



REPUBLIC OF KENYA



**Bomu & 9 others (Suing on behalf of all the 5190 members of Ihaleni  
Community Based Organization (CBO)) v Kindimba Limited & 6 others  
(Petition 15 of 2015) [2025] KEELC 3123 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3123 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
PETITION 15 OF 2015**

**MAO ODENY, J**

**APRIL 4, 2025**

**BETWEEN**

**HENRY CHANGAWA BOMU ..... 1<sup>ST</sup> PETITIONER  
MWALIMU AHMED ..... 2<sup>ND</sup> PETITIONER  
JOHNSON MWAREMA MWANJE ..... 3<sup>RD</sup> PETITIONER  
FERDINARD CHARO ..... 4<sup>TH</sup> PETITIONER  
PETER THOYA IHA ..... 5<sup>TH</sup> PETITIONER  
JAMES MRAMBA THOYA ..... 6<sup>TH</sup> PETITIONER  
RAYMOND KAZUNGU KENGA ..... 7<sup>TH</sup> PETITIONER  
SARAH KARISA THETHE ..... 8<sup>TH</sup> PETITIONER  
CONSTANCE GEORGE KAINGU ..... 9<sup>TH</sup> PETITIONER  
KARISA BONGO MASHA ..... 10<sup>TH</sup> PETITIONER  
SUING ON BEHALF OF ALL THE 5190 MEMBERS OF IHALENI  
COMMUNITY BASED ORGANIZATION (CBO)**

**AND**

**KINDIMBA LIMITED ..... 1<sup>ST</sup> RESPONDENT  
KILIFI PLANTATION LIMITED ..... 2<sup>ND</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT  
KILIFI COUNTY GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT  
HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT  
DIRECTOR OF PUBLIC PROSECUTIONS ..... 6<sup>TH</sup> RESPONDENT**



JUDGMENT

1. The Petitioners filed a Petition dated 14<sup>th</sup> October, 2015 which, was subsequently amended on 10<sup>th</sup> November, 2016 seeking the following orders:
  - a. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants, Kilifi Plantation Limited and Kilifi County Government, its servants and/or agents from evicting the Petitioners from Blocks 11, 12, 4236/4, 5023 AND 5018 Kilifi County.
  - b. A declaration that the Petitioners having resided on the said parcel of land long since to date has proprietary right on the same against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and should not be evicted arbitrary by the 4<sup>th</sup> Defendant who is the custodian of Trust Land.
  - c. A declaration that the 4<sup>th</sup> Defendant and officials have improperly allocated Trust Land to private individuals at the detriment of the community and such allocations be declared void.
  - d. A declaration that the eviction of the Petitioners and other members of the Community from the suit land is contravention of the right to life protection by section 71 of the previous Constitution and Article 26 of the 2010 Constitution and the economic and social rights under Article 43 of *the Constitution* 2010.
  - e. An order restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants from allocating the Petitioners' land to other persons to the exclusion of the Petitioners.
  - f. A declaration ordering the 3<sup>rd</sup> Defendant to identify and open a registrar of members of the community in consultation with the community elders and identify the suit land and community land and thereafter apportion the land to the Community.
  - g. Costs of this Petition be borne by the Respondents.

**Petitioners' Case**

2. PW1, Henry Changawa adopted his witness statement dated 18<sup>th</sup> January, 2019 and a Supplementary affidavit as part of his evidence in chief and further produced a list of documents as Pex 4 to 32. It was his evidence that the Vice Chair of the Commission gave him the documents during a meeting organized by the 3<sup>rd</sup> Respondent.
3. PW1 stated that Fundi Sudi one of his deceased forefathers' land was taken by white settlers. PW1 further testified that they had annexed a newspaper cutting indicating absentee landlords and a Certificate of Title for plot No 11. It was his evidence that they were claiming the land as ancestral land, which belongs to them.
4. PW1 testified that the 2<sup>nd</sup> Respondent was initially known as Kilifi Coastland, which was later changed to Kilifi Plantations Ltd who took their land. PW1 informed the court that they were later evicted from the land in the 1950s and 1988, respectively, from plot No. 11. PW1 also stated that they have had numerous trespass cases before the Kilifi Principal Magistrate's Court and, that is why they enjoined the Director of Public Prosecutions to this case.
5. PW1 informed the court that all the cases were dismissed. He also stated that they were not in occupation of the suit parcels of land and urged the court to grant the orders as prayed in the petition.



6. Upon cross-examination by Mr. Ole Kina, PW1 stated that it is true the certificate of title refers to Msefu Ltd as per PExh 10, and Msefu Ltd is not one of the Defendants. PW1 stated that they did a search a long time ago in 2010, and would not know whether there has been a change of ownership since then.
7. PW1 also confirmed that they presented their grievances to the Parliamentary Committee however, they were neither given a report nor land PW1 further stated they also filed a complaint with the 3<sup>rd</sup> Respondent as per Gazette Notice produced as PExhb 20 whereby the titles held by the 2<sup>nd</sup> Respondent were upheld and found to be valid. PW1 further stated that it is true that PExh 5 at paragraph 5 states that the freehold titles that were already in place in 1963 were to be respected and recognized.
8. PW1 further confirmed that the 2<sup>nd</sup> Respondent bought land privately from individual owners hence was not allocated land Further that it is within landowners' right to keep out intruders and trespassers from their land.
9. It was PW1's testimony that he is aware that there are people who have been given permission by the 2<sup>nd</sup> Respondent to use its land and that his father together with him do not stay on the suit land.
10. Upon cross-examination by Ms. Munyuny, PW1 stated that the documents they have produced show the titles are in the names of the 2<sup>nd</sup> Respondent and that they were arrested and charged before the Kilifi Magistrates court, however they were never convicted.
11. Upon re-examination, PW1 testified that the land was theirs even before the Arabs and Europeans came to Kenya. Further that their houses were destroyed from around 1959 to 1988 and some people would come to burn their houses as late as 2016. He testified that the 3<sup>rd</sup> Respondent gave its decision in 2017 which they did not agree with.
12. PW2 Ferdinard Bakari Charo, the 4<sup>th</sup> Petitioner, adopted his affidavit dated 18<sup>th</sup> January, 2019, supported the testimony of PW1 and urged the court to grant the orders sought. He further stated that the land dispute started in 1956 when he was two years old by a person named Fundi Sudi and justice has never been served. He also stated that he is the grandchild of the late Hamisi Fundi Sudi and that Plot No 11 is theirs where they have occupied for over 160 years.
13. Upon cross-examination by Mr. Ole Kina, PW 2 stated that it is true that their grandfather filed a petition No. 948 of 1958 in Mombasa in 1956, which went on, until his demise. He testified that the Registrar of Titles and the Recorder of Titles, Mr. Gitonga rendered a judgment whereby their claim was rejected as it was a subdivision of Plot No. 11. He stated that those decisions were not correct as the green card was in the name of their grandfather but was not sure whether his grandfather had a title. Further that he did not know whether his grandfather had filed an appeal against the decision of the Recorder of Titles and has nothing to show of such appeal.
14. PW2 stated that he agrees that the 2<sup>nd</sup> Respondent has not encroached on anyone's land and he has no survey report showing they have exceeded their boundaries, but their homesteads and shrines are still on the land.
15. Upon cross-examination by Mr. Ngoya, PW2 stated that it is true that exhibited titles were issued by the Recorder of Titles Mombasa and not the County Government of Kilifi. Upon cross-examination by Ms. Munyuny, PW2 stated that he has no claim against the 5<sup>th</sup> and 7<sup>th</sup> Respondents. Upon reexamination, PW2 reiterated that their shrines are still on the land.



16. PW3 Raymond Kazungu Kenga , the 7<sup>th</sup> Petitioner, adopted his statement dated 18<sup>th</sup> January, 2019 as his evidence and stated that he was born on the suit property, urged the court to grant the orders as prayed.
17. Upon cross-examination by Mr. Ole Kina, PW3 stated that he resides in Mavueni and does not live on the 2<sup>nd</sup> Respondent's land. PW3 stated that the 2<sup>nd</sup> Respondent would be within its right to protect its land by removing intruders. He further stated that the government has given them neither the land nor a title to the land in their name. It was his testimony that the land is community land that has not been registered.
18. Upon cross-examination by Ms. Munyuny, PW3 stated that he had no problem with the 5<sup>th</sup> and 7<sup>th</sup> Respondents. Upon re-examination, PW3 testified that he is 47 years old and he was born on the suit property.
19. PW4 Karisa Bongo Masha adopted his affidavit dated 28<sup>th</sup> February, 2019 as his evidence and urged the court to grant the orders as prayed in the Petition.
20. Upon cross-examination by Mr. Ole Kina, PW4 stated that he was born in Mnarani Kilifi and does not stay within the 2<sup>nd</sup> Respondent's land. Upon cross-examination by Ms. Gitari, PW4 stated that he had sued the 4<sup>th</sup> Respondent but he had not seen the title to the suit land. Upon re-examination, PW4 testified that the land is within Kilifi Plantations where they graze their animals.
21. PW5, James Mramba Thoya adopted his statement dated 18<sup>th</sup> January, 2019 as his evidence and stated that he resides in Mavueni Kilifi County and that their forefathers lived on the suit land before the coming of the Arabs and colonialists. PW5 informed the court that they were not given a chance to be heard and in 1908, when the Registrar and the Recorder of Titles asked for the people to be recorded, the indigenous people were not recorded. He testified that nobody went to claim the land as their forefathers were claiming the land under customary land tenure.
22. PW5 testified that the elite went and claimed the land and were registered. Further that the Mazrui Land Trust Act took the land and gave the Arabs and ignored the rights of the indigenous people. It was PW5's testimony that the 3<sup>rd</sup> Respondent failed in administering justice to them as they never heard, yet they promised an all-inclusive solution to the matter. PW5 testified that they went ahead and gazetted a resolution while the matter was still pending in court.
23. Upon cross-examination by Mr. Thoya, PW5 stated that he neither resides on the properties belonging to the 2<sup>nd</sup> Respondent nor knows how the how the 2<sup>nd</sup> Respondent acquired the land. It was his testimony that he was not aware of the Judgment by the Recorder of Titles that gave the land to the 2<sup>nd</sup> Respondent.
24. He stated that Plot No 12 was given to Seif-Bur-Al Salim Liwali, who is not a party in this case, and further that he has not sued the Mazruis. PW5 stated that there was an agreement between the government of Kenya, Zanzibar and the Prime Minister for the titles to be recognized. He confirmed that the 3<sup>rd</sup> Respondent gave a recommendation that they be evicted and upheld the 2<sup>nd</sup> Respondent's titles.
25. Upon cross-examination by Ms. Gitari, he stated that they sued the 4<sup>th</sup> Respondent because it allowed a company to carry out developments on a land that is disputed. Upon cross-examination by Mr. Munga, PW5 stated that he cannot ascertain whether the matter at Kilifi Senior Resident Magistrate's court (7<sup>th</sup> Respondent) was civil or commercial in nature as he was not one of the people who was arrested and arraigned in court.



26. Upon re-examination, PW5 testified that they were evicted from the suit land before and after 2015 and further that when he first came to court, the 6<sup>th</sup> and 7<sup>th</sup> Respondents were not parties who were later added through amendment.

### **1st Respondent's Case**

27. DW1 Christopher Denis Wilson adopted his replying affidavit dated 26<sup>th</sup> October 2015 and a supplementary affidavit dated 7<sup>th</sup> March 2016 as his evidence and sated that he is a Director of Kilifi Plantations of the 2<sup>nd</sup> Respondent in charge of agriculture. He testified that he knows the 1<sup>st</sup> Respondent company which was a special purpose company and the same was deregistered, hence no longer in operation.
28. DW1 relied on the Surveyor's report dated 20<sup>th</sup> September, 2018 and produced the DEX No 1 to 15 and the Supplementary documents as DExh No 16 and 17 together with a survey report as DExh No 18. DW1 informed the court that they are in possession of the land that the company owns and prayed that the Petition be dismissed with costs.
29. Upon cross-examination by Mr. Mwadilo, DW1 stated that the company bought the land in 1926 and got titles in 1926, 1927 and 1928, respectively. He stated that he was not aware that the Petitioner's ancestors were owners of the parcels of land. He further testified that nobody was in occupation of the suit parcels except the 2<sup>nd</sup> Respondent.
30. According to DW1, the Petition was filed in 2015 and the petitioners were not in occupation of the suit parcels of land as they had been forcibly evicted about six times. He stated that the Petitioners were charged with the offence of trespass in Criminal Case No 365 of 2016 and there was a status quo order.
31. It was DW1's testimony that as a private property owner of the suit land had a right to protect its property. DW1 further stated that the 2<sup>nd</sup> Respondent company owns eight parcels which are in dispute of which Block 12 is freehold title and parcel No 5032 was one of the original titles. He stated that the land was disposed of after the 1<sup>st</sup> Respondent company was closed down.
32. Upon re-examination, DW1 testified that the 2<sup>nd</sup> Respondent company was formed as a British Company and bought the suit land which was unoccupied. He stated that the 2<sup>nd</sup> Respondent company is in occupation and they have made a report to the police as the Petitioners had invaded their parcel of land. DW1 further testified that prior to the invasion, they were not in occupation of the suit land.
33. DW1 also stated that they appeared before the 3<sup>rd</sup> Respondent who declared in their findings that the property belongs to Kilifi Plantations as per the report annexed to his affidavit. DW1 testified that there were some structures which were demolished by the police and the makeshift structures were put up during the invasion.

### **Petitioners' Submissions**

34. Counsel for the Petitioners filed submissions dated 22<sup>nd</sup> November, 2022 and submitted that the Petitioners have proved their case as required by the law hence entitled to the orders sought. Counsel submitted that the Petitioner's case revolves around the fact that most of them were born on the land in dispute and have lived there and, that the land in question is ancestral in nature as their ancestors possessed, occupied and cultivated the same from time immemorial.
35. Mr. Mwadilo submitted that if any title was issued to third parties then the issuance of such titles amounted to historical injustice that needs to be remedied. Further that the agreement between the



Sultan of Zanzibar, Britain and the Government of Kenya purporting to protect the aforesaid titles without any input from their ancestors who were in occupation thereby treating them as third-class citizens whose opinions were inconsequently irrelevant and immaterial should be disregarded.

36. It was counsel's submission that the Mijikenda were the occupants of the ten Mile Coastal strip before they were forced to flee inland by the ravages of the slave trade. Counsel submitted that the Respondent only called one witness and this does not negate their claim to their ancestral land which they were wrongly dispossessed and title issued to third parties. Counsel urged the court to find merit in the Petition.

## 2nd Respondent's Submissions

37. Counsel for the 2<sup>nd</sup> Respondent filed submissions dated 11<sup>th</sup> October, 2022 and identified the following issues for determination:
- a. Whether the Petitioners have provided any evidence to support the assertion that they have any bona fide interests on Land Reference Numbers Plot No 11, Plot No 12, Block No 4236/4, Block No 5023 and Block No 5018 situate in Kilifi;
  - b. Whether the 2<sup>nd</sup> Respondent is a bona fide registered owner of the suit land;
  - c. Whether the Petitioners have placed any evidence to support their contention that the suit land qualifies as Trust Land; and
  - d. Whether this Honourable Court can issue any of the orders sought by the Petitioner as against any of the Respondents as prayed in this Petition.
38. On the first issue, counsel submitted that no evidence has been submitted by the Petitioners to support the assertion that they have bona fide interests on the suit land. Counsel invited the court to study the report by the 3<sup>rd</sup> Respondent which counsel relied on and submitted that the decision by the 3<sup>rd</sup> Respondent has not been challenged by the Petitioners.
39. Mr. Ole Kina further submitted that the 3<sup>rd</sup> Respondent the National Land Commission, a Constitutional independent institution established under Article 67 is mandated to initiate and undertake investigations, on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress. Counsel relied on the case of *Ledidi Ole Tauta & Others v Attorney General & 2 others* [2015] eKLR, where a three-judge bench determined the role of the National Land Commission in investigating historical land injustice.
40. On the second issue, counsel submitted that the 2<sup>nd</sup> Respondent demonstrated that it is the bona fide registered owner of the suit property and relied on Section 26 of the *Land Registration Act*, 2012 and the case of *Margaret Njeri Wachira v Eliud Waweru Njenga* [2018] eKLR.
41. On the third issue, counsel submitted that no evidence of any of the broad categories contemplated by the Supreme Court in the case of *Isack M'Inanga Kiebla v Isaaya Theuri M'Ilintari & another* [2018] were met to find basis on existence of a trust.
42. On the fourth issue, counsel submitted that the suit property is validly owned by the 2<sup>nd</sup> Respondent and the Petitioners have fallen way below the evidentiary threshold required to sustain their claim. Counsel urged the court to dismiss the Petition with costs to the 2<sup>nd</sup> Respondent.



#### 4<sup>th</sup> Respondent's Submissions

43. Counsel for the 4<sup>th</sup> Respondent filed submissions dated 5<sup>th</sup> October, 2022 and identified the following issues for determination:
- a. Whether the Petitioners have any ownership rights over the suit land and whether their rights over the suit land have been violated?
  - b. Whether the Petition raised any triable issues as against the 4<sup>th</sup> Respondent?
  - c. Whether the Petitioners are entitled to the reliefs sought?
44. On the first issue, counsel submitted that the Petitioners failed to demonstrate that they have any ownership rights over the suit land and hence cannot claim violation of constitutional rights. Counsel relied on Sections 22, 24 and 26 of the Land Registration Act 2012 and the case of Alphonse Mwangemi Munga & 10 others v African Safari Club Limited [2008] eKLR.
45. On the second issue, counsel submitted that the Petition failed to meet the requirements for the institution of a constitutional petition and to show any cause of action against the 4<sup>th</sup> Defendant and relied on the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR.
46. On the third issue, Ms. Gitau submitted that the Petitioners have failed to demonstrate any proprietary rights over the suit land that can be protected by the Court and urged the court to dismiss the Petition with costs for lack of merit.

#### 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup> Respondents Submissions

47. Counsel for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents filed submissions dated 25<sup>th</sup> October, 2022 and identified the following issues for determination:
- a. Whether the Petition raises any issues on violation of the Constitution against the 5<sup>th</sup>- 7<sup>th</sup> Respondents?
  - b. Whether the Petitioners are entitled to the reliefs sought?
48. On the first issue, counsel submitted that the Petition shows no violation or breach of any constitutional rights of the Petitioners having been committed by the 5<sup>th</sup> - 7<sup>th</sup> Respondents from the pleadings. Counsel submitted that the Petitioners prayers and orders are all against the 1<sup>st</sup>- 4<sup>th</sup> Respondents and in no way are orders sought against the 5<sup>th</sup> - 7<sup>th</sup> Respondents.
49. On the second issue, counsel submitted that the Petition lacks merit and should be dismissed with costs and relied on Section 24 of the National Police Service Act No 11A of 2011 and the cases of Davi Ndolo Ngali & 2 others v Directorate of Criminal Investigations & 4 others [2015] eKLR, Erick Kibiwott & 2 others v DPP & 2 Others Judicial Review Civil Application No 89 of 2010, Philomena Mbeti Mwilu v Director of Public Prosecutions & 3 others, Anarita Karemi Njeru v Republic [1979] 1 KLR 154 and Peter Ngaki Njagi v Officer Commanding Station (OCS) Kasarani Police Station and others NBI HCCC No 169 of 2012 [2013] eKLR.

#### Analysis And Determination

50. The issues for determination from the pleadings and the evidence on record are:



- a. Whether the Petitioners have proved that they have proprietary interest in the suit parcel of land known as BLOCK 11, 12, 4236, /4, 5023 and 5018 Kilifi County and if so whether there has been any violation of their constitutional rights.
  - b. Whether the 2<sup>nd</sup> Respondent is the bona fide owner of the suit parcel of land and whether the orders sought by the Petitioners are tenable.
51. From the evidence on record, the Petitioners claim is that the suit land in dispute belonged to their forefathers who were dispossessed by the colonialists and the Arabs They further faulted the agreement between the Sultan of Zanzibar, Britain and the government of Kenya that protected titles that were issued as void as they did not consult the people who were in occupation. The Petitioners also stated that they suffered historical injustice hence the same should be remedied and be given back their ancestral land. It should also be noted that the Petitioners s also advanced a claim that the land is trust land, which should not have been allocated to private individuals.
  52. From the onset, the Petitioners seemed to be gambling with the orders that they wanted to pursue in this Petition. On one hand, the Petitioners are claiming the land on account of ancestry/historical injustice and on the other hand, laying a claim that the land is trust land/community land.
  53. Let us start with the issue of ancestral land and historical injustice. The dispute with respect to this parcel of land is not new. PW 2 stated that their grandfather filed a petition No. 948 of 1958 in Mombasa in 1956, which went on, until his demise. He further testified that the Registrar of Titles and the Recorder of Titles, Mr. Gitonga rendered a judgment whereby their claim was rejected as it was a subdivision of Plot No. 11. He admitted that he was not aware whether his grandfather had filed an appeal against the decision of the Recorder of Titles and had nothing to show of such appeal.
  54. Secondly, this matter was heard and determined in 2015 by the 3<sup>rd</sup> Respondent, the National Land Commission, whereby all the parties including, the Petitioners were given an opportunity to be heard. It is on record that the 3<sup>rd</sup> Respondent issued an interim report on 11<sup>th</sup> December 2015 and a final report dated 18<sup>th</sup> July 2016. The Petitioners produced the reports and the finding was that the suit parcels of land were private property held under freehold title by the 2<sup>nd</sup> Respondent.
  55. The findings were as follows:
    - “ 1. The Ihaleni Squatter Group’s claim of the subject land being public has not been supported by any of their evidence, neither do records in the Lands Registries of Kilifi, Mombasa and Nairobi indicate that.
    3. Claims of historical and ancestral ownership of the land by the Ihaleni Squatter Group can only be considered once the proposed law on addressing historical and present injustices is put in place...
    4. Alternatively, the Ihaleni Squatter Group members should request to be considered for allocation of some of the land by the registered owners, if available and acceptable to the holders instead of forcefully invading the property. Invasion of someone’s property is prohibited by Kenyan Laws...”
  56. It is instructive that the National Land Commission (Investigation of Historical Land Injustices) Regulations were gazatted vide a [Legal Notice No. 258 of 2017](#) with a commencement date of 13<sup>th</sup> October 2017. The National Land Commission established under Article 67 of [the Constitution](#) as an independent body is mandated to initiate and undertake investigations on its own initiative or on complaint, into the present or historical land injustices and recommend appropriate remedies. The



petitioners and their counsel submitted that the Petitioners had suffered historical injustice as the colonialists and the Arabs took their land away without being consulted.

57. In the case of *Henry Wambega & 733 others v Attorney General & 9 others* [2020] KEELC 824 (KLR) the court held that:

“The argument of the petitioners is that because their forefathers lived on the suit lands, and were dispossessed during the colonial period, or shortly thereafter, then they have a right to these parcels of land. Straight from the blocks, the respondents have attacked this claim, asserting that there is no evidence to prove such allegations. On this point, I must agree with the respondents. I am afraid that there is absolutely no evidence that any of the forefathers of the petitioners ever resided on the suit lands and I say this after having carefully gone through the evidence tendered by the petitioners. One cannot tell with precision and finality, which forefather of which petitioner resided in which land, and what sort of occupation such person had. Indeed, as pointed out by the respondents, some of the petitioners appear to have roots in Kwale and not within the site of the disputed land. There is a claim of dispossession, but absolutely no evidence of who dispossessed whom, and when exactly this occurred.”

57. I agree with Judge Munyao Sila on the above analysis that the Petitioners claimed that their forefathers resided on the land without proof of any such occupation. In this case, the Petitioners also alleged that their forefathers occupied the suit parcels with no proof of the same. The Petitioners admitted to having intermittent invasions, which were repelled, by evictions and arrests with some being arraigned in court for trespass. The National Land Commission also stated that the Petitioners’ acts of invasion of private land were unlawful under the law.

58. If the Petitioners’ claim was hinged on historical land injustice then the Commission was the right forum to lodge their claim, which they did, and the Commission heard the dispute and determined that the suit parcels of land were private land, hence the Petitioners could not claim it as public land. If the Petitioners were dissatisfied with the verdict of the Commission then they should have filed a Judicial Review to fault the process of arriving with the outcome.

59. The court also has jurisdiction to hear and determine constitutional violations if the same are particularized with specific articles of *the Constitution* that have been violated including, historical injustices.

60. In the case of the *Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others* [2018] KECA 27 (KLR) the Court of Appeal held as follows:

“75. On the question whether a court should await investigations 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 a 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 Court 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...”

61. How can a person/trespasser claim violations of right to property in private land? The Petitioners admitted that some of them were arrested and charged with trespass, which means that they were the ones who violated the 2<sup>nd</sup> respondent’s right to a peaceful and quiet enjoyment of its private property.
62. Similarly, as earlier indicated, the Petitioners alleged grandparents had filed a similar case against the Registrar and Recorder of Titles in Case No. 948 of 1958 where a judgment was rendered and their claim rejected. No appeal was lodged.
63. The Petitioners had sued the County government of Kilifi on the ground the suit land was trust land. The National Land Commission having determined that the suit property was private land, then the claim of the land being trust land does not arise. The Petitioners also claimed that the land in dispute is community land, which has not been registered, which claim the Petitioners never proved.
64. Having considered the petition, the evidence on record, the submissions by counsel and the relevant judicial authorities, I conclude that the petition lacks merit and is therefore dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF APRIL 2025.**

**M. A. ODENY**

**JUDGE**

