



**Sanders v Shella Beach Management Unit & 3 others (Environment & Land  
Petition E005 of 2023) [2025] KEELC 3505 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3505 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**ENVIRONMENT & LAND PETITION E005 OF 2023**

**EK MAKORI, J**

**APRIL 30, 2025**

**IN THE MATTER OF ENFORCEMENT OF HUMAN RIGHTS AND  
PROTECTION OF FUNDAMENTAL FREEDOMS UNDER ARTICLES 3, 19,  
21, 22, 23, 258 & 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO ACCESS TO  
INFORMATION ENTRENCHED IN ARTICLE 35(1) OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO OWN PROPERTY IN  
FLAGRANT CONTRAVENTION OF ARTICLE 40 OF THE CONSTITUTION  
OF KENYA, 2010**

**AND**

**IN THE MATTER OF PROTECTION AND SAFEGUARDING OF THE RIGHT  
TO A CLEAN AND HEALTHY ENVIRONMENT, ENTRENCHED IN ARTICLE  
42 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**ELC PETITION NO. E005 OF 2023 PAGE 2 OF 21**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO FAIR  
ADMINISTRATIVE ACTION GUARANTEED BY ARTICLE 47 OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF UNCONSTITUTIONAL AND ILLEGAL DEPRIVATION**



AND LIMITATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS  
OF A PERSON CONTRARY TO THE VALUES AND OPEN DISREGARD TO  
THE SPIRIT AND OBJECT OF THE BILL OF RIGHTS

AND

IN THE MATTER OF THE FISHERIES (BEACH MANAGEMENT UNIT)  
REGULATIONS, 2007

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE  
RULES, 2013

AND

IN THE MATTER OF THE BEACH PLOT KNOWN AS LAMU/BLOCK IV/8

BETWEEN

KATHERINE ISOBEL MARY SANDERS ..... PETITIONER

AND

SHELLA BEACH MANAGEMENT UNIT ..... 1<sup>ST</sup> RESPONDENT

COUNTY GOVERNMENT OF LAMU ..... 2<sup>ND</sup> RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 3<sup>RD</sup>  
RESPONDENT

ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT

JUDGMENT

1. The case currently before the court is grounded in a Petition that initially claimed a violation of the right to property to a Petition that was amended on 21 July 2023, now alleging that the Shella Beach Management Unit (1<sup>st</sup> Respondent) is managing public land in contravention of Article 67(2) of [Constitution](#). Furthermore, the Amended Petition asserts a violation of the right to a clean and healthy environment under Article 42 of [Constitution](#).
2. The Petitioner requests various forms of relief that will constitute the foundation for the court's decision. These include declaratory orders, injunction orders, and a judicial review order of mandamus directed against the Respondents, whether individually or collectively.
3. The origin of this matter can be traced to a Petition dated 14 February 2023, which was filed simultaneously with an Application of the same date, submitted under Certificate of Urgency. This Application was supported by an affidavit deposed to by Katherine Isobel Sanders, sworn on 14 February 2023.



4. The Petition was subsequently amended through an application dated 21 July 2023, and the proceedings are now founded upon the Amended Petition dated 21 July 2023.
5. The 1st Respondent has opposed the Petition via a Replying Affidavit sworn by Yahya Idarus deposed on 22 January 2024. The 2nd Respondent submitted affidavits through its Principal Fisheries Officers, Simon Komu and Joseph Athens Onyango, dated 26 April 2023 and 12 October 2023, respectively. The 3rd Respondent filed an affidavit deposed on 7 August 2023 by its County Director of Environment, Lamu James Kamula. Conversely, the 4th Respondent submitted grounds of opposition dated 18 May 2023.
6. The Petition was further deliberated through written submissions. Parties referenced various provisions of the law and judicial precedents to assist the court in arriving at its final decision, for which the court is grateful.
7. The Petitioner asserts that she has been the registered owner and in possession and use of parcel of land Lamu/Block/IV/8 for over twenty years. This property is a beachfront plot situated in Shella, adjacent to the Indian Ocean.
8. In the year 2023, the 1st Petitioner commenced development on the land directly in front of her gate, thereby restricting both her access and that of other beach users to the sea, consequently infringing upon her constitutional rights.
9. The Petitioner contends that the 1st Respondent has been disposing of both degradable and non-degradable waste on the property, further violating her rights to a clean and healthy environment as enshrined in Article 42 of *Constitution*.
10. She claims that she was never informed that the site was designated for activities proposed by the 1st Respondent and that the 2nd Respondent failed to notify her regarding this development, thus infringing upon her right to fair administrative action as outlined in Article 47 of *Constitution*.
11. The 1st Respondent asserts that the site purportedly subject to constitutional violations is a fish landing site, utilized by the local community of traditional fishers since the establishment of Shella village as a coastal settlement area. This usage predates the Petitioner's acquisition of Lamu/Block IV/8 in 2005.
12. Consequently, the 1st Respondent contends that the site has a traditional communal interest, grounded in its historical utilization for various fishing and communal activities.
13. Following the purchase of the Petitioner's Beach Plot, the Petitioner collaborated with the local fishing community, financially contributing to the construction of makuti sheds/bandas, which were built using locally available materials, including wooden mangrove poles for the supporting framework and makuti for the roofing.
14. In alignment with the site's intended use, the bandas have functioned as a boat yard for the construction of boats and for the repair of boats and fishnets.
15. In accordance with *Legal Notice No. 402 of 2010*, the Fisheries (Beach Management Unit) Regulations, 2007 (BMU Regulations) came into effect. Among other provisions, section 3(1) of the BMU Regulations established Beach Management Units as representative bodies for fishers, boat owners, fish traders, fish processors, and other stakeholders who traditionally rely on fisheries for their livelihoods. Pursuant to Regulation 5(1) of the BMU Regulations, each Beach Management Unit possesses jurisdiction over the specific area for which it is constituted.



16. With the promulgation of *Constitution*, fisheries became a devolved function of government pursuant to paragraph 1(e) of Part 2 of the Fourth Schedule of *Constitution*. The 1st Respondent is a legitimate registered Beach Management Unit and has conducted activities at the site in this capacity.
17. On or about 9th February 2023, the 1st Respondent, acting as a bona fide Beach Management Unit, undertook renovations to replace six (6) wooden pillars on three existing bandas. These renovations were necessitated by the need to substitute mangrove poles that had deteriorated and become unstable due to exposure to natural elements, thereby creating safety concerns. Additionally, these renovations align with current community and County Government initiatives aimed at restoring Lamu's mangrove ecosystem for various reasons, including local climate adaptation, environmental management, and conservation.
18. The Petitioner filed a Petition alleging multiple constitutional violations without any preliminary communications with the 1st Respondent or any other Respondents, including an information request or pre-action letter. The Petition was subsequently amended as previously outlined.
19. The Second Respondent asserts that fisheries constitute its function in accordance with paragraph 1(e) of Part 2 of the Fourth Schedule of *Constitution*; however, the protection of the environment and natural resources, to establish a durable and sustainable system of development, particularly in the areas of fishing, hunting, and gathering, is the responsibility of the National Government.
20. Regulation 6(7) of the BMU Regulations confers upon the First Respondent the authority to construct structures or buildings deemed necessary for executing its functions, contingent upon obtaining written permission from the director.
21. The structures erected were intended to undergo renovation by reinforcing the pillars with concrete slabs due to the recurrent replacement of deteriorated timber.
22. In a rejoinder dated 7 August 2024, the 3rd Respondent contends that its inclusion in this Petition is not pertinent, as the issues presented do not relate to environmental matters; consequently, there is no necessity for its involvement. Its report, dated 27 February 2023, indicates the absence of ecological violations concerning a clean and healthy environment at the site in question.
23. With regard to the Attorney General, it is acknowledged that the fourth Respondent is referenced solely in paragraph 7 of the amended Petition within the party's description in Part B, and not elsewhere. Nevertheless, concerning the inclusion of the Attorney General in this Petition, it is observed that the Petitioner addresses all facets of the legal framework related to the other Respondents but fails to identify any of the Government Ministries or Departments that may have infringed upon her fundamental rights. The Attorney General questions the rationale behind this decision. The Petitioner has invoked the oversight role of the Attorney General without presenting any specific allegations against that office, prompting the Attorney General to contemplate the nature of such a transient involvement. The Attorney General asserts that the Petitioner has not sufficiently demonstrated how the fourth Respondent violated her rights.
24. The Petition asserts violations of the following constitutional provisions: Article 35 (right of access to information), Article 40 (right to property), Article 42 read in conjunction with Article 69 (right to a clean and healthy environment), Article 47 (right to fair administrative action), and Article 67(2) of *Constitution*. The Respondents contend, and correctly so, that the Petition lacks merit and substantiation regarding each alleged violation, as detailed below.



25. The Respondents cited, and appropriately so, the decision in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR), in which the Court of Appeal addressed the necessity for reasonable precision in the drafting of pleadings as follows:

“(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 *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. What Jessel, M.R 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.”

26. The Petition underscores a breach of the right to information resulting from the denial of access to reports pertaining to the developments of the 1st Respondent. Firstly, no evidence has been presented within the Petition that illustrates a request for information directed to any of the Respondents or any other party.
27. The Petition proclaims that the 1st Respondent has engaged in construction utilizing both degradable and non-degradable waste, “which the 1st Respondent has been dumping and littering all over the



front beach and the shoreline adjoining and abutting the Petitioner’s beach plot.” However, it is observed that no evidence has been presented within the context of the Petitioner’s case to substantiate this allegation of dumping or littering by the Petitioner.

28. It is an established principle of law, as outlined in Section 107 of the [Evidence Act](#), that a party who asserts a fact bears the burden of proof and is required to establish the existence of such facts for the court to issue a judgment regarding any legal right or liability contingent upon the existence of those facts. The Petition in this matter has not succeeded in this regard. It is noteworthy that, although Article 42 of [Constitution](#) provides protection against potential infringements of the right to a clean and healthy environment, the Petitioner in this instance claims an actual violation. Consequently, they are bound by their pleadings and the corresponding burden of proof to substantiate evidence of such a violation, which they have not accomplished.
29. To the extent that the Petition alleges a violation of Article 42 as interpreted in conjunction with Article 69 of [Constitution](#) and Section 58(1) of the Environmental Management and Coordination Act, 1999 (EMCA), the essence of the Petition pertains to - the unauthorized, illegal, unlawful and unconstitutional developments by the 1st Respondent in the nature of construction on the front beach/beach and shoreline adjoining and abutting Petitioner’s beach plot - by way of erecting solid concretes for a building on the beach. However, the grievance articulated actually concerns the renovation of bandas that predate the Petitioner’s acquisition of the Beach Plot, for which the Petitioner provided financial support. Neither [Constitution](#) nor the Environmental Management and Coordination Act (EMCA)—whether under Section 58(1) or its Second Schedule—mandates the conduct of an environmental impact assessment for renovations akin to those executed by the first Respondent.
30. The National Environment Management Authority (NEMA) - the 3rd Respondent, conducted a comprehensive joint inspection of the site on 27 February 2023. This joint site inspection resulted in a report, which has been incorporated into the Replying Affidavit of James Kamula dated 7 August 2023. Firstly, within that report, there is no indication of any confirmed dumping, littering, or any threat of such violations. Secondly, the report affirms the renovations carried out, detailed in the following terms as part of the inspection findings:

“Three of the sheds had their wooden posts replaced with concrete pillars at different times in the past. They were all observed to be now supported by concrete columns. The shed in contention was the last to have its wooden support posts replaced with concrete pillars. The reinforced concrete columns were constructed on 9<sup>th</sup> February 2023.”
31. The report notes the advantages motivating the renovations, including reduced environmental impact. Based on this report, no actual or threatened ecological violations are raised in the Petition. NEMA’s County Director of Environment, in paragraph 12 of his affidavit, states that:

“The 3<sup>rd</sup> Respondent does not see the reason behind its joinder and even the court’s intervention as no environmental issue is raised.”
32. Regarding the [Fair Administrative Action Act](#) (FAA) and the allegation that the Petitioner was materially affected by an administrative action impacting their legal interests and rights, there should have been a public notice concerning the proposed administrative action, inviting public input prior to the execution of said action. This assertion is likewise grounded in Section 6(1) of the FAA, which stipulates a violation of the Petitioner’s right to be furnished with information. Regarding the administrative action in question, the Petition merely reiterates the provisions of Article 47. This claim does not satisfy the requisite standard of reasonable precision necessary for a constitutional claim.



33. The assertion does not satisfy the necessary criteria for the following reasons. The Petition fails entirely to specify the administrative action(s) being contested. Furthermore, the Petition does not designate the Respondent(s) against whom the infringement of the right to fair administrative action is alleged. Lastly, multiple facets of the right to fair administrative action are invoked, including the right to legitimate expectation, without any specification of the elements needed to substantiate these claims.
34. The Supreme Court, in the case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others, SC Petition No 14, 14A, 14B, and 14C of 2014; [2014] eKLR, delineates the principles that govern a claim based on legitimate expectation, namely:
  - a. There must be an express, clear, and unambiguous promise given by a public authority;
  - b. The expectation itself must be reasonable;
  - c. The representation must be one that it was competent and lawful for the decision-maker to make; and
  - d. There cannot be a legitimate expectation against the law's or *Constitution's* clear provisions.
35. The Petitioner believes that the 1st Respondent has undertaken some questionable developments on public property, which may go against Article 67(2) of *Constitution*. It's important to note that these weren't new constructions but rather renovations of existing buildings. What's more, the 1st Respondent acted within the legal framework provided by the Fisheries (Beach Management Regulations) 2007, which grants each registered beach management unit specific rights for activities that support fisheries management as outlined by law. Furthermore, the Petitioner's claim mistakenly suggests there has been a conveyance or disposition of the same land, but this assumption is clearly incorrect and lacks solid evidence.
36. It appears that the current Petition is grounded in a misunderstanding of the law. While there seems to be an effort to present this as a case focused on environmental conservation, a collaborative inspection by NEMA and various state agencies at both the National and County Government levels shows that this claim doesn't hold water. There is no evidence of pollution as claimed, and the assertion that the Petitioner's view of the beach is blocked lacks support. As a result, NEMA wonders why it or the court has been drawn into this matter. The reports from the 1st Respondent and NEMA clearly indicate that the Petitioner was aware of the 1st Respondent's presence on the Site and even helped with the construction of the bandas. However, the Petitioner notably did not disclose this information in either her Petition or the affidavit she signed in support. To add to the situation, the Petitioner also did not share any concerns or worries with any of the Respondents before filing the Petition.
37. For reasons aforesaid, the Petition lacks merit and is hereby dismissed.
38. In the case of Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR), the Supreme Court established that costs should follow the event. Furthermore, costs are awarded not as a means to penalize the losing party; rather, they serve to compensate the successful party for the efforts expended in prosecuting or defending the suit.
39. While the Supreme Court has upheld prior rulings indicating that no costs shall be levied against a party who initiates proceedings aimed at promoting a legitimate public interest or enhancing the proper understanding of the law, provided there is no expectation of private gain, the circumstances of this case do not align with the parameters of this principle.
40. Consequently, the current Petition is dismissed with costs.



**DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms. Bosibori for the Petitioner

Mr. Odaga for the 1<sup>st</sup> Respondent

Mr. Munga for the 4<sup>th</sup> Respondent

Happy: Court Assistant

In the Absence of:

Ms. Swaleh for the 2<sup>nd</sup> Respondent

Mr. Ngararu for the 3<sup>rd</sup> Respondent

