



Hassan & 20 others (Suing on their Behalf and on Behalf of all the Residents and Livestock Herders at Kenya Agricultural and Livestock Research Organization, (KALRO) Kiboko) v Kenya Agricultural And Livestock Research Organization (KALRO) & 4 others (Environment & Land Petition E003 of 2020) [2024] KEELC 1295 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND PETITION E003 OF 2020**

TW MURIGI, J

MARCH 6, 2024

IN THE MATTER OF ARTICLE 10, 20, 21, 22 (2)(4)(5), 28, 29 (A)(C)(D)&(F) AND 40(1) OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF CONTRAVENTION OF ARTICLE 10, 28, 40, 60 AND 67 (1)(D) AND 67 (1)(E) AND (F) OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF SECTION 5(D) AND 5(E) OF THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012 AND IN THE MATTER OF SECTION 66 OF THE LAND REGISTRATION ACT NO. 3 OF 2012 AND IN THE MATTER OF SECTION 5 OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

BETWEEN

- NURA BARROW HASSAN 1ST PETITIONER**
- FARAH ABDULLAHI DUALE 2ND PETITIONER**
- AHMED MOHAMED ABDI 3RD PETITIONER**
- DAHIR M. ALIOW 4TH PETITIONER**
- MOHAMMED HUSSEIN IBRAHIM 5TH PETITIONER**
- IBRAHIM BASHIR MAALIM 6TH PETITIONER**
- ISAK ADAN SOMO 7TH PETITIONER**
- DUALE ADOW 8TH PETITIONER**
- AFIF MOHAMED SHEIKH 9TH PETITIONER**
- OSMAN GURE GUTALE 10TH PETITIONER**
- MOHAMED MAALIM KULMIA 11TH PETITIONER**
- MOHAMED BILOW SHABAN 12TH PETITIONER**
- ABDI ALKEROW MOHAMED 13TH PETITIONER**



BERNICE MWENDE MBITHE	14 TH PETITIONER
NTHANGA MUTUA KALII	15 TH PETITIONER
MUTUA MUTUVA	16 TH PETITIONER
ANTHONY MUELI MUSOLI	17 TH PETITIONER
WILSON NZIOKA PAUL MUASYA	18 TH PETITIONER
P MUSOLI MAILU	19 TH PETITIONER
JOSHUA KAUKU KANZI	20 TH PETITIONER
ALFRED MAITHYA MUTUNGA	21 ST PETITIONER
SUING ON THEIR BEHALF AND ON BEHALF OF ALL THE RESIDENTS AND LIVESTOCK HERDERS AT KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION, (KALRO) KIBOKO	

AND

KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION (KALRO)	1ST RESPONDENT
NATIONAL LAND COMMISSION	2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING	3RD RESPONDENT
KENYA WILDLIFE SERVICE	4TH RESPONDENT
THE HON. ATTORNEY GENERAL	5TH RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 14th October, 2020 brought under Rule 19 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 in which the 1st Respondent seeks the following orders: -
 - i. That the Petition herein dated and or filed on 02/10/2020 be struck out with costs to the 1st Respondent.
 - ii. That costs of this application be provided for.
2. The application is premised on grounds appearing on its face together with the supporting affidavit of Patricia Ngutu, the 1st Respondent's Legal Officer, sworn on even date.

The Applicant's Case

3. The Applicant averred that the Petition herein does not disclose any reasonable cause of action against the 1st Respondent. She averred that the 1st Respondent is the registered owner of LR. No. 25379 measuring approximately 25,925.1 hectares or thereabouts (the suit property herein).
4. She further averred that the Petitioners have not demonstrated any rights in the suit property or how the 1st Respondent has denied, infringed and or violated those rights. She argued that the Petition does



not allege and plead any unlawful and unconstitutional action, omission and or conduct of the 1st Respondent in respect of the suit property.

5. She averred that the Petition is based on mere allegations which are not supported by any evidence and hence, it is an abuse of the court process. She further averred that the Petitioners are non-suited against the 1st Respondent.
6. The Applicant contended that the suit property is not unalienated government land as alleged by the Petitioners since the 1st Respondent is the registered owner thereof through its predecessor in title, KARI. According to the Applicant, the Petitioners admitted to having trespassed onto the suit property by acknowledging that they have no title, right or interest therein.
7. The Petitioners and the other Respondents did not file any response to the application despite being duly served.
8. The application was canvassed by way of written submissions.

The 1st Respondent's Applicant's Submissions

9. The 1st Respondent submissions were filed on 11th August, 2023.
10. Counsel submitted that the application herein is unopposed since the Petitioners and the other Respondents did not file any response despite being duly served on 02/12/2022.
11. On behalf of the 1st Respondent, Counsel outlined the following issues for the court's determination: -
 - i. Whether the Petition raises any Constitutional issues for determination.
 - ii. Whether the Petition offends the doctrine of constitutional avoidance.
12. On the first issue, Counsel submitted that apart from claiming violation of their rights under Articles 10,40, 60, 67 (1) (d) and 67 (1) (e) of the *Constitution*, the Petitioners did not particularize the manner in which the 1st Respondent has violated, infringed or threatened their Constitutional rights.
13. Counsel submitted that under paragraph 20 of the Petition, the Petitioners not only acknowledged that the suit property belongs to the 1st Respondent, they also admitted that they were trespassers who only needed adequate notice to vacate the suit property.
14. On the second issue, Counsel submitted that it is an established principle that where there is a remedy in ordinary civil law, one should pursue the said remedy under the provisions of the laid down statute rather than invoking the *Constitution*. Counsel submitted that there are no sufficient grounds to warrant the invocation of the Constitutional jurisdiction of this court since the issues of eviction are capable of being resolved by the court as a civil claim. Counsel urged the court to find that the Petition violates the doctrine of constitutional avoidance.
15. Concluding his submissions, Counsel urged the Court to allow the application with costs. To buttress his submissions, Counsel relied on the following authorities: -
 - i. *Nyandarua North Bar Owners Welfare Association & 6 others v County Commissioner Nyandarua & 4 others* [2019] eKLR
 - ii. *Eric Kiprotich Soi & another v Director General Nairobi Metropolitan Services* [2022] eKLR
 - iii. *Bandari Investment Company Limited v National Police Service & others* [2021] eKLR



Analysis And Determination

16. Having considered the application and the submissions by the 1st Respondent, the only issue for determination is whether the Petition against the 1st Respondent should be struck out for failing to meet the threshold of a Constitutional Petition.
17. Article 22(1) of the *Constitution* grants every person the right to institute proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.
18. When a party institutes a Constitutional Petition contending that there has been violation of its rights and fundamental freedom, the right must be clear and unequivocal, the violation must be discernible and the Respondent must be identified to have been the violator.
19. In *Anarita Karimi Njeru v The Republic* (1976-1980) KLR 1272 the court laid down the substantive test to be applied when making a finding on whether the alleged violation formed the basis of the Petitioner's complaint. The court held that: -

“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.”
20. The above position was re-affirmed by the Supreme Court in *Communications Commission for Kenya & 5 Others v Royal Media Services Limited & 5 Others* [2014] eKLR where the Court held 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.”
21. In the matter at hand, the Petitioners alleged that the 1st Respondent violated their right to property under Article 40 of the *Constitution*. Their main grievance as pleaded in paragraphs 22, 23, 24 and 25 of the Petition is that the 1st Respondent allegedly issued a verbal 30-day notice to vacate the suit property which the Petitioners feel is unreasonably short considering the fact that they are livestock herders with many heads of cattle and camels which are in calving season.
22. At paragraph 20 of the Petition, the Petitioners conceded that the suit property is public land registered in the name of the 1st Respondent and that they have encroached into the suit property to a limited extent as expressed under paragraph 26 of the Petition.



23. In the case of *Japheth Ododa Origa V Vice Chancellor University Of Nairobi & 2 Others* [2018] eKLR the Court stated as follows:

“It is a principle in Constitutional Litigation that a party seeking reliefs through a Constitutional Petition on the basis of violation of the *Constitution*, Constitutional Rights and fundamental freedoms, the Petitioner must plead with a higher degree of precision; show constitutional or fundamental freedoms violated, the manner of violation, the Constitutional provision in question or violated and the jurisdictional basis for the litigation...”

24. From the foregoing, it is crystal clear that the Petitioners have no proprietary rights to the suit property and hence none can be claimed to have been breached or violated under Article 40 of the *Constitution*. It is not enough for the Petitioners to cite articles of the *Constitution* and not relate them to the infringement complained of against the 1st Respondent.

25. The Petition as pleaded does not disclose any violation of fundamental rights and freedoms as alleged. In my view, this is a civil dispute which ought to be ventilated in a civil court.

26. The upshot of the foregoing is that, the Petition dated 2nd October, 2020 is hereby struck out against the 1st Respondent for failing to meet the threshold of a Constitutional Petition. Each party to bear its own costs.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICRO SOFT TEAMS THIS 6TH DAY OF MARCH, 2024.

IN THE PRESENCE OF

Ms. Auma for the 1st Respondent.

Court assistant Kwemboi.

