



**Bandari v County Government of Kilifi & 3 others (Environment & Land
Petition 22 of 2020) [2023] KEELC 19141 (KLR) (26 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19141 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 22 OF 2020**

**NA MATHEKA, J
JULY 26, 2023**

BETWEEN

MELVIN CHIRO BANDARI PETITIONER

AND

THE COUNTY GOVERNMENT OF KILIFI 1ST RESPONDENT

CABINET SECRETARY MINISTRY OF LANDS 2ND RESPONDENT

MTWAPA MAIN BEACH MANAGEMENT UNION 3RD RESPONDENT

HON SAMMY NDAGO MCA 4TH RESPONDENT

JUDGMENT

1. The Petitioner together with his wife are Proprietors of the parcel of land known as Number 3160/111/MN, Title CR 28248 situate at Mtwapa, at Mombasa Mainland North. That the Petitioner and his wife have developed the parcel by building a house on the Plot and building a perimeter wall around it and the Petitioners has enjoyed quiet possession and the Respondents started to interfere and commence activities to disposes him of the property. Article 40 of *the Constitution* provides for the Protection of property rights and the Petitioner herein in this Petition is seeking such protection with regard to his property aforesaid. Article 47 of *the Constitution* provides for Fair Administrative Action and Article 20. provides that the Bill of Rights applies to all laws and binds all state organs and all persons. The assault on the Petitioners property started with a visit by the District Commissioner at which time he requested the Petitioners to avail his title documents. Then on the 21st of March, 2019 officers from the 1st respondents Department of Lands, Energy Housing and Physical Planning also requested the Petitioner for his title documents together with authorizations to develop it. The 1st Respondent then proceeded to take over and the land belonging to the Petitioner and his wife and declare that it is available for settlement. The 1st Respondent together with the 2nd Respondent proceeded to make plans and sketches to subdivide the Petitioner's land and proceeded to block



the access road leading to the Petitioner's land, making it difficult for the Petitioner and his wife to access the land. The 1st Respondent then wrote notices accusing the Petitioner of illegally pulling up its boundary wall illegally and proceeded to destroy the wall. The 1st Respondent then encouraged the 3rd Respondent to make a claim on the Petitioner's land as well. The 4th Respondent leading members of the 3rd Respondents invaded the land and destroyed property and the remaining part of the boundary wall thereby causing the Petitioners damage and infringing the Petitioners, property rights. The Petitioner therefore is not able to have quiet possession and peaceful enjoyment of his land and stands the risk of losing his property.

2. That the Respondents actions and activities are illegal as they expressly violate the Petitioners property rights. Article 20 of *the Constitution* provides that the Bill of Rights applies to all state organizations, institutions and persons. Article 21 of *the Constitution* emphasizes the states duty to observe, respect and promote and to fulfill the rights and freedoms. Article 40 of Constitution provides for the freedom and rights to own property anywhere in Kenya. The petitioners right to own property is under threat of violation forcing the petitioner to seek the intervention of the courts. The petitioner therefore seeks as follows;
 - a. A declaration that thepetitioner has a right to own property anywhere in this Country.
 - b. A declaration that thepetitioner and his wife having been registered as the proprietors of the land known as Plot 3160/111/MN, Title No.CR.28248 situate at Mtwapa of Mombasa Malindi road near Beach bar measuring approx. 0.6799Ha have the right to ownership and occupation of the land aforesaid.
 - c. A declaration that the actions of the Respondents are unConstitutional and illegal in so far as the said actions are intended to deprive the petitioner of his property, namely the parcel of land known as Plot 3160/111/MN, Title No.CR.28248 situate at Mtwapa of Mombasa Malindi road near Beach bar measuring approx. 0.6799Ha.A declaration that the Petitioner and his wife are therefore entitled to damages payable by the Respondent.
 - d. An Order of thishonourable court prohibiting therespondents from trespassing, alienating, and or interfering with the land knowns as Plot 3160/111/MN, Title No.CR.28248 situate at Mtwapa of Mombasa Malindi road near Beach bar measuring approx. 0.6799Ha belonging to the Petition and his wife.
 - e. Order directing the Respondent to pay costs of this Petition.
3. The threshold for a Constitutional Petition was set out in *Anarita Karimi Njeru v The Republic* (1979) eKLR, it was held;

“We would, however, again stress that 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.”
4. Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, emphasised the principles set out in *Anarita Karimi* and held that;

“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. What Jessel, MR said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch D 637 at 639 holds true today:



The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

The petition before the High Court referred to articles 1, 2, 3, 4, 10, 19, 20 and 73 of the Constitution in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the Constitution, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of the Constitution and the rule of law, without any particulars. We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru* (*supra*). In view of this, we find that the petition before the High Court did not meet the threshold established in that case.”

5. The Petition refers to articles 19, 22, 23, 40 and 47 of the Constitution of Kenya. The Petitioner averred that the 1st respondent has taken over Land Parcel MN/III/3160 CR 28248 to create a settlement. The 1st Respondent is said to have illegally pulled down the Petitioner’s boundary wall under the guise that it was illegal. After the demolition, the 3rd Respondent made a claim over the suit premises and encouraged its members to destroy the Petitioner’s property which is an infringement to the Petitioner’s right to property. The 1st Respondent pointed out that the Petitioner constructed the boundary wall without seeking authorisation from the County’s department of planning and that the said wall was obstructing the access wall for the public to access the beach.
6. Despite making reference to several articles of the Constitution in his petition, the Petitioner has not met the threshold set out in *Anarita Karimi* (*supra*) and *Mumo Matemu* (*supra*). The petitioner has not demonstrated to the required standard how his individual rights and fundamental freedoms were violated, infringed or threatened by the respondents. The Petitioner alleged that the 1st Respondent took over his land to create a settlement scheme, and that the 4th Respondent led members of the 3rd respondent to demolish the boundary wall and destroy his property. There is no evidence that has been presented before the court to support the allegations of the creation of a settlement scheme. Further to that the petitioner has attached MCB-7 (Form P.P.A 7) from the 1st respondent which stated that the boundary wall was blocking access to the beach. The onus was on the petitioner to demonstrate to the court that he was issued a permit by the 1st respondent to construct the perimeter wall. I have perused the notice dated May 24, 2010 which the petitioner seeks to rely on to demonstrate his boundary wall was approved. I do note that the said notice is not a permit but rather a notice that the site was ready for inspection, in my view only after the inspection would an approval be issued. It has not been established to the court that the Petitioner was ever permitted by the 1st respondent to construct any boundary wall. Consequently, I am not persuaded that the petitioner has proved his case against the Respondents on a balance of probabilities to warrant the court to find in his favour and grant the prayers sought. I find that the case does not meet the threshold for a Constitutional Petition and the remedies sought after ought to be considered in a civil case. The mere allegation that a right has been violated is not enough to invoke the jurisdiction of this court and granting of Constitutional remedies set out in article 23 (3) of the Constitution. I find that the petition dated August 25, 2020 is devoid of merit and is dismissed with costs to the respondents.



It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF JULY 2023.

N.A. MATHEKA

JUDGE

