



Olal & 4 others v Nairobi City Water and Sewerage Company & 4 others (Environment and Land Constitutional Petition E023 of 2020) [2023] KEELC 19342 (KLR) (27 July 2023) (Judgment)

Neutral citation: [2023] KEELC 19342 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E023 OF 2020

JO MBOYA, J

JULY 27, 2023

**IN THE MATTER OF THE CONTRAVENTION OF THE CONSTITUTION,
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES
1, 2, 3, 6,10, 20, 21, 22, 23, 26, 28, 29, 31, 39, 40, 43, 47, 53, 57,
73,165(3), 258, 259, & 260 OF THE CONSTITUTION OF KENYA**

BETWEEN

**WILLIS JUMA OLAL 1ST PETITIONER
BEN OTIENO AGAO 2ND PETITIONER
FRANCIS WAWERU MBUTHIA 3RD PETITIONER
ROBERT JIMWAI AMWATA 4TH PETITIONER
KENYA HUMAN RIGHTS COMMISSION 5TH PETITIONER**

AND

**NAIROBI CITY WATER AND SEWERAGE COMPANY 1ST RESPONDENT
THE CABINET SECRETARY, MINISTRY OF WATER AND
SANITATION 2ND RESPONDENT
THE INSPECTOR GENERAL 3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT
NAIROBI CITY COUNTY 5TH RESPONDENT**



JUDGMENT

Introduction And Background

1. The instant Petition has been filed and/or lodged by the 1st to 4th Petitioners, who contend that same were resident upon and/or occupiers of various (sic) Plots situated within L.R No. 8285/163, (hereinafter referred to as the Suit Property), within the City of Nairobi. Furthermore, the 1st to 4th Petitioners were joined by the 5th Petitioner, which is a Non-Governmental Organization famed for fostering, inspiring and/or propagating Human Rights and Fundamental freedoms.
2. In respect of the current Petition, the 1st to 4th Petitioners have contended that the Respondents herein jointly and/or severally dispatched their officers, employees and/or agents to the suit property wherein the 1st to 4th Petitioners; and other residents estimated to be 1500 families were residing, with a view to evicting the 1st to 4th Petitioners and the rest of the Families.
3. Premised on the foregoing contention, the Petitioners herein filed and mounted the Petition dated the 15th October 2020; and in respect of which same have sought for a plethora of Reliefs.
4. For ease of reference, the reliefs sought are as hereunder;
 - a. A Declaration that the 1st, 2nd, 3rd and 4th Petitioners and all other plot owners duly acquired and own their respective plots, being land subdivisions situate on land described as L.R. No. 8285/163.
 - b. A Permanent Injunction be issued restraining the Respondents by themselves their servants and/or agents or any other person from dealing, transferring, disposing, transacting and/or in any way interfering with the suit land and/or a portion thereof.
 - c. A Declaration that the subject eviction was illegal, unlawful, contrary to *the constitution* of Kenya and international conventions/declarations as particularized in the Petition.
 - d. A Declaration that the Respondents contravened and violated the fundamental rights and freedoms of the 1st, 2nd, 3rd and 4th Petitioners and other victims of the subject eviction as particularized in the Petition.
 - e. An award of Damages for violation and contravention of the Fundamental Rights and Freedoms of the 1st, 2nd, 3rd and 4th Petitioners and all victims of the subject Evictions.
 - f. An Order for Compensation for the loss suffered by the 1st, 2nd, 3rd and 4th Petitioners and all victims of the subject Evictions particularized as follows: Land valued at Kshs. 308,430,000.00 Buildings and other structures valued at Kshs. 570,446,600.00 Moveable Assets valued at Kshs. 32,201,687.00 Loss of livelihood and business establishments valued at Kshs. 3,516,750.00
 - g. An order for restitution of the 1st, 2nd, 3rd and 4th Petitioners and all victims of the subject evictions to the subject land.

In the Alternative to order (g):
 - h. (gg) An order for resettlement of the 1st, 2nd, 3rd and 4th Petitioners and all other victims of the subject evictions which resettlement measure are to include construction of homes, provision of water, electricity, sanitation, schools, access roads and such other basic amenities.



- i. An Order that the 5th Petitioner be assigned the responsibility to follow up with the enforcement of the Order(s) of the Court issued in the Petition herein until compliance thereof in full
 - j. An order awarding costs of the Petition to the Petitioners
 - k. Any other or further orders, writs and directions this court considers appropriate and just to grant for the purpose of enforcement of the petitioner's fundamental rights and freedoms.
5. Instructively, the Petition under reference is anchored and/or premised on various albeit numerous grounds, which have been enumerated in the body of the Petition. Further and in addition, the Petition is supported by the affidavit of the 1st Petitioner, wherein same has made several averments concerning the manner in which the 1st to 4th Petitioners and other families; who were residing on L.R No. 8285/163, were evicted from the suit property albeit without any Prior Eviction notice or at all.
 6. On the other hand, the 1st Petitioner has also annexed and/or attached various documents to the supporting affidavit, inter-alia, a List/Schedule containing names of (sic), Plot owners, Copies of Letters of allotment and copies of Demand for rates, issued by and on behalf of the 5th Respondent herein.
 7. Upon being served with the Petition, the 1st Respondent herein responded thereto by way of a Replying affidavit and thereafter a witness statement by one, Stanley Kimani. On the other hand, the 2nd, 3rd, 4th and 5th Respondents filed Grounds of opposition dated the 25th November 2020; and wherein same denied the allegations contained at the foot of the Petition.
 8. For good measure, the Petition herein came up for directions, pertaining to and or concerning the manner in which the Petition was to be canvassed and or disposed of. Instructively, the Parties to the Petition thereafter agreed that the Petition be canvassed and disposed of vide viva voce evidence. Consequently and in this regard, the Petition was ultimately set down for hearing.

Petitioners' Case:

9. The Petitioners' case revolves and gravitates around the evidence tendered by six witnesses, inter-alia Wiliam Juma Olal, Ben Otieno Agao, Francis Waweru Mbuthia, Robert Jimwai Amwata, George Kegoro and Joel Ombati Nyamweya; who testified as PW1, PW2, PW3, PW4, PW5 and PW6, respectively.
10. It was the testimony of PW1, that same is the chairperson of Kariobangi North Self-help Group, which is duly registered with the relevant Ministry. For good measure, the witness tendered and produced before the court a copy of the certificate of registration to that effect. Further and in addition, the witness contended that the 2nd, 3rd and 4th Petitioners together with approximately 283 others have filed and mounted the instant Petition arising out of the offensive actions culminating into the eviction of same from L.R No. 8285/163, wherein same had been in occupation.
11. It was the further testimony of the witness that the 2nd, 3rd and 4th Petitioners; himself and others had been allocated Plots within the suit property by the City Council of Nairobi, now defunct. In any event, the witness added that upon being allocated the various Plots, the allottees thereof proceeded to and paid the requisite allotment fees.
12. On the other hand, the witness testified that other than the allotment of various plots by and the City Council of Nairobi; the Government of the Republic of Kenya also established the office of the Area Chief on a portion of the suit property.



13. Additionally, it was the testimony of the witness that after the 2nd, 3rd and 4th Petitioners; himself and the other allottee were allocated various Plots on the suit property, the allottees proceeded to and constructed Residential and Business Premises on their various Plots. In any event, the witness added that the allottees also resided on their various plots together with their families.
14. Be that as it may, the witness testified that on or about the 4th May 2020; the Respondents herein dispatched their agents, servants and or employees to evict the 2nd, 3rd and 4th Petitioners, himself and the various persons who were occupying portions of the suit Property. In this regard, the witness added that on the 4th May, 2020; approximately 500 police officers descended onto the suit property and commenced to assault the 1st to 4th Petitioners and various persons who were residents on the suit property.
15. Other than the foregoing, the witness also testified that there were also Bulldozers that were unleashed by the Respondents herein resulting into the demolition of the residential and business premises that were constructed and erected by the 2nd, 3rd and 4th Petitioners and the rest of the persons, who had been allocated plots within the suit Property.
16. Furthermore, it was the testimony of the witness that the impugned demolitions and evictions were carried out and or undertaken without any prior Eviction Notice having been issued by the Respondents, either in accordance with the provisions of Section 152(2) (c) of The Land Act, 2012 (2016) or otherwise.
17. On the other hand, the witness also testified that impugned eviction was carried out and or undertaken during the Covid-19 pandemic and that the evictees, inter-alia, the 2nd, 3rd and 4th Petitioners' himself and their families Members without any preventive measures being taken to avert the likelihood of the evictees being exposed to Covid – 19.
18. Besides, the witness also testified that as a result of the Eviction and the consequential demolitions, the 2nd, 3rd and 4th Petitioners, himself and the other persons who had been allocated land out of the suit property suffered massive losses in respect of the structures which were taken down, the movable properties that were destroyed, as well as loss of of income arising from destruction of Business.
19. As a result of the foregoing, the witness herein averred that the impugned actions and/or activities were illegal, unlawful and amounted to breach of the Petitioners Constitutional Rights and Fundamental Freedoms.
20. In this regard, the witness implored the Honourable court to find and hold that the Eviction was carried out and under taken contrary to and in contravention of the Constitution and the relevant provisions of the Law underpinning Eviction.
21. Other than the foregoing, the witness tendered before the Honourable court the assorted documents which were attached to his supporting affidavit. For good measure, the assorted documents contained Letters of allotment, the demand for Land rates and the Photographs showing Bulldozers on site and same were produced as Exhibits P1 to P6, respectively.
22. Additionally, the witness also averred that the impugned Eviction was also carried out and or undertaken during the subsistence of a court order issued to and in favor of Kariobangi Sewerage Farmers Self-help Group. Instructively, the witness averred that the order in question was issued on 3rd May 2020.



23. Based on the foregoing, the witness therefore implored the Honourable court to find and hold that the Petitioners herein suffered substantial losses and thereafter that the court be pleased to award the reliefs sought at the foot of the Petition.
24. On cross examination by Learned counsel for the 1st Respondent, the witness stated that the impugned Eviction was carried out and or undertaken on the 4th May 2020. Further and in addition, the witness testified that he was present and thus witnessed the impugned eviction.
25. On the other hand, the witness averred that prior to the Eviction that was carried out on the 4th May 2020, the Chief had summoned the various residents of the suit property and informed same that they needed to vacate and move out of the suit Property. However, the witness added that the Chief neither issued nor served any Eviction notice; nor did the Chief intimate to the residents who, to wit, the details of who were to undertake the evictions.
26. Additionally, the witness testified that the Petitioners have sued the 1st Respondent because the 1st Respondent was part of the people who were on site and participated in the demolition of the premises. Nevertheless, the witness averred that he was not aware of the names of the Employees of the 1st Respondent who participated in the Eviction and Demolition.
27. On cross examination by Learned counsel for the 2nd, 3rd and 4th Respondents, the witness testified that same has appeared in court for and on behalf of 283 Group Members. For clarity, the witness averred that same has testified as the Chairperson of Kariobangi Self Help Group.
28. Whilst under further cross examination, the witness averred that the 2nd, 3rd and 4th petitioners; himself and the rest of the Members of the Self-help group were indeed allocated plots within the suit property in the year 2008.
29. On the other hand, the witness also testified that same has been able to produce before the Honorable court copies of the Letters of allotment which were issued by the City Council of Nairobi, now defunct.
30. Whilst under cross examination by Learned Counsel for the 5th Respondent, the witness testified that he entered onto the suit Property in the year 2009; and that the impugned demolition took place on the 4th May 2020, albeit in the presence of Police Officers.
31. Furthermore, the witness also averred that the 5th Respondent herein was also involved in the Eviction of the 2nd, 3rd and 4th Petitioners; himself and the rest of the Members who were in occupation of the suit property.
32. The Second witness who testified for and on behalf of the Petitioners was Ben Otieno Agao. For good measure, same testified as PW2.
33. It was the testimony of the witness that same is the 2nd Petitioner herein and further that he was also a victim of the demolition that was carried out and/or undertaken by the Respondents herein on the suit property.
34. Further and in addition, the witness also averred that he is the Secretary of Kariobangi North Self-help Group; and by virtue of being the Secretary, same was privy to and or knowledgeable of the facts pertaining to the occupation of the suit property and the impugned evictions that was carried out on the 4th May 2020.
35. Other than the foregoing, the witness referred to the witness statement dated the 11th March 2022; and thereafter sought to adopt and rely on the contents of the named Witness Statement.



36. On cross examination by Learned Counsel for the 1st Respondent, the witness herein reiterated that the demolition in question took place on the 4th May 2020. However, the witness added that he did not see any Employee of the 1st Respondent at the scene when the impugned Eviction took place.
37. On cross examination by learned counsel for the 2nd, 3rd and 4th Respondents, the witness stated that same had been allocated Plots by City Council of Nairobi. In any event, the witness added that same has sued the Cabinet Secretary for Water and Sanitation; because the 1st Respondent is under the said Ministry.
38. On cross examination by Learned counsel for the 5th Respondent, the witness averred that the Bulldozers and tractors, which were being used to effect the demolition had Green Number Plates.
39. Whilst under further cross examination, the witness averred that he however does not recall the number Plates.
40. The 3rd witness who testified on behalf of the Petitioners was Francis Waweru Mbuthia. For coherence, same testified as PW3.
41. The witness herein alluded to his witness statement dated the 11th March 2021; and thereafter sought to adopt and rely on same as his Evidence- in Chief.
42. On cross examination by Learned Counsel for the 1st Respondent, the witness herein averred that the tractors which were being used during the demolition had Green Number Plates. However, the witness stated that he was unable to recall the registration details/ Numbers.
43. The Fourth witness who testified on behalf of the Petitioners; was Robert Jimwai Amwata. Instructively, same testified as PW4.
44. It was the testimony of the witness that same was allocated a Plot within the suit Property by the City Council of Nairobi, now defunct. In any event, the witness added that he was a victim of the impugned eviction and demolition that was undertaken on the 4th May 2020.
45. Other than the foregoing, the witness alluded to his Witness Statement dated the 11th March 2020; and thereafter same adopted the witness statement as his Evidence in chief.
46. The 5th witness who testified on behalf of the Petitioners was one; George Mongare Kegoro. For good measure same testified as PW5.
47. It was the testimony of the witness that at the time of the offensive Eviction and demolition, which took place on the 4th May 2020, he was the Executive Director of Kenya Human Rights Commission.
48. Additionally, the witness testified that as pertains to the impugned Evictions and the consequential demolition, same prepared a witness statement dated the 16th March 2022; and an Affidavit sworn on the 15th October 2020. In this respect, the witness sought to and indeed adopted the contents of the named documents as his Evidence in chief.
49. Other than the foregoing, the witness herein also referred to various documents which were attached to the Affidavit sworn on the 15th October 2020; and thereafter sought to adopt the named documents as Exhibits. In this regard, the documents attached to the affidavit were thereafter admitted and marked as Exhibit P8, P9 and P10, respectively.
50. On cross examination by Learned counsel for the 1st Respondent, the witness herein averred/ stated that the contents of his witness statement do not constitute and or amount to heresay.



51. Additionally, the witness also averred that same went to the Locus in Quo after the impugned demolitions had been taken.
52. On cross examination by Learned counsel for the 2nd, 3rd and 4th Respondents, the witness testified that his Witness statement has only mentioned the 1st Respondent as the person who was responsible for the impugned eviction and demolition. However, the witness admitted that his witness statement has not mentioned the rest of the Respondents.
53. Further and in addition, the witness conceded that the 2nd Respondent was not involved in the offensive Eviction and demolition.
54. On cross examination by Learned counsel for the 5th Respondent, the witness herein averred that the 5th Petitioner engaged and instructed a Valuer who thereafter proceeded to and prepared a Valuation Report, pertaining to and concerning the extent of the damage and lose suffered by the 1st, 2nd, 3rd and 4th Petitioners; as well as the rest of the Persons who were occupiers of the suit Property.
55. The Last witness who testified on behalf of the Petitioners herein was one, Joel Ombati Nyamweya. For clarity, same testified as PW6.
56. It was the testimony of the witness herein that same is a Licensed and Registered valuer practicing under the name and style of Milestone Land Access Limited. In this respect, the witness testified that same was instructed and or retained by the 5th Petitioner to undertake valuation pertaining to and concerning the destruction that occurred at Kariobangi North.
57. It was the further testimony of the witness that upon receipt of the instructions, same proceeded to and undertook the valuation culminating into a preparation of a Valuation Report dated the 11th August 2020. In this regard, the witness tendered and produced before the court the Valuation Report.
58. Other than the foregoing, the witness alluded to a witness statement dated the 16th March 2022; and same sought to adopt the witness statement as Further Evidence in chief. For good measure, the Witness Statement dated the 16th March 2022 was duly admitted and constituted as Further Evidence in chief of the witness.
59. On the other hand, the witness also testified that same also generated Questionnaires for data collection and which Questionnaires were used for gathering information from the victims of the Eviction and demolition. In this regard, the witness thereafter produced before the Honourable court the various Questionnaires, as well as the Valuation schedules for the Land parcels, Valuation Schedule for Buildings and Valuation Schedule for the Movable Assets.
60. On cross examination by Learned counsel for the 1st Respondent, the witness herein averred that same was able to ascertain and or authenticate the Land Reference Number from the various Letters of allotment. In this respect, the witness added that the Land Reference Number of the suit property was LR. No. 8183/1431.
61. Whilst under further cross examination, the witness thereafter stated that the Land Reference Number in question is now known as LR N0. 8285/163. Furthermore, the witness also avers that the Petitioners herein are in occupation of L.R No. 8285/163. However, the witness contended that the Petitioners are not in occupation of the entire land.
62. Whilst under further cross examination by Learned counsel for the 2nd, 3rd and 4th Respondents, the witness testified that he was involved in carrying out the collection of data at the foot of the Questionnaires. However, the witness added that he did not participate in the collection of data in person.



63. On cross examination by Learned counsel for the 5th Respondent, the witness averred that the various Letters of allotment were availed to him by Kenya Human Rights Commission, namely, the 5th Petitioner.
64. With the foregoing testimony, the Petitioners' case was duly closed.

1St Respondent's Case

65. The 1st Respondent herein called one witness, namely, Stanley Kimani. Same testified as RW1.
66. It was the testimony of the witness that same is a surveyor currently engaged as a Surveyor Co-ordinator of the 1st Respondent. In this regard, the witness averred that by virtue of his portfolio, same is conversant with and knowledgeable of the facts pertaining to the dispute beforehand.
67. Other than the foregoing, the witness averred that same had recorded a witness statement dated the 26th November 2021 and which witness statement, the witness sought to adopt and rely on as his Evidence-in chief. For good measure, the witness statement under reference was thereafter admitted and adopted as Further Evidence- in chief of the witness.
68. Other than the foregoing, the witness also alluded to two documents which were referred to in the witness statement and sought to produced same as Exhibits on behalf of the 1st Respondent.
69. On cross examination by Learned Counsel for the Petitioners, the witness testified that though he is a Surveyor by profession, same has however, not avail a Certificate to confirm and authenticate that he indeed a Surveyor.
70. Furthermore, the witness testified that there were encroachments on the suit property and the encroachments had reached near or next to the Water Plant.
71. Additionally, the witness testified that same is aware that Evictions were done and that currently there are no encroachment on the suit property.
72. Nevertheless, the witness added that even though the encroachers were removed; same is however, not conversant with the persons who removed the encroachers form the suit property.
73. Whilst under further cross examination, the witness testified that same is familiar with the process leading to eviction. Nevertheless, the witness averred that he is not aware whether any Eviction Notice was issued and served on the Petitioners herein.
74. On the other hand and whilst under further cross examination, the witness testified that the 1st Respondent is a subsidiary of the 5th Respondent herein. In any event, the witness averred that the 1st Respondent cannot carryout and/or undertake any Eviction without informing and or involving the 5th Respondent.
75. With the foregoing testimony, the 1st Respondent's case was closed.

The 2Nd, 3Rd And 4Th Respondents' Case:

76. The 2nd, 3rd and 4th Respondents herein had opposed the Petition on the basis of Grounds of opposition. In any event, the named Respondents did not file any Witness statement or otherwise.
77. Be that as it may, the named Respondents proceeded to and closed their case, albeit without calling any witness or producing any document, whatsoever.



The 5th Respondent's Case:

78. Similarly, the 5th Respondent herein neither called any witness nor tendered any documents, whatsoever. In short, the 5th Respondent's case was also closed without production of any evidence, whether oral or otherwise.

Submissions By The Parties:

a. Petitioners' Submissions:

79. The Petitioners herein filed two sets of written submissions, namely, the submissions dated the 27th February 2023; and 5th May 2023, respectively. For good measure, the Petitioners' have raised, highlighted, canvassed and amplified Four (4) salient issues for consideration by the Honourable court.
80. Firstly, Learned counsel for the Petitioners has submitted that the 1st, 2nd, 3rd and 4th Petitioners and the rest of persons represented by same, were duly and lawfully allocated Plots by the City Council of Nairobi, now defunct, out of the suit property known as L.R No. 8285/163.
81. Furthermore, Learned counsel for the Petitioners has further submitted that the allocation of the various Plots by the City Council of Nairobi, were signified by issuance of various Letters of allotment, which were issued between the years 2008 to 2012, respectively.
82. Additionally, Learned counsel for the Petitioners has submitted that upon being allocated the various, the 1st, 2nd, 3rd and 4th Petitioners; and the rest of the persons represented by same thereafter proceeded to and paid the Statutory levies alluded to at the foot of the Letters of allotment, inter-alia, the Stand Premium and the Ground rents, respectively.
83. Based on the fact that the 1st, 2nd, 3rd and 4th Petitioners and the rest of the persons represented by same, were duly issued with Letters of allotment, Learned counsel for the Petitioners has therefore submitted that the named Petitioners and the persons represented by same, were therefore lawfully in occupation of the suit property and thus ought not to have been evicted.
84. Further and in any event, Learned counsel for the Petitioners has submitted that having availed and or tendered to the court evidence of the Letters of allotment, the Petitioners herein have discharged their burden of proof in showing and/or establishing that same were lawful allottees.
85. Other than the foregoing, Learned counsel has contended that to the extent that the Petitioners have placed before the Honourable Court copies of the Letters of allotment, the Evidential burden thereafter shifted to the Respondents to disprove that the Petitioners herein were indeed lawful allottees. However, Learned counsel has contended that the Respondents did not disprove the fact that the Petitioners' or better still the 1st, 2nd, 3rd and 4th Petitioners and the persons represented by same; were indeed allottees.
86. In support of the foregoing submissions, Learned counsel for the Petitioners has cited and relied on inter-alia Hamed Mohamed Noor versus Abdi Aziz Osman (2013)eKLR and Raila Odinga & Others versus IEBC (2017)eKLR, respectively.
87. Secondly, Learned Counsel for the Petitioners' has submitted that the impugned Eviction and the consequential Eviction were carried out and undertaken albeit without any notice having been issued and served on the Petitioners and the rest of the persons represented by same.



88. In the absence of the requisite Eviction Notice, Learned counsel for the Petitioners has therefore submitted that the impugned Eviction and the consequential demolition were therefore taken contrary to and in contravention of the provision of Section 152(c) of the Land Act, 2012 (2016).
89. Thirdly, Learned counsel for the Petitioners has submitted that in carrying out and effecting the impugned eviction, the Respondents herein breached, infringed upon and/or violated the Human Rights and Fundamental Freedom of the 1st, 2nd, 3rd and 4th Petitioners, as well as the rest represented by the Petitioners.
90. For good measure, Learned counsel has pointed out that the impugned Eviction was carried out to and in contravention of the established and laid down Procedures underpinning Evictions.
91. Owing to the foregoing, Learned counsel for the Petitioners has thereafter contended that the 1st, 2nd, 3rd and 4th Petitioners and the person represented by same, therefore suffered violation, breach and infringements; and hence same are entitled to recompense under the Constitution.
92. In support of the submissions touching on the breach, infringements and violation of Human Rights and fundamental Freedoms; Learned counsel has cited and relied on, inter-alia, the case of Joseph Letuya & 21 Others versus Attorney General & 5 Others (2014)eKLR, Mittu-bell Welfare Society versus Kenya Airport Authority ; Initiative for Strategic Litigation in Africa (Amicus curie) (2021), Kenya National Commission on Human Rights versus Attorney General & 3 Others (2017)eKLR and Azim Smeja T/a Business 2000 versus Lakhamsi Vipal Shah & 5 Others (2016)eKLR, respectively.
93. In nutshell, Learned counsel has impressed upon the Honourable court to find and hold that the Petitioners' have indeed established and proved the breach, violation and or infringement of their Human Rights and Fundamental Freedoms; and same are thus entitled to recompense. In this regard, Learned counsel has thereafter implored the Honourable court to grant the reliefs enumerated at the foot of the Petition.
- b. 1st Respondent's Submissions:
94. The 1st Respondent filed written submissions dated the 16th March 2023; and in respect of which same has raised, highlighted and canvassed four (4) salient issues for due consideration and determination by the Honourable court.
95. First and foremost, Learned counsel for the 1st Respondent has submitted that the 1st Respondent herein has been improperly joined and impleaded in the subject suit and hence same ought to be struck out from the proceedings.
96. Further and in addition, Learned counsel for the 1st Respondent has submitted that even though the 1st Respondent has been sued, there is no scintilla of averment that has been made against the 1st Respondent. In this regard, counsel has contended that it was incumbent upon the Petitioners' to supply particulars pertaining to and or concerning the breaches and infringements, if any, that are attributed to the 1st Respondent.
97. Nevertheless, Learned counsel for the 1st Respondent has submitted that in the absence of such particulars, the 1st Respondent has been enjoined, albeit without any lawful cause and or basis.
98. In support of the foregoing submissions, learned counsel for the 1st Respondent has cited and relied on the decision in the case of Communication Commission of Kenya & 5 Others versus Royal Media Services Ltd & 5 Others (2014)eKLR.



99. Secondly, Learned counsel for the 1st Respondent has submitted that even though the Petitioners' herein have contended that the subject Petition has been filed on their own behalf and on behalf of 283 others, the Petitioners have however not complied with and or adhered to the mandatory provisions guiding/regulating Representative suits.
100. Consequently and in this regard, Learned counsel has therefore submitted that the purported Petition on behalf of the 283 others, is therefore premature, misconceived and Legally untenable.
101. At any rate, Learned counsel for the 1st Respondent has further submitted that other than the Petition not complying with the law regulating Representative suits, the Petition beforehand also offends and contravenes the provisions of Order 1 Rule 32 of the Civil Procedure Rules.
102. Thirdly, Learned counsel for the 1st Respondent has submitted that the Petitioners herein have neither established nor demonstrated that same were lawfully allocated Plots within the suit property, either as claimed or otherwise.
103. In any event, Learned counsel for the 1st Respondent has submitted that the impugned Letters of allotment in the absence of the requisite Part Development Plan; can not therefore be a basis for the claim that the 1st, 2nd, 3rd and 4th Petitioners and the other persons alleged to be represented by same, were indeed allocated Plots.
104. In support of the contention that the 1st, 2nd, 3rd and 4th Petitioners and the other 283 persons represented by same, were not duly allocated Plots, Learned counsel for the 1st Respondent has cited and relied on, inter-alia, the case of Nelson Kazungu Chai & 9 Others versus Pwani University College (2014)eKLR and Ali Mohamed Dagane versus Hakar Abshir & 3 Others (2021), respectively.
105. Lastly, Learned counsel for the 1st Respondent has submitted that Public Land does not cease to be such merely because the intended purpose has not accrued and/or arisen. In this respect, Learned counsel has contended that the 1st, 2nd, 3rd and 4th Petitioners cannot stake a claim to ownership of the suit property or any portion thereof, with a view to defeating the fact that the suit property is Public Land and thus reserved for Public purposes and not otherwise.
106. Premised on the foregoing, Learned counsel for the 1st Respondent has therefore submitted that the Petitioners' herein have neither established nor proved their case to the requisite standard or at all. Consequently and in this respect, Learned counsel for the 1st Respondent has implored the Honourable court to dismiss the Petition beforehand.

c. Submissions By The 2nd, 3rd And 4th Respondents:

107. The 2nd, 3rd and 4th Respondents filed written submissions dated the 21st March 2023; and in respect of which same have raised, highlighted and canvassed one issue for consideration by the Honorable court.
108. Instructively, Learned counsel for the named Respondent has submitted that it was incumbent upon the Petitioners to suitably plead the claims as against the said Respondents and thereafter to supply the requisite particulars pertaining the infringements, breaches and/or violations being attributed to the named Respondents.
109. Nevertheless, Learned counsel for the named Respondent has submitted that the Petitioners' herein have failed to supply the requisite particulars to show the basis upon which the 2nd, 3rd and 4th Respondents, have been impleaded in respect of the subject matter.
110. Owing to the fact that no particulars have been alluded to and/or exhibited, Learned counsel has submitted that the impugned Petition has failed to meet and or satisfy the requisite standard of pleading



necessary prior to and or before a court of law can engage with the Constitutional dispute under reference.

111. Further and in addition, Learned counsel for the named Respondent has cited and relied on, inter-alia, the decision in Anaritah Karimi Njeru versus Republic (1979)eKLR; Communication Commission of Kenya & 5 Others vs Royal Services Ltd & 5 Others (2013) and Mumo Matemu versus Trusted Society of Human Rights Alliance & Anther (2013)eKLR, to anchor the claim that the Petition as against the 2nd, 3rd and 4th Respondent is fatally defective and thus legally untenable.
112. In a nutshell, Learned counsel for the named Respondent has implored the Honourable court to find and hold that the Petition beforehand merits being struck out.
 - d. Submissions By The 5th Respondent:
113. Though Learned counsel for the 5th Respondent was present when directions pertaining to and concerning the filing and exchanging of written submission were given, same has however failed and or neglected to file written submissions, either within the prescribed timeline or at all.
114. Simply put, as at the time of crafting the Judgment herein, no submissions, had been filed. Invariably and for completeness, none was obtaining on the court tracking system (CTS).

Issues For Determination:

115. Having evaluated the Petition filed by and on behalf of the Petitioners and the Responses thereto and having considered the oral and documentary evidence tendered and upon taking into account the written submissions filed on behalf of the respective Parties, the following issues do arise and are thus pertinent for determination;
 - i. Whether the Petition before the court has set out the requisite provisions of *the Constitution*, which are alleged to have been violated, breached and or infringed upon; whether same has identified the persons responsible for such violation and whether the requisite particulars have been availed/supplied.
 - ii. Whether the 1st, 2nd, 3rd and 4th Petitioners and the rest of the persons represented by same; legally acquired any Plots over and in respect of L.R No. 8285/163 or otherwise.
 - iii. Whether this Honorable Court has the requisite Jurisdiction to deal with and/or handle a claim pertaining to compensation in respect of movable assets/properties.
 - iv. Whether the Petitioners have established that same are entitled to compensation for the value of the Land and Buildings, if any, erected on the suit property.
 - v. Whether the Honorable Ccan grant an orders relating to Loss of income and business as sought by the Petitioners.
 - vi. Whether the court can grant an order of Permanent Injunction on the suit property as claimed or otherwise.
 - vii. What Reliefs, if any, ought to be granted.

Analysis And Determination:

Issue Number 1



Whether the Petition before the court has set out the requisite provisions of *the Constitution* which are alleged to have been violated, breached and or infringed upon; whether same has identified the persons responsible for such violation and whether the requisite particulars have been availed/supplied.

116. It is common ground that what has been placed before the honorable court is a Constitutional Petition in respect of which the Petitioners herein are contending that their Human Rights and Fundamental Freedoms as enshrined in *the Constitution* 2010, have been breached, violated and or infringed upon.
117. Furthermore, the Petitioners have thereafter ventured forward and implored the Honourable Court to find and hold that same are entitled to recompense, arising from the impugned breach, violation and/or infringement.
118. Nevertheless, it is imperative to point out and underscore that any claimant/Petitioner, the current Petitioners not excepted, are obligated to craft the Petition in such a manner that same must identify the requisite provisions of *the constitution*, which are alleged to have been breached, violated and or infringed upon; thereafter the Petitioner is called upon to venture forward and supply the particulars of the persons who are responsible and or culpable for the breach and or violation complained of.
119. Furthermore, it is important that a Petitioner stipulates the particulars of each and every person who is (sic) said to be responsible for the breach and also the manner in which the designated culprit, is said to have breached and/or violated the Human Rights and Fundamental Freedoms that are complained of.
120. It is only after the Petitioner has pleaded and/or impleaded the requisite particulars and the persons guilty of the violations complained of, that the Petitioner is thereafter at liberty to tender and place before the Honourable court cogent and credible evidence to demonstrate the violations complained of. For good measure, the Petitioner will be called upon to demonstrate the violation albeit on a balance of probability in compliance with and adherence to the provision of Section 107, 108 and 109 of the *Evidence Act*, Chapter 80 Laws of Kenya.
121. Instructively, the manner in which a Petition must be crafted and the requisite details that must be contained thereunder has been the subject of various court decisions, starting with the holding in the famous case of Anarita Karimi Njeru versus Republic (1979)eKLR, where the court stated and held thus;

“if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important(if only 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.”
122. Furthermore, the necessity to plead the particulars with appropriate precision, specificity and clarity was re-visited, nay, emphasized by the Court of Appeal in Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, where the court stated and observed as hereunder;
 - (41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated.



We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude *ex ante* is to miss the point.

- (42) However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in *Anarita Karimi Njeru* (*supra*) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party.

The principle in *Anarita Karimi Njeru* (*supra*) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.

123. Notably, the Supreme Court of Kenya has also had an occasion to highlight, underscore and reiterate the significance of supplying not only the provisions of *the Constitution* that are alleged to have been violated, infringed upon or breached; but also the particulars underpinning the alleged violations and additionally, the persons, if any, responsible for such violation.
124. For good measure, the Supreme Court elaborated the foregoing significance in the case of *Communications Commission of Kenya & 5 Others versus Royal Services Ltd & 5 Others* (2014)eKLR, where the court stated thus;
- “Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or grievance. This principal emerges clearly from the high court decision in *Anarita Karimi Njeru v Republic* (1979)KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened and the manifestation of contravention of infringement. Such principal plays a positive role as a foundation of conviction and good faith, in engaging the Constitutional process of a dispute settlement”
125. Having highlighted the Jurisprudential position pertaining to the manner in which Constitutional Petitions ought to be crafted and/or pleaded and having similarly underscored the important role played by precision/ specificity in determination of disputes before the Honourable court, it is now appropriate to revert to the subject Petition and to discern whether the Petitioners have indeed met the requisite threshold, in the manner elaborated in the decisions cited hereinbefore.
126. Be that as it may, I beg to point out that the Petition beforehand has supplied various general provisions of *the Constitution*, 2010; whose details have been enumerated in the body of the Petition, but same relates to the general provisions, perhaps in a manner that introduces the Fundamental Freedoms entrenched thereunder and which emphasizes the significance of the Fundamental Freedoms.



127. Additionally, the Petitioners have also reproduced and highlighted various International Instruments, which are deemed to be applicable in the Kenya legal system by din of Article 2(5) and (6) of *the Constitution* 2010.
128. Finally, the Petitioners have also alluded to and highlighted statutory provisions, which also underpin the manner which Eviction is to be carried out and undertaken. For good measure, the Petitioners have identified and alluded to inter-alia Sections 7 and 152 of the *Land Act*.
129. However, the critical issue that deserves determination is whether the Petitioners herein have ventured beyond the enumeration of the various provisions of *the Constitution* to specificity, pertaining to which are this provisions that have been breached; who has breached what and how was same been breached. Unfortunately, the Petition is silent on the particulars, which ought to form a critical segment and foundation of a Constitution Petition.
130. To my mind, the absence of the requisite particulars pertaining to the manner in which the Petitioners rights have been breached and/or infringed upon, the entire Petition before the court suffers from a serious and fundamental deficiency, which negates and/or vitiates same.
131. In short and for the avoidance of doubt, my answer to issue Number one is to the effect that the instant Petition does not meet the requisite constitutional threshold, pertaining to the need for precise and concise pleading of the impugned Provisions, the Particulars and need for specificity; and hence same is bad in law and Legally untenable.

Issue Number 2

Whether the 1st, 2nd, 3rd and 4th Petitioners and the rest of the persons represented by same legally acquired any Plots over and in respect of L.R No. 8285/163; or otherwise.

132. The 1st, 2nd, 3rd and 4th Petitioners have contended that same entered upon and settled on L.R No. 8285/163 on or about the year 2000.
133. Further, it was contended that on or about the year 2002, same Petitioned the Government to establish a chief's camp within Kariobangi North Area; and in any event within the suit property. In this regard, the named Petitioners' thereafter averred that the Government heeded their request and established a chiefs camp.
134. Other than the foregoing, the named Petitioners' have averred that or about the year 2008, same Petitioned the City Council of Nairobi, now defunct; and sought to be allocated Plots from the suit property. In this respect, the named Petitioners' have thereafter averred that the City Council of Nairobi, now defunct, proceeded to and allocated unto same together with other persons represented by same, various plots.
135. Furthermore, the Petitioners' have also averred that arising from the allocation of Plots by and on behalf of the City Council of Nairobi, now defunct, same were issued with Letters of allotment, which were duly signed by the Town clerk of the City Council of Nairobi.
136. In any event, it was further averred that upon being issued with the Letters of allotment, the beneficiaries thereof, comprising of the 1st, 2nd, 3rd, and 4th Petitioners and the rest of the persons represented by same; proceeded to and paid the Stand Premium and the Ground rents.
137. Based on the foregoing, the Petitioners' herein have thereafter contended that same lawfully acquired rights and interests to the various Plots that were alluded to at the foot of the Letters of allotments. For good measure, the various Letters of allotment were tendered and produced before the Honorable court as part of the Exhibits on behalf of the Petitioners.



138. Despite the fact that the named Petitioners' have tendered and produced before the court assorted Letters of allotment coupled with copies of demand for rates; it is important to underscore that allocation and/or alienation of Public Land prior to the enactment of the *Land Act*, 2012, was guided by the provisions of the Government Act, Chapter 280 Laws of Kenya, now repealed.
139. Instructively, prior to and or before any Letter of allotment Could be issued and or be granted; it was imperative that a Part Development Plan be prepared and thereafter same be subjected to the requisite checking and ultimate approval by the Commissioner of Land and not otherwise.
140. Significantly, it is upon the approval of a Part Development Plan by the Commissioner of Lands that a Letter of allotment would then be generated and or issued. For good measure, the Letter of allotment, if any, would refer to the Part Development Plan Number, signaling approval and would also be attached with a copy of the named Part Development Plan.
141. Furthermore, the importance of a Part Development Plan cannot be gainsaid. Nevertheless, I must underscore that it is the Part Development Plan that would show and/or exhibit that the Plot which is sought to be allocated is indeed available for such allocation or otherwise.
142. Consequently and in the absence of the requisite Part Development Plan, no allocation/ alienation could legally and lawfully; be undertaken and/or otherwise processed, or at all. Instructively, it is not enough to wave a copy of a Letter of allotment, without more; and thereafter imagine that same suffices.
143. To anchor and illuminate the foregoing position, it is important to re-state and reiterate the holding of the Court in the case of Nelson Kazungu Chai & 9 Others versus Pwani University College (2014)eKLR, where the Honourable court held and stated thus;

“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co. Ltd vs. The Hon. Attorney General, Mombasa HCCC No. 276 of 2013 where Njagi J. held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”
144. Back to the instant matter. It is not lost on the Honourable court that despite tendering and producing copies of what the Petitioners contended to be Letter of allotments, no Part Development Plans, if any, were ever placed before the Honourable court.
145. Consequently and in the premises, the documents which were touted and produced as Letters of allotments; and upon which the Petitioners herein hinge their claim are certainly incapable of vesting and or conferring any Legal rights in favor of the various Petitioners and persons represented by same.



Whether this Honorable Court has the requisite Jurisdiction to deal with and/or handle a claim pertaining to compensation in respect of Movable assets/Properties.

146. In the body of the Petition, the Petitioners herein have sought for a plethora of reliefs. Consequently and in this regard, there are certain reliefs, which certainly do not fall within the Jurisdiction of the Environment and Land Court as established pursuant to the provisions of Article 162(2) (b) of [the Constitution](#) 2010.
147. In particular, the Petitioners herein have sought that this court be pleased to assess and award compensation arising from the destruction of movable assets and/or properties belonging to the named Petitioners and the persons represented by same.
148. Furthermore, the 5th Petitioner, in a bid to assist the rest of the Petitioners to pursue and obtain recompense engaged a valuer who proceeded to and generate a valuation schedule to inter-alia movable assets belonging to the 1st, 2nd, 3rd and 4th Petitioners as well as the rest of the persons represented by same.
149. Consequently and in this respect, the Petitioners' have thereafter claimed the sum of Kes.32, 201, 687/= only, at the foot of the Movable Assets.
150. The question that I must grapple with is; whether by dint of Article 162(2) (b) of [the Constitution](#) as read together with Section 13(2), (3) and (7) of the Environment and [Land Act](#), 2011; this court has the Jurisdiction to value and to offer recompense on the basis of movable assets.
151. In my humble view, the Jurisdiction of the Environment and Land Court is circumscribed to issues of Environment and immovable properties, namely, land, as defined vide Article 260 of [the Constitution](#) 2010. Quite clearly, this court has no Jurisdiction to interrogate and make any award as concerns movable properties.
152. Most importantly, it is worthy to highlight and reiterate the dictum in the Supreme Court decision in the case of Samuel K Macharia versus Kenya Commercial Bank Ltd & Another (2012)eKLR, where the court remarked as follows;

(68) A Court's jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by [the constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.

This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where [the Constitution](#) exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by [the Constitution](#). Where [the Constitution](#) confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.



153. Bearing the foregoing dictum in mind, I come to the humble albeit considered conclusion that this Honourable court is not seized of the requisite Jurisdiction to engage with and to award compensation touching on Movable assets or at all.

Issue Number 4

Whether the Petitioners have established that same are entitled to compensation for the value of the Land and Buildings, if any, erected on the suit property.

154. Other than the claim touching on and/or concerning compensation on account of the movable properties, which were allegedly destroyed by (sic) the Respondents, the various Petitioners have also sought for recompense on the basis of the value of the Land and Buildings, that were said to have been erected thereon.

155. I beg to point out that I have hitherto found and held that the various Petitioners' and the persons represented by same did not acquire any lawful rights to and or interests over L.R No. 8285/163 or any portion thereof.

156. Consequently and to my mind, having not acquired any lawful rights over and in respect of the suit property or any portion thereof, the question that does arise is whether the Petitioners and the persons allegedly represented by same; can accrue compensation over and in respect of what does not belong to same.

157. Surely, before one can stake a claim for compensation to and in respect of land, it behooves the claimant, the Petitioner herein not excepted, to demonstrate title to the landed property in question. Short of title, I am afraid that no compensation can issue and/or be made to the Petitioners in the manner impleaded.

158. In any event, even though the Petitioners engaged and retained PW6 to undertake valuation and thereafter same proceeded to and prepared a valuation schedule, it is imperative to state and underscore that the impugned valuation schedule does not demonstrate and or exhibit the foundation upon which the impugned valuation was undertaken. For good measure, a valuation can only speak to the legal rights and or interests, if any, owned by the claimant and not otherwise.

159. In short, it is my humble position that to the extent that the various Petitioners had no legal title or rights to the suit property, same cannot stake a claim for compensation for land, which admittedly belongs to the Government and is thus Public Land. Clearly, the Government cannot render compensation over and in respect of what belongs to same.

160. As pertains to the claim for the Buildings and structures, which were allegedly destroyed, it is my humble position that no scintilla of evidence was placed before the Honourable Court to inform any such claim or otherwise.

161. To start with, though the Petitioners' place before the Honourable court a valuation schedule, I must point out that there were no approved Building Plans or otherwise to demonstrate that any building, whether temporary or otherwise, was ever approved for construction by Planning authority, namely, City Council of Nairobi, now defunct or the Nairobi City County Government.

162. Secondly, the Petitioners' have availed a plethora of pictures, nay, photographs; most probably to persuade the Honourable court that there were structures that were erected and which were thereafter demolished by the Respondents; however, there is no gainsaying that the impugned pictures have no probative value and thus cannot anchor the claim for compensation for buildings and structures in the sum of Kes.570, 446, 600/= only.



163. Importantly, it is appropriate to underscore that he/she who wishes to place before the court any pictures, photographs or such other electronically generated evidence, must comply with the import and tenor of the provisions of Section 106B of the *Evidence Act*, Chapter 80 Laws of Kenya. Short of that, the impugned electronic evidence becomes valueless and or worthless in eyes of a court of law.
164. In this respect, the elaborate dictum of the Court of Appeal in the case of County Assembly of Kisumu & 2 others versus Kisumu County Assembly Service Board & 6 others [2015] eKLR, is succinctly and apt.
165. For coherence, the Court of Appeal stated as hereunder;
1. Section 106B of the *Evidence Act* states that electronic evidence of a computer recording or output is admissible in evidence as an original document “if the conditions mentioned in this section are satisfied in relation to the information and computer.”
 1. In our view, this is a mandatory requirement which was enacted for good reason. The court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B(2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced. For ease of reference, we wish to reproduce Section 106B of the *Evidence Act* in its entirety:
“106B (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.
 - (2) The conditions mentioned in subsection (1), in respect of a computer output, are the following —
 - (a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
 - (b) during the said period, information of the kind contained in electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
 - (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
 - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
 - (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub section (2) was regularly performed by computers, whether—



- (a) by combination of computers operating in succession over that period; or
 - (b) by different computers operating in succession over that period; or
 - (c) in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,
then all computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer and references in this sections to a computer shall be construed accordingly.
- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following—
- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
 - (c) dealing with any matters to which conditions mentioned in sub-section (2) relate; and
 - (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.
- (5) For the purpose of this section, information is supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of an appropriate equipment whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purpose of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities.”
1. In relation to this case, the relevant conditions in that section are (a) if the computer output was recorded by a person having lawful control over the computer used; (b) if the output was recorded in the ordinary course of that person’s activities using a computer or some other electronic devise and fed into a computer that was properly operating throughout the material period; and (c) if that person gives a certificate that to the best of his knowledge, the output is an electronic record of the information it contains and describes the manner in which it was produced.
 1. The *Evidence Act* does not provide the format the certificate required under sub-section 106B(2) thereof should take. The certificate can therefore take any form including averments in the affidavit of the recorder.

166. Sadly, I find and hold that no compensation/ recompense, is due and payable on account of land (sic) the Buildings and Structures, in the manner claimed by the Petitioners.

Issue Number

Whether the Honorable Court can grant an orders relating to Loss of Income and Business as sought by the Petitioners.



167. It behooves each and every court to ascertain and/or authenticate the extent and scope of her Jurisdiction, if any; before venturing to entertain a particular dispute and to award any relief claimed by a Party.
168. Instructively, the significance of Jurisdiction was underscored in the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, where the court stated thus;
- “By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited.
- A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”
169. Most recently, the significance of Jurisdiction of a Court was underlined and reiterated in the case of Phoenix of E.A. Assurance Company Limited versus S. M. Thiga t/a Newspaper Service [2019] eKLR, where the court held and observed as hereunder;
1. At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
 2. In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.
170. Having made the foregoing observations, it is important to interrogate and to ascertain whether the Environment and Land Court can deal with the issues pertaining to loss of Income and Business and to award any compensation to that effect.
171. However, I must point out that other than the fact that no evidence was placed before the Honourable court to ascertain how sum of Kes.3, 516, 750/= only, was arrived at; there is also no gainsaying that this court is also divested of the requisite Jurisdiction to engage with the question of Loss of income, livelihood and business.
172. In this respect, I must decline to make any award, either as sought or at all.



Issue Number 6

Whether the Court can grant an order of Permanent Injunction on the suit property as claimed or otherwise.

173. One of the many reliefs which have been impleaded and sought for at the foot of the Petition herein relates to the grant of an order of Permanent Injunction to, inter-alia, to restrain the Respondents from dealing with, transferring, disposing or in any other way alienating the suit property, namely, L.R No. 8285/163.
174. In my humble view, before a Party, the Petitioners not excepted, can procure and obtain an order of Permanent Injunction; it behooves the claimant to demonstrate that same has lawful and legal rights, known to law over and in respect of the suit property.
175. Consequently and in the premises, before the Petitioners' herein can partake of and/or benefit from an order of Permanent Injunction to restrain the Respondents from alienating the suit property, same must therefore place before the Honourable court evidence of title. Unfortunately, none was tendered to and/or produced before the court.
176. In the circumstance, the question that does arise is whether an order of Permanent Injunction can issue in vacuum. Clearly and to my mind, an order of Permanent Injunction requires some foundation and legal anchorage.
177. Other than the foregoing, there is no gainsaying that the suit property is admittedly Public land on which various institutions, including the water works for the 1st Respondents are situated/located. Further and in addition, the Petitioners also intimated to the court that the Government has also constructed the chief's camp and other utilities thereon.
178. Based on the foregoing, I must grapple with the question whether an Order of Permanent Injunction can issue against the known owner of the suit property. However, in this regard, I confess and affirm that no such order can issue and if it does, it would amount to a Legal absurdity
179. Without belaboring the point, it is important to take cognizance of the dictum in case of Nguruman Limited versus Jan Bonde Nielsen & 2 others [2014] eKLR, where the court state and observed as hereunder;

“It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.”

180. Simply put, the ratio decidendi cited in the preceding paragraph applies with equal force, if not more, as pertains to the claim for an order of Permanent injunction, which has been sought against the Respondents herein.

Issue number 6

What Reliefs, if any; ought to be granted.

181. The Petitioners herein had sought for various albeit numerous reliefs at the foot of the Petition. However, whilst discussing the issues which were enumerated herein before, I have been able to discuss and calibrate on a substantial number of the issues.
182. Furthermore, it is not lost on this court that elsewhere the court found and held that the Petition beforehand was not suitably crafted and in any event, same suffered from fundamental defects, which go to the root of the entire Petition.



183. Finally, what remains outstanding and which has not be mentioned and discussed is whether the Petitioners were evicted from the suit property, either in the manner alleged or otherwise. In respect of the claim that the Petitioners were evicted from the suit property, the Petitioners' have placed before the Honourable court a plethora of pictures but which I have found to be devoid of probative value, for want of compliance with Section 106B of the *Evidence Act*, Chapter 80 Laws of Kenya.
184. Having come to the foregoing conclusion, the question that I must deal with is; whether the Petitioners herein have demonstrated and proved their entitlement to the reliefs or any of the reliefs sought at the foot of the Petition.
185. Be that as it may, I hold the humble, albeit considered opinion that despite the documentation that were placed before this Honourable court; the Petitioners have however, failed to lay a Legal basis for the grant of any of the reliefs sought.

Final Disposition

186. Having appraised and thereafter calibrated on the numerous issues that were highlighted in the body of the Judgment, it must have come crystal clear that the Petition beforehand was not only premature and misconceived; but same is also devoid/ bereft of merits.
187. Consequently and in the premises, I come to the conclusion that the Petition herein courts Dismissal. In this regard, same be and is hereby Dismissed.
188. However, as pertains to costs, I am minded to order and direct that each Party shall bear own costs of the proceedings. For good measure, my decision on costs is informed by the dictum in the case of Jasbir Singh Rai & Others versus Tarlochan Singh Rai & 5 Others (2014)eKLR; where the Supreme Court highlighted the various factors to be considered before making an award for costs.
189. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2023.

OGUTTU MBOYA,

JUDGE.

In the Presence of:

Benson - Court Assistant.

Mr. Meso h/b for Caroline Oduor for the Petitioners

Mr. Limo for the 1st Respondent

Mr. Allan Kamau h/b for Ms. Nyawira for the 2nd, 3rd and 4th Respondent

Ms. Nyakundi h/b for Mr. Koceyo for the 5th Respondent

