



**Samuel & 292 others v Ndegwa & 6 others (Petition E012 of 2023)
[2025] KEELC 3506 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3506 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

PETITION E012 OF 2023

EK MAKORI, J

APRIL 30, 2025

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 23, 40, 60, 67,
159 AND 258 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ARTICLE 25 OF THE
UNIVERSAL DECLARATION OF HUMAN RIGHTS**

AND

IN THE MATTER OF SECTION 134 AND 135 OF THE LAND ACT NO. 6 OF 2012

AND

**IN THE MATTER OF SECTION 5 AND SECTION 6 OF THE
NATIONAL LAND COMMISSION ACT (ACT NO. 5 OF 2013)**

AND

**IN THE MATTER OF THE RIGHT TO OWN LAND AND PROTECTION
OF PROPERTY UNDER ARTICLE 40(1) OF THE CONSTITUTION
AND RIGHT TO ACCESS TO LAND BY MARGINALIZED GROUPS
UNDER SECTION 134 AND 135 OF THE LAND ACT NO. 6 OF 2012**

BETWEEN

HASSAN CHONDE ABDULLAHI SAMUEL 1ST PETITIONER

**GATUA KABOGO & 291 OTHERS & 291 OTHERS & 291
OTHERS 2ND PETITIONER**

AND

JAMES KIGATHI NDEGWA 1ST RESPONDENT

MOHAMED ALI ABDALLA 2ND RESPONDENT

THE NATIONAL POLICE SERVICE 3RD RESPONDENT



THE NATIONAL LAND COMMISSION	4 TH RESPONDENT
CHIEF LAND REGISTRAR	5 TH RESPONDENT
THE DIRECTOR OF SURVEY OF KENYA	6 TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL	7 TH RESPONDENT

JUDGMENT

1. The Petitioners, as stakeholder organizations representing Malindi's populace, are duly established under the *Societies Act* and have registered offices within Malindi Municipality. They are a corporate entity endowed with perpetual succession, possessing the legal capacity to initiate and defend actions in their corporate name.
2. The Petitioners, through their Petition dated 17 April 2023, assert that they are residents of Mkondoni Village and claim that they have each occupied their respective portions of what is known as the Mkondoni Swahili Settlement Scheme, located within the subject property. They maintain that the subject property had long been earmarked for their settlement by the government, in light of their previous occupation of the land. The Petitioners contend that while they awaited settlement, it became apparent that the 1st Respondent had obtained a grant over the disputed land and subsequently transferred it to the second Respondent. Furthermore, they argue that they were looking forward to settlement on this land until they learned that, through the case Lamu PM Misc. Application No. E001 of 2022, police assistance had been sought to survey the subject property, which they believed had already been designated for their settlement. In addition, they assert that fencing the land would significantly change its character and intended use.
3. The Second Respondent asserts that he was the original Allottee of the property known as CR. 57546, currently located at Mkondoni Village and encompassing approximately 21.00 hectares or thereabouts. He was subsequently issued a Certificate of Lease/Title.
4. The Second Respondent conveyed the property to the First Respondent in 2014, culminating in a Transfer dated April 27, 2014, which was duly executed in favor of the First Respondent and subsequently registered at the Mombasa Lands Registry on May 6, 2014. The stamp duty of the Transfer was duly settled by the Advocates representing the First Respondent at that time, George Wakahiu, as evidenced by the KRA payment slip serial number 1855271, presented by the First Respondent in his Replying Affidavit.
5. To further substantiate that the First Respondent's acquisition was conducted in accordance with legal requirements, the necessary LCB Consent was procured and issued, which the NLC produced as part of its document bundle. This Consent is dated April 7, 2014.
6. Upon acquiring the property, the First Respondent took possession and has consistently been in possession, excluding any other individuals. There have been no intruders or squatters on the subject property besides the First Respondent and his employees, and this remains the situation to date. It was not until sometime in 2022 that the First Respondent sought to reestablish his beacons and erect a robust fence to secure the property, at which point he requested the intervention of the Lamu Law Courts through Misc. App E001 of 2022, where the court issued orders for the fencing and resurveying the property known as Grant CR NO. 57546. These orders were never contested, and an appeal was never lodged against them. The court was satisfactorily informed that the First Respondent is the registered owner of the property in question and that no squatters occupied it before issuing the



Orders. The Police provided security as directed by the Court, encountering no resistance as there were no squatters on the suit property, as confirmed by the Letter from the OCS Hindi Police Station dated June 14, 2022.

7. The request for court orders arose from the Lamu Port's operationalization. Due to the property's proximity to the port, it was essential to safeguard it against trespassers and land grabbers who were eyeing the area. Furthermore, it was an election year, during which some politicians exploited land issues as a campaign tactic. The Petitioners herein do not occupy the suit property and have never resided there. While the suit property was still registered in the name of the Second Respondent, the Petitioners raised no issues whatsoever, and it was only upon its transfer to the First Respondent that they began asserting claims of interest over it.
8. The Petitioners delineate the constitutional provisions they assert have been contravened: Articles 3, 40, 60, 67, 159, and Article 43(1) of *the Constitution* of Kenya. They subsequently request the following prayers:
 - a. A declaration that the use of an ex parte order issued by the Hon. M. M. Wachira, Principal Magistrate on the 20th January 2022, in Misc. Application EOO1 of 2022, Lamu to evict the Petitioners is unlawful and unconstitutional.
 - b. A declaration that the Petitioners are beneficially entitled to the portions occupied by each of them as against the 1st and 2nd Respondents.
 - c. A declaration that the grant resulting in Title No. CR. NO. 57547 and the said title deed are null and void.
 - d. A declaration that the failure by the 4th, 5th, and 6th Respondents to respond to the Petitioners' letters dated 30th July 2022, 3rd January 2022, and 7th March 2015 was unconstitutional and in breach of the Petitioners' rights as enshrined under Articles 35 and 60 of *the Constitution* of Kenya 2010.
 - e. A mandatory order must be issued to compel the 4th, 5th, and 6th Respondents to comply with Sections 134 and 135 of the *Land Act* regarding the suit land in favor of the Petitioners.
 - f. The 4th, 5th, and 6th Respondents must be compelled to provide all the information and documents leading to the issuance of Title CR. 57547.
 - g. Any other relief the honorable court may find to grant.
 - h. Costs be awarded to the Petitioners.
9. The first, third, fourth, fifth, sixth, and seventh Respondents submitted their written submissions, referencing several law provisions and pertinent judicial precedents, articulating the issues raised in the Petition. The court shall refer to these materials and precedents as necessary. Conversely, the Petitioners failed to provide any submissions.
10. In consideration of the materials and submissions presented before me, the issues I identify for the determination of this court are as follows:
 - a. To determine whether the petitioners have the necessary locus standi to bring this petition on behalf of the Petitioners.
 - b. To determine whether the petition satisfies the constitutional thresholds for such petitions.



- c. To assess whether the petitioners' fundamental rights have been violated, threatened, infringed, or denied.
 - d. To evaluate whether the petition is subject to statutes of limitations.
 - e. To ascertain whether the petitioners are entitled to the relief sought.
 - f. To identify who should bear the costs associated with the Petition?
11. On February 7, 2024, the court issued a directive for a site visit to be conducted. On March 21, 2024, the Deputy Registrar of this Court, Hon. Makau, visited the property in question in the presence of the parties and subsequently prepared a report on the same date; the court will reference this report should the need arise.
 12. The first Respondent aptly asserts that (a view I fully endorse) locus standi is the fundamental right to appear before a court of law and present one's case on its merits. A party must possess the requisite locus standi; otherwise, it should not be permitted to be heard, irrespective of the merits of its case.
 13. In the case of *Law Society of Kenya v Commissioner of Lands & others*, Nakuru High Court Civil Case No.464 of 2000, the court held as follows:

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229, the Court also held that: -

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.
 14. In the present case, the first and second Petitioners assert that they have been duly authorized to file the Petition on behalf of 291 Mkondoni Residents Welfare Organization members, which is claimed to be a Community-Based Organization (CBO). The court must examine whether such authority is adequate to justify the participation of the two Petitioners in this litigation. To this end, the following matters warrant consideration: Has the alleged authority received signatures from all 291 members, as purported by the Petitioners? Are there any minutes from the asserted CBO authorizing the two Petitioners to engage with the court?
 15. According to the records, the two Petitioners have not secured the requisite authority to confer the necessary locus standi upon them to initiate these pleadings. This assertion is substantiated by examining the List of Members annexed to the Authority to Act, where it is evident that a significant number of members have not provided their signatures, despite their names being included. Specifically, pages 19, 20, 21, 22, 23, and 24 of the said lists remain unsigned or partially signed, indicating that the individuals whose names are listed did not authorize the Petitioners to pursue this legal action.
 16. It is, therefore, clearly evident that the authority asserted by the Petitioners is deficient, as not all of the purported 291 members have affixed their signatures. The Petition submitted by the two Petitioners is critically flawed due to a lack of locus, as it fails to comply with the stipulations outlined in Order 1 Rule 13 (2) of the Civil Procedure Rules 2010, as detailed below:
 - 13.(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner,



where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

- (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.
17. In *Andrew Ileri Njeru - Embu Nyangi Ndiiri, Proposed Society Chairman & others v Daniel Nganga Kangi & another* [2015] eKLR, the court provided the following observation:
- “The Plaintiffs herein sue in their capacity as the representatives of the proposed Nyangi Ndiiri Society members. The authority to sue signed by the members has not been annexed to the plaint as required by the law.”
18. In addition, in the case of *Savala & another v Ndanyi* (Environment and Land Case Civil Suit 248 of 2021) [2022] KEELC 2536 (KLR) (5 July 2022), the learned Justice Naikuni articulated the following regarding the failure to grant authority:
- “From the foregoing, it is quite clear that a party in a proceeding cannot purport to appear, plead and act on behalf of others until and unless he is so authorized to do so in writing and the authority is filed in such a proceeding. To my mind therefore, a statement in an affidavit that one has the authority of the co-plaintiffs or co-defendants is not enough. Such an authority, properly signed by the party giving the authority, must be filed in the proceeding.”
19. From the foregoing, the first and second Petitioners did not possess the requisite locus standi to initiate this Petition due to a deficiency in proper authorization as mandated by law. On that point alone, the Petition ought to be struck out.
20. Before dismissing the Petition, I will assume that the individuals who endorsed the authorization have conferred the requisite authority upon the First and Second Petitioners to proceed. Subsequently, I shall verify the existence of a valid constitutional petition in alignment with the established principles that govern the formulation of constitutional petitions.
21. As duly noted by the first, third, fifth, sixth, and seventh Respondents, the Petitioners have cited several constitutional provisions that they allege have been violated. It is essential to emphasize that they have not sufficiently met the evidentiary burden required to substantiate these claims. The crux of a valid Petition resides in the invocation of constitutional articles and in demonstrating their applicability to the present case. In this context, the Petition does not adequately articulate any constitutional issues that warrant consideration as outlined under Articles 3, 40, 60, 67, 159, and 43(1). The lack of clarity and precision in their arguments further diminishes their standing. Without a clear statement of any breach or violation of rights as prescribed by these constitutional provisions, the Petition fails to satisfy the foundational requirements anticipated in such legal proceedings.
22. The criteria for a constitutional petition were delineated in the Court of Appeal case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, wherein the court articulated the following:
- “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.”

23. Furthermore, in the case of *McKnight v Limika* [2024] KEHC 15765 [KLR], the esteemed Judge LN Mugambi remarked that:

“ A Constitutional petition, just like any other pleading must not embarrass the adverse party who must know what exactly it is that he/she is accused of so as to be able to defend or answer the allegations. The Court should also be in a position to appreciate what the issues in controversy are. That is the essence of particularity test for if the pleadings are vague, it is a tall order for the court to reach a just resolution in a nebulous dispute.

A pleading that is overbroad is unacceptable as it undermines fair trial. A Petitioner should thus set out in his/her petition the complaint with reasonable degree of precision by clearly stating the facts that show how *the Constitution* has been violated.

A Petition that does not meet this threshold cannot be valid and sustainable and the court will not allow it. There must be clarity in presentation of factual situation relied upon to seek court intervention.”

24. The current Petition has inadequately provided sufficient details regarding the allegations and the nature of the purported infringements. For example, as stated in paragraph 23 of the Petition, the Petitioners allege that the 4th, 5th, and 6th Respondents have neglected the integrity of the process involved in allocating the suit property. However, they have not supplied specific details of this alleged neglect. Furthermore, the Petitioners assert that the 4th, 5th, and 6th Respondents have committed violations of Articles 3, 40, 60, 67, 159, and 43 (1) of *the Constitution* of Kenya, 2010; however, they have again not demonstrated any instance of such violation by the Respondents, among other issues.

25. It is also important to highlight that the Petitioners did not submit a supporting affidavit alongside their Petition. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 - “The Mutunga Rules, 2013”, stipulates under section 11 of the Rules that a supporting affidavit must accompany a Petition. Instead, the current Petition is accompanied by a verifying affidavit.

26. This distinction holds considerable significance as a supporting affidavit substantiates the claims presented in a Petition, highlighting that it transcends mere procedural technicality. In the case of *Omtatah Okoiti & 2 others v Cabinet Secretary, Ministry of Health & 2 others Kenya National Commission on Human Rights (Interested Party)* [2020] eKLR, the court underscored that:

“ Article 159(2)(d) of *the Constitution* cannot assist the 2nd Petitioner and 3rd Petitioner since the requirement for a Petition to be accompanied by a supporting affidavit is not merely a procedural technicality as affidavit contains the evidence, a party wishes to rely on in support of the case. It is an important part of pleading that guides the parties to a matter. In absence of such vital evidence, thus affidavit evidence, I find that the 2nd and 3rd Petitioner’s Petitions fatally defective for lack of affidavit evidence in their support.”

27. A supporting affidavit represents a formal declaration that includes evidence upon which the parties intend to rely for the support of their case, thus ensuring that verifiable facts substantiate all assertions.



The absence of an appropriate supporting affidavit renders the Petition submitted by the Petitioners fundamentally flawed.

28. A notable oversight concerning the Petition's annexures is also evident. It is crucial to emphasize that these annexures have not been duly commissioned in accordance with the provisions outlined in Rule 9 of the Oaths and Statutory Declarations Rules, which states that:

“ All exhibits to affidavits shall be securely sealed thereto under the commissioner's seal, and shall be marked with serial letters of identification.”

29. The absence of such commissioning raises significant concerns regarding the authenticity and verifiability of these annexures. We cannot ascertain whether these annexures are genuine without the requisite seal and appropriate identification markings. The integrity of the evidence presented before this court is paramount, particularly in constitutional petitions.
30. Considering the factors as mentioned above, the annexures attached to the Petition cannot be deemed accurate or reliable evidence, as they have not been endorsed adequately per the statutory obligations. This signifies yet another deficiency within the Petition that cannot be overlooked.
31. The Petition submitted to this court fundamentally lacks depth and precision. It fails to satisfy the requisite criteria for constitutional petitions, which demand a clear and compelling demonstration of any purported infringement of rights or legal principles. The Petition lacks specificity and does not furnish concrete evidence or substantial arguments to substantiate the claims. However, this court has conducted a thorough evaluation, considering all aspects of the Petition. Moreover, the absence of appropriate documentation further compromises its credibility and renders it inadequate for judicial scrutiny. Without a well-articulated foundation for the claims, this court cannot reasonably evaluate whether any constitutional rights have been contravened. In light of these shortcomings, the Petition ought to be dismissed.
32. Regarding the merits of the Petition, particularly as articulated by the 4th Respondent, the National Land Commission (NLC), it is imperative to acknowledge the historical context of Lamu Island about the numerous and volatile land issues that have beset it. This historical context, as detailed in a report by Haki Yetu, entitled "Excluded and Displaced in Your Own Homeland: Land-Related Injustices and Conflicts in Lamu County" (Chapter 2, Clause 2.2, Historical Background on the Land Question in Lamu), provides a comprehensive understanding of the case:

“The region's widespread landlessness, therefore, has a unique historical origin. It can be traced back to the colonial government's decision to forcefully implement a system of individual land title deeds under the Land Titles Ordinance for those who claimed ownership rights within the Ten Mile Coastal Strip. Unfortunately, only a few of the locals were aware of the process, and even fewer saw the need to take advantage of the opportunity to register land in their own names. As a result, the land they lived on was declared Crown Land, which later became Government Land after the country gained independence. The indigenous communities were now dispossessed of their land, or put another way, they moved from being slaves to squatters on their own land.”

33. The land in question is classified as Government Land; consequently, the transition from Government Land to Private Land must adhere to the requisite due process. This process involves several legal



requirements and procedures, which I will now clarify. In the Case of Hubert L. Martin & 2 others v Margaret J. Kamar & 5 others [2016] eKLR, the Court held:

“A court, when faced with a case of two or more titles over the same land, has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document, and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

34. Procedurally, for unalienated government land to be allocated to private individuals under the repealed Acts (notably, the Physical Planning Act), the initial requirement is an approved Part Development Plan (PDP), which is processed as follows: Under Section 9 of the Government Lands Act Cap 288:

“The Commissioner may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the prescribed manner.”

35. The Minister would, in writing, authorize the Director of Physical Planning to prepare a PDP for the alienation of Government land. Under Section 3 of the PPA, a PDP specifies precise sites for the immediate implementation of specific projects or for alienation purposes.
36. Subsequently the Minister would authorize the Director to prepare a PDP, circulate it for comments, publish it in the Gazette, and disseminate it in two daily newspapers (in English and Kiswahili) with national circulation, as well as display it in the chief's office and local government offices for public feedback. The public is granted sixty days to make representations or objections. Thereafter, the Director of Physical Planning would submit triplicate certified copies to the Minister for approval, accompanied by evidence of the comments received and the respective newspaper publications cuttings.
37. The Minister, after receiving approval, forwarded a copy to the Director of Physical Planning with the purpose of:
- a. Assign an officially approved Development Plan Number.
 - b. Enter the officially approved Development Plan number into the register of approved Development Plans.
 - c. Distribute a copy of the officially approved Development Plan, which includes the specific approved Development Plan Number, to the relevant implementing agencies for execution.
38. The Director of Physical Planning submits a copy of the Plan, accompanied by an assigned approved Development Plan Number, to the Commissioner of Lands to request the issuance of a letter of allotment. In summary, an authentic PDP must:



- a. Be approved by the minister;
 - b. Be assigned an approved development plan number by the director of physical planning and enter it in the register as an approved plan.
39. Upon investigating the title's origin, the fourth Respondent procured an approved Part Development Plan from the Ministry of Lands and Physical Planning in this suit, thereby satisfying the initial requirement, dated May 12, 1995, Reference number LMU 231.
40. The letter of allotment was subsequently issued to the second Respondent. The land designated in the allotment letter pertains to Plot H, which is accurately illustrated in the Approved Part Development Plan.
41. The subsequent phase involves the survey process, a crucial step in land allocation. This phase leads to the allocation of land reference numbers and the issuance of a lease certificate. In the case of *Nelson Kazungu Chai & 9 others v Pwani University College* [2014] eKLR, the court stated the following:
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 ‘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 survey was confirmed by the Surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co. Ltd Vs The Hon .AG, 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.”
42. The Fourth Respondent obtained an approved and authenticated survey, designating the Second Respondent as the assignee of the suit land, thereby fulfilling the requisite obligation that a procedural survey was conducted.
43. Furthermore, an application was submitted for consent to transfer the suit land from the Second Respondent to the First Respondent. As mentioned above, the processes established that there was due process in allocating the land to the Second Respondent, who subsequently transferred the suit land to the First Respondent.
44. The Petitioner asserts in their Petition that the Fourth Respondent allocated the land to the Mkondoni Residents, who are members of the Mkondoni Residents Welfare Organization. The procedure for the allocation of such land is mandated by Section 12(b) of the *Land Act*:
- “Whenever the national or county government is satisfied that it may be necessary to allocate the whole or part of a specific public land, the Cabinet Secretary or the County Executive Committee member responsible for matters relating to land shall submit a request to the Commission for the necessary action by way of-
- (b) Application confined to a targeted group of persons or groups to ameliorate their disadvantaged position;”
45. The Petitioners have not provided any correspondence documents or letters from the County Government of Lamu that would demonstrate any approved allocation, nor have they submitted any letter to the County requesting an allocation.



46. The Commission also did not receive a request from the County Government of Lamu to allocate land to the Petitioners.
47. The Land (Allocation of Public Land) Regulations [*Legal Notice 284 of 2017*](#) delineates the procedure for allocating land to marginalized communities. The allocation of public land, as articulated under Regulation 9, which states:

“Vetting of targeted group of persons

1. Where the national or county government is satisfied that it is necessary to allocate land to a targeted group in order to ameliorate the group's disadvantaged position pursuant to section 12(1) (b) of the Act, the national government or county government shall, after giving notice in accordance with section 14 of the Act, vet the targeted group to ascertain the nature of the group's disadvantaged position.
 2. In order to ascertain the disadvantaged position of the group the national or county government shall consider—
 - (a) aspects of gender and equity;
 - (b) persons with disabilities within the group;
 - (c) social imbalances and injustices against the group;
 - (d) historical injustices against the group; and
 - (e) economic and cultural marginalization against the group.
 3. The national or county government shall prepare a report on the disadvantaged nature of the group and recommend allocation of the identified land to ameliorate the group's disadvantaged position.
 - (4) The Commission shall study the report and if satisfied reserve the recommended land to be implemented under section 134 of the Act.”
48. The Petitioners did not submit a notice issued by the County or the National Government regarding the vetting process intended to ascertain the group's disadvantaged status to this court. Moreover, the Commission received no report from the County or National Government regarding the Mkondoni Residents.
49. The Petitioners failed to present any documentation substantiating the claim that the Mkondoni Residents would receive land from the National or County Governments. Furthermore, the 4th Respondent received no requests from the National or County Governments about this matter.
50. The land was appropriately allocated to the second Respondent and transferred to the first Respondent.
51. Upon visiting the site, the Deputy Registrar of this court submitted her report, which included a pictorial impression dated 8th March 2024. She conducted the site visit in the presence of the Petitioners, their counsel, the first respondent, and his counsel.
52. Based on the site visit report, it is unequivocal that the first respondent is the sole occupant of the subject land, CR 57546. No squatters or individuals are infringing upon the subject land. The photographs of the structures appended to the Petition do not appear near the first respondent's land.



53. The report established that the first respondent occupies the 21 Ha. This contrasts with the incorrect and misleading information presented by the Petitioners in their pleadings.
54. The site visit report elucidates the discrepancies that the Petitioners ultimately chose to obscure. This report starkly contradicts the issues articulated in the Petition, as the Petitioners provided false information concerning their occupation of the 1st Respondent's property.
55. I regard the report as an essential element of these proceedings, as elucidated by the judicial precedents accurately referenced by the first respondent. In the case of *Beatrice Ngonyo Ndungu & another v Samuel K Kanyoro & 2 others* [2017] eKLR, the court articulated the following regarding the importance of a site visit:

“Whenever it becomes necessary for a court of law to conduct a site visit, the court does so to reach a just determination of the matter before it. The raw materials that a court of law uses in its determination are the law and facts. Facts are to be presented before the court as evidence. Consequently, site visits are essentially an occasion to receive evidence since the law can be cited by parties in pleadings or submissions. Further, the court can access the law on its own. A site visit that is incapable of yielding any evidence is not a prudent use of the court's time and resources. “

56. In the case of *Ayoyih v Muhanji* (Environment and Land Appeal E011 of 2022) [2023] KEELC 17511 (KLR) dated 16 May 2023, the judgment articulated the following about the site visit:

“Thus, a site visit is as much a judicial process as a hearing in open court. It should be part of the record in all its aspects, in terms of the date when it is scheduled, the coram and what took place. Parties should be made aware of the date when it is scheduled and be given the opportunity to be present during the visit and to offer evidence in response to any notes taken by the court during the visit. “

57. Having thoroughly analyzed the Petition's procedural and substantive merits, I find it unnecessary to determine whether it runs afoul of laches and delays, as such a determination is not imperative.
58. The present Petition is fundamentally deficient in legal grounds and devoid of merit; consequently, the reliefs sought cannot be granted, and it is hereby dismissed with costs awarded to the participating Respondents.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 30TH DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Soita for the 1st Respondent

Mr. Munga for the 3rd, 5th, 6th, and 8th Respondents

Mr. Kiilu for the 4th Respondent

Happy: Court Assistant

In the Absence of:

Mr. Komora for the Petitioners

