



Nkatha & 76 others v District Surveyor [Isiolo County & 4 others; Kaindio & 565 others (Interested Parties) (Petition 8 of 2021) [2025] KEELC 3265 (KLR) (7 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3265 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISILOLO
PETITION 8 OF 2021**

JO MBOYA, J

APRIL 7, 2025

(FORMERLY MERU CONSTITUTIONAL PETITION NO. 6 OF 2011)

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 27 AND 40 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

VERONICA NKATHA 1ST PETITIONER
GEOFFREY MARITI 2ND PETITIONER
GEORGE KARITHI 3RD PETITIONER
LUCY KATHURE 4TH PETITIONER
DOREEN KAGWIRIA KARANI 5TH PETITIONER
JUANINA M'THUMATIA 6TH PETITIONER
PRICILLA NGOKI 7TH PETITIONER
LAZARUS M'ETHANGATHA 8TH PETITIONER
STANLEY GATOBU MARIJATA 9TH PETITIONER
ROSALIA MUKUBA 10TH PETITIONER
DORIS KANYIRI ANAMPIU 11TH PETITIONER
JEWEL KANANA MBAAU 12TH PETITIONER
PETER EKWAM 13TH PETITIONER
ELESIUS RIUNGU 14TH PETITIONER
ALIAS KIRIMI M'MUGA 15TH PETITIONER
JUSTUS ORUTWA MATIEBO 16TH PETITIONER



JOSHUA MIRITI	17 TH PETITIONER
LIDIA GACHERI	18 TH PETITIONER
LAWRENCE MUCHUI	19 TH PETITIONER
SAVERIO LILI THAIMUTA	20 TH PETITIONER
GLADIES KINYA	21 ST PETITIONER
CATHERINE GACHERI	22 ND PETITIONER
AGNES MWARI	23 RD PETITIONER
JULIAS KABURUNGA ITULIO	24 TH PETITIONER
BENEDICTOR KARAMBU	25 TH PETITIONER
LIDIA MAKENA	26 TH PETITIONER
NANCY MWENDWA	27 TH PETITIONER
LEONA UEUKA	28 TH PETITIONER
PAUL NNKUNJA	29 TH PETITIONER
STELLA NKIROGE KUBAI	30 TH PETITIONER
PETER MWANGI	31 ST PETITIONER
ROSEMARY RUGURU	32 ND PETITIONER
HILDA KINYA KARANI	33 RD PETITIONER
HELLEN KARUGU MUGAMBI	34 TH PETITIONER
ANN MUTHONI	35 TH PETITIONER
MARGARET NASURA	36 TH PETITIONER
IKWATHU GITONGA PETER	37 TH PETITIONER
GRACE MONTUNE.ISABELA NGUGI	38 TH PETITIONER
ISABEL NGUGI	39 TH PETITIONER
LAWRENCE MWARIA	40 TH PETITIONER
JOSEPH KALUMA.DOUGLAS M'INGALA	41 ST PETITIONER
DOUGLAS MINGALA	42 ND PETITIONER
LIDIA MAKENA	43 RD PETITIONER
STELLA KATHURE MUTHAURA	44 TH PETITIONER
MARY WANJIKU GICHOI	45 TH PETITIONER
STEPHEN KARIGUA	46 TH PETITIONER
ALEX MURIIRA	47 TH PETITIONER
JULIUS MUGAMBI ANAMPIU	48 TH PETITIONER



JULIUS GITHINJI MUGO	49 TH PETITIONER
JOHN GITONGA	50 TH PETITIONER
JOYCE MWITI	51 ST PETITIONER
REHAB MWITI	52 ND PETITIONER
DANIEL KAGURU	53 RD PETITIONER
CATHERINE NKATHA	54 TH PETITIONER
CHARLES MURITHI	55 TH PETITIONER
GEORGE KITHINJI RIUNGU	56 TH PETITIONER
MARGARET KALOKI	57 TH PETITIONER
ISAIAH GITONGA	58 TH PETITIONER
ESTHER AKOELEN	59 TH PETITIONER
YAMETO NYANGA	60 TH PETITIONER
CAROLINE KAMIRU	61 ST PETITIONER
ELIZABETH MUKOMUNENE	62 ND PETITIONER
PATRICK MUTETHIA	63 RD PETITIONER
BERNARD THURANIRA	64 TH PETITIONER
DOROTHY GACHERI	65 TH PETITIONER
PAULINE KIRITU	66 TH PETITIONER
BONIFACE MIRITI	67 TH PETITIONER
ELIZABETH MONTHEA	68 TH PETITIONER
LYDIA KITHINJI	69 TH PETITIONER
ROSE KANINI	70 TH PETITIONER
JUDY KENDI MUTUGI	71 ST PETITIONER
GABRIEL NYAGA	72 ND PETITIONER
JANE KAIMURI	73 RD PETITIONER
THURANIRA KIBUKO	74 TH PETITIONER
DANIEL KAGURU	75 TH PETITIONER
JOSHUA THAIRU KIMATHI	76 TH PETITIONER
CHRISTINE KANYUA	77 TH PETITIONER

AND

DISTRICT SURVEYOR (ISIOLO COUNTY)	1 ST RESPONDENT
COUNTY GOVERNMENT OF ISIOLO	2 ND RESPONDENT



DISTRICT PLANNING OFFICER, COUNTY OF ISIOLO 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT
NATIONAL LAND COMMISSION 5TH RESPONDENT
AND
SOLOMON KAINDIO & 565 OTHERS INTERESTED PARTY

JUDGMENT

1. The Petitioners' herein approached the court vide Petition dated the 12th July 2011 and wherein the Petitioners sought for various reliefs. The Petition was subsequently amended vide amended Petition dated the 18th March 2024 and wherein the Petitioners' sought for the following reliefs;
 - i. A declaration that the purported and or threatened action[s] of the Respondents to evict and displace the Petitioners from their plots/ parcels of land as set out at paragraph 6 above is against the provisions of Article 27 and 40 of the Constitution of the Republic of Kenya.
 - ii. A declaration that each of the Petitioner's is entitled to the Plot[s] he or she occupies as stated at paragraph 6 of the Petition and should not be evicted.
 - iii. A permanent injunction restraining the Respondents by themselves , their agents, servants, employees or representatives or whomsoever else from claiming or acting for or on behalf or through them from entering into, assuming actual possession of allocating to other persons other than the Petitioners or affecting any form of eviction or displacement of the Petitioners from their plots and or parcels of land set out at paragraph 6 of the Petition, situate in Mwangaza area of Isiolo County/District and or whatsoever interfering with the Petitioners' quiet, peaceful and uninterrupted actual possession occupation, cultivation, user development and enjoyment of the Petitioners afore mentioned plots/parcel of land.
 - iv. Costs of this Petition and interests thereon at courts rates.
2. The 1st, 2nd and 3rd Respondents proceeded to and filed a Replying affidavit sworn on the 26th July 2011 and wherein the 1st, 2nd and 3rd Respondents contended inter-alia that the suit property which is being claimed by the Petitioners' was lawfully acquired by the National Government for purposes of the expansion of Isiolo airstrip [now Isiolo airport]. Furthermore, it was contended that the persons who were hitherto in occupation of what now comprises the suit property were duly verified and thereafter duly compensated.
3. Moreover, it was contended by and on behalf of the 1st, 2nd and 3rd Respondents that in the process of compensation, various persons who were hitherto in occupation of what comprises of the suit property were re-allocated other plot[s] and re-settled elsewhere. In addition, it has been contended that the displaced persons were duly issued with letters of allotment.
4. Moreover, the 1st, 2nd and 3rd Respondents have averred that the current Petitioners, who are laying a claim to ownership of what comprises the suit property were never in occupation of what comprises the suit property. In this regard, it has been posited that the claims by the Petitioners are not only misconceived but legally untenable.



5. The rest of the Respondents do not appear to have filed any responses. In any event, no such responses are traceable on the court tracking system [CTS].
6. Before the petition could be heard, another group of parties sought to be joined as co-Petitioners. To this end, an application dated the 8th June 2023 was duly filed by a group comprising of 92 persons [proposed/intended co-Petitioners]. The application under reference was duly heard and disposed of vide ruling of the court delivered on the 17th July 2023.
7. Pursuant to the ruling under reference, the proposed co-Petitioners [92 in number] were duly joined into the proceedings in addition to the initial 77 Petitioners. To this end, the total number of Petitioners at the foot of the amended petition are 169.
8. Be that as it may, the claim by and on behalf of the 92 co-Petitioners replicate and resemble the claim by the original Petitioners. In particular, the co- Petitioners have contended that same were lawful residents of what now comprises the suit property and that same were duly issued with letters of allotment by the county council of Isiolo [now defunct].
9. It was the further contention by the co-Petitioners that having been allocated portions of what constitutes the suit property, same acquired lawful rights to and in respect of the various plots. Nevertheless, it has been averred that on or about the year 2005, the 1st, 2nd and 3rd Respondents sought to evict the co-Petitioners from their plots and as a result of the threatened eviction, the co-Petitioners protested the illegal eviction by the named Respondents.
10. Additionally, the co-Petitioners contended that the 1st, 2nd and 3rd Respondents thereafter induced the co-Petitioners to surrender their letters of allotments under the guise that the 1st, 2nd and 3rd Respondents were desirous to compile a list of all the original occupants of the suit property with a view to processing the certificates of titles [titles deeds].
11. Notwithstanding the foregoing, it has been contended by the co-Petitioners that instead of compiling the list of the original occupants and thereafter processing the certificate of titles [title deeds], the 1st, 2nd and 3rd Respondents proceeded to and issued fresh letters of allotments to third parties [interested parties].
12. Arising from the foregoing, the co-Petitioners, together with the original Petitioners have therefore contended that their [petitioners] rights to own property have been breached, violated and/or infringed upon. In particular, the Petitioners have cited and relied on the provisions of Article 40 of the *Constitution* 2010.
13. The petition, came up for directions on various occasions including the 22nd November 2021 and 14th February 2022, whereupon the parties covenanted to dispose of the petition on the basis of affidavit evidence and written submissions. To this end, the court [differently constituted] proceeded to and circumscribed timelines for the filing and exchange of the written submissions.
14. The initial [Original] Petitioners filed written submissions dated the 14th March 2022 and wherein same have raised, canvassed and highlighted four [4] pertinent issues. The issues raised by the Petitioners are, namely; whether the Petitioners have accrued recognizable rights on their respective parcels of land; whether a permanent injunction should be issued restraining the Respondents from interfering with the Petitioners ownership rights to the suit properties; whether eviction orders should be issued against the persons that unlawfully took over possession of the Petitioners parcels of land; and whether the Petitioners should be declared the legal owners of their respective parcel[s] of land and be issued with certificates of titles.



15. Regarding the first issue, namely; whether the Petitioners have acquired any recognizable right on their respective parcel of land, it was submitted that the petitioners herein have been resident on various portions of what comprises of the suit property. Furthermore, it has been submitted that the Petitioners herein have owned and developed various portions of the suit property. In addition, it was posited that on the basis of the longevity of occupation, possession and use, the Petitioners have acquired lawful rights to and in respect of the suit property.
16. Additionally, it was submitted that the Petitioners herein were lawfully issued with letters of allotment by the 2nd Respondent and thereafter the Petitioners have been paying rates to and in favour of the 2nd Respondent. To this end, the petitioners have contended that on the basis of the letters of allotments, duly issued PDP and the rate payment receipts, same [Petitioners] have acquired lawful rights to and in respect of various portions of the suit property. In this regard, the petitioners have particularized the details and sizes of plots being claimed at the foot of paragraph 6 of the amended Petition.
17. Arising from the foregoing, the Petitioners have contended that same have therefore accrued and acquired recognizable rights to and in respect of the various portions of the suit property. In this regard, it has been contended that the rights of the petitioners are therefore vindicated vide the provisions of Article 40 of the Constitution 2010.
18. Respecting the second issue, namely; whether an order of permanent injunction should issue to restrain the Respondents from interfering with the Petitioners ownership of the suit property, it has been contended that by virtue of having been issued with the letters of allotment, PDP and coupled with the payment of rates, the Petitioners have accrued lawful title which ought to be protected by an order of permanent injunction.
19. Moreover, it has been submitted that having been duly allocated plots situate within the suit property, the Petitioners herein cannot be evicted by the Respondent[s] albeit without due compensation.
20. Flowing from the foregoing, it has been contended that the Petitioners have therefore established and demonstrated a suitable basis to warrant the grant of an order of permanent injunction to bar the offensive activities by the Respondent[s].
21. Next is the issue, namely; whether eviction orders should be granted against [sic] the persons that unlawfully took over possession of the Petitioners parcels of land. In respect of the plea for issuance of orders of eviction, the Petitioners have contended that the 2nd Respondent herein illegally and without due regard to the law proceeded to and re-allocated the various plots that had hitherto been allocated to the petitioners.
22. Moreover, it has been submitted that the impugned re-allocation was undertaken regardless of the rights and interests of the Petitioners who were already in occupation of the various plots comprising the suit property.
23. To this end, it has been submitted that the persons who were re-allocated the suit plots do not have any lawful rights and or interests thereto. In short, it has been contended that the said persons [interested parties] are therefore trespassers and thus ought to be evicted.
24. Regarding the fourth issue, namely; whether the petitioners should be declared as the legal owners of their respective parcels of land and thereafter same [Petitioners] be issued with certificate of titles, it has been submitted that the petitioners have acquired lawful rights to the suit plots on account of allocation by the 2nd Respondent. Furthermore, it has been submitted that the Petitioners have also acquired lawful rights to the suit plots on the basis of the length of time, same have been in occupation thereof.



25. In the premises, it has been submitted that it is only fair and in the interest of justice that the petitioners be declared as the lawful and legal owners of the various plots in the manner articulated vide paragraph 6 of the amended Petition.
26. The foregoing submissions have been replicated by and on behalf of the 92 co-Petitioners who were joined into the proceedings vide the orders of the court issued on the 17th July 2023. Pertinently, the co-Petitioners have contended that same are the lawful owners of designated plots falling within the suit property on account of letters of allotment[s] issued by the 2nd Respondent, as well as on account of occupation on the suit plots.
27. The 1st, 2nd and 3rd Respondents filed written submissions dated the 5th February 2025 and wherein same have raised and canvassed three [3] pertinent issues. The issues raised by and on behalf of the 1st, 2nd and 3rd Respondents are namely; whether the court can issue declaratory rights of ownership of property; whether the amended Petition meets the threshold set out in the case of Annarita Karimi Njeru v republic [1979]eKLR; and whether the Petitioners are entitled to the reliefs sought at the foot of the amended petition or otherwise.
28. Regarding the first issue, namely; whether the court can issue declaratory rights of ownership of property, learned counsel for the named Respondents has submitted that the Petitioners herein have contended that same are the lawful owners and proprietors of the designated plots falling within the suit property. However, it has been submitted that despite laying a claim to [sic] the suit plots, the Petitioners have neither tendered nor produced any ownership documents or at all.
29. Moreover, it has been submitted that the suit property, which is being claimed by the petitioners was compulsorily acquired for purposes of the expansion of Isiolo airstrip [now Isiolo airport]. In addition, it has been submitted that the process of compulsory acquisition was carried out and undertaken in accordance with the provisions of the Land Acquisition Act, Chapter 295, Laws of Kenya [now repealed].
30. It was the further submissions on behalf of the 1st, 2nd and 3rd Respondents that prior to and before the process of compulsory acquisition was undertaken, the commissioner of lands [now defunct] undertook appropriate verification with a view to establishing the persons who were in occupation of the suit property and thereafter a list comprising of the lawful allottees was prepared and authenticated with the involvement of the county council of Isiolo [now defunct].
31. Moreover, it was submitted that following the exhaustive verification process, the rightful allottees who were in occupation of the suit property were duly compensated. Furthermore, it was submitted that the compensation included re-allocation of plot[s] elsewhere and re-settlement of the displaced persons.
32. As pertains to the second issue, learned counsel for the 1st, 2nd and 3rd Respondents has submitted that the amended petition, by the Petitioners does not espouse the Articles of the Constitution which are alleged to have been breached, violated and infringed upon. Besides, it has been contended that the Petition does not contain the requisite particulars of violations [if any] and the persons who are alleged to have violated [sic] the Petitioners rights.
33. In the absence of the requisite particulars pertaining to the violation and infringements, it has been contended that the Petition beforehand is therefore deficient and fatally defective. To this end, learned counsel for the 1st, 2nd and 3rd Respondents has cited and referenced the decision in Annarita Karimi Njeru v republic [1979]eKLR.
34. Thirdly, learned counsel for the 1st, 2nd and 3rd Respondents has submitted that the dispute beforehand pits the Petitioners on one hand and the interested parties on the other hand on the question of



- ownership of the disputed plots. In this regard, it has been posited that the dispute beforehand touches on and concerns ownership rights to and in respect of the disputed plots and not otherwise.
35. Additionally, it has been submitted that to the extent that the dispute beforehand touches on and concerns ownership of [sic] the disputed plots, it has been contended that the dispute herein does not raise and/or espouse any constitutional issue[s] or at all. To this end, it has been posited that the dispute ought to have been canvassed vide an ordinary suit and not as a constitutional petition.
 36. Arising from the foregoing, learned counsel for the 1st, 2nd and 3rd Respondents has submitted that the Petition beforehand constitutes and amounts to trivializing the *Constitution*, which ought not to be countenanced. In addition, it has been contended that the Petition constitutes an abuse of the due process of the court.
 37. To buttress the foregoing submissions and in particular the submissions that the dispute beforehand ought to have been canvassed vide an ordinary suit, learned counsel for the 1st, 2nd and 3rd Respondents has cited and referenced the holding in the case of Francis Oyagi v Sameul Motary Mangare & 2 Others [2018]eKLR; Naitore Ntoibure & Another v Attorney General & 2 Others; Sebastian Kaharia [Interested Party] ELC Petition No. 8 of 2018 and Leonard Otieno v Artel Kenya Ltd [2018]eKLR, respectively.
 38. Arising from the foregoing, learned counsel for the 1st, 2nd and 3rd Respondents has invited the court to find and hold that the Petition beforehand is premature and misconceived. To this end, the court has been implored to dismiss the Petition with costs to the 1st, 2nd and 3rd Respondents.
 39. The 4th and 5th Respondents did not file any written submissions. For good measure, the 5th Respondent neither entered appearance nor filed any pleadings.
 40. Having reviewed the amended petition and the responses thereto and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the Petition beforehand turns on three [3] salient issues, namely; whether the amended petition meets the statutory threshold highlighted at the foot of the decision in Annarita Karimi Njeru v Republic [1979]eKLR or otherwise; whether the Petitioners [including the co-Petitioners] have acquired any property rights to the suit plots capable of being protected under the *Constitution* or otherwise; and whether the Petitioners are entitled to the reliefs sought [if at all].
 41. Regarding the first issue, namely; whether the amended petition meets the statutory threshold highlighted at the foot of the decision in Annarita Karimi Njeru v Republic [1979]eKLR or otherwise, it is imperative to underscore that the said decision laid down the requirement that whosoever seeks to canvass a claim based on breach, violation and infringement of fundamental rights and freedoms, is obligated to highlight the provisions of the *Constitution* that are said to have been breached and/or violated; provide the requisite particulars of such breach/infringement and thereafter identify the persons/bodies, alleged to have violated the fundamental rights and freedoms in question.
 42. For good measure, the rule established vide the decision in Annarita Karimi Njeru v Republic [1979]eKLR [supra], requires the pleadings to be specific in point and particulars. Instructively, the rule in Annarita Karimi Njeru [supra] highlight the need for specificity and particularity in pleadings so as to enable a court of law to discern the issue[s] in dispute and thereafter to determine same [issues] in the manner provided under the *Constitution*, 2010.
 43. The rule in Annarita Karimi Njeru v Republic [supra] was re-visited and re-affirmed by the Court of Appeal in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, wherein the five [5] Judge bench of the court stated as hereunder;



- (39) The issue was raised that the 1st respondent had omitted to frame their case or complaint with precision as required under the High Court’s pronouncement in *Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272*. Counsel for the appellant submitted that the petition failed the requirement as it did not state the alleged constitutional provisions violated and the acts or omissions complained of with reasonable precision. Apart from citing omnibus provisions of the *Constitution*, the petition provided neither particulars of the alleged complaints, the manner of alleged infringements or the jurisdictional basis of the action before the court. He maintained that such failure to draft the petition with precision had prejudiced the appellant and the other respondents.
- (40) It was the averment of learned counsel for the 1st, 5th and 6th respondents that the petition had cited with precision complaints regarding the violation of Articles 10 and 73 of the *Constitution*; that Article 159 of the *Constitution* enjoined the courts to administer justice without undue regard to procedural technicalities.
- (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 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. 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.”

- (43) The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of the *Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the



petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the Constitution, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of the Constitution and the rule of law, without any particulars.

- (44)) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1st respondent. [Emphasis supplied].
44. Bearing in mind the decision [supra] it is now appropriate to revert to the amended Petition and to discern whether same complies with the rule pertaining to specificity and particularity in pleadings.
45. Put differently, it is now appropriate to ascertain whether the Petitioners have pleaded the articles of the Constitution that are alleged to have been breached; supplied the particulars of such breach and violation; and thereafter identified [sic] the persons culpable for the impugned breach and/or violation or otherwise.
46. To start with, it is worth recalling and reiterating that the amended petition has only adverted to the provisions of Article 27 and 40 of the Constitution 2010; but same has neither particularized the manner in which the alleged articles have been breached and/or violated. For coherence, no particular[s] of the breach and/ or infringements have been impleaded or at all.
47. Moreover, it is not lost on the court that the petitioners have also not identified the persons and/or bodies culpable of breach and/or violations complained of and in what manner the persons or bodies have breached and/or violated the provisions of the Constitution.
48. It was incumbent upon the Petitioners to supply the requisite details and particulars, starting with the details of the land ownership documents [if any] underpinning their entitlement to the suit plots. In this regard, it behooved the Petitioners to implead [sic] the details of the letters of allotment and the certificate of title [if any] that same had been issued with. Thereafter, it was the obligation to the Petitioner to demonstrate how [if at all] their rights to or interests over [sic] the suit plots have been breached. For good measure, such particulars, would constitute the fulcrum upon which the Petitioners claim is premised.
49. Absent the requisite pleadings and particulars, the entirety of the Petitioner’s claim is rendered superfluous and legally untenable. Notably, the determination of constitutional petitions must be anchored on proper pleadings and not otherwise. Furthermore, decisions on violation or breach of constitutional rights should and must not be arrived at in vacuum.
50. In the case of Leonard Otieno v Airtel Kenya Ltd [2018]eKLR, the court [Justice Mativo], as her then was] stated and held as hereunder;
52. Constitutional analysis under the Bill of Rights takes place in two stages. First, the applicant is required to demonstrate that his or her ability to exercise a fundamental right has been



infringed. If the court finds that the law, measure, conduct or omission in question infringes the exercise of the fundamental right or a right guaranteed in the Bill of Rights, the analysis may move to its second stage. In this second stage, the party looking to uphold the restriction or conduct will be required to demonstrate that the infringement or conduct is justifiable in a modern democratic State and satisfies the Article 24 analysis test.[44]

65. It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the Constitution and inevitably result in ill considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.
51. Flowing from the foregoing analysis, I come to the conclusion that the amended Petition dated the 18th March 2014 is not only deficient but fatally defective. For good measure, I beg to reiterate that it is a peremptory requirement that every Petitioner desirous to partake of and benefit from the court constitutional mandate is obligated to plead the petition with the necessary specificity and particularity. Nevertheless, the need for specificity and particularity does not mean that the Petition must be pleaded with mathematical precision.
52. Moreover, specificity and particularity are not conterminous with precision. [See Mumo Matemu v Trusted Society of Human Rights Alliance [2013]eKLR].
53. Next is the issue whether the Petitioners herein have accrued and/or acquired any property rights to and in respect of the suit plot[s], capable of being protected under the Constitution or otherwise.
54. To start with, it is imperative to underscore that this court [where appropriate] is called upon to interpret the Constitution 2010 in accordance with the principles of interpretation espoused vide Article 259[1] of the Constitution 2010.
55. For ease of appreciation, the provisions of Article 259[1] of the Constitution 2010 are reproduced as hereunder;
1. This Constitution shall be interpreted in a manner that—
 - (a) promotes its purposes, values and principles;
 - (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
 - (c) permits the development of the law; and
 - (d) contributes to good governance.
56. Other than the foregoing, it is also imperative to take cognizance of the provisions of Article 20 of the Constitution 2010.
57. Same are reproduced as hereunder;
- 20.
- (1) The Bill of Rights applies to all law and binds all State organs and all persons.
 2. Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.



3. In applying a provision of the Bill of Rights, a court shall—
 - (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
 - (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

58. By virtue of the provisions of Article 20[3][a] of the Constitution 2010, the court is obligated to interpret the Constitution in a liberal, purposive and pragmatic manner with a view to protecting a right or interests enshrined and provided for under the Constitution. Nevertheless, the court must not give a right and/or confer a right upon a party, where such right has not been enshrined and/or conferred under the Constitution.

59. My understanding of the provisions of Article 20[3][a] [supra], is to the effect that this court cannot confer upon the Petitioners herein property rights to and in respect of the suit plots. However, there is no gainsaying that where a party, the petitioners not excepted have accrued and acquired property rights in any manner known to law, then the court is obligated to protect such rights in the manner espoused vide Article 40 of the Constitution 2010.

60. Before returning to the claims by the Petitioners, it is important to reference the decision of the Court of Appeal in the case of Nelson Kazungu Chai & Others v Pwani University [2017]eKLR, where the court stated thus;

22. Before we conclude, we need to say something about Dr. Khaminwa’s submission about the appellants’ human rights being violated, and also on forceful evictions. A right can only be protected when it exists in reality and not where it remains an illusion or a mere expectation. Right to property is not one of those rights that inhere to every human being upon birth. They are acquired in different ways after one comes into this world. One cannot acquire property rights over another’s property other than in a manner prescribed in law. In this case the appellants’ claim to the suit property was in our view merely aspirational or rhetorical. This is so both under our very progressive Constitution and also under International Law.

Indeed other than call in aid International Law, learned counsel Dr. Khaminwa did not cite any specific instrument that the appellants can leverage on to elevate the appellant’s right to practice and enjoy their culture on the respondent’s property over the respondent’s rights under Article 40 of the Constitution. In the absence of any right under the doctrine of legitimate expectation and of any other valid colour of right, the trial court could not have arrived at any other finding. Our conclusion is that the learned Judge arrived at the right decision based on the evidence placed before him, and he cannot be faulted.

61. Additionally, it is also apposite to cite and reference the decision in the case of Kenya Forest Service v Rutongo’t Farm Limited [2015] KECA 160 (KLR), where the Court of Appeal stated as hereunder;

It is evident that following the registration of the suit land in the appellant’s name, bar any allegations that it was acquired by illegal means which is not evident from the petition, this Court is enjoined to recognize the appellant’s proprietary interest in the suit land as provided by section 75 of the retired constitution.

We take the view that, from the documents that were placed before the court below, this was a case of willing buyer/willing seller. Since Olsen opted to dispose of the suit land to the appellant, the question of deprivation of the suit land from the respondent cannot be said to arise. The respondent did not acquire any proprietary interest in the suit land which



the Government either compulsorily acquired or confiscated or expropriated. As such, the application of Article 40 of the *Constitution* or even section 75 of the retired Constitution was inapplicable to the circumstances of this case.

62. The golden thread that runs across the two decisions [supra] is to the effect that a Petitioner seeking to procure and obtain the protection of the court is obligated to demonstrate and prove that same has since acquired recognizable rights to and in respect of the designated property. For good measure, rights to and in respect of landed property can only arise and/or accrue in the manner provided for under the law.

63. To this end, the decision of the Court of Appeal in the case of *Wreck Motors Enterprises Ltd v The Commissioner of Lands & Others* [1997]eKLR is succinct and apt. For coherence, the court stated thus;

Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.

64. In view of the foregoing, it was incumbent upon the Petitioners to prove and demonstrate that same have since acquired lawful titles to and in respect of the suit plots which underpin the Petition beforehand. Sadly, none of the Petitioners tendered and/or produced before the court evidence of title or otherwise.

65. In the absence of certificate of titles or some corresponding document underpinning the Petitioners right to and/or interests over the suit plots, I am at pains to understand the foundation upon which the Petitioners are staking a claim to the suit plots which are stated to form part of [sic] the suit property.

66. Other than the foregoing, it is worthy to recall that the Petitioners contended that same had hitherto been issued with letters of allotment by the 2nd Respondent. However, the Petitioners ventured forward and stated that the letters of allotment which had been issued in their favour were subsequently retrieved by the 2nd Respondent on the pretext that the 2nd Respondent was going to prepare a full list of the occupants of the suit property and thereafter generate certificate of titles [title deeds].

67. Either way, what I hear the petitioners to be contending is that same had been issued with letters of allotments over and in respect of the plots underpinning the Petition. Assuming for the sake of arguments only, that the Petitioners had been issued with letters of allotment[s], the question that does arise is whether the letters of allotments [if at all], could underpin lawful title to and in respect of the suit plots.

68. The answer to the question in the preceding paragraph is discernible in the decision of the Supreme Court [the Apex Court] in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), where the court stated as hereunder;

58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* *CA 60/1997* [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: "It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all " [Emphasis added].



59. The pronouncement in Gladys Wanjiru and Dr Joseph NK Arap Ng'ok (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another, Environment and Land Case No 471 of 2010; [2022] eKLR; John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011; [2021] eKLR; and Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.
60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:
- (15) In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].
61. While we agree with the general tenor of the learned Judge’s foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.
62. Back to the facts of this case, the allotment letter issued to Renton Company Limited was subject to payment of stand premium of Kshs 2,400,000.00, annual rent of Kshs 480,000.00 amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.
69. The answer to the question as to whether [sic] letters of allotment can confer title to landed property is in the negative. In this regard, there is no gainsaying that the Petitioners herein had accrued no rights and/or interests over the suit plots capable of being protected under the law.
70. The other perspective that arises from the claims by and on behalf of the Petitioners relates to and or concerns ancestral land. In this regard, the original Petitioners had contended that what comprises of the suit property has been their ancestral land wherein same had lived since time immemorial. [See paragraph 3 of the affidavit in support of the Petition sworn on the 12th July 2011].
71. Despite the contention that the suit property comprised of the Petitioners’ ancestral land, the Petitioners herein neither tendered nor produced before the court any evidence to demonstrate the said allegation.



72. Pertinently, it is the Petitioners who had contended that the suit property forms and/or comprise the ancestral land. In this regard, it was incumbent upon the Petitioners to demonstrate as much by tendering plausible, cogent and credible evidence. [See the provisions of Sections 107, 108 and 109 of the *Evidence Act*, Chapter 80, Laws of Kenya]
73. The manner of proving what constitutes ancestral land was highlighted by the Court of Appeal in the case of *Obo & 3 others v National Land Commission & 5 others (Civil Appeal E054 of 2021)* [2024] KECA 232 (KLR) (8 March 2024) (Judgment), where the court stated as hereunder;
30. In the absence of any evidence of registration, the question that arises is whether the appellants could make out a claim for ancestral land. In our view, it was not possible for the claim for ancestral land to be made out in those circumstances. From the evidence on record presented only by PW1, we find that there was no sufficient evidence to arrive at such a finding. In our considered view, a claim for land based on ancestry requires more than just mere allegations.
- While it may not be possible to adduce documentary evidence to support such a claim, one is expected to adduce evidence that goes further than mere occupation of the land in question since, in our view, mere occupation of land without more does not necessarily convert the land in question to ancestral land. Evidence ought to be adduced by the person who expects the court to find in his favour, for example, showing actions taken by a particular community which, if considered cumulatively, satisfies the tribunal that, as a fact, the occupation was based on a claim based on ancestry. Unfortunately, no such evidence was adduced in this case. The report referred to by the appellants was purportedly made by their members and, in particular, by a person who was not called to testify. Hence, the trial court was denied the opportunity to interrogate the same in order to establish if it could pass the evidential threshold so as justify a finding on a claim based on ancestry.
74. Arising from the foregoing, my answer to issue number two [2] is threefold. Firstly, this court is not mandated to confer any property rights to and in favour of any party, the Petitioners not excepted. On the contrary, the court can only declare and protect rights which have since accrued and/or been acquired. Period.
75. Secondly, the Petitioners herein had neither acquired nor accrued any proprietary rights to and in respect of the suit plots. Absent rights and/or interests over the suit plots, the Petitioners plea pertaining to violation of the provisions of Article 40 of the *Constitution* 2010, was made in vacuum and amounts to a cry in the wilderness.
76. Thirdly, the Petitioners neither proved nor demonstrated that the suit properties constituted their ancestral land. In any event, a claim pertaining to and concerning [sic] ancestral land must then be dealt with in accordance with the provisions of Article 62 of the *Constitution* as read together with Section[s] 12 and 13 of the *Land Act*, 2012.
77. Regarding the third issue, namely; what reliefs if any, it must have become crystal clear that the Petitioners had neither accrued nor acquired any lawful rights over and in respect of the suit plots. In any event, there is no gainsaying that this court is not conferred with the mandate and/or jurisdiction to allocate land. Furthermore, this court is also divested of jurisdiction to direct the 5th Respondent to allocate land to anyone. [See the provisions of Article 249[2] of the *Constitution*, 2010]
78. Moreover, it is common ground that the mandate to manage and administer public land for and on behalf of both the County Government and the National Government is bestowed upon National Land Commission [the 5th Respondent].



79. In the case of Cordison International (K) Limited v Chairman National Land Commission & 44 others [2019] KECA 830 (KLR), the Court of Appeal stated thus;
30. Article 67 of the Constitution that establishes the National Land Commission gives it power to, inter alia, manage public land on behalf of the national and county governments. The suit land is public land as defined under Article 62(1) (a) of the Constitution and therefore vests in and is held by the County Government of Lamu in trust for the people resident in the County.
- Article 62 (2) of the Constitution provides that the land shall be administered on behalf of the County residents by the National Land Commission. Section 5 (1)(a) of the National Land Commission Act is also explicit that one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments. Under section 5(2) of the Act the Commission may,
- on behalf of, and with the consent of the national and county governments, alienate public land.”
31. Section 12 of the Land Act grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.
80. Simply put, the Petitioners herein who are before the court and seeking for orders to be declared as the owners of the land without the requisite documentations known to law are basically tempting the court to abrogate a constitutional mandate that lies at the door step of National Land Commission.
81. Such temptation must be resisted by a conscientious Court of Law.
82. From the foregoing, I must have said enough to demonstrate that the Petition beforehand is premature, misconceived and legally untenable.

Final Disposition:

83. Flowing from the discourse highlighted in the body of the Judgment, it must have become evident, nay apparent that the Petition beforehand is a sure candidate for dismissal.
84. In the premises, and for the reasons highlighted above, the final orders of the court are as hereunder;
- i. The amended Petition dated the 18th March 2014 be and is hereby dismissed.
 - ii. Costs of the Petition be and are hereby awarded to the 1st, 2nd and 3rd Respondents only.
 - iii. The costs in terms of clause [ii] shall be borne by the Petitioners and [sic] the Co-Petitioners jointly and/or severally.
 - iv. Any other order not expressly granted is hereby declined.
85. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 7TH DAY OF APRIL 2025.

OGUTTU MBOYA

JUDGE.

In the presence of



Mutuma/Mukami – Court Assistants

Mr. Ondieki for the 1st to 76th Petitioners

Ms. Maina for the 77th to 169th Petitioners

Ms. Ruth Kiunga h/b for Mr. Eric Theuri for the 1st, 2nd and 3rd Respondents

Mr. Mawira h/b for Mr. Carlpeters Mbabu for the 565 Interested parties

