



**Ntende v Njagi & 3 others (Constitutional Petition E001 of 2023)  
[2024] KEELC 7130 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7130 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
CONSTITUTIONAL PETITION E001 OF 2023**

**CK YANO, J**

**OCTOBER 30, 2024**

**BETWEEN**

**DANIEL KITHOME NTENDE ..... PETITIONER**

**AND**

**JOHN MUCEE NJAGI ..... 1<sup>ST</sup> RESPONDENT**

**THARAKA NITHI COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR THARAKA NITHI COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. By a petition dated 16<sup>th</sup> October, 2023, the petitioner is seeking for the following orders: -
  - a. A declaration that the alleged adjudication process allegedly giving the first respondent the suit property was fraudulent, illegal, null and void ab initio.
  - b. A declaration that the fraudulent registration of the suit property in the name of the first respondent is an infringement of the petitioner's right under Article 27, 40 and 47 of *the Constitution*.
  - c. An order for judicial review by way of an order of mandamus to compel the third respondent to recall the suit property's title deed issued to the first respondent and thereby revoke or cancel the same.
  - d. An order for judicial review by way of an order of mandamus to compel the third respondent to issue a fresh title deed of the suit property to the petitioner who is the true and legitimate owner of the suit property.
  - e. Cost be awarded to the petitioner.



2. The 1<sup>st</sup> respondent filed a Replying Affidavit dated 24<sup>th</sup> November, 2023 in response to the petition.
3. The 2<sup>nd</sup> to 4<sup>th</sup> respondents filed grounds of opposition dated 24<sup>th</sup> November, 2023 and a Replying Affidavit dated 15/1/2024 sworn by the Land Registrar in Marimanti Lands Registry.

### **The Petitioner's Case**

4. The Petitioner avers that he is the administrator of the estate of Simon Ndatho Ntende (deceased) who died intestate on 6<sup>th</sup> February, 1997. That the deceased was the owner and occupier of the land title number Tharaka Nithi/Chiakariga "A"/503 (hereinafter referred to as the suit property). The petitioner states that sometime in 2017, the first respondent fraudulently registered the suit property in his name therefore depriving the deceased and his beneficiaries of the suit property. That while registering the suit property in his name, the first respondent alleged that he bought the suit property from one Gerald Murithi Nkaratu upon payment of the full purchase price as the consideration. That the first respondent has also in the adjudication records alleged that the land was allocated to him through an adjudication process.
5. The petitioner disputed that the first respondent became the owner of the suit property either through the sale agreement as alleged or in any other way whatsoever. That the Adjudication Record produced in the petitioner's affidavit shows openly the inconsistencies between the adjudication record and the alleged agreement for sale of the land.
6. The petitioner avers the already filled in adjudication record dated 6<sup>th</sup> March, 1995 shows the first respondent as the owner of the land. That however, on 17<sup>th</sup> July, 2005, about 10 years later after the first respondent had already been entered in the adjudication register as the owner of the suit property, two entries were made in the adjudication record to the effect that an objection was placed as number 158 showing that the property was transferred to Gerald Murithi Waratu and an objection was placed as number 563 showing that the property was transferred by Gerald Murithi Waratu to John Mucee Njagi.
7. The petitioner contends that all those transactions were happening behind his back and he did not get to know that something fraudulent was happening to the property. That those entries were fraudulent entries in the record since the deceased was the owner and the occupier of the suit property where he lived with his family until his death.
8. The petitioner states that it cannot be true that in 1995, the first respondent acquired the land through adjudication, then again in 2005 about 10 years later, the property is transferred to him by Gerald Murithi Waratu and 24<sup>th</sup> November, 2010 he enters into an agreement for sale and purchase of the same property.
9. The petitioner avers that the first respondent has now resulted into harassing the children of the deceased including filing of a court case claiming that the deceased's children are trespassing on the suit property. The petitioner is challenging the 1<sup>st</sup> respondent's title and states that it is not enough to just produce a title without proving the legality of how the title was acquired and show that the acquisition was legal and formal. That he is apprehensive that unless the orders sought herein are granted, he will be dispossessed of the land to his great detriment.
10. The petitioner states that he has established a strong case and sufficient reason for the court to grant the orders sought herein.
11. The petitioner states that his petition is anchored on Article 19, 20, 21(1), 23, 27, 40 and 47 of *the constitution*.



12. The petitioner states that his rights under Article 47 of *the Constitution* have been infringed in that the first respondent acquired the suit property fraudulently by stating that he obtained the land by way of adjudication and then again by purchasing it through an agreement for sale. That he had the aim of dispossessing the children of the deceased of their father's land, that no inquiry was made of the residents' rights possession and occupation of the land prior to the alleged adjudication process which led to the dispossession of the petitioner's ancestral land. That that constituted a breach of the principles of natural justice. That the third respondent's actions of registering the first respondent as the owner of the suit property was unfair and discriminatory against the petitioner who is in possession and actual occupation by dispossessing them of the land in favour of the first respondent and that the actions of the respondents are unreasonable in that had they considered the adverse effects such as the loss of the petitioner's land and as such the petitioner's loss of livelihood they would not have acted in the manner they did.
13. The petitioner avers that the negative effect of the respondents' actions is an infringement of the petitioner's right to own and acquire property as protected by Article 40 of *the Constitution*.
14. The petitioner states that his legitimate expectation has been breached in that he had a legitimate expectation that the land adjudication process conducted by the third respondent would be fair and reasonable, that the third respondent would issue title deeds to the true owners of the land based on actual possession and occupation and that the adjudication process would be fair and that the second respondent would act in the best interest of the residents to promote peace and harmony in the area.
15. In his affidavit, the petitioner has annexed copies of the Grand of Letters of Administration Intestate for the estate of the deceased, letters for objection, title deed, agreement for sale, adjudication record and copy of judgment in Marimanti ELC No. 1 of 2015.

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

16. The 1<sup>st</sup> respondent avers that he is the registered owner and proprietor of the suit property. He has annexed a copy of the title and a search certificate marked JMN-1(a) and (b).
17. The 1<sup>st</sup> respondent states that when the adjudication process commenced, interest in the land parcel number LR. 503/Chiakariga "A" Adjudication Section was registered in the name of Gerald Muriithi Nkaratu. That he bought that land from Gerald Muriithi Nkaratu vide an agreement dated 24<sup>th</sup> November, 2010. The 1<sup>st</sup> respondent has annexed a copy of the agreement marked JMN-2.
18. The 1<sup>st</sup> respondent contends that the petitioner has not produced any document to prove that the land was owned by the petitioner's brother one Simon Ndatho Ntende. That an objection was placed as number 158 showing that the property was transferred to Gerald Murithi Waratu and another objection was placed as number 563 showing that the property was transferred to John Mucee Njagi on 17<sup>th</sup> July, 2005.
19. The 1<sup>st</sup> respondent states that the court ought to note that no constitutional rights have been infringed since the land adjudication officer followed procedure and the petitioner to date has never filed an appeal. He denied any collusion with the 2<sup>nd</sup> & 3<sup>rd</sup> respondents in acquiring the land parcel and in particular any form of fraud and put the petitioner to strict proof thereof.
20. The 1<sup>st</sup> respondent avers that it is within the petitioner's knowledge that the land parcel No. 1328 belongs to his late brother and the said parcel borders the suit property herein 503 and has never at any one point belonged to the deceased. The 1<sup>st</sup> respondent has annexed a copy of the map marked JMN-3



21. The 1<sup>st</sup> respondent states that the law is very clear that the petitioner ought to have exhausted the dispute resolution mechanisms provided for under the [Land Adjudication Act](#) before seeking the courts intervention. That the Petitioner has not attached a consent to institute this suit from the 2<sup>nd</sup> Respondent and that without a consent from the 2<sup>nd</sup> respondent, the Court lacks jurisdiction to hear and determine the petition.
22. The 1<sup>st</sup> respondent states that he sued one Patrick Mutugi Ndatho vide Marimanti PMCC ELC Case No. 1 of 2015 seeking that he be enjoined permanently from trespassing and grazing or in any manner interfering with the suit land. That judgment was rendered on 31<sup>st</sup> July, 2023 in which the learned magistrate held that the 1<sup>st</sup> respondent had proved that he owns land parcel No. 503/Chiakariga and allowed the suit as prayed. That the allegation that 1<sup>st</sup> respondent is harassing the children of the deceased is mis-conceived as the said suit was heard and determined on merits and no appeal was preferred. The 1<sup>st</sup> respondent has also annexed a copy of the judgment marked JMN.
23. The 1<sup>st</sup> respondent contends that the petition lacks evidential basis since the affidavit in support is very thin on facts and the issues raised are not constitutional in nature since they relate to the adjudication process governed by the [Land Adjudication Act](#) (CAP 284) Laws of Kenya. That the annexures and/or exhibits to the petition are just letters by the advocate seeking consent dated way back in 2007 and no evidence has been attached to show that the deceased ever owned land parcel No. 503 Chiakariga “A” and thus the evidence is untenable.
24. The 1<sup>st</sup> respondent maintains that the petitioner has not exhausted all the available remedies provided for in the [Land Adjudication Act](#) at Sections 12 to 26 which provides an elaborate dispute resolution mechanism for an aggrieved person to seek redress such as lodging a complaint with the Adjudication Committee, Arbitration Board, an objection to the Adjudication Officer and an appeal to the Minister before seeking recourse from this court. The 1<sup>st</sup> respondent states that it is evident from the documents in support of the petition that the determination in dispute is that of the Land Adjudication Officer – Chiakariga “A” Section emanating from Objection Number 158 and 563. That the Petitioner did not file an appeal against the determination of the Land Adjudication Officer and thus cannot allege that he was not accorded a fair hearing as is provided for under Article 47 of [the Constitution](#) as well as the [Fair Administrative Action Act](#) No. 4 of 2015.
25. The 1<sup>st</sup> respondent contends that the Petitioner is not entitled to the orders sought as the same are not merited and further that the Petitioner has not demonstrated in any way that the decision-making process was not justified as they did not object to the said adjudication. The 1<sup>st</sup> respondent denied violating any of the rights contained in [the Constitution](#) as alleged by the petitioner and argued that no sufficient evidence has been adduced of such violation. He urged the court to dismiss the petition with costs to the respondents.

#### **2<sup>nd</sup> to 4<sup>th</sup> Respondents’ Case**

26. The 2<sup>nd</sup> to 4<sup>th</sup> Respondents’ grounds of opposition are on the following grounds: -
  1. That the Petition is fatally defective, misconceived, and mischievous or otherwise an abuse of the court process and therefore, are unsustainable in the obtaining circumstances.
  2. That the petition does not meet the threshold of a constitutional petition as set out in the case of Anarita Karimi Njeru Vs. Republic (1979) eKLR as the Petitioner has not set out how the specific provisions of [the constitution](#) have been infringed neither has he demonstrated the violation or threatened violation of his fundamental rights and the manner in which his rights have been violated by the Respondents.



3. That the *Land Adjudication Act* provides for a clear procedure for raising objections against any dealing in land that is subject to adjudication and also provides for appeals to the minister in case one is dissatisfied by the determination of an objection.
  4. That this Honourable court has no jurisdiction to ascertain and determine interests in land in an adjudication area.
  5. That further, it is an established principle of law that where there is an alternative remedy and especially where Parliament has provided a statutory appeal procedure, it is only in exceptional circumstances that an order would be granted by Courts and the Petitioner herein has not established the existence of any exceptional circumstances.
  6. That the suit is statutory time barred as the cause of action relied upon arose in 2005 about 18 years ago.
  7. That the petition is otherwise frivolous, vexatious and an abuse of the court process.
27. In the Replying Affidavit sworn by Benson Maina, the Land Registrar states that the green card for the suit land was opened on 27<sup>th</sup> July, 2016, and the same is measuring approximately 3.46 Ha under the name of John Mucee Njagi the 1<sup>st</sup> respondent herein, and the same was opened by the registrar on 18<sup>th</sup> day of August 2017. That the title deed from the National Titling Center was issued on the 9<sup>th</sup> of March 2017. They have annexed a copy of the certified green card marked LRM – 1. They aver that this is the first and original registration done by the adjudication process of Chiakariga “A” Adjudication Section as completed. That after the registration of the said parcel of land and others, the title deeds of the above adjudication section from the National Titling Center were issued to the locals in mass.
28. The 1<sup>st</sup> to 4<sup>th</sup> respondents state that no other entry has been done on the suit parcel of land since its first registration. That the adjudication record delivered to the registrar’s office after the adjudication process was completed indicates John Mucee Njagi as the registered owner of the parcel Tharaka/ Chiakariga “A”/503. A copy of the certified green card marked LRM-2 has been annexed.
29. The Land Registrar states that his office was never involved in the adjudication process.
30. The petition was canvassed by way of written submissions. The petitioner filed his submissions dated 28<sup>th</sup> August, 2024 through the firm of Jessee Mwiti Advocates while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed their submissions dated 22<sup>nd</sup> September, 2024 through the office of the Honourable Attorney General and the 1<sup>st</sup> respondents filed his submissions dated 24<sup>th</sup> September, 2024 through the firm of David John Mbaya & Co. Advocates.

### **Petitioner’s Submissions**

31. The petitioner gave a brief background of the matter and identified four issues for determination. The first issue is whether the petitioner has established a violation of his rights and the second is whether the petitioner is entitled to the prayers sought in the petition.
32. Regarding the first issue, the petitioner states that he has complained of the violations of his rights under Articles 27, 40 and 47 of *the Constitution*, namely the right against discrimination, the right to property and the right to fair administrative action respectively.
33. The petitioner submitted that Article 27 has been infringed in that his property was fraudulently obtained from him and denied him the chance to distribute the land to the beneficiaries. That the same is shown by the entries in the adjudication register. The petitioner submitted that it cannot reasonably be correct that a person can be entered in the adjudication register as the owner of the property and



- the same person enters into an agreement to buy the same property as shown in the agreement for sale dated 24<sup>th</sup> November, 2010.
34. The petitioner submitted that the first respondent's title deed is fraudulent and it is not enough to confer ownership when the same title is under a challenge. That the first respondent has not shown the legality of how he acquired the title and show that the acquisition was legal. The petitioner relied on the case of *Munyu Maina Vs. Hiram Gathiha Maina* [2013] eKLR.
  35. The petitioner submitted further that the first respondent has not proved the legality of his title deed which is under a challenge. That he has not shown and proved how he was registered as the proprietor of the land in the year 1995 by the adjudication officer and how then on 24<sup>th</sup> November, 2020 he entered into an agreement to buy the same piece of Land from one Gerald Murithi Waratu.
  36. The petitioner further submitted that the respondents have acted contrary to Article 10(1)(a) (2) of *the Constitution* in breach of national values and principles.
  37. It was submitted that the gist of the Petitioner's affidavit proves that the adjudication officer controverted the process of adjudication by failing to inquire on who was in actual possession and occupation of the land before bringing in a stranger and registering him as the proprietor of the land in dispute and therefore leaving the actual residents landless and squatters in their own land. The petitioner relied on the case of *Epaphrus Muturi Kigoro Vs. William Mukui Nyaga* [2019] eKLR.
  38. The petitioner submitted that the response to the petition and the grounds of opposition filed by the respondents have not rebutted the actual existence of fraudulent dealing with the land. That indeed the right to fair administrative action inherent to the petitioner can only be remedied through this court which is vested with the authority over land and boundary matters in the exercise of its judicial authority under Article 159 of *the Constitution*.
  39. The petitioner submitted that Article (40) (1) of *the constitution* guarantees him the right to acquire and own property of any description in any part of Kenya. The petitioner also cited Article 40(2) which prohibits the enactment of a Law that arbitrarily deprives a person property.
  40. It was submitted that the petitioner is already suffering immense prejudice owing to the violation of his right by the respondents and that unless the orders sought in the petition are granted, the prejudice will continue unabated much to the petitioner's detriment.
  41. The petitioner further submitted that his right to fair administrative action as guaranteed under Article 47 of *the Constitution* has been violated. The petitioner relied on the case of *PZ Cussons East Africa Limited Vs. Kenya Revenue Authority* [2013] eKLR and *Republic Vs. Kenya Revenue Authority Ex-Parte LA.B International Kenya Limited* [2011]eKLR.
  42. The petitioner submitted that Article 47 on the right to fair administrative action inculcates Article 60(1) (d) of *the constitution* of Kenya which provides the principles under which land should be managed in Kenya to include transparency.
  43. The petitioner submitted that the averments in his affidavit in support of the petition show that the respondents' actions were illegal and fraudulent and that the 1<sup>st</sup> respondent's acquisition of the suit land was not legal.
  44. On whether the first registration can be cancelled, the petitioner cited Section 26 (1) (a) and (b) and 80 of the *Land Registration Act* and submitted that the 1<sup>st</sup> respondent's title to the suit property having been obtained fraudulently can be cancelled and the register be rectified. That whereas the Law respects and upholds sanctity of title, the law also provides for situations when a title shall not be absolute and



indefeasible. It was further submitted that Article 40(6) of *the constitution* removes protection of title to property that is found to have been unlawfully acquired. The petitioner relied on the case of Esther Ndegi Njiru & Another Vs. Leonard Gatei [2014]eKLR.

45. It is the petitioner's submission that the respondents were under a duty to ascertain the rights of the residents as being in occupation of the suit land from time immemorial before registration was effected and title issued. That the third respondent did not do that and failed in his duty to register the actual residents who were in occupation of the land and possession thereof. That the petitioner to his utmost astonishment, found out that after the adjudication process was carried out where they had lived since time immemorial it was registered in other people's names. That this was in utter disregard of the residents' proprietary interest in the land they were occupying and that by sheer negligence, the third respondent failed to register the same against the residents contrary to the standard procedure which demands that they consult the features on the ground and interview the people on the ground including neighbors while drawing the adjudication maps. The petitioner relied on the case of Kirambia (suing as the legal representative of the estate of Peter Muriungi Kaunga (deceased) Vs. Muthengi M'Mwathi Muthigu & 2 Others (Citation not given).
46. As to whether the petition is legally in court, the petitioner cited Articles 22 (1) and (3) and 159 (2) of *the constitution* which enjoins the court to go into the substance of petition before it as opposed technicality. It is the petitioner's submission that the court has wide discretion to grant the prayers sought.
47. The petitioner submitted that the issue of pleadings in Constitutional Petitions has been settled by a plethora of judicial precedents. The petitioner relied on the case of Anarita Karimi Njeru that underscores the importance of defining a dispute before court, with reasonable precision as held in Bethwel Omondi Okal Vs. Board of Trustee Telposta Pension & 2 Others [2017]eKLR. The petitioner submitted that in this petition, the particulars are clearly pleaded in the affidavit of the petitioner. That the petition has also clearly set out the gross violations and the particulars of fraud perpetuated against the residents and offers remedy to end the dispute. It was submitted that respondents during the process demonstrated a clear lack of transparency and accountability on their part by providing the impugned title to the first respondent. That the respondents conduct amounts to an infringement of the Petitioner's rights as protected by Article 47 of *the Constitution*. The petitioner submitted that there is no time limit within which a party should approach the court for redress regarding violations of its fundamental rights and freedoms. It was submitted that the petitioner has demonstrated violation of his constitutional rights and urged the court to exercise its powers under Article 23(3) of *the constitution* to grant the prayers sought.

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

48. The 1<sup>st</sup> respondent identified two issues for determination. The first issue is whether the petition meets the threshold of a Constitutional Petition and the second is whether the petition is barred by the doctrine of exhaustion.
49. Regarding the first issue, the 1<sup>st</sup> respondent cited Rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, 2013, (Mutunga Rule 2013) and submitted that the petitioner has failed to set out how the 1<sup>st</sup> respondent has violated his constitutional right. That the petitioner has not availed any document to support his allegations that the suit parcel was initially owned by the petitioner's late brother, one Simon Ndatho Ntende.



50. The 1<sup>st</sup> respondent stated that he has attached the sale agreement to prove how he acquired ownership of the suit parcel. That any alleged fraudulent transactions relating to the petitioner's land is strictly upon the petitioner to prove. That the petitioner has not demonstrated how the 1<sup>st</sup> respondent has violated his right to property as enshrined under Article 40 of *the Constitution*.
51. It is the 1<sup>st</sup> respondent's submission that the petition does not meet the requirements of a constitutional petition as it does not disclose any justifiable cause or constitutional violation to form the basis of a constitutional claim. The 1<sup>st</sup> respondent relied on the case of Communications Commission of Kenya & 5 Others Vs. Royal Media Services Limited & 5 Others [2014].
52. On whether the petition is barred by the doctrine of exhaustion, the 1<sup>st</sup> respondent submitted that the *Land Adjudication Act* has an elaborate dispute resolution mechanism which courts have found that they cannot substitute their own decision for that of the established bodies which are mandated to deal with complaints under the *Land Adjudication Act*. That where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.
53. It is the 1<sup>st</sup> respondent's submission that the substance of the dispute is based on a decision made in the year 2005. That the instant petition offends the doctrine of exhaustion of statutory remedies by invoking the jurisdiction of this court at the first instance. That the dispute would have been most suitably resolved out of court through an appeal to the minister. That the petitioner's recourse lay in filing an appeal to the Minister against the said decision within 60 days. The 1<sup>st</sup> respondent submitted that the petitioner failed to exercise his right of appeal to the minister over the decision of the land adjudication officer and is trying to escape the procedure stipulated under Section 29 of the *Land Adjudication Act* and is now seeking an escape route through this suit. That there was no explanation why the petitioner did not appeal to the minister for lands over a denial of hearing by the objection committee. The 1<sup>st</sup> respondent relied on the case of Daniel Musili Nyeki & 49 Others Vs. Cabinet Secretary of Lands & Settlement & Another, Bernard Malonza Musya & 30 Others (Interested Parties) eKLR where the court cited ELC (Meru) Petition 7B of 2013 Justus Mugaa M'Impwi Vs. District Land Adjudication & Settlement Officer, Tigania West/East District & Another (2018) eKLR and Tobias Achola Osidi & 13 Others Vs. Cyprianus Otieno Ogalo & 6 Others (2013) eKLR. The 1<sup>st</sup> respondent submitted that the petitioner ought to have exhausted the dispute resolution mechanisms provided for under the *Land Adjudication Act* and thus the court lacks the jurisdiction to determine the petition.
54. The 1<sup>st</sup> respondent urged the court to dismiss the petition with costs.

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

55. The 2<sup>nd</sup> to 4<sup>th</sup> respondents gave brief facts of the case and identified three issues for determination. These are whether the court has jurisdiction to hear and determine the matter, whether the suit is statutorily time barred and whether the petition meets the threshold for a Constitution Petition.
56. Regarding the first issue, the 2<sup>nd</sup> to 4<sup>th</sup> respondents cited Section 29 of the *Land Adjudication Act* which provides that any person who is aggrieved by the determination of an objection under Section 26 of that Act may, within sixty days after the date of the determination, appeal against the determination to the Minister. The 2<sup>nd</sup> to 4<sup>th</sup> respondents relied on the case of Kiroket Ole Punyua Vs. Umash Ole Mwanik & 2 Others [2021]eKLR, Speaker of the National Assembly Vs. James Njenga Karume [1992]eKLR, Mutunga Tea & Coffee Company Ltd. Vs. Shikara Ltd & Another [2015]eKLR and Geoffrey Muthinja Kabiru & 2 Others Vs. Samuel Munga Henry & 1756 Others (2015) eKLR.



57. It was submitted that the suit parcels of land were subject of proceedings in the objection proceedings allegedly in the year 2005 and the Petitioner though aware of the proceedings, did not appeal to the minister against the impugned decision. That the Petitioner has not given reasons why he could not pursue that avenue before coming to court. In the premises it was submitted that this court lacks jurisdiction to hear and determine this suit, and thus the petition ought to be dismissed with costs to the Respondents.
58. On the issue whether the suit is statutorily time barred, the 2<sup>nd</sup> to 4<sup>th</sup> respondents cited Section 7 of the Limitations of Actions Act and relied on the cases of Edward Moonge Lengusuranga Vs. James Lanaiyara & Another [2019] eKLR and Bosire Ongero Vs. Royal Media Services (2015) eKLR. It was their submission that the impugned decision was made in 2005 when the cause of action arose and there is no explanation for the delay in filing the suit neither did the petitioner seek leave to file this suit out of time. That the cause of action herein arose about 18 years ago and as such the suit herein is statutorily time barred.
59. Regarding the issue whether the petition meets the threshold of a Constitutional Petition, the respondents cited Rule 10 of *the Constitution* of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, 2013 and relied on the case of James Gacheru Kariuki & 19 Others Vs. County Government of Mombasa & 56 Others [2019]eKLR. They submitted that the petitioner has failed to set out and show how the Respondents have violated or infringed his right. That the petitioner has failed to indicate the manner in which the respondents have infringed his rights. The respondents submitted that every petition is required to adhere to the procedure set out in the case of Anarita Karimi Njeru Vs. Republic [1979] eKLR. They also relied on the case of East Africa Pentecostal Churches Registered Trustees & 1754 Others Vs. Samuel Muguna Henry & 4 Others [2015]eKLR. It is submitted that the petitioner has failed to set out and show how the respondents have infringed against his right to property and fair administration. That the petitioner also failed to demonstrate any failure by the 2<sup>nd</sup> respondent to hear his objection, if any was made, in accordance with the provisions of the *Land Adjudication Act* and that there is no evidence if any appeal to the Minister, therefore he cannot claim infringement of the right to administrative action. That there is no evidence to show that the petitioner raised any objection to the proceedings. It is submitted that the petitioner has failed to also demonstrate how *the constitution* has been violated through the alleged violations by the respondents.
60. It was submitted that the matters at hand were heard and determined by DLASO in exercise of their statutory mandate and as such the exercise of their legal mandate which has not been challenged either through an appeal or Judicial Review proceedings cannot be said to be infringing rights of an indolent petitioner. That the petitioner's sole intention is to engage in fishing expedition in the high seas of constitutional litigation to avert the statutory time limitation of appeals and Judicial review proceedings. That the petition is imprecise and too general and has failed to meet the threshold of a constitutional petition to warrant any positive order from the court.
61. The respondents submitted that the court must guard against transmission of normal disputes and frivolous and vexatious claims into constitutional petition. That the petition is an abuse of court process and ought to be dismissed with costs.

### **Analysis and Determination**

62. I have considered the petition, the responses and submissions. The issues for determination are: -
- i. Whether this court has jurisdiction to entertain the matter.



- ii. Whether the petition meets the threshold of a constitutional petition.
  - iii. Whether the petitioner is entitled to the reliefs sought.
63. The respondents have submitted that the [Land Adjudication Act](#) provides avenues for resolving disputes such as those raised in the petition herein. The respondents submitted that under Section 29 of the said Act, any person who is aggrieved by the determination of an objection under Section 26 of the Act may, within sixty days after the date of the determination appeal against the decision to the minister. The respondents contended that the petitioner, though aware of the objection proceedings in the year 2005, did not appeal to the Minister and has not given reasons why he did not pursue that avenue before coming to court. It is therefore the respondents' submission that this court lacks jurisdiction to hear and determine the suit.
64. The case before this court is a constitutional petition alleging violation of various rights enshrined in [the Constitution](#), including the right to property as provided for under Article 40 of [the Constitution](#), the right to equality and not to be discriminated as provided for under Article 27 and the right to fair administrative action as provided for under Article 47 of [the Constitution](#).
65. There is no denial that besides the alleged violations of his rights as stated above, the petitioner's dispute relates to the ownership of the suit land known as Title Number Tharaka Nithi/Chiakariga "A"/503 which is currently registered in the name of John Mucee Njagi, the 1<sup>st</sup> respondent herein. The title documents that have been exhibited indicates that the land was registered in the name of the 1<sup>st</sup> respondent on 27<sup>th</sup> July 2016 and a Title Deed was issued to him on 9<sup>th</sup> March, 2017. The petitioner contends that the adjudication process that led to the suit property being registered in the name of the 1<sup>st</sup> respondent was fraudulent, illegal, null and void ab initio. The petitioner is now asking this court to have the title in the 1<sup>st</sup> respondent's name cancelled and have it issued in his name.
66. Under Section 162 (2)(b) of [the Constitution](#), this court has the mandate to hear disputes relating to the environment and the use of, and occupation of, and title to land. Section 13(1) of the [Environment and Land Court Act](#) provides disputes to include disputes relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other resources. Section 13(2) (e) makes it clear that what is set out in paragraph (a) to (d) thereof is not conclusive. It is clear from the above provisions of law that the court can hear any dispute relating to the environment and land, including title to land. It is also clear that the court may grant remedies, including declarations such as the one sought in the present petition. It is my considered view that unlike the respondents and in particular the 2<sup>nd</sup> respondent, this court is the only one mandated to hear and determine applications for redress for denial, violation or infringement of, or threat to right and fundamental freedoms relating to the environment and land. In view of the above, and in particular the clear provisions of Article 162(2)(b) of [the Constitution](#) and Section 13 of the [Environment and Land Court Act](#), and bearing in mind that the dispute is over ownership of land that is already registered and title deed issued, it is my finding that this court has the requisite jurisdiction to hear and determine this case.
67. Having determined that this court has jurisdiction to hear the case, I proceed to consider the other issues. It is plain from the facts pleaded in the petition and the responses that the petitioner's claim relates to and/or arise from the 2<sup>nd</sup> respondent's exercise of his mandate under Section 26 of the [Land Adjudication Act](#). The petitioner refers to objection numbers 158 and 563. The petitioner seeks to nullify the adjudication process giving rise to the registration of the suit land.



68. Section 29 of the [Land Adjudication Act](#) provides inter alia, as follows:

- “(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 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.”

69. Going by the above provisions of law, I opine that the petitioner herein ought to have appealed to the Minister against the decision of the 2<sup>nd</sup> respondent. It is clear that the petitioner did not exercise his right under Section 29 of the [Land Adjudication Act](#). Instead, the petitioner opted to approach this court by way of the instant petition. Since the [Land Adjudication Act](#) contains specific legislation that governs all grievances and prescribes the procedure that has to be strictly followed in the resolution or adjudication of such grievances or disputes, it is my finding that the petitioner must first of all exhaust those other mechanisms before coming to court. The petition as drawn, in my view, is inviting this court to sit on appeal over the decision of the 2<sup>nd</sup> respondent. In other words, the petition is essentially an appeal against the decision of the 2<sup>nd</sup> respondent. The petitioner has not pleaded that the provisions of the [Land Adjudication Act](#), and specifically Section 29 thereof, is inconsistent with [the constitution](#) and therefore null and void. On the contrary, the petitioner accepts the validity of the [Land Adjudication Act](#) and indeed is asking this court to cancel a title that emanated through a process under that Act, and issue him with a title deed. I am afraid, this court cannot grant such orders in the manner sought.

70. I must point out the exhaustion of internal mechanisms provided under Statute is a concept that is also stressed under the law. The same was comprehensively dealt with in many cases including Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Consolidated Petition No. 201 of 2019 William Odhiambo Romgoi & 3 Others Vs. Attorney General & 4 Others, Muslims for Human Rights and 2 Others (Interested Parties) [2020]eKLR; Republic Vs. Independent Electoral and Boundaries Commission (IEBC) Ex-parte National Super Alliance (NASA) Kenya and 6 Others [2017]eKLR and Speaker of National Assembly Vs. Karume (1992)KLR 21.

71. It has also been held that a constitutional question is one whose answers flow from either the interpretation of [the constitution](#), relate to the enforcement of constitutional rights and freedoms, its roles, powers, directions and decisions of state organs as they exercise power and whose reliefs must flow from [the constitution](#) and not on a statute, and that not each and every violation of the law must be raised as a constitutional issue.

72. I have keenly looked at the dispute in this case. In my humble view, the dispute herein is more of a civil nature than constitutional, hence capable of being resolved by other means than by way of petition. Indeed, the petitioner alluded to and exhibited a judgment in Marimanti PMC ELC Case No. 1 of 2015 in which the suit land herein was the subject matter in that case. It is not clear why the petitioner did not join that other case to assert his right over the suit land, or even institute his own separate civil suit. Since the issue is one over ownership of the suit land, there are no constitutional issues raised that warrant the intervention of the court.



73. Further, a reading of the issues presented in this petition leave no doubt that the petitioner's grievances can adequately and effectively be addressed by Statute and through a normal Civil suit. I find that the petition has not been pleaded with precision and does not meet the standard enunciated in Anarita Karimi Njeru Case (Supra).
74. Having carefully considered the petition before me and the submissions, and for the reasons stated herein above, I find that the petition has no merit. The same is dismissed with costs to the respondents.
75. It is so ordered.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 30<sup>TH</sup> OCTOBER, 2024**

In the presence of:

Court Assistant – Kiruja

D. J. Mbaya for 1<sup>st</sup> Respondent

Jesse Mwiti for Petitioner

Ms. Kendi for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents

**C.K YANO,**

**JUDGE**

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JUDGMENT

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