



Mathare Valley Residents v Mathare Vocational Training Centre & 3 others (Environment & Land Petition E051 of 2021) [2022] KEELC 3935 (KLR) (28 July 2022) (Judgment)

Neutral citation: [2022] KEELC 3935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E051 OF 2021**

**JO MBOYA, J
JULY 28, 2022**

BETWEEN

MATHARE VALLEY RESIDENTS PETITIONER

AND

MATHARE VOCATIONAL TRAINING CENTRE 1ST RESPONDENT

UNDUGU SOCIETY OF KENYA 2ND RESPONDENT

NAIROBI COUNTY GOVERNMENT 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

JUDGMENT

1. Vide the Petition dated the 8th December 2021, the Petitioner herein has approached the court seeking for the following Reliefs;
 - i. An Order compelling the National Land Commission to establish the size of the suit Property and Review any Allotments and Disposition to establish the propriety and legality.
 - ii. A Declaration that the People/Community of Mathare Valley are the beneficial owners of all the Improvements and Buildings built by Undugu Society of Kenya.
 - iii. An Order compelling the 1st, 3rd and 4th Respondents to determine the use of the suit Property known as L.R No. 219/33 through Public Participation.
 - iv. A Declaration that L.R No. 219/33 is Public Land and therefore all Allotments and Grants are void and illegal and stand revoked.
 - v. A Declaration that the 3rd Respondent has continued to hold the suit property L.R No. 219/33 as Public Land for and on behalf of the People of Mathare Valley, and;



- vi. Costs of the Petition.
2. The subject Petition is premised on the various Grounds alluded to and/or enumerated in the body thereof and same is further supported by the Affidavit of one, namely, Samuel Githuka Njenga, sworn on the 8th December 2021 and to which the deponent has attached two (2) sets of documents.
3. Upon being served with the subject Petition, the 2nd Respondent duly entered appearance and thereafter filed an Answer to Petition/Response vide Replying Affidavit sworn by one Erick Joe Mukoya, which is sworn on the 24th March 2022.
4. On the other hand, the 3rd Respondent duly entered appearance and thereafter filed a Replying Affidavit sworn by one, Leonard Mititi and which is sworn on the 25th March 2022.
5. Be that as it may, the 1st and 4th Respondents herein, neither entered appearance nor filed any Response to the Petition.

Deposition By The Parties:

Petitioner's Case:

6. Vide Supporting Affidavit sworn on the 8th December 2021, one, namely, Samuel Githuka Njenga has averred that same is the chairman of Mathare Valley Residents and that same has been vested and/or conferred with the requisite authority to swear the subject affidavit.
7. Further, the deponent has averred that the subject Petition touches and/or concerns a parcel of land, namely, L.R No. 219/33, Mathare Valley, which is Public land vested in Nairobi City County Government, albeit administered by the National Land Commission.
8. The deponent have further averred that the suit property was hitherto Private land, but same was acquired vide compulsory acquisition by the Government of Kenya in the year 1970 and same was meant for Mathare re-development.
9. On the other hand, the deponent has averred that upon the acquisition of the suit property by the Government of Kenya, the suit property was placed under the custody and care of the 2nd Respondent, which is an NGO, established in the year 1973 by one Father Arnold Grol, now deceased and who was focused on the rehabilitation and re-integration of children and youth living and working on the streets.
10. Besides, the deponent has averred that upon the placement of the suit property under the auspices of the 2nd Respondent, the 2nd Respondent with the assistance of funds procured from donors of various organizations, proceeded to and constructed various Buildings and Structures and thereafter operationalized a Vocational Training Center, namely, the 1st Respondent herein.
11. Be that as it may, the deponent has averred that lately, the 1st and 2nd Respondents have engaged in chronic disagreements and/or conflicts, pertaining to and/or concerning ownership and use of the suit property and that such conflicts have gravely affected the Rights of the Community/Residents of Mathare Valley.
12. Other than the foregoing, the deponent has further averred that portions of the suit property, which is Public land, have similarly been grabbed and/or otherwise alienated to private individuals, who have put-up High-rise Buildings and thereby diminishing the extent of the suit property.



13. Nevertheless, the deponent have further averred that despite the encroachment onto and alienation of portions of the suit property by private Developers, the 3rd and 4th Respondents, who are bestowed with the mandate to protect and safeguard the suit property have failed and/or neglected to perform their statutory responsibilities and therefore exposing the residents of Mathare Valley to extreme prejudice and/or injustice.
14. In any event, the deponent has further averred that owing to the persistent disagreements between the 1st and the 2nd Respondent, pertaining to ownership and use of the suit property, the Petitioner herein lodged a Complaint with the National Land Commission for purposes of arbitration and that the National Land Commission therefore entertained and or rendered a decision dated the 23rd November 2017, which essentially confirmed that the suit property is Public land.
15. Further, the deponent has averred that the National Land Commission also directed that the 1st and 2nd Respondents herein do reconcile their disagreements and thereafter harmonize their co-existence on the suit property, with a view to ensuring that further conflicts and/or disagreements are mitigated.
16. Other than the foregoing, the deponent has further averred that despite the decision by the National Land Commission, which implored the 1st and 2nd Respondents to harmonize their core-existence, the said parties have failed to abide by and/or comply with the decision of the National Land Commission.
17. Notwithstanding the foregoing, the deponent has further averred that other than the conflict between the 1st and 2nd Respondents, the 3rd and 4th Respondents have also sat watching the suit property being alienated and/or encroached upon, without taking appropriate action to protect the suit property.
18. Based on the foregoing, the deponent has therefore averred that it is appropriate for this Court to intervene and to compel the 3rd and 4th Respondents, to involve the residents of Mathare Valley in the management of the suit property, which is Public land.
19. Further, the deponent has also averred that the Court should be able to intervene to compel the 4th Respondent to establish the size of the suit property and to review any allotment and disposition to establish the propriety and legality of such alienations.
20. The deponent has further averred that it is also appropriate for the Court to order the 3rd Respondents to hold the suit property as Public land, albeit for and/or on behalf of the people of Mathare valley.
21. Be that as it may, the deponent has further averred that though the suit property is Public land, the developments and buildings, which are standing thereon, do not belong to Nairobi City County Government.
22. Contrarily, the deponent has averred that the development and building standing on the suit property, which were constructed by the 2nd Respondent with funds from various donors, ought to be decreed to belong to the Community/people of Mathare Valley.
23. In the premises, the deponent has therefore implored the court to intervene and inter-alia, avert further acrimony and animosity between the 1st and 2nd Respondents and also to compel the 4th Respondents to Review any allotment and disposition pertaining to any Title/Grant, emanating from the suit property and thereafter to nullify such Grants.



Response By The 2nd Respondent

24. Vide Replying Affidavit sworn on the 24th March 2022, one Erick Joe Mukoya, has averred that same is the Executive Director of the 2nd Respondent and by virtue of his capacity as such, same is therefore conversant with and privy to the affairs of the 2nd Respondent.
25. Further, the deponent has averred that indeed the suit property was compulsorily acquired by the Government of the Republic of Kenya and thereafter placed under the custody of the 2nd Respondent on or about the year 1975.
26. On the other hand, the deponent has averred that upon the suit property being placed under the care and custody of the 2nd Respondent, the 2nd Respondent constructed and/or developed Buildings thereon with funds from the donor community and thereafter operationalized the running of Mathare Youth Polytechnic.
27. Be that as it may, the deponent has averred that the 2nd Respondent continued to operate and run the affairs of Mathare Youth Polytechnic up to and including the year 1983, shortly after the 1982 Coup de tat, when the Government of Kenya directed same to hand over the suit property and the Buildings standing thereon to the Ministry of Culture and Social Services.
28. Further, the deponent has averred that pursuant to the directions of the Government of Kenya, the 2nd Respondent duly handed over the suit property and the buildings standing thereon to the Government and henceforth the 2nd Respondent has never been involved in the running, management and/or operations of the 1st Respondent.
29. On the other hand, the deponent has further averred that having handing over the suit property and the buildings thereof to the Ministry of Culture and Social Services, same have no stake and/or claim on the suit property.
30. In any event, the deponent has further averred that at the time when the 2nd Respondent handed over the suit property and the Buildings thereon to the Government of the Republic of Kenya, the decision to hand over was taken in consultation with all stake holders as well as the community and henceforth the issues pertaining to the running and/or management of the 1st Respondent herein inheres and vests in the 3rd Respondent, following the inception of Devolution.
31. In view of the foregoing, the deponent has averred that the 2nd Respondent herein is therefore not aware of any Dispute existing between herself and the 1st Respondent, either as alleged or at all.
32. Owing to the foregoing, the deponent has averred that same is therefore a stranger to the allegations contained at the foot of the current Petition.

Response By The 3rd Respondent

33. On behalf of the 3rd Respondent, a Replying Affidavit was filed by one, Leonard Mititi sworn on the 25th March 2022 and wherein the deponent averred that same is a Chief Officer, currently working with the 3rd Respondent herein.
34. It was the deponent's further averment that the suit property is indeed Public land and thus vests in Nairobi City County Government, for and or on behalf of the Residents of the County of Nairobi.



35. Further, the deponent averred that the suit property is currently comprised of Mathare Youth Polytechnic, being a Vocational Training Center managed and/or operated by the 3rd Respondent, since the inception of devolution.
36. Other than the foregoing, the deponent has further averred that by virtue of being Public land, the suit property is managed and/or administered by the 4th Respondent on behalf of the 3rd Respondent, namely, the Nairobi City County Government.
37. Other than the foregoing, the deponent has averred that the 3rd Respondent has taken care of the suit property and has always engaged and/or involved various stake holders including the Community, with a view to ensuring that there is peaceful co-existence amongst the stakeholders and users of the suit property.
38. Besides, the deponent has also averred that the 3rd Respondent has also been instrumental in enforcing compliance of various decisions, which are meant to ensure that the operations and/or running of the 1st Respondent, is not interfered with and/or affected and thereby ensure that the Students of the 1st Respondent acquire the requisite skills for enhancement of their welfare.
39. Having made the foregoing averment, the deponent has nevertheless stated that the suit property has not been grabbed and/or alienated in any manner whatsoever and/or howsoever.
40. Besides, the deponent has further averred that the subject Petition, is misconceived and otherwise legally untenable, insofar as same is filed by an amorphous Group, whose composition, is dubious and unknown.
41. In any event, the deponent has further averred that the Petitioner herein has also not stated the claim and/or rights, if any, that same has over the suit property and the manner in which her rights to and in respect of the suit property has been breached, violated and/or infringed upon.
42. In short, the deponent has implored the court to find and hold that the Petition before the court constitutes and/or amounts to a gross abuse of the Due Process of the Court and thus same ought to be Dismissed.

Submissions by the Parties:

a. Petitioner's Submissions:

43. The Petitioner herein filed her written submissions dated the 21st day of June 2022, and in respect of which same has highlighted three issues.
44. Firstly, the Petitioner herein has contended that same has the requisite Locus standi to file and/or commence the subject Petition, contrary to the contention by the Respondents.
45. In any event, the Petitioner has contended that being a Community comprised of large groups, who are residents of Mathare Valley, same has the requisite capacity to approach the Court vide the subject Petition.
46. Secondly, the Petitioner herein has contended that the suit property was hitherto expansive, but the acreage thereof has since diminished under the watch of the 3rd Respondent. In this regard the Petitioner has submitted that the 3rd and 4th Respondents should therefore be compelled to involve the Petitioner in the management of the suit property, which is Public land.



47. Thirdly, the Petitioner has submitted that the 4th Respondent is amenable to the Jurisdiction of the Court and therefore the Court ought to compel same to carryout and/or undertake review of Grants/ Dispositions, arising from the alienation of parts of the suit property.
48. In support of her submissions, the Petitioner has relied on inter-alia, the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2014] eKLR and *Suleiman Habarufa Komora & Another versus The County Government of Tana River & 2 Others* (2020) eKLR.

a. 2nd Respondent's Submissions:

49. On behalf of the 2nd Respondent, written submissions were filed on the 2nd June 2022 and in respect of which counsel for the 2nd Respondent highlighted three pertinent issues.
50. First and foremost, Learned counsel for the 2nd Respondent submitted that the 2nd Respondent herein handed over the suit property and the buildings that were standing thereon to the Ministry of Culture and Social Services, at the request and or instance of the Government of Kenya, and henceforth same has no interest over and in respect of the suit property and the going- on's at the 1st Respondent.
51. Secondly, counsel for the 2nd Respondent has submitted that being a Constitutional Petition, it was incumbent upon the Petitioner herein to particularize the provisions of the *Constitution*, 2010 alleged to have been breached, violated and or infringed upon and thereafter state the manner in which same have been breached and by whom.
52. However, Learned counsel for the 2nd Respondent has submitted that the Petition is not only lacking in particulars, but same is also ambiguous.
53. Finally, counsel for the 2nd Respondent has submitted that the requirement for particularity and need for specificity, in constitutional petitions cannot be gainsaid and/ or over-emphasized.
54. Consequently, counsel submitted that in the absence of the requisite and fundamental particulars, it is impossible to discern the nature of the Fundamental Rights, if any, that have been breached and/ or violated.
55. In support of the foregoing submissions, the 2nd Respondent has relied in the decision in the case of *Anarita Karimi Njeru versus Attorney General* (1979)eKLR.

b. Submission's by the 3rd Respondent:

56. The 3rd Respondent herein filed written submissions dated the 30th May 2022 and similarly same raised three pertinent issues for determination;
57. First and foremost, Learned counsel for the 3rd Respondent submitted that the Petition herein is an amorphous and an omnibus body, which is unknown to law and cannot therefore commence and/or originate the subject Petition.
58. In any event, Learned counsel for the 3rd Respondent submitted that not being an Association, in line with the provisions of Articles 22, 258 and 260 of the *Constitution*, 2010, the Petitioner herein therefore lacks the requisite Locus standi to commence and or originate the subject Petition.
59. Further, Learned counsel for the 3rd Respondent submitted that it would be absurd to imagine that all the Residents of Mathare Valley have filed and/or lodged the subject Petition, even when it is evident that the names of persons, for and/or on whose behalf the Petition has bee filed , have neither been disclosed nor stated.



60. Secondly, counsel for the 3rd Respondent has submitted that the Petitioner herein was obligated to supply particulars of the provisions of the Constitution, 2010, which have been contravened and/or violated, as well as the manner in which same have been violated, but the Petitioner has neither pleaded the requisite particulars nor availed evidence pertaining to breach and/or violation thereof.
61. In the absence of the requisite particulars, which are mandatory, the 3rd Respondent has submitted that the entire Petition, is therefore premature and misconceived.
62. Thirdly, Learned counsel for the 3rd Respondent has submitted that the Reliefs which have been enumerated and/or alluded to at the foot of the Petition herein are legally untenable and cannot issue either in the manner sought or at all.
63. At any rate, Learned Counsel has submitted that having admitted that the suit property is Public land, the 3rd Respondent herein has no mandate to determine the use thereof and/or speak to the management of the suit property insofar as such authority vests and inheres in National Land Commission by dint of Article 62(2) as read together with Article 67(2) of the Constitution, 2010.
64. In support the foregoing submissions, the 3rd Respondent has relied on a number of decisions, inter-alia, Alfred Njau & Others versus The City Council of Nairobi (1982) KAR 229, Mumo Matemu versus Trusted Society of Human Rights Alliance & Others (2014)eKLR, Kituo Cha Sheria versus John Ndirangu Kariuki & Another (2013)eKLR, Annarita Karimi Njeru versus Republic (1979)eKLR, Buru Buru Farmers Company Ltd versus Vincent Paul Omondi Obonyo & 4 Others (2020)eKLR and Republic versus Kenya National Examination Counsel Ex-parte Geoffrey Gathenji & Others (1997)eKLR.

Issues for Determination:

65. Having reviewed the Petition, the Affidavit in support thereof, the Responses filed thereto; and having similarly considered the written submissions that were filed by the Parties, the following issues do arise and are thus pertinent for determination;
 - i. Whether the Petitioner herein is a Legal Entity and/or Body of Persons capable of commencing and/or mounting the subject Petition in accordance with Articles 22, 258 and 260 of The *Constitution* 2010.
 - ii. Whether the Petitioner herein has indeed pleaded and/or particularized the impugned Articles of the *Constitution* that are alleged to have been breached, the manner which same (sic) have been breached, who is responsible for such breach and whether failure to plead the Petition with particularity and specificity is fatal.
 - iii. Whether the Honourable Court can issue the Reliefs sought at the foot of the Petition.

Analysis And Determination:

Issue Number 1. Whether the Petitioner herein is a Legal Entity and/or body of persons capable of commencing and/or mounting the subject Petition in accordance with Articles 22, 258 and 260 of The Constitution 2010.

66. The subject Petition has been filed by and/or on behalf of Mathare Valley Residents, which presumably connotes that all the Residents of Mathere Valley, including the Male, Female and the Children residing thereat, constitutes and/or comprise the Petitioner before the court.



67. At any rate, it is also appropriate to point out at this juncture that though the Petitioner is stated to be Mathare Valley Resident, it has not been pointed out in the body of the Petition or even in the supporting affidavit, whether the Petitioner herein is an organization or an association, registered under some Statute and/or Relevant law.
68. Other than the foregoing, it is also imperative to observe that the Petition that is purported to be mounted for and/or on behalf of Mathare Valley Residents, does not contain an Inventory/ Schedule of names, (sic) of persons, for and/or on whose behalf, the Petition has been brought, if at all, same has been brought on behalf of some known persons.
69. Simply put, the person who has sworn the supporting affidavit to the Petition has simply averred that same is chairman of Mathare Valley Residents, but short of that, the deponent has been economical with information and/or evidence, to such an extent that it is difficult to authenticate whether indeed the deponent is the Chairperson of what Association and when same was elected, if so.
70. Whereas under ordinary Civil proceedings only Legal Entities and/or duly Incorporated Bodies, inter-alia, Natural Persons, Companies or Political Parties, duly registered under the *Political Parties Act*, 2011 can mount civil proceedings, however, under the *Constitution* 2010, even Organizations and Associations, (which are unincorporated bodies) can mount and/or commence Constitutional Petitions.
71. Nevertheless, where an Organization and Association seeks to commence a Constitutional Petition, it behooves the Association and or its officials to offer unto the court some description of the Body and/ or Association, including its registration under some relevant law and/ or Regulations.
72. In any event, one cannot speak about an Organization and/or Association, until and unless same is duly registered and have some scintilla of Constitution, denoting its Membership and area of interests.
73. Be that as it may, my reading of the provisions of Articles 260 of The *Constitution* 2010 connotes that indeed what the makers of the *Constitution* envisaged is that henceforth even Organizations and associations, which ordinarily are not body corporate, shall have the locus standi to approach a court of law.
74. However, I am afraid that the Makers of the *Constitution* did not open the flood gate to any amorphous and/or omnibus cluster or Groups, whose description and composition, is not only unknown but unascertainable, like in the instant situation.
75. Perhaps, to be able to appreciate the meaning and import of Articles 260 of the *Constitution*, 2010, it is expedient to reproduce same. Consequently same is reproduced as hereunder;
- “Person” includes a company, association or other body of persons whether incorporated or unincorporated;
76. To the extent that the Petitioner herein has neither supplied and/or availed her description, character and or composition, it is difficult to ascertain whether indeed the deponent of the Supporting affidavit and by extension the originator of the Petition, is indeed acting on behalf of some known Person and if so, the question remains who then are these persons and why have same not been disclosed.
77. Other than the foregoing, there is also the question of bona fides at that foot of the subject Petition, which has been mounted by the amorphous body, known as Mathare Valley Residents but whose composition has not been disclosed and Membership remains unknown.



78. To my mind, every person, whether corporate and incorporate, that is keen to approach the court vide a Constitutional Petition must avail some semblance of legal existence and or registration, which is helpful in ascertaining her/its composition, membership and by extension nature of interests as pertains to the subject matter being placed before the Court for interrogation.
79. Simply put, even though the Doctrine of Locus standi has been relaxed to expand the legal regime for persons who can approach the seat of justice vide Constitutional Petition, there is no gainsaying that a Party or Group of persons must still exhibit and/or display some semblance of existence or recognition, before commencing a Constitutional Petition.
80. To buttress the foregoing observation, it is appropriate to adopt and endorse the holding of the Court in the case *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016] eKLR, where the Court at paragraph 61 held as hereunder;
61. It is therefore clear that over time the issue of standing, particularly in public law litigation has been greatly relaxed and in our case the *Constitution* has opened the doors of the Courts very wide to welcome any person who has bona fide grounds that the *Constitution* has been or is threatened with contravention to approach the Court for an appropriate relief. In fact, since Article 3(1) of the *Constitution* places an obligation on every person to respect, uphold and defend the *Constitution*, the invitation to approach the Court for redress as long as the person hold bona fide grounds for believing that the *Constitution* is under threat ought to be welcome. I must however hasten to add that the liberal interpretation does not mean that the rule on locus standi is no longer relevant in constitutional petitions. Where it is clear that the Petitioner has completely no business in bringing the matter to Court to permit such proceedings to be litigated would amount to the Court itself abetting abuse of its process.
81. Other than the foregoing decision, it is also expedient to take cognizance of the holding in the case of *Kituo Cha Sberia versus John Ndirangu Kariuki & another* [2013] eKLR, where the court observed as hereunder;
- “The Incompetence of the present petitioner to sue is not then a simple technical matter. As I have stated earlier, it cannot be cured by the provisions of article 159 2(d) of the *constitution* or Rule 4 of the Petition Rules. The failure to bring an action by a recognized juridical person is one of law and substance. It goes to the root of the petition. The substratum upon which the petition has been brought is thus compromised completely”.
82. Premised on the foregoing, it was therefore incumbent upon the Petitioner herein to establish and/or exhibit some semblance of legal existence, either vide Certificate of registration or by a Constitution showing its composition and/or membership.
83. Unfortunately, the Petitioner herein has neither exhibited nor availed any such evidence to denote the existence of her locus standi, if any, to mount and or originate the subject Petition.
84. Consequently, it is my finding and holding that the Petitioner herein, whose description and composition has been withheld from the court, is devoid of the requisite locus standi and hence same is non-suited.



ISSUE NUMBER 2. Whether the Petitioner herein has indeed pleaded and/or particularized the impugned Articles of the Constitution that are alleged to have been breached, the manner which same (sic) have been breached, who is responsible for such breach and whether failure to plead the Petition with particularity and specificity is fatal.

85. The Petitioner herein has filed and/or mounted the subject Petition, contending that her/its Fundamental liberties and Constitutional Rights, as pertains to the ownership and use of the suit property, has been breached, violated and or infringed upon.
86. Pursuant to and in line with the alleged violation, breach and/or infringement or better still, threat of infringement of its constitutional rights, the Petitioner has therefore impleaded the Respondents herein and thus seeks the intervention of the court to remedy the breach, violation and/or infringement complained of.
87. Having contended that its constitutional and fundamental rights have been breached, violated and/or infringed upon, it behooves the Petitioner herein to first and foremost articulate the various Constitutional infringements, which have been alleged to have been breached and/or violated and or threatened with such violations.
88. For clarity, the relevant provisions of the Constitution, 2010, which have been breached, if any, would form and or provide the jurisdictional fulcrum upon which the court confronted with the Petition, shall leverage in discerning whether or not the violation complained of are indeed anchored on the constitution and/or better still known to law.
89. Nevertheless, as pertains to the subject Petition, it is common ground that the Petitioner herein has failed to plead and/or otherwise disclose in the body of the Petition, which Articles of the Constitution 2010 are contended to have been breached and/or infringed upon or at all.
90. Simply put, the Petition has been written in prose without the invocation and/or reliance on even a single provision of the Constitution, let alone the various obvious Articles, including Article 23 of the Constitution 2010, which ordinarily founds the Reliefs, to be granted.
91. Other than the foregoing defect, the Petitioner herein has similarly failed to supply and/or avail particulars of infringement and or violation, if any, that has impeached and/or affected her Fundamental rights and/or interests over and in respect of the suit property, which admittedly, is Public land and thus placed under the management under the administration of the National Land Commission by dint of Article 62(2) and 67(2) of the Constitution 2010.
92. Yet again, without providing and or supplying particulars, pertaining to and or underlining the circumstances, instances and/or incidents connoting the impugned breach, it is hard to ascertain whether indeed any Fundamental rights which inheres in the Petitioner has been breached and/or violated.
93. To my mind, in the absence of the requisite particulars, it is difficult, nay impossible to plough through the Petition and authenticate whether the subject Petition reflects a real dispute or constitutes an imaginary smokescreen, which has merely been filed for Academic purposes and or to satisfy some blotted ego.
94. Other than the foregoing, one would also have expected the Petitioner herein to descend from the hill top and come down with details pertaining to and/or concerning who amongst the Respondents, if any, is responsible for the breaches and/or violations complained of and in what manner.



95. Nevertheless, even on this account, the Petitioner has failed to state who or whose officers, have violated what Fundamental and Constitutional rights.
96. In my humble view, the Constitutional Petition herein has alluded to generalities and travelled from one corner to the other, making various, albeit numerous complaints, which ipso facto appears wild and unfounded.
97. For instance, the Petitioner has contended and or averred that the acreage of the suit property has since decreased and/or diminished from its original size, owing to illegal alienation and land grabbing, but same has failed to exhibit any documentary evidence to show what was the original acreage and by what extent same has decreased.
98. Better still, the Petitioner has also contended that portions of the suit property has since been alienated and transferred in favor of Private owners, but same has yet again not supplied and/or availed particulars of the titles, if any, resulting from the illegal alienation, allocation and or grabbing of portions of the suit property.
99. On the other hand, it is imperative to recall that the Petitioner herein also averred that there has been a claim laid to and/or over the suit property by the 2nd Respondent, but yet again same has failed to tender any evidence showing when and how the 2nd Respondent has staked and/or laid a claim to the suit property, which admittedly is public land.
100. In any event, the 2nd Respondent who is alleged to have laid a claim of ownership over and in respect of the suit property, filed a Replying affidavit articulating her clear and explicit position, including how she handed over the suit property and the buildings constructed by herself, to the Ministry of Culture and Social Services in the year 1983.
101. If indeed, the Petitioner herein was serious about the contention that the 2nd Respondent has ever laid a claim to the suit property, then it behooved the Petitioner to file a Rejoinder affidavit and annex thereto proof underpinning the allegations against the 2nd Respondent.
102. Other than the foregoing, the Petitioner has also averred that the 4th Respondent, that is, National Land Commission should also carry out a Review of various Grants and Disposition affecting the suit property and determine the legality or otherwise of such disposition but same has not disclosed details of the impugned dispositions and the beneficiaries, if any, of such alleged illegal titles.
103. Surely, if the Petitioner was serious about the subject Petition, then same needed to have done some homework to avail and/or supply unto the court evidence, if any, of the impugned titles and the beneficiaries thereof.
104. In any event, the beneficiaries, (whose details have not been availed) would also be required to be joined in the subject Petition, insofar as their Rights to property would stand impeached vide any adverse orders that may arise from the subject proceedings.
105. In a nutshell, what I have alluded to in the preceding paragraphs underscores the necessity of Petitioners and/or any one seeking to commence a Petition to indeed supply the necessary particulars starting with the impugned Articles that have been impeached and/or violated, how same have been breached and by whom.
106. Suffice it to note, that the foregoing plea has been echoed and re-echoed times without number and this Court reiterates that Petitioners and by extension, their Legal Advisors, ought to spare sometime



to acquaint and/or otherwise re-acquaint themselves with the dictum laid down in the decision in the case of *Anarita Karimi Njeru versus Republic*, (1979)eKLR, where the court observed as follows;

“The issues in a Constitutional Petition require to be pleaded with clarity and in a concise manner so as to enable the court to appreciate the complaints laid before the court.”

107. Recently, the Court of Appeal re-visited the dicta underlined in the *Anarita Karimi Njeru* case, in the decision in the case of *Mumo Matemu versus trusted society of Human rights Alliance and 5 others* [2013]eKLR, where the Honourable Court observed as hereunder;

“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.

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”.

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.

108. Having taken cognizance of the foregoing observation, it is now appropriate to reiterate that constitutional petitions ought to be pleaded with the requisite particularity and specificity, whereby the Petitioner supplies and/or avails to the court conscious and precise particulars of how the impugned rights have been violated and/or infringed upon.
109. In this regard, the Rules of pleadings as far as the Constitutional Petitions are concerned, do not admit the general allegations or ambiguous pleadings, like the one beforehand.
110. Notwithstanding the foregoing, it is also imperative that the Petitioner like the one before the court ought not to through unto the face of the court general and omnibus allegations and expect the court to comb through the numerous allegations with a view to finding something favorable, to warrant a finding supportive of the Petitioner.



111. In a nutshell, the Petition herein, whose drafting does not measure up to the requisite threshold (containing the relevant specificity and particularity) is fatally deficient and irredeemably incompetent. Consequently, on this ground alone, the Petition would again fail.

ISSUE NUMBER 3 Whether the Honourable Court can issue the Reliefs sought at the Foot of the Petition.

112. From the subject Petition, it is evident that the Petitioner has made a plethora of claims and seeks orders in respect thereof.

113. Having made the various claims, it is now incumbent upon the court to interrogate same and discern whether the reliefs herein is awardable.

114. First and foremost, the Petitioner herein seeks that the court be pleased to direct National Land Commission to review any allotments and dispositions, affecting portions of the Suit Land,(sic) and establish the propriety thereof.

115. Nevertheless, it bears repeating that despite the claim that there have been allotments and disposition affecting portions of the suit property, the Petitioner has not tabled any such evidence to show the impugned titles and the beneficiaries thereof.

116. Secondly, assuming that there were any such allotments and/or dispositions, the beneficiaries thereof, would by law be required to be impleaded and joined in the subject proceedings to enable same to respond to any adverse claims, that may be made in respect of their titles. However, this is not the case.

117. Thirdly, it is imperative to recall that the mandate of National Land Commission to review grants and/or disposition touching on and/or concerning alienation of Public land, was time bound. For clarity, the mandate and/or jurisdiction to undertake Review only subsisted for 5 years from the operationalization of the [National Land Commission Act 2012](#).

118. In this regard, the provisions of Section 14(1) of the [National Land Commission Act](#), Number 5 of 2012, are explicit and imperative, that the Jurisdiction of the National Land Commission to Review the Grants and disposition lapsed and / or stood extinguished upon Lapse of the Five-year Period, which term was neither extended nor renewed.

119. Perhaps, to be able to appreciate and discern that the jurisdiction of the National Land Commission was time bound, it is appropriate to reproduce the provision of Section 14(1) (supra) and same are reproduced as hereunder;

14. Review of grants and dispositions (1) Subject to Article 68(c)(v) of the *Constitution*, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.

120. For the avoidance of doubt, the 5-year window within which the National Land Commission was mandated to review the grants and disposition in respect of public land lapsed and/or extinguished on or about the year 2017 and same was not extended by Parliament.

121. Consequently, it is not practicable to compel National Land Commission to undertake any Review of the undisclosed allotments and dispositions, if any, arising from the suit property, insofar as same is devoid of the requisite Jurisdiction to undertake such an action.



122. On the other hand, the Petitioner herein also seeks that the 2nd, 3rd and 4th Respondents be compelled to determine the use of the suit property, albeit through public participation, allegedly with the involvement of the Petitioner.
123. Without belaboring the point, it is appropriate to state that though the public land falling within a particular County vests in the relevant County, however the said land is administered and managed by the National Land Commission and not the County Government.
124. To this end, it is imperative to take cognizance of the provisions of Article 62(2) and Article 67(2) of The Constitution 2010.
125. For convenience, Articles 62(2) and Article 67(2) of The Constitution 2010, provides as hereunder;
- 2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under—
 - (a) clause (1)(a), (c), (d) or (e); and
 - (b) clause (1)(b), other than land held, used or occupied by a national State organ.
 - (2) The functions of the National Land Commission are—
 - (a) to manage public land on behalf of the national and county governments;
 - (b) to recommend a national land policy to the national government;
 - (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
 - (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
 - (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
 - (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;
 - (g) to assess tax on land and premiums on immovable property in any area designated by law; and
 - (h) to monitor and have oversight responsibilities over land use planning throughout the country.
126. Other than the foregoing explicit Provisions of the Law, it is also appropriate to take cognizance of the holding of the Supreme Court Of Kenya in the case of In the Matter of National Land Commission (2015)eKLR where the Court observed at paragraph 222 and 223 as hereunder;
- (222) The *Land Act* defines “alienation” as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.



(223) It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC's function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration. Section 5(2)(e) of the NLC Act v the *Constitution's* terms

127. Other than the foregoing decision, the scope and mandate of the National Land Commission in administering and managing public land was also revisited by the court of appeal in the case of *Cordison International Kenya Ltd versus Chairman National Land Commission & 44 Others* (2019)eKLR, where the Court observed as hereunder;

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.

128. From the foregoing case law, it is imperative to observe that neither the 1st nor the 3rd Respondents herein can determine the use of the suit property, insofar as such determination vests and/or inheres of the National Land Commission and not otherwise. Consequently, an order directed against the 1st and 3rd Respondents to determine the use of the suit property, which is Public land shall be in vain.

129. As concerns the 4th Respondent, it is appropriate to state and underscore that same is an Independent Constitutional Commission and therefore operates without the direction and/or control by any person and/or authority in the exercise and/or execution of her mandate.

130. To this end, the provisions of Article 249 (1) and (2) of the *Constitution* 2010, are apt. For ease of reference same are reproduced as hereunder;

249. Objects, authority and funding of commissions and independent offices:

(1) The objects of the commissions and the independent offices are to—

- (a) protect the sovereignty of the people;
 - (b) secure the observance by all State organs of democratic values and principles;
- and



- (c) promote constitutionalism.
- (2) The commissions and the holders of independent offices—
 - (a) are subject only to this Constitution and the law; and
 - (b) are independent and not subject to direction or control by any person or authority.

131. Premised on the foregoing, it is therefore common ground that the National Land Commission is not amenable to the direction and/or control of this court in the exercise of her constitutional mandate to determine the use over and in respect of public land. Simply put, the National Land Commission is only subject to the *Constitution*, 2010 in administering and/or managing public land on behalf of the National and County Governments.

Final Disposition:

132. Having addressed and or dealt with the thematic issues alluded to and/or enumerated herein before, it must have become evident and/or apparent that the subject Petition, which suffers from numerous, albeit various lapses, is not only misconceived but is still-borne.
133. In the premises, the subject Petition cannot see the light of the day. Consequently, same is an automatic candidate for Dismissal.
134. Having come to the conclusion that the subject Petition ought to be dismissed, the outstanding question relates to the incidence of Costs. Though it bears public Interest connotation, the subject Petition is otherwise an abuse of the Due process of the Court and should have attracted a sanction in the name of costs.
135. Nevertheless, I reluctantly decree that Each Party shall bear own Costs.
136. In a nutshell, the Petition dated the 8th December 2021 be and is hereby Dismissed, albeit with no orders as to costs.
137. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY 2022.

HON. JUSTICE OGUTTU MBOYA,

JUDGE,

In the Presence of;

Joan Court Assistant

Mr. Charagu for the Petitioner

Mr. Okoyo for the 2nd Respondent

Mr. Oginga for the 3rd Respondent

Mr. Mbuthia for the 4th Respondent

