



Meru Cultural Center & 17 others v Kisima Farm Limited & 24 others (Constitutional Petition E006 of 2022) [2023] KEELC 19863 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19863 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION E006 OF 2022**

**CK YANO, J
SEPTEMBER 20, 2023**

BETWEEN

MERU CULTURAL CENTER 1ST PETITIONER
ROBERT KINYUA MARETE 2ND PETITIONER
JOSEPH KAIMENYI 3RD PETITIONER
ISABELLA KINANU 4TH PETITIONER
DANIEL MWEBIA 5TH PETITIONER
RAPHAELMWIRIGI 6TH PETITIONER
PENINA MUCECE MWAMBA 7TH PETITIONER
MUKETHA MUGWIKI 8TH PETITIONER
JOHNSON MBAYA M'TURUCHU 9TH PETITIONER
GITARI MUGAMBI 10TH PETITIONER
GEOFFREY KIAMBI JUSTUS 11TH PETITIONER
STEPHEN KIMATHI M'ARIMI 12TH PETITIONER
LUCY KIUNGA 13TH PETITIONER
EMMANUEL MUTUMA 14TH PETITIONER
BEATRICE KANGENDO 15TH PETITIONER
CHARITY RINYA 16TH PETITIONER
MERCY KAIGONGI 17TH PETITIONER
EDWARD KINGSS O MAINA 18TH PETITIONER

AND



KISIMA FARM LIMITED	1 ST RESPONDENT
LEWA DOWN ESTAE LIMITED	2 ND RESPONDENT
LEWA WILDLIFE CONSERVANCY LIMITED	3 RD RESPONDENT
BRIAN CRAIG	4 TH RESPONDENT
JOHN GRAHAM PHILLIP	5 TH RESPONDENT
HELLEN MARY COUNTESS OF SURTOL	6 TH RESPONDENT
HENRY TREARTOR	7 TH RESPONDENT
NICK HUTCHINSON	8 TH RESPONDENT
JONATHAN STICHBURY	9 TH RESPONDENT
DAVID SZLAPACK	10 TH RESPONDENT
GEOFFREY MORLEY	11 TH RESPONDENT
IAN ROBERTSON	12 TH RESPONDENT
CRAIG OUTLON	13 TH RESPONDENT
SIMON NDERITU	14 TH RESPONDENT
SAMUYEL MUTHUI	15 TH RESPONDENT
OLDONYO FARM TIMAU LTD	16 TH RESPONDENT
TATA LLEWELN	17 TH RESPONDENT
HUMPREY MWANGI	18 TH RESPONDENT
THE REGISTRAR OF TITLES	19 TH RESPONDENT
THE COMMISSION FOR LANDS	20 TH RESPONDENT
THE NATIONAL LAND COMMISSION	21 ST RESPONDENT
THE AGRICULTURAL FINANCE CORPORATION	22 ND RESPONDENT
THE SETTLEMENT FUNDS TRUSTEE	23 RD RESPONDENT
THE ATTORNEY GENERAL OF KENYA	24 TH RESPONDENT
THE BRITISH HIGH COMMISSIONER GOVERNMENT OF UNITED KINGDOM NAIROBI	25 TH RESPONDENT



RULING

1. This ruling is in respect of a preliminary objection dated 27th February, 2023 by the 1st, 2nd, 3rd, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th and 16th respondents (hereinafter referred to as the respondents) seeking to have the petition 28th April 2022 struck out with costs on the grounds that:-
 - i. The petition as drafted is fatally defective, incompetent and bad in law as it contravenes Rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
 - ii. To the extent that the petitioners have petitioned the National Land Commission (the 21st respondent) in relation to the title to the suit land, this court should defer jurisdiction to the National Land Commission to conclusively hear and determine the petitioners petition pursuant to the provisions of Article 159 (2) (c) of *the Constitution*, Section 9(2) and (3) of the Fair Administration Action Act, 2015 and in accordance with the constitutional doctrine of avoidance.
2. The preliminary objection which was opposed by the petitioners, was canvassed by way of written submissions. The respondents' submissions are dated 25th April 2023 and filed in court on 8th May 2023 through the firm of Coulson Harney LLP while the petitioners' submissions are dated 3rd April 2023 and 18th June 2023 and filed on 8th April 2023 and 20th June 2023 respectively.

The 1st, 2nd, 3rd, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th and 16th Respondents' Submissions

3. In their submissions, the respondents gave a brief introduction and background of the petition herein and pointed out that they are yet to substantively respond to the petition largely because the same does not disclose any cause of action against the respondents. Further, that the petition as drafted is bereft of particulars of the alleged complaints against the said respondents that they can effectively respond to. That presently, they are unaware in what manner they have infringed the petitioners' rights under *the constitution* as alleged.
4. The respondents identified two issues for the court to determine, that is whether the petition has been pleaded with reasonable precision as per the required standard in constitutional petitions and whether to the extent that the petitioners have petitioned the National Land Commission in relation to their historical claims to the properties mentioned in the petition, this court should defer jurisdiction to the National Land commission in accordance with the constitutional doctrine of avoidance.
5. Regarding the first issue, the respondents submitted that the threshold of a preliminary objection was set out by the Court of Appeal in the case of Mukisa Biscuits Manufacturing Co. Limited Vs West End Distributors Limited (1969) EA 696 as cited with approval by the Supreme Court in Application No. 50 of 2014 Aviation & Allied Workers Union Kenya Vs Kenya Airways Limited & 3 others [2015] eKLR as follows:-

“ ... A preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit.”



6. Counsel for the respondents also relied on petition No.38 of 2017 Dismas Wambola Vs Cabinet Secretary Treasury & 5 others [2017] eKLR and submitted that the preliminary objection is based on a pure point of law that subject to the court's endorsement, will dispose of the petition.
7. The respondents submit that it is a well-established principle in constitutional litigation that a party alleging violation of his or her Constitutional Rights must plead with a reasonable degree of precision the manner in which there has been such alleged violation. They relied in the decision of the Court of Appeal in the case of Anarita Karimi Njeru Vs Republic (1976-1980) KLR 1272 where the court stated-;

“Constitutional violations must be pleaded with a reasonable degree of precision.”

8. It is the respondents' submission that the Articles of *the constitution* which accord rights to the petitioners must be precisely enumerated and the claim pleaded to demonstrate such violation with the violations being particularized in a precise manner. Further, that the manner in which the alleged violations were committed and to what extent must be shown by way of evidence based on the pleadings. The respondents relied on the Court of Appeal decision in Mumo Matemu Vs Trusted Society of Human Rights Alliance & 5 others [2015] eKLR and a decision by Lenaola J (as he then was) in Dr. Rev. Timothy Njoya Vs The Hon. Attorney General & Kenya Review Authority [2014] eKLR and submitted that the judicial pronouncements in the said decisions endorse the clear edicts of Rule 10 (2) of the Mutunga Rules which inter alia provide that the petition shall show the petitioner's name and address, the facts relied upon, the constitutional provisions violated, the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit, and the reliefs sought by the petitioner.
9. The respondents submitted that considering the petition in the above context, the petitioners save for citing the Constitutional Provisions in the title of the petition, have not stated how the respondents have violated Article 1,2,3,(1), 10,9 – 23 (1), 25(1), 27, 35,40, 43, 47, 48, 50, 60, 63-69 and 156 (6) of *the Constitution* as alleged and the injury caused or likely to be caused to them as relates to the properties mentioned on the title to the petition. That the petition is based on the generalized allegation that the respondents participated in the forceful displacement of the petitioners from their lands and specifically singled out paragraph 4 of the petition. The respondents submitted that the petitioners have not provided particulars of the allegations of organized cruel and forcible detainer and neither have they disclosed the manner in which *the constitution* has been violated in this regard. Further, that there are no particulars presented of the properties mentioned on the title to the petition and to whom they belong to, which of the petitioners' forefathers were supposedly dispossessed of the properties mentioned on the title to the petition through organized cruel and forcible detainer, by whom, when and in what manner. That it is further unclear whether the petitioners ever held an absolute and indefeasible title to the properties mentioned on the title to the petition.
10. The respondents further referred to paragraph 9 of the petition where the petitioners state that the consent of Meru Tribal Community have never been sought and/or given over the registration of the suit properties into the respondents at all so far, and stated that it should be noted that the petitioners have not disclosed the manner in which *the constitution* has been violated by the mere fact that the consent of the Meru Tribal Community was not sought and obtained prior to the registration of the properties in favour of the current owners, which they noted, the petitioners have failed to indicate.
11. Further, the respondents submitted that the petitioners have not given the particulars of illegality and have not disclosed the manner in which *the constitution* has been violated by the alleged registration of a 944 year leasehold tenure over the properties mentioned on the title to the petition as stated in



paragraph 11 of the petition and that they have also failed to provide the particulars of alleged funding from the Agricultural Finance Corporation as stated in paragraph 12 of the petition. The respondents further submitted that the petitioners have not provided the particulars of loss of occupation and user and the manner in which *the constitution* has been violated as alleged under paragraph 14 and 15 of the petition.

12. The respondents further submitted that to the extent that the petitioners have joined 25 respondents to the petition, it was incumbent upon them to specify how each of them has violated which one of the petitioners' constitutional rights and relied on the case of Hon. John Mbugua & 10 others Vs Hon. Attorney General & 54 others [2023] eKLR. The respondents argued that the whole object of pleadings is to bring clarity to an issue but that looking at the petition as drafted, they cannot decipher the issues they are required to respond to due to a lack of particulars. The respondents therefore submitted that the petition does not meet the threshold established in the Anarita Karimi case (supra)
13. Regarding the second issue, the respondents submitted that whilst this court has jurisdiction under Article 67(2)(e) of *the Constitution* to hear and determine any claim relating to historical injustice whether the National Land Commission (the "NLC") is seized of the matter or not as held by the Court of Appeal in Chief Land Registrar, & 4 others vs Nathan Tirop Koech & 4 others [2018] eKLR, it is their submission that in the circumstances of this suit, the court should defer jurisdiction to the NLC to conclude its investigations into the petitioners complaints. The respondents submitted that under section 14 of the *National Land Commission Act*, the NLC has the power to review grants and disposition of public land to establish their propriety and legality, and that where the NLC under Section 15 of the Act find that the title was acquired in an unlawful manner, it should direct the registrar to revoke the title. The respondents added that guided by the provisions of Article 67 and 68(c) (v) of *the Constitution* and Section 14 of the NLC Act, the NLC had jurisdiction to review all grants or dispositions of public land. That the jurisdiction in this context is extended only to public land or land that was previously public but was subsequently converted to private land.
14. The respondents invited the court to critically assess this case and make a determination whether it may best suited to be heard by this court or find that it is the NLC that would be best placed to address the issues raised in the petition. The respondents relied on the case of Henry Wambega & 733 others Vs Attorney General & 9 others [2020] eKLR, and Communications Commission of Kenya & 5 others Vs Royal Media Services and 5 others, Supreme Court, Petition No. 14,14A,14B and 14C of 2014 which dealt with the doctrine of constitutional avoidance which requires courts to resolve disputes on a constitutional basis only when a remedy depends on *the constitution*, and submitted that considering the facts and circumstances of this case, the remedies sought by the petitioners could not turn on *the constitution*. The respondents reiterated that the petitioners have failed to demonstrate how the constitutional provisions cited in the title of the petition have been violated. The respondents argued that the NLC is bestowed with jurisdiction to handle the petitioners' complaints and submitted that by doing so, the petitioners will not be prejudiced as their rights will be protected by the NLC.
15. In response to the petitioners' contention that the respondents are not properly on record for not filing an appearance the respondent submitted that the same is not true as they filed a notice of appointment of Advocate dated 2nd August 2022 and served upon the petitioners on 3rd August 2022. On the petitioners' contention that the petition is admitted on account of the respondents not filing a defence, the respondents argued that the provisions of the Civil Procedure Rules can be imported to fill any lacuna in the Mutunga Rules and relied on the Court of Appeal decision in Kari Wehner Claasen Vs Commissioner of Lands & 4 others [2019] eKLR. The respondents further contend that there cannot be an entry in default or interlocutory judgment in a Constitutional Petition as applied under Order 10 Rules 5 and 6 of the Civil Procedure Rules. That the non-filing of a response to a



petition cannot be deemed an admission under the Mutunga Rules because Rule 16(1) of those rules provides that “if a respondent does not respond within the stipulated time in Rule 15, the court may hear and determine the petition in the respondent’s absence.” That where a response has not been filed within the stipulated timelines, a petitioner should set the petition down for hearing under Rule 20 of the Mutunga Rules. The respondents further reiterated that they are unable to respond to the petition as drafted as it is bereft of particulars that they can effectively respond to, hence the filing of the preliminary objection.

16. The respondents further urged the court to disregard the petitioners’ contention that the respondents have no locus to prosecute the preliminary objection for not filing letters of authority, and invited the court to note that save for the 1st, 2nd, 3rd and 16th respondents who are limited liability companies, the 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th respondents are individuals who do not require any authority as alleged. It is further submitted that if the petitioners’ intention in making this agreement was to challenge the 1st, 2nd, 3rd and 16th respondents’ instructions to Coulson Harney LLP in coming on record on their behalf, then they should have filed a formal application that the respondents can effectively respond to, and not raise the issue of representation in submissions. The respondents submitted that the provisions of Order 9 Rule 2(a) & (c) and Order 11 of the Civil Procedure Rules are of no relevance to the preliminary objection considering the relevant provisions of the Mutunga Rules.
17. In conclusion, the respondents submitted that the preliminary objection is merited and should be allowed with costs to the respondents for the reasons that the petitioners have failed to plead with precision the constitutional violations, the particulars of their complaints against the respondents and the manner in which *the constitution* has been violated in relation to their complaints. The respondents argued that it is apparent from the petition that the petitioners have no legitimate interest in the properties mentioned on the title of the petition as they are not the registered proprietors. That on the contrary, the petitioners historical injustice claims are vague for lack of particulars and are not supported by evidence. The respondents therefore submitted that the petition should be dismissed with costs to the respondents.

The Petitioners’ Submissions

18. In their submissions, the petitioners gave a background of the petition, the preliminary objection and response and identified the following issues for determination.
 - i. Whether the petition is time barred.
 - ii. whether the petition demonstrate any cause of action.
 - iii. Whether the petition is scandalous, frivolous, vexatious or otherwise an abuse of the due process of this Honourable court.
 - iv. Whether the preliminary objection as drawn and filed on 27/02/2023 is deceitful and fraudulent concealment of material and patent to the petition on the inescapable injustices and brutality.
 - v. Whether the preliminary objection as drawn and filed is incompetent deceitful and fraudulent per se rendering them null and void ab initio and fit to be struck out with costs at the higher scale under remuneration order 2023.
 - vi. Whether the said preliminary objection is an abuse of the court process, bad in law, defective, frivolous, incompetent and lack locus rendering it null and void



ab initio and fit to be struck out forthwith from the court record with costs at the higher scale under the remuneration order 2014.

- vii. Whether the said preliminary objection is defective and incompetent for lack of locus and legal authority donated by the respondents rendering them null and void ab initio and fit to be struck out forthwith from the court record with costs at the higher scale under the remuneration order 2014.
 - viii. Whether the memorandum of appearance and the statement of defence are filed.
 - ix. whether the preliminary objection is opposed and rebutted at all.
 - x. Whether the preliminary objection is defective or incompetent
 - xi. Whether the preliminary objection lacks locus standi and or legal authority.
 - xii. Whether the preliminary objection is fit to be struck out and dismissed forthwith with costs incidental thereto.
 - xiii. Whether interlocutory judgment may be entered on default to appear and/or file the statement of defence.
 - xiv. Whether the National Land Commission, the 21st respondent has Jurisdiction Under Rule 10 (Protection & Implementation of Basic Rights and Fundamental Freedoms) of *the Constitution* 2013 Practice and Procedure Rules, to determine the petition as drawn and filed and served upon all respondents including the National Land Commission.
 - xv. Whether the petition may proceed to hearing.
 - xvi. Whether the Mutunga Rules under legal notice 117 published in the Kenya Gazette on 28/06/2013 and the entire Constitution of Kenya 2010 apply to the petition filed on 28/04/2022 and served upon each of the twenty five (25) respondents.
 - xvii. Whether the directions cum orders of the court given inter parties on 16/03/2023 have been reviewed and amended to allow any party in default thereof to file and serve any submission.
 - xviii. Whether any order may be issued.
19. The petitioners cited rule 4, 5 and 10 (Protection & Implementation of Basic Rights and Fundamental Freedoms) of *the Constitution* 2013 Practice & Procedure Rules (the Mutunga Rules) and submitted that the preliminary objection is incompetent, defective, bad in law and an abuse of the court process and therefore fit to be struck out with costs for being in breach of Order 10 of the Civil Procedure Rules, Sections 60 – 62, 108 -131, 247, 253, 300, 317, 347 353, 373, 393 – 398 of the Penal Code, Sections 47 & 107 – 120 of the *Evidence Act*, Sections 9-11, 24 , 34 and 35 of the *Advocates Act*. The petitioner relied on the case of Cleaver Humer Ltd Vs British Tutorial (Africa) Ltd (1975) EACA 223 which held that “failure to file a defence operates as admission of all allegations in the plaint except as to damages.”
20. The petitioners further submitted that the National Land Commission is amongst the respondents in the petition and is therefore not qualified to adjudicate over the matter. The petitioners cited various Articles of *the Constitution* cited in the petition.



21. It is also the petitioners' submission that the preliminary objection does not raise any point of law and relied on the case of *Mukisa Biscuits Manufacturing Ltd Vs West End Distributors Ltd and Attorney General of the Republic of Kenya Vs Independent Medical Legal Unit (2011) EACA*.
22. The petitioners further submitted that the 1st, 2nd and 3rd respondents are corporate entities whose authority is mandatory under Order 9 Rule 2(c) of the Civil Procedure Rules and argued that no resolution under corporate seal or power of attorney under the *Stamp Duty Act* have been exhibited, rendering the preliminary objection defective and incurably incompetent. It is the petitioners' submission that the failure by the respondents to file a defence is an admission of the claim in the petition. The petitioners also relied on the case of *Tarasicio Githaiga Ruithibo Vs Mbuthia Nyingi (1982) CA 21 (unreported)*.
23. The petitioners also submitted that Order 51 Rule 14 of the Civil Procedure Rules demands that a preliminary Objection be based on and supported by an affidavit sworn and filed by the subject respondents.
24. It is the petitioners' submissions that the petition is strongly anchored on and flow from the Provisions Under Articles 3 (1), 10, 19 – 23 (1), 25, 28 31, 33, 35, 40 47, 48, 50 159, 165(3), 259 and 260 of *the Constitution* of Kenya and Rule 10 of the Mutunga Rules and that the petition is based on and flow from the trial of historical cruelties, inequities, oppressive racial injustices, brutalities, punctuated by cynical sadistic murders of the Meru people orchestrated and perpetuated by the respondents since 1919 in order to alienate the suit parcels of land under the ownership, occupation, control, management and exploitation of the petitioners. The petitioners submitted that the preliminary objection herein will not determine the petition without the respondents being compelled to furnish and tender evidence on the issue of avoidance of jurisdiction by this court to allow the National Land Commission dispose of the claims made. The petitioners denied the respondents argument that the petition does not demonstrate any cause of action. It is their submission that none of the respondents has filed a defence though they were all duly served. The petitioners urged the court to have the preliminary objection struck out and or dismissed and allow the petition to proceed for hearing.

Analysis and Determination

25. I have considered the preliminary objection raised and the rival submissions. The issues I find for determination are-;
 - i. Whether the court should defer jurisdiction to the National Land Commission in accordance with the constitutional doctrine of avoidance.
 - ii. Whether the petition has been pleaded with reasonable precision as per the standard in constitutional petitions.
26. The first issue hinges on the jurisdiction of this court and therefore can be raised at any time of the proceedings and even on appeal. This was the holding in the case of *Jamal Salim Vs Yusuf Abdullahi Abdi & another Civil Appeal No. 103 of 2016 [2018] eKLR*. The court can also raise such an issue on its own motion. In this case, the petitioners submit that the objection raised is incompetent.
27. The case of *Mukisa Biscuits Manufacturing Ltd Vs West End Distributors (1969) EA 696* is notorious on the issue of what constitutes a preliminary objection where it was held as follows-;

“ ... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may



dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration...

... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion confuse the issue, and this improper practice should stop..."

28. In the case of Owners of Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Limited 1989 1 KLR Nyarangi JA held as follows-;

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect to the matter before it the moment it holds the opinion that it is without jurisdiction."

29. In the case of Samuel Kamau Macharia & another Vs Kenya Commercial Bank Ltd & 2 others (2012) eKLR, the Supreme Court of Kenya held 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 ... 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."

30. In the petition herein, the petitioners who state that they form the descendants of the Meru Tribe, accuse the respondents for forcible detainer and/ or unlawful occupation of the suit properties since 1929. Among the reliefs sought by the petitioners against the respondents are an order of permanent injunction, prosecution, compensation and nullification of the titles in respect to the suit properties now in the name of the respondents and have the same vested to the petitioners. My reading of the petition is clear that the petitioners have brought the petition on the claim of historical injustice. Whereas the respondents want the court to defer jurisdiction to the National Land Commission in accordance with the constitutional doctrine of avoidance, the petitioners are of the view that this court should determine the matter. The respondents pointed out that the petitioners have petitioned the National Land Commission in relation to their historical claims to the suit properties.

31. In the case of Chief Land Registrar & 4 others Vs Nathan Tiropt Koech & 4 others [2018] eKLR which was relied on by the respondents, the Court of Appeal stated as follows-;

"72. The NLC is established under Article 67 (1) of *the constitution*, its mandate is outlined in Article 67(2). One of its mandates pursuant to Article 67 (2) (e) is



to initiate investigations, on its own motion or on a complaint, into present or historical land injustices and recommend appropriate redress...

75. On the question whether a court should await investigation and recommendation by the NLC before it can entertain a claim founded on historical injustice, it is our considered view that a court has jurisdiction to hear and determine any claim relating to historical injustice whether or not the NLC is seized of the matter. Our conviction stems from our reading of Article 67(2)(e) of *the Constitution*. The Article provides that the NLC can investigate “present or historical” land injustices. We lay emphasis on the word “present”. If the NLC had an initial and exclusive mandate, it would mean that all present cases on land injustices can only be handled by the NLC and not courts of law. This would prima facie render the Environment and Land Courts redundant. We do not think this was intended to be so. Our view is fortified by Section 15(3)(b) of the *National Land Commission Act* which permit the Environment and Land Court to deal with historical injustice claims capable of being addressed through the ordinary court system.
 76. Further, there is nothing in the 2010 Constitution or in the *National Land Commission Act* ousting the jurisdiction of the High Court or barring a person from presenting a petition before a court in relation to a claim founded on historical injustice...”
32. In the case of Safepak Limited Vs Henry Wambega & 11 others [2019] eKLR, the Court of Appeal also considered the question whether it is within the mandate or jurisdiction of the ELC to deal with historical land injustice claims and held that the above passage in Chief Land Registrar & 4 others Vs Nathan Tirip Koech & 4 others (above) “accurately represents the state of the law on the matter and provides a complete answer to the appellant’s contention on jurisdiction.” The Court of Appeal also considered another issue whether a petitioner’s first port of call before approaching the ELC should have been the National Land Commission on which the specific function of carrying out investigations into historical land injustices is vested and held that;
- “31. where there is a clear procedure for the redress of any particular grievance prescribed by *the constitution* or an Act of parliament, that procedure should be followed provided that the remedy thereunder is effectual.
 32. Based on the material placed before the court, it would appear that the petitioners did indeed refer the claim to the National Land Commission, the 12th respondent in this appeal. There is for instance a letter dated 21st September, 2017 in which the 2nd respondent states that it is “mandated to resolve disputes like the one pertaining to this parcel, “that” the commission is keen to settle this dispute” and that “the National Land Commission Kilifi Office is working on this issue.”
 33. The record of appeal is however silent on the outcome of the intervention by the National Land Commission, which though privy to this appeal did not participate in the hearing of the appeal...”
33. The Court of Appeal in the above case held that the ELC was right in holding that it has jurisdiction over the matter. It can be noted from the above decision of the Court of Appeal, which is binding on me, that in as much as the NLC has a mandate to look into historical injustices, an individual



can still commence a constitutional petition in a foundation of historical land injustice. It is therefore my finding that this court has jurisdiction over the petition herein, and I decline to defer jurisdiction to the National Land Commission. And just like in the above cited case, I have perused the material placed before the court. At page 100 of the petition, there is a letter dated 7th September, 2021 from the petitioners (and specifically the 1st petitioner) to the National Land Commission. In the said letter, the petitioners made an “application for the conversion of Land Reference Number 72262 & 2811/R also known as Kisima Farm located in Meru County from public land into community land in favour of members of Meru Cultural Centre.” The said parcels are part of the suit properties herein. The record however is silent on whether the National Land Commission acted as requested by the petitioners and if so, the outcome is not disclosed. That notwithstanding and having found that this court has jurisdiction to determine the matter, I will proceed to consider the other issue, which is whether the petition has met the constitutional threshold required in such petitions.

34. It is a well established litigation that a party alleging violation of his or her constitutional rights must plead with a reasonable degree of precision the manner in which there has been such alleged violation. This proposition was enunciated by the Court of Appeal in the case of Anarita Karimi Njeru Vs the Republic (1976 – 1980) KLR 1272 where the court stated-;

“Constitutional violations must be pleaded with a reasonable degree of precision.”

35. The Court of Appeal reaffirmed the above principle in the case of Mumo Matemu Vs Trusted Society of Human Rights Alliance & 5 others (supra).

36. I have perused the petition herein. Save for citing the Constitutional provisions in the title of the petition, the petitioners have not stated how the respondents have violated Articles 1,2,3(1), 10,9-23(1), 25(1), 27, 25, 40, 43, 47, 48, 50, 60, 63-69 and 156(6) of *the Constitution*. I am in agreement with the respondents’ submissions that the petition is based on generalized allegations that the respondents participated in the forceful displacement of the petitioners from their lands. The petitioners have not provided particulars of the allegations of organized cruel and forcible detainer and neither have they disclosed the manner in which *the constitution* has been violated in this regard. In addition, there are no particulars presented of the properties mentioned in the petition and to whom they belong to, which of the petitioners’ forefathers were supposedly dispossessed the suit properties through organized cruel and forcible detainer, by whom, when and in what manner. Moreover, the petitioners have not specified how each of the respondents has violated any of the petitioners’ Constitutional Rights. As rightly submitted by the respondents, the whole object of pleadings is to bring clarity to an issue. However, looking at the petition as drafted, it is difficult to decipher the issues the petitioners want the court to determine.

37. In this case, the petitioners have enjoined 25 respondents in the petition. That means the petitioners must have a specific complaint against each of the respondents. In addition, the complaint must transcend ordinary claims on failure to comply with certain statutes to constitutional issues. Whereas the petitioners may have valid complaints against the respondents such cannot be prosecuted in an omnibus style. It is imperative that pleadings are drafted with certain degree of clarity and specificity as to accord a respondent a fair opportunity to know what the complaint is all about and to possibly prefer a response thereto. Given the nature of the petition and the gravity of the issues raised, there remains the need that the pleadings be crafted in such a manner as to demonstrate how each respondent violated which of the petitioners’ constitutional rights. (see Nairobi High Court Constitutional Petition No. E237 of 2011 – Hon. John Mbugua & 10 others Vs Hon. Attorney General & 54 others) (supra). It is therefore my finding that the petition does not meet the threshold for constitutional petitions established in Anarita Karimi case (supra) and must fail. The petitioners, in my view, will not suffer any



prejudice as they can still pursue their application already lodged with the National Land Commission, the 21st respondent herein.

38. In the result, I find that the objection raised is merited to the extent that the petitioners have failed to plead with precision the constitutional violations, the particulars of their complaints against the respondents and the manner in which *the Constitution* has been violated in relation to their complaints, and therefore has not met the threshold established in Anarita Karimi Njeru (supra). Consequently, the petition is hereby struck out with costs to the 1st, 2nd, 3rd, 8th, 9th, 10th, 11th, 12th, 13th, 14th 15th and 16th respondents.

39. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH SEPTEMBER, 2023.

C.K YANO

JUDGE

