



Sand & others v Toboo Farmers Co-operative Society & 4 others (Environment & Land Petition 1 of 2020) [2025] KEELC 503 (KLR) (11 February 2025) (Judgment)

Neutral citation: [2025] KEELC 503 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION 1 OF 2020**

CK NZILI, J

FEBRUARY 11, 2025

BETWEEN

NATHAN KIMAIYO SAND & OTHERS PETITIONER

AND

TOBOO FARMERS CO-OPERATIVE SOCIETY 1ST RESPONDENT

DIRECTOR, LAND ADJUDICATION AND SETTLEMENT . 2ND RESPONDENT

ATTORNEY GENERAL & 2 OTHERS & 2 OTHERS & 2

OTHERS 3RD RESPONDENT

JUDGMENT

1. The petitioners, describing themselves as residents of Trans Nzoia County, came to this court through a petition dated 29/1/2020. They seek:
 - (a) Declaration that members of Makutano Group are entitled to 279.8 acres of land comprised of LR No. 7076(1) and 7076(2), known as Quintin Farm at Endebess Sub-County.
 - (b) An order for vacation and handover of vacant possession by members of Toboo Farmers Co-operative Society, who are occupying part forming 279.8 acres.
 - (c) An order compelling the office of the County Surveyor to carry out survey, demarcation, and subdivision of the land by excising 279.8 acres belonging to Makutano Group.
 - (d) An order that the office of Settlement Fund Trustees discharges parcels of land known as LR No. 7076(1) and 7076(2) measuring 2798 acres upon the petitioners settling any outstanding loans and interests.



- (e) Permanent injunction restraining any person, agents, or servants from Toboo Farmers Co-operative Society from interfering with the petitioners' quiet enjoyment and occupation of the suit parcel of land.
2. The Petitioners' complaints are supported by a verifying and supporting affidavit of Nathan Kimaiyo Sang dated 29/1/2020. Equally, the petitioners rely on a supplementary affidavit of Nathan Kimaiyo Sang, sworn on 5/11/2020. The facts are set out in paragraphs 9-42 of the petition.
 3. The petitioners, who are 32 in number, aver that Makutano Group is an association of 84 persons who came together in 1984 and contributed funds intending to purchase a parcel of land measuring 788 acres comprising of LR No. 7076(1), 7076(2) and 6138(4) formally known as Quintin. The petitioners aver that they raised Kshs.529,540/=, being the value of the land that they paid to Agricultural Development Corporation (ADC) through the Subsidiary Lands Limited (SLL).
 4. Prior to the Group coming into the picture, the petitioners aver that Jonathan Kipkoech and Gabriel Mathenge had expressed interest in purchasing the same land whose application had been considered by the lands ministry as new Leasees.
 5. The petitioners aver that the said new leasees had successfully mounted court proceedings against one Abdul Aziz Kanji, and upon recovery of the land, the said Leasees offered the land to both Makutano Group and the 1st respondent, in terms of 279.8 and 508 acres, respectively.
 6. The petitioners aver that after the exit of Abdul Aziz Kanji from the suit land, the then Minister of Agriculture, Hon. Elijah Mwangale, caused the land to be transferred, and he became the owner in 1991, but later on, in 1997, he did surrender the land back to the Settlement Fund Trustees (SFT) at a consideration of Kshs.33,000,000/=. The petitioners aver that in 2005, they learned of the occupation of part of the land by persons said to be members of the 1st respondent and raised their complaints with the area chief Koibei location, who summoned their officials and denied knowledge of the petitioners' interest in the entire land, only to establish that the land had reverted to the Settlement Fund Trustees (SFT).
 7. The petitioners aver that upon advice from the District Commissioner Endebess Division, they made a formal application for consideration as owners of the land to the 2nd respondent, who sought an investigation by the Land Adjudication Officer Kitale about the status of the land on the ground, leading to meetings before the Deputy County Commissioner (D.C.C.) Kwanza Sub-County, between all the concerned groups. The petitioners aver that the (D.C.C.) prepared and forwarded a report to the 2nd respondent, who established a committee to handle the matter and came up with a resolution in November 2015 that the suit land belonged to the two groups, and mandated the District Land Adjudication and Settlement Officer, Trans Nzoia County to ensure that the land is subdivided between them.
 8. The petitioners aver that after the directives were made, no headway has been made due to stubbornness and belligerence on the part of the officials of the 1st respondent. The petitioners aver that the Dispute Resolution Committee had resolved that they receive 279.8 acres, which now is occupied by members of the 1st respondent, who should be ordered to vacate and hand over vacant possession in order to actualize the said resolution. The petitioners aver that the respondents are bound by the provisions of Articles 25 and 26 of *the Constitution* to ensure that the petitioners' rights are not limited, especially the right to life.



9. In this case, the petitioners blame the 1st and 2nd respondents for acting against and contravening the values and principles of the rule of law, participation of people, equity, social justice, inclusiveness, human rights, non-discrimination, and good governance.
10. The petitioners aver that the respondents are bound by Article 27 of *the Constitution* on equality and freedom from discrimination by failing to treat everyone equally, for failing to listen to them and act on the issues tabled to them, and for failing to consider them reasonably. The petitioners aver that the 2nd respondent has acted against the provision that every person should be treated with and is entitled to equal protection and benefit before the law.
11. Additionally, the petitioners aver that the 1st and 2nd respondents have, contrary to Articles 27 and 28 of *the Constitution*, employed a process that is neither fair nor transparent to ensure that the petitioners occupied their rightful place as they had already agreed, which offends the principles of good governance, integrity, transparency, and accountability, and the right to human dignity.
12. The petitioners aver that the failure to allow them assume occupation of their property by the 1st and 2nd respondents has subjected them to cruel, inhuman, degrading treatment and denied them the freedom of security, contrary to Article 29 of *the Constitution*. Moreover, the petitioners aver that they are protected by Articles 38, 39, and 40 of *the Constitution* to make their political choices without being forced or discriminated against and also the freedom of movement, residence, and the right to protection of property, anywhere in the territory of Kenya.
13. The petitioners aver that under Article 48 of *the Constitution*, they are entitled to access to justice, which the respondents have frustrated or denied them, despite having a justifiable claim before them, and instead have acted against their mandate as stipulated in *the Constitution*. The petitioners aver that the respondents are bound by Sections 134 and 135 of the *Land Registration Act* to ensure that they are well settled, yet the respondents have neglected to exercise their statutory duties, hence rendering them homeless and keeping them out of the land. The petitioners aver that the actions by the respondents set a bad and dangerous precedent, which is against the concept of constitutionalism and the rule of law.
14. Through sworn testimony through Nathan Kimaiyo Sang, he deposes that he is the elected Chairman of the Makutano Group, duly authorized by his co-petitioners to swear the affidavit. He attached copies of payment receipts dated 28/8/1980, NKS'1', letter dated 12/10/1979 from the Ministry of Lands NKS'2'. Advocates letter dated 15/7/1980 to the Ministry of Agriculture NKS'3', Letter dated 5/9/1970 from the ADC to the P.S. Agriculture NKS'4 (b)', Letter dated 20/8/1979 from the Central Agriculture Board to ADC NKS'4 (b)', application to the Land Registry NKS'4 (c)', official search as NKS'5', copy of decree as NKS'6', the letter from MS Kamau Advocates as NKS'7 (a)' and '(b)', letter to the Ministry of Agriculture as NKS'8', letter from the Area Chief NKS'9', formal application to the Settlement Fund Trustees (SFT). NKS'10', a letter dated 24/1/2014 from the 2nd respondent as NKS'11', a letter from the Deputy County Commissioner dated 10/2/2015, 21/2/2019, 8/11/2018 as NKS '12', '13' and '14'. Dispute Resolution Committee's letter dated 20/5/2016, as NKS'15', letter from the 2nd respondent dated 5/3/2018 as NKS'16', copy of letter from the County Land Adjudication and Settlement Officer as NKS'17'.
15. The 1st respondent opposed the petition through replying affidavits of its Chairman, treasurer, and secretary, Peter Naibei, Jane Tetei, and Julia Kimeres, sworn on 25/2/2020. It was averred that the 1st respondent was an incorporated society since the issuance of a certificate of registration on 4/9/1985, attached as annexure PN'1'.
16. The 1st respondent averred that on 20/8/1979, the late Jonathan Kipkoech and Gabriel Mathenge expressed interest in purchasing the land as per annexure PN'2', but were unable to obtain vacant



- possession leading to a decree in Civil Case No. 23613 of 1990 as per a copy annexed as PN'3'. The 1st respondent averred that by a sale agreement dated 10/8/1987, the officials of the 1st respondent bought 500 acres of the land from the two persons for Kshs.6,500,000/= and paid a deposit of Kshs.1,000,000/= as per a copy of the agreement attached as PN'4'.
17. The 1st respondent avers that later, on 8/12/1993, its officials bought an extra 288 acres out of the remained of LR. No. 7076(1), 7076(2) and 6138(4) for Kshs.3,700,000/= and made a deposit of Kshs.2,700,000/= as per an agreement attached as PN'5'. The 1st respondent averred that on 31/5/1993, it was given authorization by the District Commissioner to occupy the land having paid Kshs.4,500,000/= as per correspondence marked PN'6', following which the land was surveyed as per annexure marked PN'7'; hence they have been occupying the land lawfully since 1/6/1993, which is evidenced by demand and settlement of land rates from the defunct Council of Trans Nzoia as per receipts marked PN'8'.
 18. The 1st respondent averred that the petitioners have exhibited no agreement for sale or payment in that regard to warrant them acquiring the title to the land and, hence, are not entitled to any right over it. The 1st respondent averred that the question of who owns the land has never been an issue for the reason that they duly paid the full purchase price for the land, and were granted possession to occupy the same as the bonafide purchaser for value, enjoying protection under Article 40 of *the Constitution*.
 19. In response to the 1st respondent replying affidavit, Nathan Kimaiyo Sang swore a supplementary affidavit on 5/11/2020. While agreeing that the late Jonathan Kipkoech and Gabriel Mathenge had expressed interest in the suit land, the petitioners averred that the two were not financially capable and hence approached them for assistance as per a letter of offer dated 18/8/1993 marked NKS'1', leading to the contribution of Kshs.529,540/= which was paid through their advocates to Lands Limited as per NKS'2' and NKS'3', the official receipt, which transactions took place in 1980; otherwise, the two deceased persons held the land in trust for the petitioners.
 20. The petitioners aver that unlike them, who paid Kshs.529,540.=-, there is no evidence that the 1st respondent paid Kshs.900,000/= as per the letter of offer; otherwise, annexure '4' would only show that the 1st respondent was only entitled to 500 acres. The petitioners aver that 288 acres could not have been paid for since it had already been designated as their portion, and further that they were not privy to the sale agreement of the same.
 21. The petitioners reiterate that the alleged sale agreement dated 8/3/1993 was inconsistent with the initial agreement and their interest. Equally, the petitioners insist that the alleged payment to the two deceased persons was never permitted on part of the government through the Settlement Fund Trustees (SFT), to secure any interest in the three parcels of land. The petitioners aver that long occupation, as squatters, cannot enable the 1st respondent to derive interest in the land. Lastly, the petitioners aver that the verdict arrived at after the adjudication process as per annexure NKS'6 (a)' - '(e)' remains and is valid.
 22. The 2nd and 3rd respondents were duly served with the petition. They appeared in court through Mr. Odongo, State Counsel on 25/7/2023, who requested 14 days to file a response. By mention dated 4/10/2024, 15/11/2023, and 18/12/2023, none had been filed. Another chance was requested to comply by the 2nd and 3rd respondents on 24/4/2024. There was no compliance. Come 22/5/2024, Mr. Odongo requested 21 days to comply. The court granted the 2nd - 3rd respondents 45 days to do so. By 17/7/2024, still the 2nd and 3rd respondents had not complied and sought for 14 days to do so. They were granted 21 days. There was no compliance by 17/9/2024. The court granted the 2nd -3rd respondents 21 days. There was no appearance or compliance by 14/11/2024 when the matter



was mentioned. The 2nd and 3rd respondents were granted up to 15/1/2025 to do so. There was no compliance or appearance on 15/1/2025. So, the averments on oath by the petitioners for breach of statutory and constitutional obligations on the part of the 2nd respondent remain uncontroverted.

23. The issues calling for my determination are:
- (1) If the petitioners have locus standi to file a petition.
 - (2) If the petition raises constitutional questions or issues.
 - (3) If the petitioners have proved a breach of any of their constitutional rights and freedoms.
 - (4) If the petitioners are entitled to the reliefs sought.
 - (5) What are the orders as to costs?
24. A party alleging breach of his or her constitutional rights or freedoms has to comply with Articles 21, 22, 23, 258 and 260 of *the Constitution*, as read together with *the Constitution* of Kenya (Protection of Fundamental Rights and Freedoms) (Practice and Procedure Rules 2013), by defining up capacity in which the petition is brought, setting out the fundamental rights and freedoms breached, threatened with breach, infringed or violated, manner and nature of the breach, injury, loss or damage occasioned, past, present and pending disputes over the issue, reliefs sought and the signature. Rule 10(2) of the Rules provides that the petitioner must disclose his address, facts relied upon, provisions violated, nature of injury caused, details regarding present or past cases over the issue, signature, and the reliefs sought.
25. In *Methodist Church of Kenya -vs.- Mohammed Fugicha & Others* (Petition No. 16 of 2016 [2019] KESC 59 [KLR] (23rd January 2019 (Judgment)), the court observed that the issues for the court's determination remain as those prosecuted by the primary parties before the court as held in *Francis Muruatetu & Another -vs- Republic & Others* [2016] eKLR. The court reiterated that a constitutional petition must meet the requirements set out in the Mutunga Rules and be framed in a manner known by law to avoid violation of the parties' rights to be heard under Articles 25 and 50 of *the Constitution*.
26. A constitutional petition must be pleaded with precision and clarity in order to define the dispute to be decided by the court. Anyone who wishes the court to grant any relief for violation of fundamental rights and freedoms must plead in a precise manner the rights infringed, the manner of infringement and the jurisdictional basis for it. In *Mumo Matemu -vs- Trusted Society for Human Rights Alliance* [2014] eKLR, the court said that proper pleadings ensure that the court knows the issues in controversy and gives fair notice to the other party on what it is blamed for.
27. In *Gladys Jepkempoi -vs.- Zakayo Chepkonga Cheruiyot* [2021] eKLR, the court observed that a constitutional petition may amount to an abuse of the court process if christened as such, especially if there is an alternative remedy for filing a suit in ordinary courts and manner.
28. In this petition, the petitioners have described themselves as a group who contributed monies in 1980 to purchase the suit land, which they allege they paid for to the Settlement Fund Trustees, but were yet to obtain the land. The petitioners have established the nexus between the subject matter, the alleged rights, and the constitutional and statutory obligations of the 2nd and 3rd respondents to act on their rights and freedoms as enshrined in *the Constitution*. The petition is also pleaded with precision and clarity for the court and the respondents to appreciate the issues due for determination.
29. As to whether the petition raises a constitutional question or issues, a constitutional question is that which forces the court to resort to *the Constitution* in order to resolve it, rather than a statute. See *Hakiziman Abdul Abdulkarim -vs- Arrow Motors EA Ltd & Another* [2017] eKLR. In *Turkana*



- County Government & Others -vs.- Attorney General & Another [2016] eKLR, the court observed that claims of statutory violations could not give rise to a constitutional violation.
30. In Bernard Murage -vs.- Fine Serve Africa Ltd & Another [2015] eKLR, the court held that not every violation of the law was to attract or be raised as a constitutional issue and where there exists an alternative statutory remedy, such a remedy should be sought there first. In Patrick Mbau Karanja -vs- Kenyatta University [2012], eKLR Lenaola J, as he was then, held that a constitutional court should not be involved where other remedies exist. Further, in Geoffrey Muthinja Kibiru & Others -vs.- Samuel Munge Henry & 1956 Others [2015] eKLR, the court observed that dispute resolution mechanisms outside courts must first be exhausted before the jurisdiction of the court is invoked.
 31. The petitioners have brought their complaints for breach of the right to property, freedom from discrimination, right to equal treatment under the law, equality before the law, freedom of movement, and fair hearing under Articles 22, 23, 25, 26, 27, 28, 38, 39, 40 and 48 of *the Constitution*. The petitioners allege that they contributed Kshs.529,540/=, which they paid to the Agricultural Development Corporation (ADC) in 1980 and formally applied for the land with the 2nd respondent who, despite recommendations to resettle them in 2016 by subdividing the land, no action has been taken since, due to impediments by the 1st respondent, contrary to the resolutions and recommendations of the Ministry of Lands Public Communication and Resolution Committee, vide letter reference MLHUD/PCRC/Compl. Vol. V/55 of 20th May 2016.
 32. The petitioners aver that given the provisions of Sections 134 and 135 of the *Land Registration Act*, the 2nd respondent has neglected to execute its mandate as enshrined in the Statute and violated their rights to property and protection of the law, hence rendering them homeless. The petitioners urge the court to find that the acts of neglect by the 2nd respondent have contravened the national values and principles, lawful and equal treatment, benefit and protection by the law, is cruel, inhuman, and degrading, and has denied them the freedom of security, residence, movement, and denial of access to justice.
 33. The 1st respondent admits that there has been a long-running dispute over the suit land involving them and the petitioners. The 1st respondent bases its claim on the land through sale agreements with non-parties to the petition. On the other hand, the petitioners have attached receipts and correspondences with the 2nd respondent, including letters confirming that the two parties are entitled to defined portions of the suit land. The petitioners have produced correspondences in which the 1st and 3rd respondents undertook to resettle, resolve, and implement the findings and recommendations of the Public Communication and Resolution Committee made on 20th May 2016.
 34. The petitioners urge the court first to hold that any delay in implementing the resolutions and findings has infringed on their constitutional rights and freedoms as pleaded and proceed to issue constitutional reliefs for the alleged breach, violation, and infringement.
 35. The 2nd and 3rd respondents have not denied the averments on oath by the petitioners. The respondents have not denied the facts on lack of action on time or at all. Further, the respondents have not termed the issues sought by the petitioners as capable of being resolved through an alternative forum, or moot or lacking merits before a constitutional court.
 36. Regulation 28 of the Mutunga Rules provides that if the respondent does not dispute the facts in the petition, whether wholly or in part, the court shall, after hearing the parties, make such orders as it may deem fit. The petitioners have demonstrated the nexus between them and the suit land. The 1st respondent has not denied the paper trail of the facts as pleaded, showing how the 2nd and 3rd



- respondents attempted to establish the rightful owners of the suit land, leading to the establishment of a body or organ to come up with a lasting solution in the matter.
37. The findings and recommendations by the Dispute Resolution Committee were arrived at after extensive meetings between the petitioners and the 1st respondent. The petitioners question the delay in the implementation, terming it as unconstitutional and amounting to a breach of their constitutional rights and freedoms as regards resettlement, equality before the law, fair hearing, right to own property and Fair Administrative Actions Act.
 38. In *Mitu-Bell Welfare Society -vs.- Kenya Airports Authority & Others (Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018)[2021] KESC 34 [KLR] (11th January 2021) (Judgment)*, the apex court observed that the right to accessible adequate housing remains but a pipe dream for many since it is predicated upon one's ability to own land. The court held that the government must protect the rights and dignity of its citizens in informal settlements and that courts are supposed to ensure that such protection is realized. Articles 69 and 159 of [the Constitution](#) mandate this court to promote alternative and traditional dispute resolution mechanisms
 39. In my considered view, the issues raised by the petitioners are not idle, moot, academic and or immaterial. They seek their answers from [the Constitution](#) and not the statutes. The letters written by the Ministry of Lands and sent to the 2nd respondent directing it to implement the recommendations and findings created a legitimate expectation on the part of the petitioners that the recommendations will be acted upon in line with Sections 134 and 135 of the [Land Registration Act](#). See *Kenya Airports Authority -vs.- Mitu-Bell Welfare Society & Others [2016] eKLR*.
 40. Humane treatment and dignity are what the petitioners are saying to have been denied by the 2nd and 3rd respondents. See *Susan Waithera Kariuki & Others -vs.- Town Clerk Nairobi City Council & Others, Petition No. 66 of 2011, Jatrose Ayuma & Others -vs.- The [Registered Trustees of the Kenya Railways Staff Retirement Pension Scheme & Others NRB HC Petition No. 65 of 2010](#)*. The petition, in my view, raises constitutional questions.
 41. The next issue is whether the petitioners have proved a breach of the alleged constitutional rights and freedoms. There is no dispute that the Settlement Fund Trustees own the suit land with effect from 5/2/1997. The Settlement Fund Trustees is a body of Trustees established pursuant to the provision of Section 167 of the repealed Agriculture Act Cap 318, mandated to settle settlers on either un-alienated government land or on land purchased from private owners by the Settlement Fund Trustees (SFT) Board.
 42. In *Eliud Nyongesa Lusena & Another -vs.- Nathan Wekesa Ochacha [1994] eKLR*, the court observed that the Settlement Fund Trustees (SFT), a body corporate with the capacity to sue and be sued, and that its interest with the land is that of a charge over the parcel of land that it owns.
 43. Further, in *Boniface Oreto -vs.- Wabumba Mukite Civil Appeal No. 17 of 1989*, the court said that the Settlement Fund Trustees (SFT) lends money for development to the person to whom it has allocated land, and a charge upon the property secures the repayment of such money.
 44. Both the petitioners and the 1st respondent allege that their right to ownership of the disputed land predates its acquisition by the Settlement Fund Trustees in 1997. Evidence that the title held by the Settlement Fund Trustees (SFT) is impeachable under Sections 24, 25, 26, and 27 of the [Land Registration Act](#) or Sections 27, 28, and 143 of the Repealed Registered [Land Act](#) has not been availed by the petitioners.



45. The burden of proof under Sections 107-112 of the *Evidence Act* lies with the party who desires any court to give judgment as to any legal right or liability. It is the petitioners who must avail facts and evidence that they lawfully applied for the land alongside the 1st respondent and that the 2nd respondent has the legal capacity to implement the resolutions and recommendations of the Public Communication and Dispute Resolution made in 2016.
46. In *Raila Odinga & Others -vs.- IEBC & Others* [2017] eKLR, the court observed that the party with the legal and evidential burden must discharge it, especially if, in the absence of evidence, he would stand to lose. Under Sections 134-5 of the *Land Registration Act*, the government has the discretion to resettle squatters anywhere in Kenya through the Settlement Fund Board. Other than the annexures to the petition, the petitioners have not produced any letter of offer by the government for the land through the Settlement Fund Trustees.
47. In *Dr. Joseph Arap Ng'ok -vs.- Moiijo Ole Keiwua & Others* [1997] eKLR, the court observed that issuance of a letter of allotment, meeting of the conditions stated in such letter, and the actual issuance of a title document under the Act is what constitutes ownership of land. In *Nelson Kazungu Chai & Others -vs.- Pwani University* [2017] eKLR a squatter was defined as a person who settles on a property without any legal claim or title.
48. The petitioners, to claim a breach of their fundamental rights and freedoms must establish the right or ownership over the suit property, for Article 40 of *the Constitution* to be invoked. Article 40(3) of *the Constitution* of Kenya does not offer protection to land titles unlawfully obtained. The legitimate expectation alleged by the petitioners must meet the attributes set out in *Fanikiwa Ltd -vs.- Sirikwa Squatters Group & Others* [2022] KECA 1286 [KLR] (18th November 2022) (Judgment), and also *CCK & Others -vs- Royal Media Services & Others* [2014] eKLR.
49. The legitimate expectation cannot be enforced if it is against explicit provisions of the law. The petitioners have not been able to demonstrate if the Dispute Resolution Committee and its recommendations and the findings were anchored in any law or are enforceable against the title holder of the land, namely the Settlement Fund Trustees. The Settlement Fund Trustees, the Chief Land Registrar, the Cabinet Secretary, Ministry of Lands Urban Settlement and Housing are not parties to this petition. The petitioners must show that the findings and the recommendations are capable of being enforced. The participation of the Settlement Fund Trustees in the deliberations leading to the recommendations and the findings has not been clarified or proved.
50. In *M'Mugwika M'Rugongo -vs.- Settlement Fund Trustees & Another* [2022] eKLR, the court observed that when a title deed is in question, a party must show the claim of acquisition, including all the steps and procedures of acquisition, by demonstrating the manner and the path the documentation has traveled from the issuing authority.
51. In this petition, there is evidence that a third party lawfully acquired the land before the same came under the ownership of the Settlement Fund Trustees in 1997. If the petitioners and the 1st respondent had any rights or interests in the Suitland between 1980 and 1997, one wonders why they did not object to the surrender of the land or acquisition by the Settlement Fund Trustees. Equally, the petitioners cannot purport to prove any alleged breach of their constitutional rights and freedoms against the respondents who are not the owners of the suit land. The failure to sue the registered owners of the land, in my view, was fatal to the petitioners' case. Similarly, the annexures to the supporting affidavits by the petitioners are unverified, not certified, and are unauthenticated.
52. The upshot is that the petition lacks merits and is hereby dismissed with no orders as to costs.



**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 11TH DAY OF FEBRUARY 2025.**

In the presence of:

Court Assistant - Chemutai

Ngania for the 1st Respondent present

Petitioners absent

2nd and 3rd Respondents absent

HON. C.K. NZILI

JUDGE, ELC KITALE

