



**Ntoye v District Land Registrar Kajiado & another; Mutunkei (Interested Party)
(Petition E006 of 2022) [2024] KEELC 13644 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13644 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
PETITION E006 OF 2022
LC KOMINGOI, J
DECEMBER 5, 2024**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 20(1), 21 (1), 22 (1),
10, 40, 47, 50 AND 64 OF THE CONSTITUTION OF KENYA 2010;**

AND

IN THE MATTER OF: THE REGISTRATION OF LAND ACT CAP 300(NOW REPEALED)

**IN THE MATTER OF: ALLEGED CONRAVENTION OF SECTION 3(1) OF
THE LAND DISPUTES TRIBUNAL ACT CAP 303 (A) (NOW REPEALED);**

IN THE MATTER OF: THE LAND REGISTRATION ACT, 2013 AND THE LAND ACT 2013;

BETWEEN

AGNES WANJIKU NTOYE PETITIONER

AND

DISTRICT LAND REGISTRAR KAJIADO 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

BACKSON MUTUNKEI INTERESTED PARTY

JUDGMENT

1. What is before this court for determination is the Petition dated 28th July 2022. The same is brought under;
 1. Under Article 2, the Constitution of Kenya, 2010 is the supreme law of the Republic and binds all persons and all State organs at both levels of government. Under Article 3 of the



Constitution of Kenya, 2010, every person has an obligation to respect, uphold and defend this Constitution.

2. Under Article 10 of the Constitution of Kenya 2010, the national values and principles of governance in this Article bind all State organs, public officers and all persons whenever any of them applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.
3. Under Chapter Four of the Constitution, various fundamental rights have been declared to belong to all persons in Kenya (Article 19,20), including inter-alia the following:-
 - a. Article 40, the right not to be arbitrarily deprived of property of any description or of any interest or right over property, which rights do not extend to property that was unlawfully acquired.
 - b. Article 47, the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - c. Article 48, the right to access to justice for all the persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.
 - d. Article 50(1), the right to have any dispute that can be resolved by the application of Law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
 - e. Article 64, the right to have private land registered by any person under freehold tenure; under leasehold tenure; declared under an Act of Parliament.
2. Under Articles 60 the principles of land policy are to be upheld including equitable access to land and security of land rights to all the citizens.
3. Under Articles 73 and 75, state officers are required to act in accordance with various principles of leadership and integrity including inter alia compliance with the Constitution, promoting public confidence in the integrity of the office, and to avoid conflict of interest between public duty and personal interests.
4. Under Article 232, the values and principles of public service that all public officers are required to comply with include high standards of professional ethics, efficient, effect and economic use of resources, involvement of the people in policy making, accountability for administrative acts, transparency and provision to the public of timely accurate information.
5. The aforesaid Articles of the Constitution are also supported by statute law as follows:-
 - a. Under Sections 4 and rules 18 and 22 of the Land Disputes Tribunal Act (Cap 303 A) (repealed) provides that the adjudicating body ought to ensure that there is fair hearing and administration of justice by involving the parties in the decision to be reached whilst determining matters, this is the principle enshrined in the Constitution of Kenya, 2010, Article 10 and Article 50 for fair hearing and natural justice.
 - b. Under Section 28 and 32 of the Registered Land Act (Cap 300), (repealed) read together with Section 75 of the previous Constitution of Kenya and Article 40 of the Constitution of Kenya, guarantees a proprietor who has on first registration or acquired a property for a valuable consideration an indefeasible title and cannot be deprive the said property unless as provided in law.



- c. Under Sections 36, 79, 80 and 101 of the [Land Registration Act \(Act No. 3 of 2012\)](#), read together with Article 40 of the [Constitution](#) of Kenya, 2010 guarantees that once a property is acquired then the same is not subject to any form of administration except through court process.
6. The Petition is supported by the Affidavit of Agnes Wanjiku Ntoye dated 26th July 2022 and a Further Affidavit dated 15th March 2024.
7. The Petitioner seeks the following reliefs;
 - a. A declaration that the hearing and determination of the District Kajiado Land Registrar issued on the 24th October 2019 and dated the 16th October 2019 in relation to a boundary dispute between Kajiado/Kitengela/33340 AND Kajiado/Kitengela/8451 and in particular the finding and award dated the 16th day of October 2019 is in breach of the Petitioner right protected under Articles 48 and 50 of the [Constitution](#) of Kenya, 2010 and those proceedings and finding be declared null and void abinitio.
 - b. A declaration that the Kajiado District Lands Registrar in relation to a boundary dispute between Kajiado/Kitengela/33340 and Kajiado/Kitengela/8451 ultravires its statutory mandate in hearing and determining the complaint made by the Interested Party and the decisions arising therefrom and all other subsequent orders including order of.
 - c. A declaration that the Petitioner is the absolute and legal proprietor of Land Reference Number Kajiado/Kitengela/8451 and a declaration that the cancellation and hiving off part of the petitioner title to their parcel of land known as Kajiado/Kitengela/8451 and awarding it to the interested party and the process leading thereto are unconstitutional and contravenes the petitioners fundamental rights and freedoms as recognized by the [Constitution](#) of Kenya and are therefore void, illegal, invalid and or inapplicable to enforcement and or of no legal effect.
 - d. Consequently, an order prohibiting the respondents whether by themselves, their officers, agents and/or servant or employees from further dealing, registering transfers and or interference with the parcel Land known as Kajiado/Kitengela/8451 unless in accordance to law.
 - e. Consequently, an order prohibiting the respondents whether by themselves, their officers, agents and or/servant or employees from restricting or otherwise limiting the petitioner's peaceful enjoyment of and access to their parcel of land known as Kajiado/Kitengela/8451.
 - f. All such other orders as this Honourable court shall deem just in the circumstances.
8. It is not clear if the Respondents were duly served with the Petition. I have gone through the court file and I see no evidence of service.
9. The Interested Party upon being served with the Petition filed a Preliminary Objection dated 28th September 2022 citing that the Petition herein contravenes Section 86 of the [Land Registration Act](#), No. 3 of 2012 which gives the avenue for seeking review of the impugned ruling of the 1st Respondent.
10. The Petition was canvassed by way of written submissions.



The Petitioner's Submissions.

11. They are dated 19th October 2023 and 6th May 2024. Counsel submitted that the 1st Respondent acted ultravires since no court order was issued and the issue in dispute materially affects the interest of the Petitioner.
12. It is further submitted that the cancellation and the hiving off, of part of the Petitioner's parcel of land and the process leading thereto contravenes the Petitioner's fundamental rights especially Articles 48, 50,40 and 47 of the Constitution.
13. Counsel further submitted that the matter was heard in her absence and she was not given an opportunity to be heard despite being the registered owner of Kajiado/Kitengela/8451. He has put forward the case of Mandeep Chauhan v. Kenyatta National Hospital & 2 others (2013) eKLR where Lenaola J (as he then was) stated;

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase ‘audi alteram partem’ literally translates into ‘hear the parties in turn’, and has been appropriately paraphrased as ‘do not condemn anyone unheard’. This means a person against whom there is a complaint must be given a just and fair hearing.”

He prays that the reliefs sought in the Petition be granted with costs.

The Respondents Submissions.

14. It appears they did not file any.

The Interested Party's Submissions.

15. They are dated 5th February 2024.
Counsel raised one issue for determination; whether this Honourable Court can issues the declarations and the orders sought through a petition.
16. Counsel submitted that the Petition lacks the nexus between the Petitioner's grievances and the ruling of the Land Registrar dated 24th October 2019 or 16th October 2019. He has put forward the case of Anarita Karimi Njeru v. Attorney General (1979) KLR 154 as cited in the case of Mumo Matemu v. Trusted Society of Human Rights Alliance and Others (2012) eKLR.
17. Counsel also submitted that the Petition as drawn and filed shows that the issues concern a boundary dispute which is not a constitutional issue. *Viva voce* evidence is necessary to establish the competing rights of the parties herein.
18. Counsel also submitted that the proceedings before court seek determination of competing private rights to property between private persons and can only be determined by a substantive suit for recovery of the said property and declarations of any rights thereto. He has put forward the cases of Sangani Investment Limited v. The Officer In Charge Remand and Allocation Prison; Miscellaneous Application No. 99 of 2006; R v. Attorney General & Another Ex parte Samuel Kazungu Kambi (2012) eKLR .



19. It is further submitted that the Petition contravenes Section 86 of the Land Registration Act. That where there is a clear procedure of redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

He has put forward the case of Speaker of the National Assembly v. Karume (2008) KLR 425.

20. It is also submitted that the Petition does not satisfy the threshold as to what constitutes a valid Constitutional Petition as set out in the case of Anarita Karimi Njeru case (*supra*).

He prays that the reliefs in the Petition be disallowed.

Analysis and Determination.

21. I have considered the Petition, the grounds, the Affidavits in support, the response thereto, the rival submissions and the authorities cited. The single issue for determination is whether this Honourable Court can issue the reliefs sought in the Petition.

22. It is not in dispute that the issues raised in this Petition arose out of a decision from a boundary dispute between the Petitioner and the Interested Party. It is the Petitioner's case that she was not present when the matter was heard by the Respondents. That the impugned ruling was arrived at without being afforded an opportunity to be heard.

23. At this juncture it is important to point out that it is not clear for the documents filed by the Petitioner, whether the impugned ruling is dated 24th October 2019 or 16th October 2019.

24. Section 86 (1) of the Land Registration Act provides that;

“If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.”

The Section prescribes a procedure in which to challenge the decision of the Land Registrar.

25. It is clear that the reliefs sought by the Petitioner cannot be granted as they are in this Petition.

I find that the Petition herein failed to satisfy the threshold of what a Constitutional Petition as set out in the case of Anarita Karimi Njeru case (*Supra*).

26. The Petitioner has ignored the procedures set out in Section 86(1) of the Land Registration Act and purports to seek redress by way of Petition.

The Petitioner has filed contested documents which can only be tested in an ordinary suit.

In the case of Sangani Investment Limited v. The Officer in Charge Remand and Allocation Prison Miscellaneous Application No. 99 of 2006 and R v. Attorney General & Another Ex parte Samuel Kazungu Kambi (2012) eKLR where the court held that;

“judicial review proceedings is not a forum where disputes on ownership of land can be adjudicated and determined since such disputes require viva voce evidence and cross examination of witnesses which is not allowed in judicial review proceedings.”

27. It is also not clear why the Petitioner took too long to approach the court on the issue. I have gone through the affidavits in support and I find no explanation for the delay.



28. The upshot of the matters that the Petitioner herein however aggrieved has used the wrong forum to ventilate her issues.

29. I find that the Petition is not merited and the same is struck out with costs to the Interested Party.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF DECEMBER 2024.

L.KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mrs Okusimba for Mr. Ndolo for the Petitioner.

N/A for the Respondents.

Mr. Nairi for the Interested Party.

Mutisysa – Court Assistant.

