



**Gisebe v Land Registrar, Trasmara Sub-County & another; Maroi & 2 others (Interested Parties)
(Being the Chairman, Secretary & Treasurer Olorien Adjudication Section on behalf of the
Adjudication Committee & the Land Owners Olorien Adjudication Section) (Environment
& Land Petition 8 of 2017) [2023] KEELC 16766 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 16766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 8 OF 2017
MN KULLOW, J
FEBRUARY 22, 2023
(FORMERLY KISII ELC MISC APP NO. 1 OF 2017 (JR))**

BETWEEN

WILFRED GISEBE GISEBE PETITIONER

AND

THE LAND REGISTRAR, TRASMARA SUB-COUNTY 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

MOIKO OLOIPUTA MAROI INTERESTED PARTY

JULIUS OLE MOKITA INTERESTED PARTY

LENKAI LE METETA INTERESTED PARTY

**BEING THE CHAIRMAN, SECRETARY & TREASURER OLORIEN
ADJUDICATION SECTION ON BEHALF OF THE ADJUDICATION
COMMITTEE & THE LAND OWNERS OLORIEN ADJUDICATION SECTION**

JUDGMENT

1. The Petitioner had moved this court by way of a Petition dated 25/3/2014 seeking a declaration that he is entitled to protection under the Constitution of Kenya after the 1st respondent failed, refused and neglected to give him reasons for declining to accept and register a mutation form and in respect of LR Trasmara/Olorien/20 amounted to violation of Article 47 of the Constitution of Kenya. A declaration that the actions of the 1st respondent amounted to dereliction of Public duty and above offence and he



- thus sought for orders compelling the 1st respondent to accept and duly register the aforesaid mutation in favour of the petitioner.
2. The petitioner was brought under Article 20,21,22,27 and 47 of the Constitution of Kenya 2010 on the grounds that the Petitioner is the registered proprietor of the suit land as the land was registered in his name after the completion the Adjudication process of Olorien Adjudication section: However, in 2013, the petitioner commenced the process of subdividing the suit property which measured 141.49 hectares and he applied for and obtained the consent of the land Control Board and after he engaged the services of a Surveyor who surveyed the property, subdivided the land and prepared the necessary mutations forms for registration but the same was declined by the 1st respondent and despite the said refusal he never gave any reason for his failure to accept and register the said mutation which in the petitioner opinion denied him the right to subdivision and register his property.
 3. The petitioner further contends that the only reason given to him for the refusal by 1st Respondents registered the said mutation when he visited his office, was that there is a pending boundary dispute that must be resolved. The said dispute was raised by the Olorien Group Ranch which owns the neighbouring land. The petitioner stated that the aforesaid reasons were given to him verbally and that the 1st respondent has refused to reduce the same into writing and avail to the petitioner. Consequently, his Constitutional Right to information has been breached by the 1st respondent and in view of the above breach the petitioner sought the following declaration;-
 - a. A declaration be issue to effect that the Petitioner is entitled to protection under the Constitution.
 - b. A declaration to issue that the failure and/or refusal by the 1st respondent to supply or avail reasons for declining to accept and register the mutation over and in respect of LR No. Trasmara/Olorien/20 belonging to and registered in favour of the Petitioner amounted to violation of Article 47 of the Constitution of Kenya 2010.
 - c. A declaration that the actions and/or omission of the 1st respondent Constitution and/or amount to dereliction of Public Duty or abuse of Office.
 - d. An order compelling and/or directing 1st respondent to accept and register the mutation one and in respect of LR No. Trasmara/Olorien/20 forthwith.
 - e. Cost of the petitioners.
 4. The petition was opposed by 1st and 2nd respondent and the Interested Parties. The 1st respondent filed a Replying Affidavit sworn by Stephen Githinji the Trasmara District Land Registrar. In his replying Affidavit, he stated that the petition is based on lies and misrepresentation which the petitioner was fully aware of. He contended that whereas the petitioners title indicated that his land measures 141.49 Ha, he was only allocated a mere 14.49 Ha. It was therefore important to correct the error as to what the petitioner actually owned and was entitled to vis a vis what was indicated on his title. He further stated that there were various complaints touching on the boundary of the suit land and the actual acreage that the petitioner owns.
 5. He to further averred that he could not register the mutation based on the reason of the complaints and the difference in what the petitioner owned and what was indicated in his title. He based his refusal pursuant to the Provisions of section 14 of the Land Registration Act, 2012 and consequently dismissed the Petitioner's allegations as misconceived.
 6. The Interested parties on the other hand contend that they were members of the Olorien Adjudication section in which the suit property is situated and are well aware of all the facts surrounding the suit land.



- They argued that the reliefs sought by the petitioner would affect several people who own land within Olorien Adjudication section, since the petitioner claims half of the land within the said Adjudication section and is intent to validate his claim over the entire hectares 141.49 hectares of land within the Olorien Adjudication section; they claimed that only 14.49 hectares of land was adjudicated and earmarked in favour of the petitioner.
7. The interested party further stated that allowing the petition would have serious effect as several land owners within the Adjudication section would be displaced.
 8. I have considered the petition in its entirety and the evidence of the petitioner and his submissions. I have also considered the evidence of the 1st respondent and his witness together with the submissions and that of the Interested Party, and I find that there is only one issue arising for determination; whether the refusal by the 1st respondent to register the mutation of said parcel No. Transmara/Olorien/20 was a violation of the petitioner's rights.
 9. It is the petitioner's contention that the refusal by the Transmara land Registrar to register the mutation contravened his Constitution Rights. The 1st Respondent in his defence to the petition contends that he could not register the mutation since firstly, the acreage of the land parcel on the petitioner title was 141.49 hectares whereas what he was actually entitled to as per the adjudication records obtained and produced before court, was that the petitioner was only entitled to 14.49 hectares and secondly; that there were pending boundary dispute involving the petitioner and other land owners within the Olorien Adjudication section thus until this dispute were resolved that it would not be possible to have the mutation registered.
 10. Having considered the petitioner's allegation against that of the land Registrar, I find that the 1st respondents decision not to register the mutation was both responsible and justified. The petitioner during cross-examination could not explain the discrepancy between the acreage on the title and that on the Adjudication record and if the Registrar had accepted the said mutation the net effect would be an extension of the petitioner's land illegally and as a result would have affected other land owners to the extent of having a deficit of their respective acreage, it would have been convenient for the petitioner herein to await the decision of the 1st respondent in addressing the issue of the discrepancy on the title and other boundary dispute involving the suit land as he is empowered under section 14 of the [Land Registration Act](#).
 11. It is therefore my considered view that having looked at the provisions of section 14, I find no fault on the part of the 1st respondent to refuse the registration. I have not seen the 1st respondent as having abused his discretion to register the mutation and in arriving at his decision, the 1st respondent did not fail to execute his statutory discretion reasonably.
 12. The upshot of the above is that the Petitioner has not demonstrated a case to warrant the intervention of the court since the 1st respondent has acted prudently pursuant to section 14 of the [Land Registration Act](#) and I therefore proceed to dismiss the petition with cost to the Respondent and Interested Parties.

DATED SIGNED DELIVERED, VIRTUALLY AT MIGORI THIS 22ND DAY OF FEBRUARY 2023

MOHAMMED .N. KULLOW

JUDGE

In presence of;-

Tom Maurice – Court Assistant

