. In view of the above provisions of the law, and as rightly submitted by the 2nd respondent, upon the summons being served upon the deceased’s last known address and the subsequent attendance by the deceased’s sons to the proceedings representing the deceased’s interest therein, the estate of the deceased was duly represented and the petitioners and the estate of the deceased are estopped from claiming that it was not adequately represented. The Act stipulates that the estate of a deceased person can be represented by any of his successors, not exclusively the deceased’s legal representatives. The statute therefore allows any person who is claiming a right or an interest in land to lodge or defend a claim. (see *Rose Kanini M’Atheru & another Vs District Land Adjudication & Settlement, Karama Adjudication Section & 2 others* (supra). It is not surprising therefore that the petitioners did not even deem it fit to include their brothers who represented the estate of their deceased father in the impugned objection proceedings, either as respondents or interested parties especially where the petitioners are seeking for a fresh hearing of the objection. It therefore follows that due process was followed by the respondents hence this petition is hollow and stands on quick sand and must fail. In my considered view, the petitioners had a right to appeal to the Minister under Section 29 of the said Act. They did not do so. Instead, the petitioners are now seeking an escape route through this constitutional petition. The petitioners have not demonstrated that indeed they exhausted the available mechanisms before turning to this court for intervention. Where *the constitution* itself or vide statute provides an alternative mode of dispute resolution for specified disputes, then the court in the spirit of Article 159(2) of *the Constitution*, oblige and cede jurisdiction to such forums. There is a clear process established under the *Land Adjudication Act* for resolving disputes over land that is within an adjudication section. Parties are bound to follow that process before they resort to court.



56. Further, a reading of the issues presented in this petition leave no doubt that the petitioners' grievance, if any, can adequately be addressed by statute. The issues raised in the petition, in my humble opinion do not raise any constitutional issues. This is a case where the 1st respondent was claiming a portion of the suit property pursuant to an agreement for sale. The petition raises issues of ownership over the suit land.
57. The threshold for a constitutional petition is clearly enunciated in the case of Anarita Karimi Njeru (supra) as follows-;
- “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 any 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.”
58. The dispute herein is a private claim. It is also convenient to state that a constitutional question is an issue whose resolution requires the interpretation of *the constitution* or application of the Articles of *the Constitution*. This is not the case in this petition.
59. This court ought to discourage invocation of the constitutional process where there exist alternative statutory remedies. In John Harun Mwau Vs Peter Gastrol & 3 others [2014] eKLR, it was held-;
- “courts will not normally consider a constitutional question unless the existence of a remedy is dependent on it... It is an established practice that where a matter can be disposed of without recourse to *the constitution*, *the constitution* should not be invoked at all.”
60. From the facts before me, I find that this petition does not raise constitutional issues at all and on this ground, the petition fails. I also find that no contravention of constitutional rights have been proved at all. The evidence tendered on behalf of the petitioners in my view do not demonstrate the alleged violation.
61. Having carefully considered the petition before me and the evidence and submissions, I find that the petition does not raise any constitutional issues at all. Secondly, the petitioners have failed to prove the alleged infringement of constitutional rights to the required standard and are not entitled to the orders sought.
62. I find that the petition has no merit. I dismiss this petition with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF JULY 2024

In the presence of

Court Assistant – Tupet

Ringera for petitioners

Ms. Mukaburu for 1st respondent

C.K YANO

JUDGE

