



Nganga & 28 others v Kenya Railways Corporation & 2 others (Environment and Land Petition E002 of 2024) [2025] KEELC 5149 (KLR) (Environment and Land) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5149 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION E002 OF 2024**

MC OUNDO, J

JULY 10, 2025

**IN THE MATTER OF ARTICLES 2, 19, 20, 22, 23, 27,
40 AND 47 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF VIOLATION OF RIGHTS

BETWEEN

PETER KAMAU NGANGA 1ST APPLICANT

JON MWANGI NGUGI 2ND APPLICANT

AND

PETER MBURU MWANGI PETITIONER

AND

SECUNDA MUTHONI KARANJA 1ST APPLICANT

FRANCIS WAINAINA MWANGI 2ND APPLICANT

DANIEL NJUNG'E NDUNG'U 3RD APPLICANT

CHEGE STEPHEN NJUGUNA 4TH APPLICANT

PETER NDUNGU KARANJA 5TH APPLICANT

HENRY MOINDI ANGIENDA 6TH APPLICANT

HIRAM MBUGUA 7TH APPLICANT

GIDEON NGANGA WAINAINA 8TH APPLICANT

MERCY WAMURINGO MUCHIRI 9TH APPLICANT



FRANCIS MWAURA WAINAINA	10 TH APPLICANT
MARY WANGUI MWANGI	11 TH APPLICANT
GRACE WANJIRU MBUGUA	12 TH APPLICANT
PATRICK KIVUVA KASUNGI	13 TH APPLICANT
JOSEPHINE WAJIRU NDERU	14 TH APPLICANT
TERESIA WAIRIMU KIHARA	15 TH APPLICANT
JAMES KAMAU GITHIACA	16 TH APPLICANT
MICHAEL KAHURA NJOROGE	17 TH APPLICANT
JULIUS KIGOTHO KABIRU	18 TH APPLICANT
ETHELDREDA JANE ADHIAMBO	19 TH APPLICANT
JOHN NJOROGE NGANGA	20 TH APPLICANT
DEBORAH CHEPTOO RUTTO	21 ST APPLICANT
MICHAEL NDURA NJOROGE	22 ND APPLICANT
SIMON MWANGI IRUNGU	23 RD APPLICANT
PETER GICHIHI MBURU	24 TH APPLICANT
DEREK KIHUGI NGANGA	25 TH APPLICANT
PHILIS WAITHERA NJUGUNA	26 TH APPLICANT

AND

KENYA RAILWAYS CORPORATION	1 ST RESPONDENT
ATTORNEY GENERAL	2 ND RESPONDENT
NATIONAL LAND COMMISSION	3 RD RESPONDENT

JUDGMENT

1. The Petitioners, vide a Petition dated the 9th February, 2024 sought for the following orders;
 - i. A declaration that the intended compulsory acquisition is a violation of the petitioners' rights to own property protected under Article 40 of the *Constitution*.
 - ii. An order of Permanent injunction do issue restraining the 1st Respondent from trespassing into, taking possession, demolishing structures on, or dealing with the subject land parcels in any manner whatsoever.
 - iii. General and Exemplary damages for trespass to property.
 - iv. An order for compensation at the prevailing market rate.
 - v. Costs of the suit.
 - vi. Any other relief that the court may deem fit to grant.



2. The Petition was supported by an Affidavit of equal date sworn by Peter Kamau Ng'ang'a, the 1st Petitioner herein who deponed that the Petitioners were the registered owners of the subject land title Nos. Gilgil/Gilgil Block 1/9802, 33603, 33596, 9796, 25742, 25760, 133595, 60637, 9087, 10179, 9869, 9868, 14046, 14047, 14045, 28163, 563, 18107, 60710, 14034, 14033, 33597, 18109, 8742, 18726, 9798, 9800, 20130, 53020, 20139, 22015, 747, and 9799 (suit properties). That the suit properties herein had been generated from a large parcel of land that was initially owned by the Agricultural Industrial Holdings Limited (the company), a company registered by the GEMA community. That the company had sold out to some of the members parcels of land measuring 5 acres each wherein the said members had been issued with title deeds for their respective land parcels.
3. He deponed that the aforementioned parcels of land measuring 5 acres each had later been subdivided and sold out to the Petitioners herein who had also been issued with title deeds for their respective land parcels. That however, in January 2024, the 1st Respondent through Mumbi Company Limited and while accompanied by the police, had encroached into the suit properties herein and commenced illegal mapping, resurveying and sampling.
4. That the 1st Respondent had intended to compulsorily acquire the suit properties belonging to the Petitioners without consultation and engagement thus the said act was illegal and a contravention of the Petitioners rights. That their effort to seek audience with the 1st Respondent had been fruitless as they had only been engaging the local administration and persons who had no stake in the suit properties.
5. That the 1st Respondent's intended action was a breach of Section 14 of the Railways Corporation Act, the Land Acquisition Act and the Constitution since no negotiations had been made or agreement reached with the registered owners of the suit properties. That further, no valuation had been conducted on the suit properties to determine their market value which was a necessary exercise before compulsorily acquiring the Petitioners' properties. That subsequently, the 1st Respondent's acts were a violation of their rights to own property protected under the provisions of Article 40 of the Constitution.
6. That indeed, most of the Petitioners had extensively developed their parcels and stood to suffer serious and irreparable losses should the 1st Respondent proceed to take possession of the same and demolish the structures thereon as could be seen from the photographs attached and marked as "PKN-2".
7. In response to the Petition, the 1st Respondent vide its Replying Affidavit dated 4th March 2025 sworn by its surveyor Nathaniel Ochieng, deponed that the Petition herein was unfounded and ought to be dismissed forthwith. That the 1st Respondent was established pursuant to the provisions of the Kenya Railways Act and was a body corporate with perpetual succession and common seal and had power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for its purposes. That it governed its operations and affairs.
8. That the Petitioners had not demonstrated or shown proof of the alleged intended compulsory acquisition by the 1st Respondent thus the instant Petition had been founded on speculations and should be dismissed. That he was aware that the suit properties herein related to a railway line corridor running from Gilgil Railway Station to Lanet Railway Station through Eburu and Elementaita station, thus the Petitioners' claim was based on fraudulent acquisitions of titles to land belonging to the 1st Respondent.
9. That the said railway line was originally reserved for the East Africa Railways Corporation as defined under East African Railways and Harbors Drawing Number 6473/1 and was defined by various survey plans as could be seen from copies of the survey plans Folio Number 14, Register Number 27 dated



- 14th April 1917, Folio Number 77 Register Number 121 authenticated by the Director of Surveys on 3rd May 1953, Folio Number 78 Register Number 6 authenticated by the Director of Surveys on 6th May 1957 and Folio Number 43, Register Number 50 dated 31st July 1935 annexed and marked as NO-2 (a-d) respectively.
10. That the suit properties among others had been vested in the General Manager of East African Railways and Harbors Administration vide the Kenya (Vesting of Land) Regulations, 1963 (L.N. 245 of 1963). That in a subsequent Legal Notice, that is, Kenya Railways Corporation (Vesting of Land) Order, 1986 (L.N. 24 of 1986), it had been directed in the Schedule that all land that had been reserved for use or had been in use by the East African Railways and Harbors Administration should vest in Kenya Railways Corporation hence the 1st Respondent had become the successor of all land titles that had been owned by East African Railways and Harbors Administration.
 11. He explained that the railway reserves were demarcated 30 meters (100 feet) from the centerline of the rails on either side of the railway line. That the 1st Respondent had obtained the Registry Index Maps for Gilgil/Gilgil Blk 1 (Kikopey) from the Director of Surveys being Map Sheets 10, 5, 6 and 23 annexed and marked as NO-5 (a-d). That the said Registry Index Map Sheets were for the original parcel numbers prior to the subdivision that had given rise to the Petitioners' titles as most of the subdivisions had not been captured in the RIMs by way of amendments. That while relying on the Registry Index Map Sheets and the Survey plans, he had used the following procedure to show the interaction between the Railway reserve and the suit properties:
 - i. He scanned the survey plans and Registry Index Maps and geo fenced them using Ecri's ArcMap Software version 10.8.2.
 - ii. The Railway corridor/reserves as captured in survey plan Folio Number 78, Register Number 6 was vectorized to create a shapefile of the corridor.
 - iii. The shapefile was then overlaid with the Registry Index Maps and a series of maps were created showing the interaction between the Railway Reserve and the Suit properties.
 12. That the finding of the said procedure had concluded that that the Petitioners' parcels of land were fully or partially encroaching on the Railway reserve. That indeed, parcel Numbers Gilgil/Gilgil Block 1/9802, 9801, 1900, 9799 and 9798 were fully within the Railway Reserve while Gilgil/Gilgil Block 1/742, 743, 744, 745, 520, 746, 914, 764 and 988 were partially encroaching on the Railway Reserve.
 13. He deponed that the 1st Respondent had never surrendered the railway reserve corridor for allocation as private land. That the Petitioners' properties sat on the railway reserve thus public land which was not available for allocation for private use.
 14. Subsequently, he urged the court to dismiss the instant Petition and cancel the Petitioners' titles for having been acquired illegally and/or fraudulently.
 15. The 2nd and 3rd Respondents did not participate in the Petition.
 16. On 6th March, 2025, directions were taken to dispose of the Petition by way of written submissions, wherein the Petitioners vide their submissions dated 29th May, 2025, summarized the factual background of the matter before framing two (2) issues for determination as follows:
 - i. Whether the Petitioners are the owners of the suit parcels.
 - ii. Whether the Petitioners are entitled to the orders sought.



17. On the first issue for determination, the Petitioners' argument had been that they were the registered owners of the suit parcels of land by virtue of the titles they held. That this was not a question of competing titles, but a case where the 1st Respondent which held no title lay claim as a legitimate owner of the suit properties. They placed reliance on the provisions of section 26 of the [Land Registration Act](#) to submit that they were the holders of the certificate of titles to the suit properties wherein there had been no evidence of fraud or misrepresentation committed while obtaining the same and which position was buttressed by the fact that they had not been the first proprietors of the suit properties herein.
18. Their further reliance was hinged on the provisions of Section 24 of the [Land Registration Act](#) as well as the decisions in the cases of Mbuthi v Osman & another (Environment & Land Case E004 of 2022) [2024] KEELC 387 (KLR) (1 February 2024) (Judgment) and Samuel Ambasa & 3 Others v Stella Ingasia [2022] eKLR where the court had cited the case of Dr. Joseph Arap Ngok v Justice Moiyo Ole Kirwa & 5 Others Civil Appeal No. [CA 60 of 1997](#) to submit that they had acquired valid titles to the suit parcels having purchased the same from the previous title holders. That further, they were bonafide purchasers for value without notice in the defect of the title to the land having had purchased the same from people who held valid titles, a fact that had been admitted by the 1st Respondent.
19. They also placed reliance in the decided case of Kimani v Njeri & 3 others (Environment & Land Case 10 of 2022) [2023] KEELC 17771 (KLR) (8 June 2023) (Judgment) where the court had cited the case of Lawrence Mukiri v Attorney & 4 Others [2013] eKLR to submit that they fitted the conditions therein within the definition of bonafide purchasers and urged the court to find that they were not the first title holders to the suit properties, and had bought the land for value from the initial proprietors who held valid titles. It was thus their submission that the burden would lie on the 1st Respondent to lead evidence to prove that the Petitioners were part of any fraud at all.
20. As to whether they were entitled to the orders sought, the Petitioners submitted that since they had proved through submissions and evidence that they had valid titles to the suit properties, hence they were protected by dint of the provisions of Section 26 of the [Land Registration Act](#). That further, no evidence of fraud, misrepresentation or corruption had been led by the 1st Respondent as against them to invalidate their titles. That the purported trespass into the suit properties and the intended taking possession of the same was a violation of their rights to property under the provisions of Article 40 of the [Constitution](#). They thus submitted that they were entitled to the orders that had been sought vide their Petition dated 9th February 2024 and they urged the court to find as much.
21. In opposition to the Petition, the 1st Respondent vide its Submissions dated 23rd May 2025, framed two (2) issues for determination as follows:
 - i. Whether the Petitioners have demonstrated any violation of their constitutional rights?
 - ii. Whether the Petitioners are entitled to the orders sought
22. On the first issue for determination, it placed reliance in the decided case of Omaso v Secretary/ Chief Executive Officer, Teachers Service Commission & 2 others (Petition E026 of 2024) [2025] KEELRC 1041 (KLR) (2 April 2025) (Judgment) to submit that since this was a Constitutional Petition premised on violations of the supreme law of the land, it was incumbent upon the Petitioners to demonstrate with sufficient clarity and detail the specific provisions of the [Constitution](#) allegedly violated, the manner or nature of the alleged violation and the extent of the violation as postulated.
23. Its reliance was placed in the locus classicus decision in the case of Anarita Karimi Njeru v Republic [1979] eKLR, where the principles of precision had been articulated as follows:



- i. Constitutional violations must be pleaded with a reasonable degree of precision.
 - ii. The Articles of the Constitution which entitles rights to the Petitioners must be precisely enumerated and how one is entitled to the same.
 - iii. The violations must be particularized in precise manner.
 - iv. The manner in which the alleged violations were committed and to what extent must be clearly stated;
24. to submit that the Petitioners had failed to demonstrate through cogent evidence how the 1st Respondent had allegedly violated the constitutional provisions that had been cited. That indeed, whereas the Petitioners had stated that there was an “intended compulsory acquisition” of the suit properties for purposes of constructing a railway line by the 1st Respondent who had not consulted and engaged them, no evidence had been placed on record to support their averments.
25. Reliance was also placed on the provisions of Sections 107-122 of the Land Act No. 6 of 2012 to submit that they had not presented any request through their parent Ministry to the 3rd Respondent for acquisition of land for a railway project.
26. That since the burden of proof lay with the Petitioners, it was incumbent upon them to lay down evidence in support of the violation as had been alleged. It was thus their submission that in the absence of such evidence, the court could not make any pronouncements on the issues that had been raised vis a vis the alleged constitutional violations. Reliance was placed on the decided case of Consumer Federation of Kenya v Toyota Motors Corporation & 4 others [2022] KRHC 15459 (KLR). Further reliance was placed on the decision in the case of Nabhan & another v National Land Commission & 3 others [2025] KEELC 1108 (KLR) to urge the court to dismiss the instant Petition since the discussion of any compulsory acquisition was far-fetched.
27. Its submission was that a Petition could not be based on suspicions or paranoia, instead, a Petitioner must demonstrate through evidence the alleged infringement or threatened infringement to the required standard to afford a finding in their favour. That the Petitioners herein had failed to meet the said requirement hence the court should make a finding that their right to property had not been threatened, infringed and/or violated.
28. That in any case, contrary to the Petitioners allegations, it would prima facie appear that the suit properties herein had been acquired fraudulently as they had formed part of the land vested in the 1st Respondent. That the suit properties sat on the railway reserve hence a public land which was not available for allocation for private use since the provisions of Article 40 of the Constitution was to the effect that the right to acquire and own property did not extend to property that had been acquired unlawfully. That indeed, the 1st Respondent was at liberty to follow the laid-out procedure to recover any illegally allocated land which liberty should not be curtailed through the orders sought herein.
29. On the second issue for determination as to whether the Petitioners were entitled to the orders sought, its submission was that the Petitioners having failed to prove the actual or threatened violations of their rights, a declaratory order could not issue. That whereas the burden of proof lay with the Petitioners and which burden they ought to have discharged to the required legal standard; the Petitioners had not presented any evidence of the alleged intended compulsory acquisition, thus the Petition was based on unfounded speculations and suspicions.
30. That in relation to the order of Permanent Injunction sought, it submitted that injunctive orders were equitable in nature and were issued only to deserving litigants hence a party who sought equity must



come with clean hands and equally do equity. That the Petitioners herein had approached the court with unclean hands. That in any case, they had not attained the conditions precedent for the grant of a permanent injunction to wit; the existence of a threat/violation of a constitutional right, inadequacy/insufficiency of an alternative remedy, the balance of convenience and the public policy considerations. That the Petitioners having failed to demonstrate any violation of its rights, they were automatically disentitled to an order of injunction. That the legal burden was on the Petitioners to tender evidence supporting a violation actual or threatened of its rights thus in the absence of evidence to support the violation, the prayer must fail.

31. With regards to prayer on General and Exemplary damages for trespass to property, it submitted that the same must fail since no evidence had been adduced before the Court of any alleged trespass to property. That it was trite law that he who alleges must prove hence the Petitioners having failed to prove the alleged trespass by the 1st Respondent, the prayer for damages could not stand.
32. That there had been no compulsory acquisition of the Petitioner's land or the undertaking of the same by the 3rd Respondent on behalf of the 1st Respondent and therefore the order for compensation at the prevailing market rate as sought was premature and must fail.
33. While placing reliance on the Supreme Court's decision in the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others, Sup. Ct. Petition No. 4 of 2012 [2014] eKLR, the 1st Respondent submitted that it was a legal principle that costs ordinarily follow the event and was to compensate the successful party for the labour in defending or prosecuting a suit rather than punishing the losing party. That it should be awarded costs, especially taking into account that it had used public resources to defend the suit against the present Petition which was unfounded, baseless, an abuse of the court process and a waste of judicial time and resources.
34. They thus urged the court to dismiss the Petition.

Determination.

35. Having considered the Petition, the response thereto, the submissions, the authorities cited and the relevant law, I find that I need to determine in the first instance whether claims of statutory violations could give rise to constitutional violations and whether the Court has jurisdiction to entertain the Petitioner's Petition herein.
36. The threshold of what constitutes a constitutional Petition has been established in the case of Anarita Karimi Njeru vs The Republic [1979] eKLR where the court had held that a Constitutional Petition should set out with a degree of precision the Petitioner's complaint, the provisions infringed and the manner in which they are alleged to have been infringed.
37. This principle was later reaffirmed by the Court of Appeal in the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR where the Court had stated as follows:-

“It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of the Constitution of Kenya and the Ethics and Anti-corruption Commission Act, 2011, accordingly the petition did not meet the standard enunciated in the Anarita Karimi Njeru case.”
38. It is clear from their Petition, the Petitioners seem to argue that the 1st Respondent was bent on Compulsory acquiring their properties without consultation and negotiations, which properties they



had bought from the initial proprietors as bonfide purchasers without notice of any fraud to the titles held. That they had extensively developed most of the land for which they stood to suffer serious and irreparable losses should the 1st Respondent proceed to take possession of the same and demolish the structures.

39. The 1st Respondents response had been that there had been no compulsory acquisition of the Petitioner's land or the undertaking of the same by the 3rd Respondent on behalf of the 1st Respondent. That the Petition was founded on speculations and should be dismissed. That indeed suit properties herein related to a railway line corridor running from Gilgil Railway Station to Lanet Railway Station through Eburu and Elementaita station, thus the Petitioners' claim was based on fraudulent acquisitions of titles to land belonging to the 1st Respondent wherein parcels No. Gilgil/Gilgil Block 1/9802, 9801, 1900, 9799 and 9798 were fully within the Railway Reserve while Gilgil/Gilgil Block 1/742, 743, 744, 745, 520, 746, 914, 764 and 988 were partially encroaching on the Railway Reserve.
40. That the Petition fell short of the threshold set out in the case of Anarita Karimi Njeru (supra) as it did not disclose adequate particulars in support of the alleged violations of the Constitution to enable the court to grant the reliefs sought.
41. I find the issues arising herein for determination being as follows:-
- i. Whether the Petition discloses a legal interest capable of protection under the law.
 - ii. Whether the Petitioners' rights under the Constitution had been infringed.
 - iii. Whether the Petitioners are entitled to the orders sought in the Petition?
42. On the first issue for determination, it was incumbent of the Petitioners not only to clearly identify the relevant and specific Articles of the Constitution that had been violated, but also to avail evidence, through affidavit or otherwise of such violation particularity and specificity how their rights had been violated, infringed or threatened, as cited under Articles 2, 19, 20, 22, 23, 27, 40 and 47 of the Constitution, as per the principles laid down in respect of the Constitutional Petitions as set out in the case of Anarita Karimi Njeru (Supra) to wit:-
- i. Specifically set out the provisions in the Constitution that had been allegedly violated;
 - ii. Provide the particulars of the alleged violations;
 - iii. Provide particulars in which the Respondents had purportedly infringed their rights.
43. All that I hear the Petitioners state was that they had bought their parcels of land as bonafide purchasers from the initial proprietors wherein they had been issued with titles which were free from any encumbrances are stipulated under Section 26 of the Land Registration Act, wherein the 1st Respondent through Mumbi Company Limited and while accompanied by police officers, had encroached into the suit properties herein and commenced illegal mapping, resurveying and sampling with an intention of compulsorily acquiring the suit properties without consultation and engagement with them which act was illegal and a contravention of their Constitutional rights.
44. A constitutional question is an issue whose resolution requires the interpretation of a Constitution rather than that of a statute. The particular question to be decided herein so as to put this matter into the ambit of a Petition was whether the state was liable for acts committed by its agents while on duty. In this case, I find the answer in the negative as constitutional rights protect individuals from governmental injury and regulate the discretion of the Government to inflict injury. No such evidence had been adduced by the Petitioners. Reference is made to the decision by Justice Mumbi Ngugi as (she then was) in Joseph C. Kiptoo & another v Kericho Water and Sewerage Company [2016] eKLR.



45. Looking at the prayers sought by the Petitioners as well as their arguments in support thereto, it is not in doubt that they seek to be declared as the registered proprietors to the suit parcels of land hereinabove mentioned for which the 1st Defendant had sought to compulsorily acquire, and thereafter an injunction be issued against the Respondents herein restraining them from interfering with such ownership. No evidence of communication of such an intent had been submitted.
46. The 1st Respondent in their response have stated that apart from the fact that they had not sought to compulsorily acquire the suit parcels of land for which no evidence had been tendered, on the other hand, the Petitioners had encroached on the Railway line reserve using fraudulent titles.
47. In the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR the Supreme Court had observed as follows:

“Although article 22(1) of the *Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru v Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the *Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

48. Could the Petitioners herein then bring a Constitutional Petition to claim that there had been an intended compulsory acquisition of their land in violation of their rights to own property under Articles 2, 19, 20, 22, 23, 27, 40 and 47 of the *Constitution* and more so when the 1st Respondent has pleaded encroachment and fraud in the acquisition of the titles held? The answer is negative. The court finds that the remedy for the Petitioners would lie in the ordinary civil statute and not in a Constitutional Petition.
49. Indeed the Supreme Court of Kenya considered the question as to whether where a legislation has provided a remedy and prescribed a clear procedure for address of a particular grievance, a litigant can invoke the provisions of the *Constitution* for redress of such grievance, wherein it had termed this situation as ‘the principle of Constitutional avoidance’ wherein in the case of *Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others* [2014] eKLR the Supreme Court had defined the same as follows: -

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

....I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”



50. While in the case of R.G Patel vs Lalji Makanji 1957 E.A 314, the Court of Appeal stated as follows:

“Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.

51. The Black’s Law Dictionary 9th Edition defines a bona fide purchaser as:

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One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

52. From the above holding and definition, it is clear that while a constitutional issue might arise tangentially in a case involving fraud or property disputes (e.g., if a fundamental right like the right to property is alleged to have been violated due to a specific action by the state or a state agent), the core factual determination of whether the titles were obtained through fraud or if someone is a bona fide purchaser is outside the scope and procedural capacity of a typical constitutional petition. These are matters for the ordinary civil justice system before courts which are equipped to handle extensive factual investigations, witness testimonies, and cross-examinations necessary to resolve the disputes.

53. It is therefore an established principle that where a party has remedies in an ordinary civil law, or remedies provided for in statute, (s)he, or in this case they, need to pursue those remedies and follow the provisions of the laid down statute, rather than invoking the Constitution. Indeed, in many instances, a Constitutional Petition is not the best avenue to take where there is an established civil remedy and procedure, for it may happen that there are facts in contention which can only be tested when the suit is heard in the manner that civil suits are ordinarily conducted. See Bandari Investment Company Limited v National Police Service & others [2021] eKLR.

54. To conclude, courts must at all times guard against improper transmission of normal disputes or ordinary issues of litigation being clothed as Constitutional Petitions. I find that the limitations in the Petitioners Petition leaves me with no other option but to strike out their Petition dated the 9th February, 2024 which I now do, with costs to the 1st Respondent.

It is ordered.

DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 10TH DAY OF JULY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

