



**Songok v Chemenjo & 3 others (Environment & Land Petition
E001 of 2024) [2024] KEELC 13826 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13826 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND PETITION E001 OF 2024
EO OBAGA, J
DECEMBER 16, 2024**

BETWEEN

SALINA CHEBITOK SONGOK PETITIONER

AND

MONICA CHEMENJO 1ST RESPONDENT

NOAH KIPCHIRCHIR 2ND RESPONDENT

UASIN GISHU LAND DISPUTE TRIBUNAL 3RD RESPONDENT

CHIEF MAGISTRATES COURT, ELDORET 4TH RESPONDENT

JUDGMENT

Introduction

1. The Petitioner is a step mother of the 1st, 2nd and 3rd Respondents. The Petitioner is the 2nd wife of Timothy Sawe Songok who suffers from dementia. The petitioner was appointed as guardian ad litem of her husband for purposes of prosecuting and defending suits on his behalf.
2. The 1st, 2nd and 3rd Respondents are children of Timothy Sawe Songok from his first wife who is deceased. The Petitioner filed this petition against the Respondents in which she sought the following reliefs:-
 - a. A declaration that Mr. Timothy Sawe Songok is the lawful owner to the suit land being plot No. 97 Kiplombe Farm.
 - b. A declaration that the proceedings before Uasin Gishu Land Disputes Tribunal and resultant Decree issued by the Chief Magistrate's court at Eldoret in Eldoret CMC LDT Award No. 33 of 2016 are null and are hereby quashed and or set aside.



- c. In the alternative to prayer (b) above, an order of certiorari to bring to this Honourable court and quash the 4th Respondent's award and the 5th Respondent's Decree in Eldoret CMC LDT Award No. 33 of 2006.
 - d. A permanent injunction to restrain the Respondents and their agents from interfering with the Petitioners' ownership, possession, occupation and use of the parcel of land known as Plot No. 97 Kiplombe Farm.
 - e. Any other relief that this Honourable court may deem just and fair to grant.
 - f. Costs of the petition.
3. The 1st, 2nd and 3rd Respondents neither entered appearance nor filed a response to the petition. The Attorney General entered appearance for the 4th and 5th Respondents but did not file any response to the petition.

Background;

4. Timothy Sawe Songok (Songok) originally came from Nandi County where he lived with his first wife. When his first wife died, he sold his land in Nandi and went and purchased land in Kitale. He later sold the Kitale land and came and purchased land at Ziwa area in Uasin Gishu county and married the petitioner as his second wife. Songok later sold his Ziwa land and went and purchased a 25 acre parcel at Kiplombe in Uasin Gishu County.
5. It is alleged that after he sold his Ziwa land which was 20 acres, he used half the proceeds thereof to purchase the Kiplombe land and gave half to the 3rd Respondent to go and purchase land in Kitale. It is further alleged that the 3rd Respondent tried to purchase land at Kitale but was not successful. He went to the Kiplombe land where Songok gave him 1.9 acres to settle.
6. In 1992, Songok and one of his sons from the 2nd house filed a suit against the 2nd and 3rd Respondents seeking to evict them from the Kiplombe land. During the hearing of the 1992 case before the Senior Principal Magistrates court at Eldoret, it was found as a fact that the 3rd Respondent had given Kshs 5,000/= towards purchase of the Kiplombe land. In the judgment delivered on 20.5.1996, the trial magistrate found that the 3rd Respondent had paid Kshs 5000/= towards purchase of the Kiplombe land without his sanction and that the 3rd Respondent was liable get a refund of the same. He proceeded to allow the Plaintiffs' claim as prayed with costs.
7. The 1st to 3rd Respondents then moved to the 4th Respondent where they filed a claim over part of the Kiplombe land. The Tribunal held that the 1st to 3rd Respondents were entitled to 10.2 acres of the Kiplombe land. The Tribunal award was adopted as judgement of the court vide Eldoret Chief Magistrates Court Award No. 33 of 2006 on 26.9.2006. The petitioner alleges that she was not aware of the award of the Tribunal and its adoption and only became aware of it after the expiry of the six months' period provided for filing of appeal or judicial review proceedings. This is what prompted the petitioner to file this petition.

Petitioner's contention;

8. The Petitioner contends that the Kiplombe land was purchased for her and her children from half proceeds of Ziwa land and that half of the Ziwa land was given to the 1st house of Songok. She further contends that the proceedings before the 4th Respondent were conducted in the absence of Songok and therefore deprived the other family of Songok their entitlement.



9. The Petitioner states that the proceedings before the 4th Respondent amounted to re-litigation on issues that had been litigated in Eldoret SPMCC No. 31 of 1992 and that the proceedings before the 4th Respondent were res judicata and the 4th Respondent had no jurisdiction to deal with the matter. She therefore contends that the award by the 4th Respondent infringes Songok's rights under Article 40 of the Constitution.
10. The Petitioner further avers that the award and the decree deprived Songok of his right to be heard as enshrined in Article 50(1) of the Constitution and has adversely interfered with Songok's personal and private affairs thereby infringing on his rights under Articles 28, 31, and 57 of the Constitution.
11. The Petitioner further states that the Respondents' actions violated Songok's rights to fair administrative action under Article 47 of the Constitution by seeking to distribute his property contrary to his wishes and that the Respondents' action have discriminated against Songok's children from the 2nd house which is contrary to Article 27 of the Constitution.

Petitioners submissions and analysis and determination;

12. The Petitioner filed submissions dated 16.9.2024. The petitioner submitted that as the Respondents did not file any responses to the petition, the facts remain uncontested. This is a constitutional petition which is premised on alleged contravention of constitutional provisions. Even if the petition was not opposed, this court must be satisfied that the petitioner's constitutional rights were violated.
13. The Articles of the Constitution which are said to have been violated are Articles 27, 28, 31, 40, 45, 47, 48, 50 and 57 of the Constitution. The Petitioner has dwelt in great detail on the issue of jurisdiction of this court to handle this matter. There is really no dispute that this court has jurisdiction to deal with this petition. The issues for determination are firstly whether there was violation of the petitioner's rights and secondly whether the 4th Respondent exceeded its jurisdiction. Thirdly, whether the doctrine of res judicata can be raised as a constitutional issue.
14. Article 27 of the Constitution states as follows:-
 - (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms. (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4). (6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination. 23 Constitution of Kenya, 2010 (7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need. (8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.
15. In the context of this petition, the Petitioner contends that the 4th Respondents action of giving the 1st to 3rd Respondents 10 acres out of the Kiplombe land was discriminatory in that the children from the first house of Songok who are the 1st to 3rd Respondents had been given half of the proceeds of



sale of Ziwa land and that therefore they were not entitled to get the Kiplombe land which was meant for the 2nd house.

16. The Petitioner's petition implies that the first house of Songok was given half of the Ziwa land. This is not true. In the supplementary affidavit filed by the petitioner, a judgement from ELodret SPMCC No. 31 of 1992 was attached. The judgement clearly shows that the entire Ziwa land was sold out by Songok. There was nothing which was retained or given to the first house. What emerged is that the 3rd Respondent was given half of the proceeds to go and purchase land at Kitale.
17. Though the judgement states that the purchase for the Kitale property by the 3rd Respondent did not go through, he paid the 5,000/= being half share for the Kiplombe land. Songok tried to refund the 5,000/= to the Committee of Kiplombe Farm but this was not accepted. This therefore meant that the first house was entitled to half of the Kiplombe land. They were only given 10 acres out of 25 acres. It is therefore clear that there was no discrimination shown to the 2nd house. It therefore follows that the constitutional rights of the Petitioner under article 27 of the Constitution were not violated.
18. Article 28 of the Constitution states as follows: -

“Every person has inherent dignity and the right to have that dignity respected and protected.”

There was no evidence shown or tendered to show that the Petitioner's dignity was not protected or respected. There is therefore no infringement of the Petitioner's right to dignity as enshrined in Article 28 of the Constitution.

19. Article 31 of the Constitution states as follows:-

“Every person has the right to privacy, which includes the right not to have—

- (a) their person, home or property searched;
- (b) their possessions seized;
- (c) information relating to their family or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.”

20. There is nothing in this petition which shows that the Petitioner's person, home or property was searched. There is nothing in the petition to show that the Petitioner's possessions were seized or that any information relating to his family or private affairs were required or revealed or his private communication revealed. The Tribunal that is the 4th Respondent dealt with what was necessary and what was put before it. There is therefore nothing to show that the petitioner's right under Article 31 of the Constitution was infringed.

21. Article 40 of the Constitution provides as follows:-

- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property —
 - (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—



- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that— [Constitution of Kenya, 2010](#)
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
22. The Petitioner and his son from the second house filed a suit against the 2nd and 3rd Respondents seeking to evict them from the Kiplombe land. Though the proceedings in Eldoret SPMCC No. 31 of 1992 were not availed, at least from the judgment, it is clear what the dispute was and its origin. The children of the first house were seeking their rightful share of the Kiplombe land which had its history from the ancestral land at Nandi. There is nothing to show that the petitioner’s right to property under Article 40 of the [Constitution](#) were violated. Just like the 2nd house, the first house of Songok were entitled to a share of the Kiplombe land having paid half of the purchase price.
23. Article 45 deals with family and states as follows: -
- (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.
 - (2) Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.
 - (3) Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.
 - (4) Parliament shall enact legislation that recognises—
 - (a) Marriages concluded under any tradition, or system of religious, personal or family law; and
 - (b) Any system of personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent that any such marriages or systems of law are consistent with this Constitution.
24. This petition was filed on behalf of Songok. There is no evidence at all that the Respondents have in any way interfered with marital rights of the Petitioners. The issues in this petition revolves around the share of the Kiplombe land between the 1st and 2nd families of Songok. There is no evidence of infringement of Songok’s family in as far as Article 45 of the [Constitution](#) is concerned.
25. Article 47 of the [Constitution](#) provides as follows:-



- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.
26. The petitioner contends that he was not involved in the proceedings leading to the award which was adopted in Award number 33 of 2006. The petitioner contends that he became aware of the proceedings before the 4th Respondent when he was pursuing title to the Kiplombe land. Other than decree arising out of award No. 33 of 2006, there were no proceedings from the Tribunal which were filed with this petition to show that the petitioner was not served or was present or not. In the absence of this, there is no basis upon which this court can find that there was violation of the Petitioner's rights under Article 47 or Article 50 of the Constitution.
27. Article 57 of the Constitution provides as follows:-
- The State shall take measures to ensure the rights of older persons— (a) to fully participate in the affairs of society; (b) to pursue their personal development; (c) to live in dignity and respect and be free from abuse; and (d) to receive reasonable care and assistance from their family and the State.
28. There is absolutely no evidence adduced or given through affidavit to show any infringement of the petitioner's rights under Article 57 of the Constitution. What the 1st, 2nd and 3rd Respondent did in filing proceedings before the 4th Respondent did not in any way infringe on the petitioner's rights under Article 57 of the Constitution.
29. The petitioner was expected to meet the threshold in the case of Anarita Karimi Njeru –vs- Republic where it was held that for a petitioner to succeed in a Constitutional petition, he/she has to set out the Article of the Constitution said to be infringed and given specific particulars on how the said constitutional provisions were violated. In the instant case, the petitioner has failed to state in which manner the constitutional provisions were violated.
30. The Petitioner has submitted at length on the jurisdiction of the 4th Respondent to entertain the proceedings before it. The jurisdiction of the 4th Respondent was set out under section 3 of the Land Disputes Tribunal Act Cap 303 (now repealed) which provides as follows:-
- “(1) Subject to this Act, all cases of a civil nature involving a dispute as to—
- (a) the division of, or the determination of boundaries to land, including land held in common;
 - (b) a claim to occupy or work land; or



(c) trespass to land, shall be heard and determined by a Tribunal established under section 4.”

31. The 1st to 3rd Respondents’ claim before the 4th Respondent involved division of the Kiplombe land among the 1st and 2nd house of Songok. It also involves a claim to occupy or work on the Kiplombe land. This is a claim which was squarely within the jurisdiction of the 4th Respondent. It had nothing to do with ownership or title to land which is not in any way registered.
32. The case of M’Marete –vs- Republic & 3 others (2004) eKLR relied on by the petitioner involved a case where the Tribunal exceeded its jurisdiction by purporting to award parcel of land which was registered in the appellant’s name. This is unlike the case with the 1st to 3rd Respondents who were seeking to have the Kiplombe land which was unregistered divided among their mother’s house and the house of the petitioner.
33. The Petitioner is raising the issue of res judicata through this constitutional petition. The petitioner is comparing Eldoret SPMCC No. 31 of 1992 with Eldoret Award No. 33 of 2006. The petitioner argues that the issues which were raised in Eldoret SPMCC No. 31 of 1992 were the same ones which were raised in Eldoret Award No. 33 of 2006. As I have said hereinabove, the petitioner did not annex proceedings in respect of Eldoret SPMCC No. 31 of 1992 or proceedings in Eldoret Award No. 33 of 2006. The court is not aware of what the reliefs in Eldoret SPMCC No. 31 of 1992 or what was discussed in the Tribunal which resulted in adoption of award No. 33 of 2006. The court cannot therefore determine whether the issues determined in Eldoret SPMCC No. 31 of 1992 were the same which were determined by the Tribunal. In any case the doctrine of res judicata cannot be invoked as the court which rendered its verdict on 20.5.1996 had no jurisdiction to determine the issues before the 4th Respondent which were finally adopted in Eldoret Award No. 33 of 2006.
34. In the Independent Electoral and Boundaries Commission –vs- Maina Kiai & 5 others (2017) eKLR the Court of Appeal stated as follows:-

“This for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

 - a. The suit or issue was directly and substantially in issue in the former suit.
 - b. That the former suit was between the same parties or parties under whom they were litigating under and finally deter in the former suit.
 - c. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

Disposition;

35. From the above analysis, it is clear that the petitioner’s petition is devoid of merit. The same is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF DECEMBER, 2024.

E. O. OBAGA

JUDGE



In the virtual absence of parties who were aware of the date of delivery of Judgement.

Court Assistant –Laban

E. O. OBAGA

JUDGE

16TH DECEMBER, 2024

