



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Papiyio Investment Limited v Murero & 3 others; Murero & 2 others (Cross Petitioner)
(Petition E006 of 2024) [2025] KEELC 6037 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6037 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
PETITION E006 OF 2024
LN GACHERU, J
SEPTEMBER 18, 2025

IN THE MATTER OF THE PREAMBLE TO THE CONSTITUTION OF KENYA
2010
AND
IN THE MATTER OF ARTICLES 22, 23, 159, 162(2), 165 AND 258 OF
THE CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 3(1), 10,19,20,21 27(1),
40,47, 48, 50,60 AND 64 OF THE CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE
RULES 2013
AND
IN THE MATTER OF SECTION 3 AND 13 OF THE ENVIRONMENT &
LAND COURT ACT, NO 19 OF 2011
AND
IN THE MATTER OF SECTIONS 30,35,37 79(1) &86 OF THE LAND
REGISTRATION ACT, NO 3 OF THE 2012

BETWEEN
PAPIYIO INVESTMENT LIMITED PETITIONER



AND

WILLIAM MURERO 1ST RESPONDENT
DANIEL MURERO 2ND RESPONDENT
THE LAND REGISTRAR, NAROK 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT

AND

WILLIAM MURERO CROSS PETITIONER
DANIEL MURERO CROSS PETITIONER
WILLIAM MURERO & DANIEL MURERO (SUING AS JOINT
ADMINISTRATORS OF THE ESTATE OF JOHN TUPENET MURERO
(DECEASED) CROSS PETITIONER

JUDGMENT

1. Petitioner herein Papiyio Investments Ltd, claims that it is the registered proprietor of Title No. CIS Mara/Lemek/190, since 26th July 2007, after purchase from the 1st & 2nd Respondents, who are the appointed trustees of their late father’s estate on behalf of the deceased’s children. Their deceased father was a holder of Title Deed No.36XXXX7, in the name of John Tupenet Murero. The Petitioner further claims that it is the holder of Title Deed No. 56178, and it had carried out multiple official searches, which confirmed its proprietorship.
2. These official searches were allegedly done in the years 2009 and 2022, and the said searches showed that the Petitioner was the proprietor of the suit land. However, in the years 2023 and 2024, the searches showed that the suit land had been re-transferred to the names of 1st and 2nd Respondents, without consent of the Petitioner, thus depriving the Petitioner of its right to property, which is a constitutional violation.
3. Further, the Petitioner claimed that on 12th October 2012, a Court Order was registered against the title, and all transactions dealing with the said land were halted, until full determination of Succession Cause No. 95 of 2006.
4. A further Order was entered on 26th June 2013, to the same effect, that no dealings should be done on the suit land until the aforesaid Succession Cause was finalized. However, on 18th October 213, an entry was made to remove the earlier entry for no dealing with the land. On the same date, the 1st and 2nd Respondents were registered as proprietors of the suit land, and a Certificate of title No 050XXXX11 was issued.
5. The Petitioner was shocked to learn about the said issuance of a title deed of the suit land to the 1st and 2nd Respondents, as the said Respondents had been registered as proprietors even before the Succession Cause had been determined. Further that in 2022, it came to the attention of the Petitioner that there were attempts to sell the suit land to 3rd parties, and potential buyers had visited the suit land. Consequently, the Petitioner lodged a caution on the suit land on 22nd November 2022, which was filed by Patel Gopal Dhanji Velji (PW1), one of the Directors and a shareholder of the Petitioner, claiming beneficiary interest.



6. On 24th November 2022, the Petitioner conducted a search and was issued with an Official Search No. 1201/11/2022, which showed that the Petitioner was the registered owner of the suit land, with an encumbrance being a Court Order registered against the said title and caution.
7. Further, that when speculation of the sale of the suit land heightened in 2023, the Petitioner conducted a search over the title of the suit land, and to its shock, the search showed the 1st and 2nd Respondents as the registered proprietors of the suit land, as from 18th October 2013. Consequently, Patel Gopal Dhanji Velji (PW1), placed a caution on the suit land on 7th September 2023.
8. Another search was conducted on 24th January 2024, which also showed that the 1st and 2nd Respondents were still the registered proprietors of the suit land, and its attempt to have the record rectified by 3rd Respondent has born no fruits.
9. It was its claims that the Respondents' actions constitute fraudulent deprivation of its property rights under Article 40 of the Constitution. The Petitioner particularized the alleged violations as follows;
 - Article 40(1) & (2): Right to property, protection against arbitrary deprivation.
 - Article 10: National values – integrity, transparency, accountability, violated by fraudulent registration.
 - Articles 27, 47, 48, 50, 60, 64, 159, 165, 258 & 259: Equality, fair administrative action, access to justice, judicial authority, and enforcement of rights.
10. It was its further claim that both the Environment and Land Court & Land Registration Acts grant jurisdiction and mandate to this court to rectify the register, protect titles, and punish fraudulent dealings.
11. Therefore, the Petitioner has sought for the following prayers and /or reliefs;
 1. Declaration of legal ownership of the suit property, being Cis Mara/ Lemek/190.
 2. Declaration that deprivation of the petitioner's quiet enjoyment of their property is a violation of its constitutional rights.
 3. Declaration that the registration of the 1st and 2nd Respondents' as the proprietors of the suit land was an unfair administrative action.
 4. Permanent injunction restraining 1st and 2nd Respondents, their servants, agents trustees or representatives acting under them from trespassing /alienating and or interfering with the suit land (Cis Mara/ Lemek/190).
5. An order of Mandamus to compel the Land Registrar, Narok to rectify the register of the suit land, Cis Mara/Lemek/190, to remove entries No. 8–11,
 6. An order of Mandamus to the Land Registrar, Narok to ensure that any other title deed to the suit land are destroy for being fraudulent titles.
 7. Compensation to the Petitioner for loss of use of the said parcel of land, Cis Mara/Lemek/ 190
 8. General, exemplary, and constitutional damages to remedy the oppressive, arbitrary and unconstitutional actions of the petitioner.
 9. Costs of the Petition



10. Any other relief the court may deem it fit to grant.
12. The Petition is opposed by the Respondents herein. The 1st and 2nd Respondents filed their Response to the Petition and Cross Petition on dated 24th June 2024, and denied all the allegations made by the Petitioner, and claimed against it.
13. It was the 1st and 2nd Respondents' averments that they have never held the suit land in their personal capacity, but they got registered as proprietors of the said suit land on 25th October 2006, to hold it in trust for the beneficiaries of the estate of John Tupenet Murero(deceased), being the administrators of the said estate, pursuant to a Grant of Letters of Administration issued to them in Nairobi Succession Cause No 95 of 2006.
14. The 1st and 2nd Respondents also averred that the Petition herein is bad in law, as they are non- suited and the said Petition ought to be struck out in limine for being incompetent, as the Petitioner is abusing the court process.
15. Further, it was pleaded that the Petition is grossly incompetent, which is disguised as constitutional Petition without any constitutional violations demonstrated, and yet in para 52, the Petitioner made allegations of fraud, without any particulars pleaded thereon. They urged the court to strike out the Petition with costs.
16. The 1st and 2nd Respondents reiterated that they are not the proprietors of the suit property, but alleged that the said land is registered in the names of the trustees of the estate of John Tupenet Murero, since 25th October 2006, under Certificate of Confirmed Grant dated 15th September 2006, and as trustees, they have never conveyed the suit land to any party at all, leave alone the Petitioner herein.
17. They denied ever having signed any sale agreement over the sale of the suit land to the Petitioner and/ or any other party, and there is no justifiable cause of action enforceable in law as claimed by the Petitioner, and hence no constitutional rights have been breached, as no interest over the suit land vested to the Petitioner, as provided by section 24 of the [Land Registration Act](#).
18. Further, the 1st and 2nd Respondents averred that the Petitioner has no cause of action, since even if the Petitioner had any claim against them, it failed to comply with section 6(1) of the [Land Control Act](#), as it did not produce prove of consent from the Land Control Board.
19. In conclusion, the 1st and 2nd Respondents averred that the Petitioner's case is not enforceable since the two trustees never sold the suit land to the Petitioner as they are not private proprietors, but are Trustees of the Estate of John Tupenet Murero (their late father) under Succession Cause No. 95 of 2006.
20. Further, as Trustees, they hold the land in trust for estate's beneficiaries, but not in their individual capacity, and have held this Trusteeship since 2006, wherein they were registered only as trustees under a Cconfirmed Grant; which Grant has never been revoked.
21. They argued that there was no valid sale, since no sale agreement, or Land Control Board consent were exhibited by the Petitioner to prove its allegation of purchase of the suit land. Further, they argued that the Petitioner's title, searches, and alleged transfer are fraudulent; collusion between Petitioner & and the Land Registrar, Narok. Therefore, the Petitioner's documents breach the [Land Registration Act](#), [Land Control Act](#), and the [Law of Succession Act](#), and further this matter belongs to Succession proceedings/ Court, and not an ELC Petition.
22. It was their further allegation that Succession proceedings over the Estate of John Tupenet Murero are still pending, and vide a letter dated 30th November 2023, it is evident that the said Succession Cause



95/2006, is still undetermined. Therefore, for the above reasons, the Petitioner is unlawfully occupying the deceased 's estate land.

23. The 1st and 2nd Respondents filed a Cross- Petition, wherein they sought for the following orders;
 - a. Petition be struck out in limine.
 - b. Declaration that the suit land belongs to the estate of John Tupenet Murero, and not Petitioner herein.
 - c. Dismissal of Petitioner's claims with costs.
24. The 3rd & 4th Respondents filed their response to the Petition dated 23rd May 2025, through Ms. Mwihaki Ndundu, a Principal State Counsel at the AG'S Office.
25. The 3rd and 4th Respondents denied all the allegations made by the Petitioner, and further denied any complicity in fraud or arbitrary deprivation of the Petitioner's right to property, and did put the Petitioner to strict proof of ownership, fraud, and constitutional violations.
26. They also claimed that since there was no violation of rights shown by the Petitioner, then the Petition is defective. Therefore, they prayed for the Petition herein to be dismissed with costs.
27. The Petitioner filed Supplementary Affidavit in support of the Petition, dated 4th July 2024, and averred that the 1st and 2nd Respondents were once Directors and/or Shareholders of Papiyio Investment Ltd, the Petitioner herein, but later resigned after transferring their shares for valuable consideration. Further, that no court has ever revoked the title deed held by the Petitioner, and it is a shocking on how the 3rd Respondent extinguished the Petitioner's right to property, and therefore, the action of the 3rd Respondent violated the Petitioner's right to property.
28. The Petitioner reiterated that the 3rd Respondent has been complicit and aided in the fraudulent dealings of the 1st and 2nd Respondents in issuing them with a second title deed No 050XXXXX11, on 25th October 2013. Therefore, the actions of the Respondents invariably violated the rights of the petitioner to property.
29. The matter was canvassed by way of viva voce evidence. The Petitioner called one witness, whereas, the 1st and 2nd Respondents called two witness, and closed its case. The 3rd and 4th Respondents did not call any witness.

Petitioner's Case

30. PW1 Gopal Dhanji Velji Patel, one of the Directors and a Shareholder of Papiyio Investment Ltd, testified that he filed two Affidavits in support of the Petition herein, which Affidavits were adopted as his evidence in chief. He also produced the annexures attached to the Affidavits as exhibits in support of the Petition.
31. In cross examination, PW1 reiterated that he had authority of Papiyio Investment Ltd(Petitioner), to represent them in court. He confirmed that though he averred that the Petitioner acquired the suit land on 27th July 2007, there was no sale agreement between the Petitioner and the 1st and 2nd Respondents that was produced as an exhibit.
32. Further, he testified that though there was consent of the beneficiaries, he did not produce that consent as an exhibit nor the Land Control Board's consent. He further testified that the Petitioner discovered the land was registered in the name of the 1st and 2nd Respondents on 13th September 2023, but filed this Petition on 28th May 2024.



33. He admitted that the 1st and 2nd Respondents were registered as proprietors of the suit land to hold it in trust for the children of the deceased, and that the estate of the deceased got registered on the title on 18th October 2013. He also admitted existence of Succession Cause No 95 of 2006, but he alleged that in 2012, the suit land did not form part of the estate of the deceased.
34. It was his evidence that there was Confirmation of Grant, wherein the suit land was registered in the names of the 1st and 2nd Respondents, but the said Grant has never been set aside. He also confirmed that Papiyio Investment Ltd is a private company, and the estate of John Tupenet Murero, was not represented in the Articles and Memo of Association of the said Company. He further testified that the 1st and 2nd Respondents are trustees of the estate of John Tupenet Murero, and the Petitioner has sought for various declarations, among them an order of Mandamus to cancel the entries in the title deed.
35. Further, he testified that though the Petitioner alleged that it had built a hotel on the suit land, the witness (PW1) did not produce any documents for the said development, and that the 1st and 2nd Respondents ceased being shareholders of Papiyio Investment Ltd, and he denied that the Petitioner is defrauding the estate of John Tupenet Murero.
36. Upon being cross examined by counsel for the 3rd and 4th Respondents, he testified that the 1st and 2nd Respondents connived with 3rd Respondent to defraud the petitioner.
37. On re-exam, he testified that he bought shares at Papiyio Investment Ltd, and by then, the sale of the suit land to Papiyio Investment Ltd had already taken place. Further that by 26th July 2007, when the suit land was registered in the name of the Petitioner, the main shareholder was Merica Holdings Ltd, together with the 1st and 2nd Respondents. He claimed that he was never charged with fraudulently registering of the parcel of land, and it was his further allegation that the members of the family of John Tupenet Murero or the beneficiaries were involved in the sale of the suit land to the Petitioner.
38. Pw1 reiterated that on the search done on 23rd November 2022, the said search showed that the suit land was registered in the in the name of the Petitioner, and there was a caution thereon, wherein the Petitioner was claiming beneficial interest. He claimed that the Petitioner never re-transferred the land to the Mureros, and the entry showing the suit land is owned by the Mureros was fraudulently done.
39. He also claimed that the suit land did not form part of the estate of the deceased in 2012, and the Land Registrar colluded with 1st and 2nd Respondents to have the suit land registered in the names of the 1st and 2nd Respondents.

The Respondents Case.

40. DW1: Philip Mathew Odida, the Land Registrar -Narok, informed the court that the Land Registrar has been sued in the Petition and Cross Petition. He gave evidence in respect of the suit land, Cis Mara/ Lemek/ 190, and produced documents in relation to entries made on the Green Card of the suit land.
41. It was his evidence that the suit land herein is a subdivision of land parcel No Cis Mara/ Lemek/ 140, and is approx. 20 acres, which first registration was done in the year 1989, in the name of John Tupenet Murero, and a title deed was issued on the same day. However, on 25th October 2006, the suit land was registered in the name of William and Daniel Mureros, as the Administrators of the estate of their late father (John Tupenet Murero), to hold it in trust for the children of the deceased.
42. Further, that on 26th July 2007, the suit land was registered in the name of the Papiyo Investment Ltd, and a title deed was issued the same day. Again, on 12th October 2012, there was a court order registered



- against the title, which halted any dealing on the suit land until the Succession Cause No 95 of 2006, was finalized.
43. The same Order of no dealing until Succession Cause was finalized was made on 26th June 2013, and on 18th October 2013, the court order was removed as the said Succession Cause No 95 of 2006, was determined. On the same day, William and Daniel Mureros were registered as the proprietors of the suit land to hold in trust for the children of deceased, and a title deed was issued.
 44. Further, a caution was placed by Patel Gopal Dhanji Velji on 7th September 2023, who claimed interest as proprietor and shareholder of Papiyo Investment Ltd. On 30th May 2024, a temporary injunction was recorded on the suit land, restricting any dealings on the said land until the hearing and determination of the application.
 45. He testified that the suit land has two sets of Green cards. The second card was opened after Succession Cause of 2006, and the first one was opened in 1989. There are also two Court Orders in the parcel file, emanating from Succession Cause No 95 of 2006. First order was issued on 11th December 2012, and the second is dated 5th June 2013, and the property was registered in the names of the administrators of the estate. He did not have copies of Certificates of titles, but the title deed in the names of the trustees was issued on 25th June 2006, being serial No 36XXXX7.
 46. Another title deed was issued in favour of Papiyo Investment Ltd, and since it was a transfer, the Land Control Board Consent was mandatory and/or needed. He further testified that he did not have all the documents for the purposes of Stamp duty and for transfer purposes.
 47. Upon being cross examined by Ms Karbor for the 3rd and 4th Respondents, he stated that the entries on the Green Card are based on the documents presented to the Lands office, but the parcel file in respect of the suit land had many missing documents. He denied that the Lands Registry violated the interests of the Petitioner, and that many of the entries were made out of court orders.
 48. On cross exam by Mr Michuki, counsel for the Petitioner, he confirmed that the parcel file had missing documents, and since there are entries made, the presumption was that the relevant documents were produced, when the transfer was made in favour of Papiyo Investment Ltd. He also confirmed that he had not seen title deed No 36XXXX7, the title in favour of the Mureros.
 49. He also testified that if the Mureros did not transfer the suit land, they would be holding the original title deed, and that no title has been cancelled. He also confirmed that as at 24th November 2022, the proprietor of the suit land was Papiyo Investments Ltd, but it was not shown when the title was issued. It was his evidence that entry No 4 was never cancelled on the Green card.
 50. On re-exam, he confirmed that entry No 10 was not captured in the search, and therefore, the search was incomplete.
 51. DW2: William Rakita Murero, the 1st Respondent told the court that Daniel Murero is his brother, and they are both Cross-petitioners, and Legal Administrators of the estate of John Tupenet Murero. He relied entirely on their Affidavit in opposition to the Petition and support of the Cross-petition. He also produced the documents attached to the Affidavit as his exhibits in court. He urged the court to allow their cross petition and dismiss the petition herein.
 52. On being cross examined by Ms Karbor, the State counsel, he testified that he resigned from Papiyo Investment Ltd, when he noted that the Petitioner wanted to take away their land.



53. Upon being cross examined by Mr Michuki for the Petitioner, he confirmed that he was once a shareholder at Papiyio Investment Ltd, and he confirmed the signatures on the documents for registration of the Company as belonging to him.
54. He confirmed that in Nakuru HCC Case No of 2011, he had indicated that they formed Papiyio Investment ltd for easy management of the suit land, and thus the suit land was transferred to the Petitioner, but it was his evidence that the land was not sold to the Petitioner. He testified that they registered the suit land in the name of the Company because they were shareholders, but they did not sell the said land to the Petitioner. He further confirmed that the land now is in their names, as trustees of the estate of John Tupenet Murero.
55. It was his evidence that his brothers have not sued him over the transfer of the suit land to Papiyio Investment Ltd, and no court has held that the said transfer was irregular. Further, he testified that they left the Company, and they did sell their shares in the Company, and the other family members sold their shares of Papiyio Investments Ltd, and the most important asset was the suit land, which belonged to the beneficiaries of the estate of John Tupenet Murero.
56. He confirmed that he resigned from the Company (Papiyio Investment), and he signed an Affidavit for transfer of his shares to Sahkar Company Ltd. Further, that though he signed the Affidavit, he did not understand its contents, and he did not transfer the land to Sahkar Co. Ltd, when he transferred his shares. He claimed that the trustees regained the suit land back after resigning from Papiyio Investment Co Ltd.
57. The witness further confirmed that in 2013, he reported that the title deed to the suit land was lost, but his brothers did not swear an Affidavit that they had a problem with the sale of the land to Papiyio Investments Ltd, and the said brothers were paid some money for the sale of the shares to Papiyio Investments Ltd.
58. On re-exam, he confirmed that his family did not sign any sale agreement for transfer of the suit land to Papiyio Investments Ltd, and that only Daniel and himself were shareholders in Papiyio Investments Ltd, and not the whole of Mureros family. It was his further evidence that the suit land has gone back to the family of Murero, and the suit land was identified as part of a family land for the estate of John Tupenet Murero, and not the petitioner.
59. After the close of viva voce evidence, the court directed the parties to file and exchange written submissions. In compliance thereto, the petitioner herein filed its submissions dated 16th July 2025, through K. Michuki Law Advocates, and raised several issues for determination being
 - i. whether Patel Gopal Dhanji Velji was authorized to act on behalf of the petitioner;
 - ii. whether the petitioner is the absolute and indefeasible proprietor of the suit land known as Cis mara / Lemek/ 190;
 - iii. whether the re-registration of the cross-petitioners as proprietors of the suit land was fraudulent and unlawful thus amounting to an unfair administrative actions;
 - iv. whether the petitioner's constitutional rights were violated;
 - v. what orders avail themselves to the petitioner;



60. The Petitioner relied on various authorities being; Kibos Distillers limited & 4 others vs Benson Ambuti Adegwa & 3 others [2020]KECA, Seascapes Limited vs Development Finance Company of Kenya Limited [2009]eklr, Njenga & 3 others vs Ndua & another[2021]KECA 253(KLR) and Gitwany Investment Limited vs Tajmal Limited & others (2006)eklr among others.
61. The 1st and 2nd Respondents filed two sets of written submissions through J.Harrison Kinyanjui & Co Advocates in opposition to the Petition herein, and in support of the Cross-petition. The 1st and 2nd Respondents raised several issues being;
- i. whether the petitioner legally acquired the suit land;
 - ii. whether there is a valid sale agreement over the suit land;
 - iii. whether there is a Land Control Board Consent for sale of the suit land;
 - iv. whether the petitioner is entitled to the reliefs sought in the petition;
 - v. whether the cross-petitioners are entitled to the orders sought in their cross-petition;
 - vi. who should pay costs of the petition and Cross-petition.
62. The 1st and 2nd Respondents/ Cross -Petitioners relied on various decided cases among them; Samuel Kamere vs Lands Registrar Kajiado (2015) eklr; Esther Ndengi Njiru & Another vs Leonard Gatei Mbugua (2020) eklr; Warari vs Wangora & Another (Civil Appeal No. 504 of 2019(2022) KECA1334 (KLR) 2 Dcember 2022) Judgment; Munyu Maina vs Hiram Gathiha Maina(2013) eklr and Mariera & Another vs Ongwancho & 2 Others (2023)KEELC 21423(KLR), and many others.
63. The court has considered the pleadings herein, the evidence adduced in court, the exhibits produced and the rival written submissions and finds the issues for determination are as follows;
- i. Whether the court has jurisdiction to hear and determines the suit herein;
 - ii. Who is the owner of the suit land, Cis Mara /Lemek/ 190;
 - iii. Was there fraud in registration of the suit land in favor of the petitioner herein, and or in the re-transfer of the suit land to the 1st and 2nd Respondents;
 - iv. Is the petitioner entitled to the orders sought in the petition;
 - v. Are the cross-petitioners entitled to the orders sought;
 - vi. who should bear costs of the petition and cross -petition.
64. The first issue for determination is whether the court has Jurisdiction to hear and determines this matter. In its pleadings, the Petitioner alleged that the Respondents have violated its constitutional rights to own and enjoy its property, and as provided by *the Constitution* and the *Environment and Land Court Act*, this Court has Jurisdiction to hear and determines the issues raised in the instant petition.
65. On their part, the 1st and 2nd Respondents averred that this court has no jurisdiction to hear and determines this Petition, as the issues raised thereon emanates from succession proceedings, and are succession matters and therefore, the suit should have been filed in a Succession Court and / or proceedings, but not through an ELC Petition. It was further pleaded and submitted that this matter is subject of an active succession proceedings and should not be heard in this court.



66. However, the Petitioner pleaded and submitted that the Petition herein is over redress for violation of the Petitioner's rights to property as enshrined in Article 40 of *the Constitution*, violation of right to Fair Administrative action as provided by Article 47 of *the Constitution*, and have sought for remedies for such infringement and/ or deprivation, which redress and remedies falls under the jurisdiction of ELC and not a Succession Court.

67. Jurisdiction is everything, and without jurisdiction, a court has no business proceeding with a matter, and the only option available to such court is to down its tools. See the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, where the Court of Appeal held;

"... it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

68. It is also evident that jurisdiction flows from *the Constitution*, or written laws, and a court cannot arrogate jurisdiction to itself. See the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, where the Supreme Court of Kenya held;

"A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law. The issue as to whether a court of law had jurisdiction to entertain a matter before it, was not one of mere procedural technicality; it went to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.

Where *the Constitution* exhaustively provided for the jurisdiction of a court of law, the court must operate within the constitutional limits. It could not expand its jurisdiction through judicial craft or innovation"

69. Jurisdiction is defined in Halsbury's Laws of England (4th Ed.) Vol. 9 as;

"...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.". Further, Black's Law Dictionary, 9th Edition, defines jurisdiction as "the Court's power to entertain, hear and determine a dispute before it."

70. The Court of Appeal in the case of Jamal Salim v Yusuf Abdulahi Abdi & another Civil Appeal No. 103 of 2016 [2018] eKLR, held as follows: -

"Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in the case of Adero & Another vs. Ulinzi Sacco Society Limited [2002] 1 KLR 577, as follows;

1. "....."
2. The jurisdiction either exists or does not ab initio ...



3. jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
4. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”

71. Further, on the centrality of jurisdiction, the Court of Appeal in the case of *Kakuta Maimai Hamisi - vs- Peris Pesi Tobiko & 2 Others* (2013) eKLR stated as follows;

“So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren *cui-de-sac*. Courts, like nature, must not sit in vain.”

72. It is the 1st and 2nd Respondents’ contention that the Petition herein does not raise any constitutional issues for it to fall squarely under the Environment and Land Court. They further contended that the issues raised herein are probate or succession issues which falls under the purview or jurisdiction of the Family Court, and the Succession Cause that issued Confirmed Grant over the estate of the late John Tupenet Murero, is still on going, and thus this matter should not have been filed in ELC, but in a Succession court.

73. However, the court has considered the Petition herein, and the bone of contention is that the Petitioner as the registered owner of the suit land Cis Mara/ Lemek/ 190, has been deprived of its right to property, when the said land was illegally registered in the names of the 1st and 2nd Respondents without the knowledge of the Petitioner. Further that the said action deprived the Petitioner of right to fair administrative action, and due to the said unconstitutional actions of the Respondents, it sought for various declarations, to restore it back to its earlier position before the alleged violations of its rights as redress for such violations.

74. Are the claims herein by the Petitioner constitutional claims on the right to property, or are claims on the right to inheritance? The court has considered the Petition herein and the legal foundation of the said petition, and indeed, the Petitioner has laid the basis of the various constitutional violations by the Respondents, and has quoted the various Articles of *the Constitution* that have allegedly been breached by the Respondents. The Petitioner has alleged that its rights to own property has been violated and/ or breached, and therefore the Petition herein is on right to property, and not on the issues of inheritance as provided by the *Law of Succession Act*.

75. The jurisdiction of this court is provided by Article 162(2)(b) of *the Constitution* which states;

- 2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (b) the environment and the use and occupation of, and title to, land.

76. It is evident that the Environment and Land Court (ELC) has original and appellate jurisdiction over disputes relating to land, such as title, tenure, use, and administration, as well as environmental and natural resources matters like climate change and compulsory land acquisition. Its jurisdiction is as



defined by Article 162(2)(b) of *the Constitution* and the *Environment and Land Court Act*. See Section 13(1) of ELC Act, which provides;

“ 13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.”

77. Section 13(3) grants the Environment and Land Court (ELC), the jurisdiction to hear and determine Petitions for the redress of a denial, violation, or infringement of, or a threat to, rights or fundamental freedoms related to environment and land under *the Constitution*. This allows parties to seek enforcement of constitutional rights through the ELC for issues within its mandate. Such redress can be sought through ELC Petitions such as the instant Petition.

78. Therefore, when a constitutional right concerning the environment or land is allegedly violated, denied, or threatened, a party can file a Petition in the Environment and Land Court, relying on Section 13(3) of the ELC Act to bring the matter for determination and enforcement of those rights. See Section 13(3) of ELC Act, which provides; “(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.”

79. The Petitioner herein has invoked the above provisions of *the Constitution* and the ELC Act to bring this Petition, which falls within the jurisdiction of the ELC. Section 13(7) of the said Act provides the remedies that can be granted by the ELC court, among them declarations and award of damages and costs. Thus, this court finds and holds that it has jurisdiction to hear and determines this Petition.

80. Having found that the court has jurisdiction to hear and determines this Petition, the next issue for determination is whether the Petition herein meets the principles set out in the case of Anarita Karimi Njeru vs The Republic (1976-1980) KLR(the Anarita Karimi Case), which case prescribed that a party seeking a constitutional remedy is required to set out with reasonable precision that which is complained of, noting to stipulate which constitutional provisions have been infringed and how they have been infringed.

81. In the above case, the Court (Trevelyan & Hancox JJ) held as follows;

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

82. The principles set in the above Anarita’s case essentially call upon litigants to plead their case with a high degree of specificity, thereby saving on the time required by the Court to determine the issues upon which the relevant evidence and the law should be considered.

83. The above principles were also emphasized by the Court of Appeal in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR (the Mumo Matemu Case), where the Court observed that the precision requirement in the Anarita Karimi Case is not to be mistaken for exactitude, but rather the doctrine in the Anarita Karimi Case is applied to ensure that upon proper



- definition of the issues in a constitutional Petition, the Court can apply its mind to the real issues at hand, thereby saving on judicial resources.
84. With the above background in mind, has the Petition and Cross- Petition herein met the above principles? The Petitioner has sought for declaration on various aspects on allegations that the Respondents herein did violate its right to own property as provided by Article 40 of *the Constitution*. Further, it alleged that the entry in the Green Card, wherein it was indicated as the proprietor of the suit land was changed without its knowledge and thus its right to fair administrative action was infringed.
 85. he Petitioner did cite the provisions of *the Constitution* that have been infringed, and how the said infringement has been carried out by the Respondents allegedly through collusion. After gleaning through the Petition herein and the legal background of the same, and the alleged violations, the court finds that the Petition herein meets the criteria or the principles set out in the Anarita Karimis case above quoted.
 86. On the Cross- petition, the 1st and 2nd Respondents have averred that the petitioner's alleged acquisition of the title to the suit land is against the law, and the said title is not protected as provided by Article 40(6) of *the Constitution*, and is also against the Rule of Law as envisioned in Article 10(2) of *the Constitution*. The two mentioned issues are the only constitutional issues in the Cross-Petition, as all the complaints thereon amount to breach of the rules of proper procedure in the alleged purchase of the suit land, trespass, collusion and fraud, which are claims of civil nature, and the said issues can be properly canvassed in a civil court.
 87. In the case of CNM v WGM (2018) e KLR, the court observed that a constitutional matter is one that compels a Court to consider constitutional rights or values, whereas the matters in the current case required the constitutional Court to essentially examine the contractual rights between the parties. This court finds that the Cross-petition contains hybrid of constitutional issues and civil claims. This being a constitutional Petition, the court will majorly deal with constitutional issues at hand.
 88. Given that some of the issues raised by the Cross petitioners can be raised in a civil claim, the court will apply the doctrine of constitutional avoidance in some issues, since where it is shown that there exist alternative, sufficient and adequate avenues for parties to ventilate their grievances, Courts have consistently maintained that when a party has an appropriate forum before which to seek redress, it is incumbent upon such a party to raise such concerns before the said forum instead of invoking the constitutional jurisdiction of the Court at the outset.
 89. Therefore, in its determination of the Cross-Petition, this court will only look at the constitutional issues raised thereon, but will not consider the other issues such as particulars of collusion and fraud by the Respondents in the Cross-petition, as they are not constitutional issues perse.
 90. In the case of Consumers Federation of Kenya (COFEK) (Suing Through its Officials Namely S Mutor, E Kanake and Ochieng) v Cabinet Secretary for National Treasury and Economic Planning & 24 others [2024] KEHC 16213 (KLR); the court held and noted that under the principle of constitutional avoidance, the jurisdiction of the constitutional Court is limited to protecting and enforcing constitutional rights; and not to determine concerns of performance of contractual obligations which can be properly canvassed under civil law without the need to invoke the constitutional Court's jurisdiction.
 91. Therefore, this court will only deal with the constitutional issues in the Petition and Cross-Petition and avoid the other issues that can be canvassed in a civil court.



92. With the above in mind, the court finds that the Petition herein meets the criteria for a proper Petition. Further, some of the issues raised in Cross Petition ALSO meet that criterion for a proper Petition and will be considered and determined.
93. Having found and held that the Petition herein and a portion of the Cross-petition meet the principles set out in Anaritas case, the next question to be determined is whether the Petition, and or the Cross-Petition are merited. The backbone of this Petition is the alleged infringement of the Petitioner's right to property as enshrined in Article 40 of *the Constitution*. The Petitioner averred that it is the legal owner/ proprietor of the suit land; Cis Mara/Lemek/190, which it lawful obtained registration on 27th July 2007.
94. On their part, the 1st and 2nd Respondents denied that the suit land legally belongs to the Petitioner, but contended that the said land, Cis Mara/ Lemek/190, belongs to the estate of John Tupenet Murero, and vide a Confirmed grant, it was transferred to them on 2006, to hold in trust for the children of the deceased. They denied ever selling the suit land to the Petitioner, and contended that the Petitioner's title is not protected as provided by Article 40(6) of *the Constitution*, and in remaining on the suit land, the Petitioner has breached the provisions of Article 10(2) of *the Constitution* on the rule of law.
95. For the court to determine whether the Petitioner is entitled to the reliefs sought in the Petition, and whether the Cross-Petitioners are entitled to the declaration sought that the Petitioner's title is not protected , having been unlawful acquired and should be declared so, as provided by Article 40(6) of *the Constitution*, the court will first have to determine whether the Petitioner is the lawful owner of the suit land; If so, have the Respondents infringed on its right to own property as enshrined in Article 40 of *the Constitution*; whether the Petitioner is entitled to the remedies sought. Further, whether the Cross -Petitioners are the lawful owners of the suit land.
96. At the center of the dispute herein is land parcel No Cis Mara/Lemek/190, which came into existence as a subdivision of Cis Mara/Lemek/140, which parcel of land was initially owned by the late John Tupenet Murero. This suit land, Cis Mara/ Lemek/ 190, was created and registered in the name of John Tupenet Murero in 1989, and the said John Tupenet Murero died in 1992, and a Succession Cause No.95 of 2006, in respect of his estate was filed.
97. Vide a Confirmed Grant dated 15th September 2006, the 1st and 2nd Respondents who were the administrators of the estate of the deceased (John Tupenet Murero), were registered as proprietors of the suit land, to hold in trust for the children of the deceased. A title deed was issued in their joint on 25th October 2006. It is instructive to note that this Succession Cause No. 95 of 2006, is still on going before Narok High Court after the said Cause was transferred from Milimani Family Division vide a letter dated 30th November, 2023.
98. However, in the year 2007, (26th July 2007), the suit land was registered in the name of the Petitioner, but the circumstances of the said transfer are what is contested by the 1st and 2nd Respondents. The 1st and 2nd Respondents who were shareholders of the Petitioner alleged that the suit land was registered in the name of the Petitioner for its easy management, because the two were shareholders of the Petitioner, but they did not sell the suit land to the Petitioner, since the beneficiaries of the estate of John Tupenet Murero(deceased), did not grant them permission to sell the suit land. The 1st and 2nd Respondents alleged that the suit land did not belong to them individually, but to the estate of John Tupenet Murero, and it could not be sold without the consent of the beneficiaries.
99. Of course, during the said transfer, PW1 was not in the picture as the Petitioner, Papiyio Investmet Ltd, was owned by Merica Holdings Ltd fifty percent (50) and 1st and 2rd Respondents at twenty five percent (25) each. Merica Holdings Ltd, later sold its shares in the Company to SAHKAR CO, LTD,



which was owned by PW1, and others, and later 1st and 2nd Respondents relinquished their shares in Papiyio Investment Co, Ltd by resigning and transferring their shares.

100. To the 1st 2nd Respondents, the suit land was not sold to the Petitioner, but was transferred in its name for easy management, as long as they remained shareholders in Papiyio Investment Ltd, because the suit land was for the beneficiaries of the estate of John Tupenet Murero(deceased), and could not be sold without their consent.
101. The issue that needs determination is whether there was a valid transfer of the suit land to the Petitioner, which suit land is still subject of the Succession Cause No. 95 of 2006. Could the trustees who are holding a parcel of land in trust for the beneficiaries of the estate sell the said land without the consent of the beneficiaries? Only if the court finds that the Petitioner is holding a valid title could it proceed to determine whether its constitutional rights to property has been infringed or not.
102. Further, only if the court is to find that the suit land rightful belongs to the children/ beneficiaries of the estate of John Tupenet Murero(deceased), could it then proceed to determine whether the Petitioners' alleged title to the suit land is not protected by law as provided by Article 40(6) of *the Constitution*, and that the Petitioner's continued occupation of the suit land is in breach of the rule of law, as provided by Article 10(2) of *the Constitution*.
103. When PW1 gave evidence on behalf of the Petitioner, he admitted that he is a shareholder at Sahkar Co Ltd, which Company acquired the 50% shares held by Merica Holdings Ltd on 7TH September 2011, and he could therefore not give concrete evidence on how the suit land was registered in the name of the Petitioner herein. Was it by purchase, gift or by what agreement.
104. However, PW1 admitted that he was not in possession of any sale agreement for the sale of this suit land to the Petitioner by the 1st and 2nd Respondents. Further, there was no consent from the Land Control Board nor the consents of all the beneficiaries of the estate of John Tupenet Murero, on whose benefit and behalf the 1st and 2nd Respondents were holding a title to the suit land. PW1, also confirmed that the Green Card did not indicate what was the consideration for the transfer.
105. Land acquisition by purchase is one of the processes of acquiring land in Kenya, and it is a legal requirement under Section 3(3) of the *Law of Contract Act* that any transaction touching on land must be in writing. This provision requires any agreement for the sale of land must be in writing and signed by the parties so that it can legally be enforceable.
106. In the case of St Thomas Academy Limited v Githumu Kangema Limited and Others [2024] KEELC 7025 (KLR), the court observed as follows;

“Section 3(3) of the *Law of Contract Act* read together with Section 38 of the *Land Act*, 2012 provide that no suit shall be brought upon a contract for the disposition of an interest in land unless; the contract upon which the suit is founded is in writing, signed by all the parties, and the signature of each party signing has been attested by a witness who is present when the contract was signed. This was the decision of the Court in the case of Machakos District Cooperative Union Vs Philip Nzuki Kiilu CA No 112 of 1997.”
107. There are also other decisions made in regard to disposition or sale of land without a written sale agreement, and the implication of failure to obtain the Land Control Board Consent. It is trite that failure to have a written land sale agreement makes the disposition legally invalid, as the *Law of Contract Act* (Cap. 23) section 3 mandates land sale contracts to be in writing to be enforceable. See the case



of Njiru v Orkesi & 5 others; Tumpes (Interested Party) (Environment & Land Case 671 of 2015) [2024] KEELC 3765 (KLR) (11 April 2024) (Judgment), where the court held:

“In the absence of a valid written contract for sale between the 1st Defendant and the 3rd Defendant and the lack of payment of consideration as admitted by the 3rd Defendant, there was no valid transfer of the property to the 3rd Defendant. “

108. Further, in the Case of Lucy Wangui Mwaura – v- Linet Achieng Amala [2019] eKLR, & in the case of Moses Njaramba Kamau – v – Mary Muthoni Njaramba (2017) eKLR, it was held that;

“A valid transfer of land must be preceded by a Sale agreement and a transfer document duly executed by the parties. In the latter case, the court was emphatic that Section 3(3) of the *Law of Contract Act* sets out the requirements for a valid contract for sale of Land. Being a prerequisite anchored under the Law, nothing valid can come out of an invalid contract.”

109. From the above provision of law and courts’ decisions, it is evident that for a valid sale of land to occur, a written, signed, and witnessed land sale agreement that clearly outlines the parties, land details, purchase price, and payment terms is required. Additionally, a consent from the Land Control Board is needed for agricultural land. The purchaser also pays stamp duty after the agreement, and the transfer documents are then submitted and registered at the Ministry of Lands to complete the sale. In this case, there is no evidence of any sale agreement, consent from the Land Control Board or payment of Stamp Duty.

110. PW1 did not produce the above documents, and DW1, Philip Mathews Adida, the Land Registrar Narok, confirmed that the above documents were not available in the parcel file, and he could not tell whether they had been availed during the transfer of the suit land to the Petitioner, or not and the consideration was not stated. See the case of Samuel Kamere vs Land Registrar, Kajiado (2015) eklr where it was held: -

“On the question of whether the valuable consideration was paid, there is nothing in the evidence to show that the appellant paid valuable consideration, or indeed, any consideration at all, for the suit property. It was the appellant’s testimony that he drew cash from his bank account, and paid the alleged seller of the suit property. But, he did not produce a bank statement evidencing the cash withdrawal, or provide any relevant proof of payment. Furthermore, no sale agreement was produced showing that a purchase had taken place. There was no seller in evidence who testified. He did not produce any acknowledgments confirming receipt of the purchase price. Without such evidence, we are not satisfied that appellant actually pay any consideration, and if at all, to whom?”

111. Section 3 (3) of the Law of Contracts Acts (Kenya) states that any transaction relating to land;
Must be in writing and signed by both parties; buyer and seller.
Must be witnessed and attested by a witness.
Must specify the land registration number, size of the plot, its location and amount to be paid for it.
Must indicate how payments will be processed.
Must be registered at the Lands Registry.

112. This Section (3) of the *Law of Contract Act*, provides that:

“No suit shall be brought upon a contract for the disposition of an interest in land unless: -



- (a) The contract upon which the suit is founded:
 - (i) is in writing;
 - (ii) is signed by all the parties thereto, and incorporates all the terms which the parties have expressly agreed in one document; and
- (b) The signatures of each party signing has been attested by a witness who is present when the contract was signed by such party”.

113. On failure to obtain Land Control Board consent, courts have variously held that such transactions are invalid and unenforceable. See the case of *Macharia Mwangi Maina & 87 others vs. Davidson Mwangi Kagiri* (2014) eKLR, where the Court of Appeal held;

“The other critical issue for our consideration is the lack of consent of the Land Control Board. The trial court held that the suit property being agricultural land was subject to the *Land Control Act*, Chapter 302, Laws of Kenya; Section 6 (1) of the said *Land Control Act* required the Land Control Board consent to be obtained in respect of the sale transactions; the failure of such consent made the said agreements void and unenforceable against the respondent”.

114. From the pleadings, and the exhibits produced in court, the suit land was registered in the names of the 1st and 2nd Respondents to hold in trust for the children of the deceased, John Tupenet Murero. The Petitioner alleged that the 1st and 2nd Respondents sold the suit land to it, though there is no evidence of such sale. However, there is no evidence that the said trustees obtained consents from the children of John Tupenet Murero, on whose behalf they were holding the suit land, to sell the said land. If the 1st and 2nd Respondents did not obtain the consents of the beneficiaries while selling the suit land, could they have breached their trusteeship duties? Did they have authority to sell the said suit land?

115. Though the Petitioner had the suit land registered in its name on 27th July 2007, which registration was allegedly done for easy management of the suit land, since 1st and 2nd Respondents were shareholders of the Petitioner, it is evident that there is another registration in favour of the 1st and 2nd Respondents, as holding the said land in trust for the children of the deceased. This registration is as per the Confirmed Grant of 15th September 2006, which Grant has not been revoked.

116. Given that there is no evidence of sale of the suit land to the Petitioner, which parcel of land is held on behalf of the children of the late John Tupenet Murero, did the Petitioner hold a valid title deed.? As has been variously held by courts, it is not sufficient to wave a certificate of title, when ownership of land is challenged. The root of the title must be traced. See the case of *Munyu Maina vs Hiram Gathiha Maina* the Court of Appeal held;

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

117. Courts in this country had held that, simply "waving a title deed" is not sufficient proof of ownership of land, especially when such ownership is challenged. The proprietor is required to go beyond the document itself to prove the legality and procedural correctness of how the title was acquired. This



includes establishing the "root of title," meaning proving the entire chain of transactions from the original land allocation was lawful. Purchasers must conduct thorough due diligence, investigating the property's history and potential irregularities, not just relying on a simple registry search. Did the petitioner herein investigate the history of this title? Did the 1st and 2nd Respondents have the capacity to sell the land which they were holding in trust for the beneficiaries of the estate of John Tupenet Murero?

118. Tracing the "root of title" refers to the process of examining a property's ownership history by going back to the original document that establishes the current owner's claim, proving a valid and unbroken chain of ownership from the initial transfer of title. This process is critical, especially where a title is challenged and tracing such history helps to resolve the dispute, as it demonstrates that the seller/vendor has the legal right to transfer the property, and that there are no undisclosed encumbrances or fraudulent dealings. A "good" root of title, clearly describes the property, and deals with the entire legal and beneficial ownership without casting doubt on the validity of the ownership chain.
119. In the case of *Dina Management Ltd Vs County Government of Mombasa & 5 Others* (Petition 8 (E010) of 2021(2023) KESC 30{KLR}) the Supreme Court held that;

"If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held to be indefeasible. This position was also reiterated recently by the Court of Appeal in the case of *Teleposta Pension Scheme Registered Trustees vs Intercontinents Importers and Exporters Limited & others*, Civil Appeal No.293 of 2016."
120. Though the Petitioner herein alleged that it was registered as the proprietor of the suit land on 26th July 2007, the root of its title was not a good root, as very crucial documents were missing or the very crucial steps of disposing the suit land were omitted, and the Petitioner did not obtain a good title. The 1st and 2nd Respondents who allegedly sold the suit land were holding it in trust for the children of the deceased, and they had no mandate and /or consent of the entire Mureros to sale the suit land. The Succession Cause is still on going and the suit land is subject to the succession proceedings.
121. From the above analysis, it is clear that the ownership of the suit land, and the title validity held by the Petitioner is in dispute, and the Petitioner cannot be held and found to be the lawful an indefeasible owner of the suit land; *Cis Mara/Lemek/190*.
122. Having found that the Petitioner is not the lawful and indefeasible owner of the suit land, can the court proceed and deal with the alleged breach of constitutional right to property? The ownership of the suit land remains vested in the estate of John Tupenet Murero(deceased), which case is still on going at the High Court, as a succession matter, and thus given that the court is not privy to the outcome of the final determination of the Succession cause, it would not be fair to hold that the suit land belongs solely to the Petitioner.
123. Further, given that the Confirmed Grant that transmitted the suit land to the beneficiaries of the estate of John Tupenet Murero has not been revoked, then this court finds and holds that the suit land is held by the 1st and 2nd Respondents/ Cross-Petitioners as trustees on behalf of the children of the said John Tupenet Murero (Deceased).
124. This court having found and held that the Petitioner did not acquire any good title to the suit land as the root of the said title is not traceable, then the allegations of fraud and collusion cannot stand. The Petitioner confirmed that there was no sale agreement or Land Control Board consent. It is not in doubt that the suit land is a trust property under Succession Cause No. 95 of 2006, and this trusteeship remains intact. Further, there was no court order has been issued transferring the suit land to the



- Petitioner, given that the administrators were holding the suit land in trust for the beneficiaries of the estate of John Tupenet Murero.
125. Therefore, having found that the Petitioner's root of the title was suspect, the court cannot hold and find that it is the lawful owner of the suit land and that the actions of the Respondents has breached its constitutional rights as provided by Articles 40, 47, 50, 48, of *the Constitution* of Kenya. Without proof of ownership, the court will not dwell on whether the Constitutional rights of the Petitioner have been breached or not.
 126. With the finding and holding that there will be no consideration and determination on whether the constitutional rights of the Petitioners were breached or not, since the suit land is subject to trusteeship, which is still pending in a succession court, as a succession dispute, then this court concludes that the Petitioner herein is not entitled to any constitutional remedies as sought in the Petition.
 127. From the available evidence, the court finds that the Petitioner herein has not proved that it is the lawful owner of the suit land Cis Mara/Lemek/190, and that being the lawful owner, the Respondents action have breached its constitutional rights. For the above reasons, the Petitioner is not entitled to the reliefs sought in the instant Petition.
 128. In regard to the Cross-Petition, the court finds and holds that the suit land belongs to the beneficiaries or the children of the late John Tupenet Murero, and the Cross-petitioners are holding the said land in trust on behalf of these beneficiaries, and could not dispose it off without their consents. Therefore, the Petitioner's title over the suit land, if it has any is not protected by law as provided by Article 40(6) of *the Constitution*.
 129. Further, the Petitioner's continuous occupation and use of the suit land is in against the rule of law, as envisaged in Article 10(2) of *the Constitution*. However, the other issues raised thereon fall within an ordinary property dispute, but raised in a constitutional petition. The Cross-petitioners can canvass the other issues thereon in an ordinary civil suit, such as the issues of collusion, fraud and/or trespass.
 130. Having found that the Petitioner is not the lawful owner of the suit land, then the court finds and holds that it is not entitled to the constitutional remedies sought in its Petition. Further, having found that the Cross-petitioners have succeeded in the claim that the Petitioner is not entitled to constitutional protection of its title as provided by Article 40(6) of *the Constitution*, and by remaining on the suit land, its action is against the constitutional tenants of the rule of law, this court finds and holds that the Cross-petitioners are entitled to prayers Nos a, b, c and e of the Cross- Petition.
 131. The final issue for determination is who is entitled to costs of the Petition and Cross-petition? This is a constitutional Petition, which is not dictated by the provisions of the *Civil Procedure Act* and Rules. However, it is trite that costs are granted at the discretion of the court, and ordinarily awarded to the successful litigant. The Petition has been dismissed, and the Cross-Petitioners have partially succeeded. However, considering the circumstance of the Petition, the court directs each party to bear their own costs.
 132. Ultimately, after considering the Petition and the Cross-Petition in general, the court finds and holds that the Petition herein is not merited. Consequently, the instant Petition is dismissed entirely with an order that each party to bear its own costs.



133. In the final analysis, the Cross- Petition succeeds partially in terms of prayers No a, b, c and e, and the court enters judgment for the cross-Petitioners against the Respondents jointly and severally in the cross-Petition in the following terms: -

- a. A declaration that the 3rd Cross Petitioners Daniel Murero and William Murero as Trustees of the beneficiaries of the estate of John Tupenet Murero (deceased) are the lawful and bona fide registered proprietors of all that land known as Narok/CISMara/Lemek/190 to date, by dint of the Certificate of Confirmed Grant of 12th September 2006 and signed on 15th September 2006 in Nairobi High Court Succession Cause No. 95 of 2006 in Re Estate of John Tupenet Murero (deceased) and they remain entitled to the full and effectual enjoyment and use of the state property absolutely.
- b. A declaration that the 1st Respondent Papiyo Investments Limited by themselves and/or trading under any other name, or otherwise howsoever, have never lawfully purchased from the 3rd Cross Petitioners Daniel Murero and William Murero as Trustees of the beneficiaries of the Estate of John Tupenet Murero (deceased) all that land known as Narok/CISMara/Lemek/190 at any time.
- c. A declaration that the purported sale by William Murero and Daniel Murero in their private capacities, and allegedly between them and the 1st Respondent Papiyo Investments of all that land known as Narok/CISMara/Lemek/190 is unlawful, null and void.
- d. A mandatory injunction directing the 2nd Respondent Narok Land Registrar to remove the entry on the proprietorship Section of the parcel Narok/CISMara/Lemek/190 bearing the 1st Respondent's name thereon made on 26th July 2007 or any other date, and to forthwith cancel any certificate of title as may have been issued to the 1st Respondent Papiyo Investments Limited over Narok/CISMara/Lemek/190.

134. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAROK THIS 18TH DAY OF SEPTEMBER 2025

L. GACHERU

JUDGE

Delivered on line in the presence of

Elijah Meyoki – Court Assistant

Mr. Michuki for Petitioner/ 1st Respondent in cross-petition

Mr. Kinyanjui 1st and 2nd Respondents

N/A for 3rd Respondent

N/A for 4th Respondent

Mr. Kinyanjui for 1st 2nd and 3rd Cross-petitioners



L. GACHERU
JUDGE

