



**Oruko (Suing as the Legal Personal Representative Ad Litem of the Estate of Alfred Nabiswa Oruko) v County Land Adjudication & Settlement Officer, Trans-Nzoia & 3 others; Bernard (Interested Party) (Environment and Land Constitutional Petition E001 of 2024) [2025] KEELC 4399 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4399 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E001 OF 2024**

**CK NZILI, J  
JUNE 10, 2025**

**BETWEEN**

**AGNES ATENG'ERE ORUKO ..... PETITIONER  
SUING AS THE LEGAL PERSONAL REPRESENTATIVE AD LITEM OF THE  
ESTATE OF ALFRED NABISWA ORUKO**

**AND**

**COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER, TRANS-  
NZOIA ..... 1<sup>ST</sup> RESPONDENT  
THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .... 2<sup>ND</sup>  
RESPONDENT  
THE LAND REGISTRAR, TRANS-NZOIA ..... 3<sup>RD</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JOHN NJUGUNA BERNARD ..... INTERESTED PARTY**

**JUDGMENT**

1. Before the court is a petition dated 23/1/2024, in which the petitioner, suing as the legal representative of the estate of Alfred Nasibwa Oruko (deceased), asks for the court for:
  - (a) A declaration that the re-allocation of Plot No. 124 Maridadi Settlement Scheme measuring approximately 5 acres by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and subsequent issuance of title for Parcel



No. Trans Nzoia/Maridadi/124 to the interested party is unconstitutional, invalid, null, and void.

- (b) An order of mandamus compelling the 3<sup>rd</sup> respondent to revoke the registration of the interested party as the proprietor of the land and instead cause the same to be registered in the name of the petitioner.
  - (c) An order of mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to re-allocate the suit land to the petitioner.
2. The brief facts of the claims are captured in the petition and supported in the affidavit of Agnes Ateng'ere Oruko, sworn on 25/1/2024. The petitioner avers that she brings the petition on behalf of the estate of Alfred Nabiswa Oruko (deceased), following a limited grant ad litem dated 24/1/2024, attached as annexure A00-1, who was allocated the suit land on 15/9/1984, as per a copy of Settlement Fund Trustee, charge and allotment letter attached as annexure AOO-2A and 2B.
  3. The petitioner avers that after the allocation, the deceased made payment as per receipts attached as AOO-3A and 3B, and that after he passed on, he was buried on the land and continued living on and utilizing the suit land where they had established a home, and brought up 12 children as per photographs annexure as A00-4A-E, respectively. The petitioner avers that despite the foregoing, it appears that the plot was secretly re-allocated to the interested party who was issued with a title deed on 19/12/2023, as per an official search certificate attached as annexure A00-5, which she only became aware of the change in January 2024, after obtaining the search certificate.
  4. Again, the petitioner avers that neither she nor the deceased were served with any notice nullifying the allocation or indicating the basis for the repossession of their land by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, yet she has been in actual possession of the land and ought to have taken precedence in any reallocation after notification of the same to members of public and herself, to participate in the exercise.
  5. The petitioner terms the exercise by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, while she had paid the money, taken possession, and developed the land, as a violation of her right to property ownership, equal access to land, fair administrative action, equality before the law, and right against discrimination.
  6. The petitioner avers that the respondents' actions reek of corrupt practices, an abuse of office, are against the rule of law, democratic values and human rights. The petitioner, therefore, terms the title deed issued to the interested party as unconstitutional, a result of unlawful and illegal activities which ought to be canceled. The petition is anchored under Articles 1, 2, 3, 10, 2(a), (b) and (c), 27, 30, 41, 60(1)(a), 73 and 232 of *the Constitution*
  7. The 1<sup>st</sup> - 4<sup>th</sup> respondents rely on the replying affidavit of Nyanga C.A. sworn on 11/2/2025, for being incompetent, frivolous, scandalous, defective, and devoid of substance.
  8. The respondents aver that the suit land measuring approximately 5 acres, was originally allocated to the late Alfred Nabiswa Oruko, who paid a 10% deposit and executed a legal charge on 15/8/1984 as per annexure marked NCA-1. The respondents aver that between 1991 and 2000, the allottee failed to meet the terms and conditions of the allocation, leading to several demand notices dated 11/9/1997 and 10/10/2000 attached as NCA-2 and 3.
  9. The respondents aver that due to non-payment, a notice to remedy the breach dated 9/11/2006 was sent and when it elicited no response, a ground visit was initiated to establish his whereabouts. The demand notice was attached as an annexure marked NCA-3.



10. Similarly, the respondents depose that on 11/1/2023, a site visit was done confirming that the land had no structures, it was not fenced, it had been ploughed the last season and there was no one on the ground to identify the user of the land. The respondents also depose that the allottee knew that the plot belonged to the Settlement Fund Trustee and that it was his responsibility to follow up on the issue of repayment to its conclusion, which he did not undertake.
11. According to the respondents, the suit land was reallocated to the interested party who applied for allocation of a settlement plot and was issued with a letter of offer dated 13/1/2023 to pay a 100% deposit of Kshs. 24,987/=, as per annexure marked NCA-4.
12. The respondents aver that after paying the sum, the interested party was issued with a receipt annexed as NCA-5, followed by transfer and a discharge of charge dated 6/11/2023, for the land annexed as NCA-6. The respondents aver that they were neither informed of the demise of the initial allottee, nor was a copy of the death certificate deposited in their offices. The respondents deny the alleged violation of the petitioner's constitutional right, which allegations are not even supported by any evidence on the manner and nature of the breach.
13. The respondents aver that the petition offends the doctrine of constitutional avoidance since the claim is a simple land case based on an alleged illegality of a settlement scheme disguised as a constitutional petition, which can be handled ordinarily. The respondents aver that the petition raises no valid constitutional questions or issues to warrant intervention and the balance of convenience, public interest, and the scales of justice tilt against the orders sought.
14. Through a supplementary affidavit sworn on 17/2/2025, the petitioner denies receiving or being served with the demand notice in 1997 and 2000 as alleged, or the notice to remedy the breach dated 9/11/2006 from the respondents. Equally, the petitioner denies that there was any site visit in 2006 that established no structures on the land. To the contrary, the petitioner deposes that her structures, houses, fence, trees, and a graveyard have been in existence since the 1970s. Further, that her late husband was buried on the land in 2017, as per photographs and a certificate attached as annexures AAO-1A, 1B, 1C, 1D and 1E.
15. In addition, the petitioner deposes that the respondents violated the law for not giving her adequate notice or a hearing, under the Land Act 2012. The petitioner deposes that there was no public participation and instead the reallocation was selective. The petitioner terms the interested party as a well-known farmer and politician in the Cherangany Sub-County who, under Sections 134(2) and 135(3) of the Land Act, was disqualified from being termed as a landless person.
16. Further, the petitioner deposes that the respondents had availed no evidence that the interested party had made full payment for the land.
17. According to the petitioner, her late husband died in 2017 and was buried on the land, hence any site visit in January 2023 could have confirmed her occupation through the area's local administration, who even issued her with a burial permit. She attached copies of the death certificate, funeral program, and photos during the burial as annexures AAO-2A, 2B, 2C, 2D, and 2E. The petitioner deposes that the respondents failed to attach the ground visit report or minutes for the same if at all it was conducted in 2006 and January 2023.
18. The petitioner relies on written submissions dated 13/3/2025, isolating four issues for the court's determination. The petitioner submits that the petition meets the constitutional threshold as guided by Joseph Kimechwa -vs- County Land Adjudication & Settlement Officer, Trans Nzoia & Others, Petition No. E003 of 2023, since she has overwhelming evidence of allocation of the land through a



- letter of allotment, a charge and payment of the premium in 1990 and 2010, and the development on the land before the burial of her deceased husband on the land in April 2017.
19. The petitioner submits that guided by Articles 2(4), 3(1), 10(1), 10 (2)(a)&(b), 27, 35, 47, 60(1)(a), 73(2)(b) and 232 of *the Constitution*, the petition is properly anchored in *the Constitution*.
  20. The petitioner submits that the reallocation of the settlement scheme by the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not adhere to Sections 4, 12, 134, and 135 of the *Land Act* as read together with Articles 2, 10, 60, and 47 of *the Constitution*. In particular, the petitioner submits that the said Articles of *the Constitution* and the law were violated because the respondents failed to adhere to the *Fair Administrative Action Act*, Rules 37, 38(a), and 39(2) of the *Land Registration Act* 2017 and that the Director of Settlement acted ultra vires by unilaterally allocating the land without the authority of the Board.
  21. Additionally, the petitioner submits that the respondents are estopped from invoking the doctrine of constitutional avoidance, for they did not undertake any process known in law before reallocating the land in question to the interested party, hence flouted the *Land Act* and the provisions of *the Constitution* set out above. Reliance is placed on *Katiba Institute & Others -vs- Director of Public Prosecution*, Petition E016 of 2023 [2024] KEHC 2890 [KLR].
  22. The issues calling for my determination are:
    - (1) If the petition meets the constitutional threshold.
    - (2) If the court should adopt the doctrine of constitutional avoidance.
    - (3) If the petitioner has proved a breach of any constitutional rights and freedoms.
    - (4) If the petitioner is entitled to the reliefs sought.
    - (5) What is the order as to costs?
  23. The main complaint by the petitioner is that the process of reallocating Plot No. 124, Maridadi Settlement Scheme was secretive, unilateral, biased and so was the subsequent issuance of a title deed for Trans Nzoia/Maridadi/124 to the interested party, which she termed as null, void ab initio and unconstitutional. Therefore, the petitioner urges the court to declare the process unconstitutional and command the 3<sup>rd</sup> respondent to revoke the title deed and reallocate the same to the her.
  24. A party seeking relief for breach of a constitutional right and freedoms must comply with *the Constitution* of Kenya (Protection of Fundamental Rights and Freedoms) Practice and Procedure Rules, 2013. Rule 10 thereof sets the foundation of the petition. It must contain the petitioner's name, address, facts relied upon, constitutional provisions violated, nature of the injury caused, capacity, details regarding past or pending proceedings, signature and the relief sought.
  25. The purpose of pleadings in constitutional petitions has been subject to litigation in our courts. In *Mumo Matemu -vs- Trusted Society of Human Rights Alliance and Others* [2013] eKLR, the court observed that apart from citing the omnibus provisions of *the Constitution*, the petitioner had failed to provide particulars of the alleged complaints, the manner of the alleged infringement and the jurisdictional basis of the action before the court. The court held thus "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 functions of precise legal and factual claims.....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 exactitudes ex-ante is to miss the point".



26. The court cited Thorp -vs- Holdsworth [1876] 3 Ch. D 637, that the whole meaning of the pleadings is to narrow the parties to define issues and diminish expenses and delay, especially on the court to the testimony required on either side at the hearing.
27. The petition before the court has defined the parties, given particulars of constitutional violations, illegal and unlawful constitutional and legal basis, and the reliefs sought. It does not set out the factual basis of the claim, including the particulars of the unconstitutional breach, unlawfulness, and illegalities. The dates when the violation, threats, or infringements occurred and who perpetrated the same are lacking.
28. In Ochari -vs- Office of DPP & Another, Speaker of Senate & Others (IP) Petition E055 of 2022[2022] KELRC 3881 [KLR] (2<sup>nd</sup> September 2022) (Ruling), the court cited Annarita Karimi Njeru -vs- Attorney General [1979] KLR 154, on the need for precision over what the petitioner complains about with sufficient particulars so that parties may know the issues in controversy and respond accordingly.
29. In this petition, the factual foundation is lacking. The facts to demonstrate the violation, as is required under Article 22(1) of *the Constitution*, are lacking. That notwithstanding, the petition is supported by a verifying affidavit which attempts to fill in the glaring gaps on the facts on the face of the petition. It is through the petition that a petitioner sets out the claims, by demonstrating the facts, the articles violated, the manner of violation, and the injury caused.
30. An affidavit attached to a petition comes in to support the pleadings in the petition. It is to sustain the allegations of the breach and the facts set therein and perhaps verify the contents and attach any supporting documents. See Joel Mwangi Kuhanga & Others -vs- Attorney General & Others [2012] eKLR and Communications Commission of Kenya & 5 others -vs- Royal Media Services Limited & 5 others [2014] KESC 53 (KLR)). Be that as it may, courts are at liberty to admit informal petitions and therefore, I find no basis to dismiss the petition for want of form.
31. A petition must disclose a constitutional question or issue. A constitutional question or issue is one that forces the court to interpret *the Constitution* or look for the answers from *the Constitution* and not a statute. In John Harun Mwau -vs- Peter Gastrow & Others [2014] eKLR, it was held that courts will not normally consider a constitutional question unless the existence of a remedy depends on it and if the remedy is available to an applicant, under some other legislative provisions or some other basis, whether legal or factual, a court will usually decline to determine whether there has been in addition to a breach other declaration of right. The court said that if a matter can be disposed of without recourse to *the Constitution*, *the Constitution* should not be invoked at all.
32. In Isaboke David -vs- Inspector General of Police & Others [2017] eKLR, the court observed that when determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful, but whether it forces the courts to consider constitutional rights or values.
33. A petitioner must also disclose if he has exhausted any available internal mechanism under the law. In Jeremiah Momba Ocharo -vs- Evangeline Njoka & Others [2022] eKLR, the court cited William Odhiambo Ramogi & Others -vs- Attorney General & Others [2020] eKLR, that the exhaustion doctrine serves to ensure postponement of judicial consideration of matters to ensure that a party first of all is diligent in the protection of his rights within the mechanisms available outside court.
34. In Speaker of National Assembly -vs- Njenga Karume [1992] KLR 21, the court observed that where there is a clear procedure for redress of any particular grievance, such procedure should be followed first unless there are exceptional circumstances. See also Geoffrey Muthinja Kabiru & Others -vs- Samuel Munga Henry & Others [2015] eKLR.



35. In *Nicholas Abidha -vs- Attorney General & Others* [2023] KESC 113 (KLR) (28<sup>th</sup> December 2023) (Judgment), however, the court was of the view that a nuanced approach should be employed by courts to ensure that a claimant's access to justice is safeguarded, more so when the available alternative remedy is not efficacious, adequate, proportionate and or available.
36. Applying the foregoing case law to the instant petition, the respondents take the view that what is before the court is an alleged illegal revocation and reallocation of a plot in a settlement scheme, which should not have found its way into a constitutional court, for it, would have been handled in a normal or ordinary suit.
37. On the other hand, the petitioner submits that the petition is beyond reallocation and repossession of the suit land, for it touches on Articles 2, 10, 27, 47, 60, 73, and 232 of *the Constitution*, which the respondents did not comply with.
38. What the petitioner is complaining about is the reallocation of the suit land despite an earlier allocation to her late husband on account of a letter of allotment and a charge by the Settlement Fund Trustee dated 15/9/1984, attached as annexure A00-2A and 2B. The 1<sup>st</sup> - 4<sup>th</sup> respondents admit that whereas the late husband to the petitioner was the initial allottee, he breached the terms and conditions of the offer letter and the charge and despite a notice to remedy the breach, he declined to rectify it, leading to a repossession and reallocation in line with the statutory law. The respondents have attached the charge dated 15/8/1984 and the demand notices are attached as NCA-1, 2(a) (b) and 3, respectively.
39. In a rejoinder, the petitioner denies receiving the said notices. Equally, she pleads that she was not given a fair hearing under the *Land Act*, since her occupation on the land is evident, there was no public participation, the process set out in the *Land Act* was not followed, there was a breach of the national values and principles of governance and that the interested party could not have qualified for reallocation under Sections 134 and 135 of the *Land Act*. Additionally, the petitioner avers that the site visit never occurred, otherwise, her visible development on the land would have been captured.
40. It is a trite law that parties are bound by their pleadings. A party may not be allowed to enlarge her claim, especially in a constitutional petition without amendments. The supplementary affidavit by the petitioner has raised new grounds that were not captured in the petition.
41. Equally, the petitioner has admitted that the reallocation and repossession of her plot is governed by a statute. The charge dated 15/8/1984 was drawn under the Registered *Land Act* (repealed). The body that issued the charge is the Settlement Fund Trustee, governed by the repealed Agriculture Act. The initial allottee was bound by the terms and conditions of the charge. Any default of the terms and conditions was governed by the *Law of Contract Act*. The Settlement Fund Trustee under Clauses 1, 2, and 3 of the offer letter had therefore the right to issue a default notice and a notice to remedy the breach. The notices sent were through the address given by the initial allottee at the signing of the charge and the letter of offer.
42. In *Isaac Kipleting Kibitok vs Secretary Board of Governors Cherangany Primary School & Others* [2020] eKLR, the court observed that the petitioner should only have approached the court for remedies of violation of his constitutional right once his interest in the land occupied by the school was clearly defined and had crystallized. The court said the claim could have been ventilated in a civil suit.
43. The court cited *Gabriel Mutava & Others -vs- M.D. KPA & Another* [2016] eKLR, that a violation of constitutional rights is more serious than a violation of statutory or contractual rights and that invoking the constitutional rights in an employment dispute was misguided, for a constitutional court should not be turned into a thoroughfare for resolution of every kind of common grievance, and where it is possible to decide a case without reaching a constitutional issue, that should be done.



44. The court cited International Legal Consultancy Group & another -vs- Ministry Of Health & 9 others [2016] KEHC 7536 (KLR) and Peter Ochara Anam & 3 others -vs- Constituencies Development Fund Board & 4 others [2011] eKLR, that coming to court by way of constitutional petition is not accepted either much as *the constitution* is superior law to the statute aforesaid and an explanation should have been given why the complainant did not refer the complaint to the available avenue, without trivializing the jurisdiction of a constitutional court.
45. The critical issue, even before addressing whether the petitioner's constitutional rights were violated or not is the legal status of the suit land as of 1984, before her late husband passed on.
46. The respondents have raised a defense that the petitioner's late husband had failed to honor the letter of offer, charge, and the terms and conditions therein, hence rendering the charge or letter of offer invalid and unenforceable in law.
47. Courts do not rewrite contracts for the parties but enforce the same by looking at the four corners of the document, without recourse to any extrinsic or parole evidence. See National Bank of Kenya Ltd -vs- Pipe Plastic Samkolit (K) Ltd [2011] eKLR and Pius Kimaiyo Langat -vs- Co-operative Bank of (K) Ltd [2017] eKLR. The charge had specific terms and conditions on payment of standard premiums and charges so that the suit property eventually would be transferred to the initial offeree upon the clearance of the standard premiums.
48. A party cannot run away from what he bargained for. Specific performance only applies in a valid sale agreement. There is evidence that the initial offeree defaulted in clearing the standard premiums. When interpreting a contract, a court gives effect to the intention of the parties. Failure to pay the standard premiums to the Settlement Fund Trustees had legal consequences. See Mugwika M'Rungongo -vs- S.F.T. & Others [2022] eKLR.
49. In Botwa Farm Co. Ltd -vs- S.F.T & Another [2019] eKLR, the court observed that under Section 167(2) of the repealed Agriculture Act, the Settlement Fund Trustees had a statutory mandate. The court cited John Kamunya & Another -vs- John Nginyi Muchiri & 3 Others [2013] eKLR, that there was no contractual relationship concerning the suit land that could be legally created as between the purchaser and the seller before the seller had discharged his indebtedness to the Settlement Fund Trustees and for the title to be transferred into his name as an owner to be capable of selling it to the purchaser.
50. The court said that upon paying 10%, the appellant only acquired a beneficial interest over the suit land until he cleared the full payment of the purchase price to be entitled to a title deed. The court said that upon repossession, the land was allocated to other third parties who were not parties to the suit and that their titles could not be canceled without being heard.
51. In this petition, the alleged breach occurred in 1984. The claim for recovery of land in law within 12 years expired in 1996. A claim for recovery of the deposit on breach of the charge should have been filed before the expiry of 6 years upon the breach. The petitioner has not told the court why her late husband did not comply with the terms and conditions of the charge on time or at all.
52. It is not enough to say that the demand notices and the notices to remedy the breach were not served upon the original allottee. The obligation was on the original allottee to pay the standard premiums on their due date. The charge and the letter of offer had self-executing clauses on the consequences of the default. It was not the duty of the Settlement Fund Trustees to remind the petitioner or the initial allottee of their obligations.



53. The petitioner, instead of suing the Settlement Fund Trustees or its successor in title, who repossessed the land and reallocated it to the interested party, for breach of the contract, has sued the respondents who had no privity of contract with her late husband.
54. The petitioner has not particularized what constitutional and statutory duties or obligations the respondents owed her or the estate of the deceased husband, especially when the deceased had no enforceable contractual rights after the offer or charge was rescinded by default on his part. His cause of action, if any, also became time- or statute-barred before he passed on.
55. Between 2017 and 2023, when the interested party became the recorded owner, the delay of 6 years is not explained. Occupation and possession by the petitioner per se did not grant her any superior rights or interests protectable in law without her late husband having perfected the charge or regularized the occupation and ownership with the allocating authority.
56. There is no evidence that the petitioner wrote to the respondents to notify them of the death of her late husband in 2017. Equally, there is no evidence that the petitioner went to the respondents to make inquiries about the status of the payments or the documentation immediately after her late husband passed on. Further, there is no evidence that the petition sought for extension of the charge or letter of offer to renew the terms and conditions which her late husband had been unable to comply with.
57. There is no evidence that the initial allottee faced frustrations in meeting the terms and conditions of the charge. The initial allottee knew the consequences of the default or breach of the terms and conditions of the charge. The suit land remained as the property of the Settlement Fund Trustees, after the expiry of the offer letter, available for reallocation and transfer to the interested party, following the meeting of terms and conditions of any letter of offer issued to him.
58. The petitioner cannot, therefore, advance a contractual claim christened as a constitutional violation against the respondents who had no contractual relationship with her in the first instance.
59. In *Esther Kiutha M’Imbui -vs- Stephen Muriuki Arachi & Others* [2022] eKLR, the court observed that a petitioner bore the burden of proving that the land was hers and that the respondents breached *the constitution* by allocating and transferring the land. The court observed that there was no evidence of suing the Chief Land Registrar and or a complaint lodged under the *Fair Administrative Action Act*, who had lifted the caution. The court observed that a delay of 50 years was inordinately long, unreasonable, and unexplained, to amount to indolence, in agitating for the rights. The court found the claim capable of being dealt with in an ordinary manner as held in *CMN -vs- WMG* [2018] eKLR.
60. The court cited Lenaola J (as he then was), in *Uhuru Muigai Kenyatta -vs- Nairobi Star Publication Ltd* [2013] eKLR, that not every ill in the society should attract a constitutional sanction and that private civil claims should not form a basis of the constitutional petition.
61. I think I have said enough to show that the petition before the court was not substantiated at all. Evidence to sustain it is lacking. See *Wareham T/A A.F. Wareham & Others -vs- Kenya Post Office Savings Bank Ltd* [2004] eKLR.
62. The upshot is that I find no basis to grant the reliefs sought. The petition is dismissed with no orders as to costs.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10 DAY OF JUNE 2025.**

In the presence of:

Court Assistant – Dennis



Miss. Lichuma for the petitioners present

Kwame for Odeyo for the respondents present

Serebe for the interested party present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

