



**Lang'ata Jua Kali Self-Help Group v County Government of Nairobi & 4 others (Environment & Land Petition E009 of 2021) [2023] KEELC 914 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 914 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E009 OF 2021**

**J OMANGE, J  
FEBRUARY 2, 2023**

**BETWEEN**

**LANG'ATA JUA KALI SELF-HELP GROUP ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, THE MINISTRY OF LAND, HOUSING & URBAN  
DEVELOPMENT' ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**KENYA RAILWAYS CORPORATION ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The subject matter of this suit is the parcel of land Langata-Mlolongo hereinafter referred to as the 'suit property'.
2. The petitioner vide a petition filed on March 11, 2021 sought for the following reliefs;
  - a. A declaration that the state has failed to perform its mandatory duty as stipulated by article 21 (1) of the *Constitution* of Kenya and thus occasioned denial of the very rights its supposed to protect.
  - b. That this court declare that the petitioners are the rightful and legal owners of the parcel of land at Langata Mlolongo and the state be compelled to issue the petitioners their titles.
  - c. That costs be in the suit.



3. The 1<sup>st</sup> and 4<sup>th</sup> respondent were represented in the petition. An interlocutory application for injunction was dismissed by Hon Lady Justice Komingoi on November 25, 2021. Following delivery of the ruling on the application, the petitioners did not attend court in spite of several affidavits confirming service. On October 25, 2022 the court directed that the petition be disposed of by way of written submissions. Only the 4<sup>th</sup> respondent complied.

### Summary of the case

4. In the petition the petitioners averred that they have been residing in the parcel of land Langata-Mlolongo . They deponed that the parcel of land was allocated to them by presidential directive of the late President Daniel Arap Moi. The petitioners insist that following the directive, they enjoyed uninterrupted quiet possession of the land for 29 years.
5. The petitioners contend that pursuant to this directive they made efforts to obtain letters of allotment from Nairobi City County. These efforts did not bear fruit. Their attempts to obtain assistance from the National Land Commission were similarly unsuccessful. The petitioners contend that unscrupulous land cartels posing as proprietors of the suit property conspired with Kenya Railways to be paid 700 million.
6. The petition was opposed by the affidavits of Erick Odhiambo Abwao for the 1<sup>st</sup> respondent and Christine Macharia for the 4<sup>th</sup> respondent. The honourable the AG also filed the grounds of opposition dated March 11, 2022 on his behalf and on behalf of the Cabinet Secretary for Lands.
7. Christine Macharia, senior legal officer stated that the petitioners had failed to give particulars of the alleged violations of the Constitution. She further noted that the petitioners had failed to give details of the property they claim or provide proof of any proprietary interest. She denied that the 4<sup>th</sup> respondent was involved in compulsory acquisition of the suit property.
8. Counsel for the 4<sup>th</sup> respondent filed written submissions in which he posited that the petition does not meet the threshold for a constitutional petition. He cited several authorities to buttress this argument. He further submitted that the petitioners had failed to prove the right which had been violated and how it was violated. Lastly counsel argued that the petitioners had failed to prove they were entitled to the reliefs sought.

#### Issues for determination

- a. Does the petition meet the threshold for a constitutional petition?
- b. Have the petitioner's rights been violated?
- c. Are the petitioners entitled to any relief?

### Analysis

9. Regarding the 1<sup>st</sup> issue, the standard for a constitutional petition was clearly laid out in the celebrated case of Anarita Karimi Njeru -vs- The Republic (1979) eKLR which principle was later restated by the Court of Appeal in the case of Mumo Matemo -vs- Trusted Society of Human Rights Alliance & 5 others (2013) eKLR. The principle established in the Anarita Karimi Njeru case (supra) was 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 be infringed. The Mumo Matemo



case (supra) reaffirmed the principle in the Anarita Karimi case when the court at paragraph 44 of the judgment stated as follows: -

' We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1<sup>st</sup> respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the 'epitome of precise, comprehensive or elegant drafting , without remedy by the 1<sup>st</sup> respondent'

Further at paragraph 87 (3) in the same judgment the court on its findings 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.'

10. I have considered submissions of counsel for the respondent on this point and I am in agreement that the petition does not particularize with precision which articles were violated by whom and in what manner.
11. On the question of whether the petitioners' rights have been violated, the petitioners needed to prove that their right to own property had been violated. The right to own property is essentially the right to acquire, own, possess and dispose of property. Article 40 (d) of the Constitution does not apply to land that is unlawfully acquired. The affidavit filed by councillor John Okoth Apiyo while averring that the petitioners were granted the land in question through a presidential directive, does not candidly state how the petitioners settled in the land. In the same vein there is lack of information on the directive, who was to benefit and on what terms.
12. An issue was raised on whether the petition offends the provisions of section 87 of the Kenya Railways Corporation Act, the petition was filed in March 2021 against among others, the 4<sup>th</sup> respondent. The actions complained of are not clear; whether it was the 4<sup>th</sup> respondent's acquisition of the land or whether it was the compensation of the persons the petitioners describe as cartels.
13. Section 87 of the Kenya Railways Corporation Act provides as follows:

Where any action or other legal proceeding is commenced against the corporation for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

- a. The action or legal proceeding shall not be commenced against the corporation until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the managing director by the plaintiff or his agent; and



- b. The action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.
14. The object of the said section is to make the 4<sup>th</sup> respondent a special party in the corridors of justice. The requirement that the 4<sup>th</sup> respondent can only be sued after a thirty (30) days' notice has been served has been found by courts of different levels to be a hindrance to the right of people to access justice. It is a reiteration of the provisions of section 13A of the [Government Proceedings Act](#).
15. In the case of [Kenya Bus Service Ltd & another vs Minister of Transport & 2 others \(2012\)](#) which was approved by the Court of Appeal in [Joseph Nyamamba & 4 others vs Kenya Railways Corporation \[2015\] eKLR](#), Majanja J observed as follows:

' The provisions for demanding prior notice before suing government is justified on the basis that the government is a large organization with extensive activities and fluid staff and it is necessary for it to be given the opportunity to investigate claims laid against it and decide whether to settle or contest liability taking into account the public expense. While the objective is laudable. The effect of mandatory notice provisions cause hardship to ordinary claimants. I am of course aware that pre-litigation protocols. For example, order 3 rule 2 of the [Civil Procedure Rules](#). Require that notice be given before action is commenced but the penalty for non-compliance is not to lose the right to agitate the cause of action but to be denied costs incurred in causing the matter to proceed to action. viewed against the prism of the [Constitution](#), it also becomes evident that section 13A of the GPA provides an impediment to access to justice. Where the state is at the front, left, right and centre of the citizen's life. the law should not impose hurdles on accountability of the government through the courts. An analysis of the various reports for commonwealth which I have cited clearly demonstrate that the requirement for notice particularly where it is strictly enforced as a mandatory requirement dismisses the ability of the citizens to seek relief against the government. It is my finding therefore that section 13A of the [Government Proceedings Act](#) as a mandatory requirement violates the provision of article 48.'

16. In [Ubah Ismail Mohamed vs Gapco Kenya Limited & another \[2019\] eKLR](#), PJ Otieno J in answering the question whether failure to comply with section 87(a) makes the suit premature, bad and subject to being struck out or dismissed observed as follows:

' Those words have been adopted in several subsequent decisions which are well reported and it should be noted that the words of section 87 are materially those of section 13A of the [Government Proceedings Act](#). I thus do not hesitate in finding that to give an interpretation to that provision to make a suit bad for failure to comply would be contra the [Constitution](#) and wholly defeatist. This requirement of at least 30 days' notice is not peculiar to the [Kenya Railways Corporation Act](#) alone. It is found in other statutes creating state corporations like the [Kenya Ports Authority Act](#), section 62, and carries the spirit of section 13A [Government Proceedings Act](#). I note that the superior courts of this country have variously pronounced themselves on how well section 13A Government Proceeding Act sits with the right to access justice and the concurrence is that the provision is not in congruence with the right to access justice. It follows therefore that failure to issue a Notice before action is not a fatal defect as to lead to an action being defeated by being guillotined.'



17. Section 87(b) on the other hand requires for the time within which the 4<sup>th</sup> respondent should be sued for any act, neglect or default complained of, which is twelve months. In case of a continuing injury or damage, the suit should be filed within six (6) months after the cessation thereof.
18. Much as I have held that the petition has not met the standard of a constitutional petition, I do not find section 87(b) applicable to this case. The date of the cause of action complained of is not clear. Secondly, the 4<sup>th</sup> respondent is not accused of any default.

**Conclusion**

19. For the reasons outlined above, I find the petition dated March 11, 2021 to lack merit in its substance and proceed to dismiss it. I make no order as to costs,

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 2ND DAY OF FEBRUARY 2022.**

**JUDY OMANGE**

**JUDGE**

