



**Nyakioga & 21 others v County Government of Nakuru & another (Petition  
13 of 2019) [2023] KEELC 706 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 706 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
PETITION 13 OF 2019  
A OMBWAYO, J  
FEBRUARY 9, 2023  
(FORMERLY ELC PET 38 OF 2011)**

**BETWEEN**

**ERICK MOGIRE NYAKIOGA & 21 OTHERS ..... PETITIONER**

**AND**

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

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

**Introduction**

1. Erick Mogire Nyakioga & 21 Others hereinafter referred to as the petitioners herein vide their Amended Petition dated 27<sup>th</sup> February 2017 and filed in court on 1<sup>st</sup> March, 2017 are seeking a declaration that the petitioners' rights guaranteed and protected by Article 28, 29, 40, 42 & 45 of *the constitution* have been violated by the Respondent. Moreover, a declaration that the Respondents have breached obligations imposed upon them in respect of the environment by Article 69 of *the Constitution* of Kenya 2010. The petitioners pray for an environmental restoration order requiring the Respondents to take such actions as will prevent the continuation of the violation of the petitioners' right to restore the petitioner's parcels of land, to prevent damage to petitioners land and environment, and to remove any waste, or refuse deposited on the petitioners parcels of land enumerated in the petition. An order that the Respondents pay the petitioners general damages for violating their rights. An order for costs of this Petition. Such orders as this Honourable Court may deem fit to grant
2. The Petition was supported by the Affidavit of Erick Mogire Nyakioga sworn on 27<sup>th</sup> February, 2017 and filed on 1<sup>st</sup> March, 2017 and on the other hand, the 1<sup>st</sup> Respondent filed its Replying Affidavit to



the Petition while the 2<sup>nd</sup> Respondent filed its grounds of opposition to the petition dated 30<sup>th</sup> January, 2012.

3. It is the Petitioners' case that they are residents of Kwa Rhodah Estate (Ronda) and are registered proprietors of various parcels of land situate on Nakuru Municipality Block 29. That the 1<sup>st</sup> Respondent failed and or neglected to construct a proper drainage system within its jurisdiction to ensure that the environment is not degraded. The Petitioners' averred that the 1<sup>st</sup> Respondent failed and or neglected to collect garbage within its jurisdiction causing the uncollected garbage to be deposited on the Petitioners' parcels of land by storm water. It is the Petitioners' case that the 2<sup>nd</sup> Respondent has failed to coordinate, monitor and assess the 1<sup>st</sup> Respondent's activities in order to ensure that the environment is not degraded.
4. They further averred that the Respondents have failed to ensure that the Petitioners live in a clean and healthy environment as provided for by *the Constitution* by allowing storm water and raw sewage to flow into their parcels of land. In conclusion, the Petitioners' stated that their rights to clean and healthy environment continues to be violated unless the orders sought herein are granted.
5. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 27<sup>th</sup> June 2014 and filed on the same date. The Replying Affidavit is sworn by James Arap Tanui an engineer and an employee of the Nakuru County Government. He deposed that in 2009 the Kenyan Government through the Ministry of Lands Housing and Urban Development initiated a project known as Kenya Informal Settlement Improvement Program (KISIP) whose main object was to upgrade drainage, roads, sewage, lighting and solid waste management at target areas which included Nakuru informal settlement areas of Gilani, Kaptembwo and Kwa Rhoda.
6. That on 16<sup>th</sup> January 2012 a feasibility study report for Nakuru town was prepared based upon defined infrastructure priorities for each of the three settlements of Nakuru namely Gilani, Kaptembwo and Kwa Rhoda.
7. That the Ministry of Lands, Housing and Urban Development invited for bids and the tender was awarded to Golden Cara Investment Limited and the contract was signed on 3<sup>rd</sup> February 2004. That he was appointed as the Head Component 3 that is Infrastructure and service delivery cum site engineer to oversee the implementation of the said project.
8. He deposes that apart from the 1<sup>st</sup> Petitioner Eric Mogire Nyakoga, there is no evidence that the remaining 21 petitioners are residents of Kwa Rhoda Informal Settlement area within Nakuru County. That the parcels of land described in paragraph 4 of the petition confirm that the twenty-one petitioners are not residents and neither are they beneficial or registered owners within Kwa Rhoda informal settlement area.
9. That as per exhibit 2- the 19<sup>th</sup> Petitioner Richard Nyaberi sold his plot Nakuru Municipality Block 29/1303 to the 1<sup>st</sup> petitioner Richard Nyaberi Ogechi on 4<sup>th</sup> March 2011 as per the agreement of the same date and therefore the 19<sup>th</sup> petitioner has no interest in the matter.
10. That the 1<sup>st</sup> Petitioner bought the plot in the year 2011 and since then he has not transferred the said parcel of land into his name and that there is no evidence that he is the registered owner of plot No. Nakuru Municipality Block 29/1303 hence this petition should be dismissed with costs.
11. That at the time the 1<sup>st</sup> Petitioner bought the suit property, it was proper for settlement and that he shouldn't complain of the same as nobody forced him to purchase.
12. He further stated that the 1<sup>st</sup> Petitioner bought the property while being fully aware that there was no proper drainage system, the land was degraded, eroded, unhealthy and had dirty water.



13. In conclusion he averred that the issues raised in the petition are being addressed and that the prayers sought have been overtaken by events and the petition should be dismissed with costs.
14. In response to the Petition, the 2<sup>nd</sup> Respondent filed Grounds of Opposition dated 30<sup>th</sup> January 2012 and filed on 1<sup>st</sup> February 2012 which are as follows;
  1. That the Petitioners claim against the 4<sup>th</sup> Respondent lacks merit, is bad in law, fatally defective and is a clear abuse of the judicial process.
  2. That the prayer cited on paragraph (f) of the Petition cannot be granted as pursuant to the provisions of the Environmental Management Coordination Act, 1999 Section 58 thereof and the provisions of the Environmental Impact Assessment and Environmental Audit Regulations 2003, the 4<sup>th</sup> Respondent is under no obligation to conduct Environmental Impact Assessment. The same is a duty bestowed upon the project proponent.
  3. That no cause of action has been disclosed against the 4<sup>th</sup> Respondent in the entire petition and no substantive prayers have been specifically sought by the Petitioners against the 4<sup>th</sup> Respondent.
  4. That the prayer for damages cannot be granted where there is no conclusive material evidence to enable this Honourable Court make a determination on the same.
  5. That the Petition does not meet the requirements for granting of the prayers sought and no claims for infringement of fundamental rights can be granted under the constitutional provisions without satisfying the required ingredients thereof.
  6. That the Petition is so general and incompetent, we urge this Honourable Court to dismiss the same with costs to the 4<sup>th</sup> Respondent.

#### **Petitioner's Submissions**

15. The Petitioners filed their written Submissions on 2<sup>nd</sup> August 2017 where it raised two issues for determination; whether the Petitioners' constitutional rights and freedoms have been violated by the Respondents' and whether the Petitioners' are entitled to the reliefs sought.
16. They observed that the Respondents did not file a response to the Amended Petition and argue that failure to file a replying affidavit in contention amounts to admission of facts. They relied on various cases including *Wycliffe Gisebe Nyakina v Attorney General & Another* [2014] eKLR and submitted that the legal effect of the Respondents failure to specifically rebut the Petitioners' averments is that the Petitioners' claims have not been controverted. That the facts remain unchallenged and are to be applied as pleaded.
17. On the first issue, the Petitioners' relied on the case of *Nation Media Group Limited & 6 Others v Attorney General & 9 Others* [2016] eKLR and submitted in the affirmative on five (5) fundamental rights and freedoms guaranteed under Articles 28, 29, 40, 42 and 43 of *the Constitution* that have been violated by the Respondents.

#### **a. Right to Dignity**

18. They cited the cases of *Kituo Cha Sheria & 8 Others V Attorney General* [2013] eKLR and *VMK v CUEA* [2013] eKLR and submitted that the 1<sup>st</sup> Respondent failed to properly discharge its devolved function of refuse and solid waste disposal. They further submitted that the Respondents are



indifferent to the Petitioners' plight and have not taken any corrective measures. That as a result, the Petitioners' have been denied their right to dignity contrary to Article 28 of *the Constitution*.

#### **b. Right to Freedom and Security of the Person**

19. They submitted that the Respondents' failure to ensure safe removal and proper disposal of solid waste which is eventually deposited on the Petitioners' land has subjected them to perpetual fear of outbreaks of diseases. They added that they live in a state of constant panic and unsure as to when they will be forced to vacate their homes amounts to psychological torture.

#### **c. Right to Protection of Right to property**

20. The Petitioners' relied on Article 40(1) of *the Constitution* and submitted that as owners of the suit properties, they have the right to enjoy all the bundle of rights contained in their properties without undue constraints.

#### **d. Right to a clean and healthy environment**

21. The Petitioners' relied on Article 42 of *the Constitution* and the case of *P.K Waweru v AG & Others* [2006]1KLR 444 and submitted that as a result of the failure by the 1<sup>st</sup> Respondent to remove and properly dispose of refuse and failure to put in place proper systems for management of storm water waste disposal, their right to a clean and healthy environment has been violated.

#### **e. Economic and Social Rights**

22. They relied on Article 43 (1) of *the Constitution* and the case of *Satrose Ayuma & 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 Others* Petition No. 65 of 2010. They submitted that as a result of the dereliction of their duties the Respondents have led the Petitioners to live in a deplorable state. They urge the court to find that the Petitioner's socio-economic rights have been violated by the Respondents'.
23. On the second issue they relied on Article 70 of *the Constitution* and submitted that the Respondents' failure to do that which is required of them by law is in violation of the Petitioners' Constitutional rights. It was the Petitioners' submission that the Respondents' have breached obligations imposed upon them in respect of the environment under Article 69 of *the Constitution*. They further relied on Section 108 (2) (4) of the Environment Management and Coordination Act and submitted that the obtaining the said declarations alone will not vindicate the Petitioners' rights. That there is need for the Respondents to be compelled to take such measures that are necessary to prevent further harm or restore the degraded properties to the condition they were before the acts complained of took place. They cited the case of *Ken Kasing'a v Daniel Kiplagat Kirui & 5 Others* [2015] eKLR.
24. The Petitioners' also relied on Article 23(30) of *the Constitution* and the case of *Ericsson Kenya Limited v Attorney General & 3 Others* [2014] eKLR and urged the court to award each Petitioner Kshs. 2 million to vindicate their rights. In conclusion, the Petitioners submitted that they have satisfactorily proved the cause of action against the Respondents and entitled to the orders sought and costs of the petition.

#### **1<sup>st</sup> respondents Submissions**

25. The 1<sup>st</sup> respondent filed its submissions dated 1<sup>st</sup> July 2014 on 4<sup>th</sup> July 2014. The 1<sup>st</sup> Respondent did an analysis of the title documents of the various parcels of land annexed to the petition and pointed out that the owners of the properties were not parties to the present Petition. It reiterated that apart from the 1<sup>st</sup> Petitioner, the other petitioners have not demonstrated that they are the registered owners of



- the other properties. The 1<sup>st</sup> Respondent reiterated the contents of its replying affidavit and submitted that the Petition is overtaken by events.
26. The 1<sup>st</sup> Respondent further submitted that there is no evidence in court upon which the court can grant prayers (a), (b), (c) and (d) of the petition because they did not make a demand notice to the 2<sup>nd</sup> respondent to carry out an environmental impact assessment report in respect of the suit area before filing the Petition.
  27. The 1<sup>st</sup> Respondent also submitted that it has complied with its obligations under Article 42, 69 and 70 of *the Constitution* as the government has enacted various statutes.
  28. The 1<sup>st</sup> Respondent concluded its submissions by seeking that the petition be dismissed.
  29. The 1<sup>st</sup> Respondent also filed submissions to the Amended Petition dated 17<sup>th</sup> September 2022 and filed on 22<sup>nd</sup> November 2022.
  30. The 1<sup>st</sup> Respondent identified the following issues for determination:
    1. Whether the petitioner have proved they are resident of the suit property.
    2. Whether the petitioners have proved any constitutional violation of their rights, and if so the manner of violation.
    3. Whether the Petitioners are entitled to relief sought.
    4. Issue as to costs.
  31. On the first issue, the 1<sup>st</sup> respondent reiterated that the petitioners have not proved that they are residents of Kwa Rhoda estate. That they have also not proved that they are registered or beneficial owners of the various parcels of land enumerated in the amended petition.
  32. On the second issue, the 1<sup>st</sup> Respondent relied on Article 69(1)(f) & (c) and submitted that it is not enough to adduce evidence of damage to the environment and its social & economic impact to the inhabitants without scientific environmental impact reports of the environment. Therefore the Petitioners have failed to prove the manner in which their right to a clean and healthy environment have been violated and that the petition remains unproven.
  33. On the third issue, the 1<sup>st</sup> Respondent submitted that the petitioners in support of their claim for damages filed a further affidavit with an annexed valuation report by Prime Valuers dated 9<sup>th</sup> February, 2018. The 1<sup>st</sup> Respondent further submitted that the integrity of the said valuation report as evidence is questionable as it ought to be subjected to the normal procedure of production of documentary evidence in court and the same tested through cross-examination.
  34. The 1<sup>st</sup> Respondent also submitted that to counter Prime Valuers report, it engaged the District land Officer/Valuer to carry valuation in respect of the said properties. It further submitted that the valuer was unable to carry out damage assessment because there were no details and evidence on the damage that was involved as the damage had already been rectified.
  35. The 1<sup>st</sup> Respondent concluded its submissions by stating that in view of the two contradictory reports which have not been tested through viva voce evidence and cross examination the court should decline to award any damages.



## 2<sup>nd</sup> Respondents Submissions

36. The 2<sup>nd</sup> Respondent filed its submissions on 26<sup>th</sup> March 2012 dated 23<sup>rd</sup> March 2012. The 2<sup>nd</sup> Respondent relied on Sections 2, 8, and 58 of the Environmental Management and Coordination Act No. 8 of 1999 and submitted that the responsibility of undertaking an Environmental Impact Assessment does not rest on it as it is just a regulatory agency.
37. The 2<sup>nd</sup> Respondent further submitted that the Petitioners failed to show any infringement of their rights by the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> respondent relied on the case of *Charles Lekuyen Nabori & 9 others Vs Attorney General and 3 Others* [2007] eKLR and concluded its submissions by seeking that the Petition be dismissed.
38. This court has carefully discerned the petition, the evidence on record and the submissions filed by the parties and the following issues are to be determined:
  - a. Whether the Petitioners are entitled to the orders sought in the Petition.
  - b. Whether the Petitioners' rights and fundamental freedoms were violated.
  - c. Who should bear the costs of the Petition?

### Whether the Petitioner is entitled to the orders sought in the Petition;

39. It is the Petitioners' case that they are the registered proprietors of various parcels of land situate on Nakuru Municipality Block 29. That the Respondents have failed to ensure that the Petitioners' live in a clean and healthy environment as provided for by *the Constitution*. On the other hand, the 1<sup>st</sup> Respondent argued that the Petitioners have not proved that they are the registered or beneficial owners of the various parcels of land. The 2<sup>nd</sup> Respondent argued that the Petitioners failed to show any infringement of their rights by the 2<sup>nd</sup> Respondent. It is the Respondent's case that the suit has since been overtaken by events.
40. In the case of *Anarita Karimi Njeru -vs- Republic* 1976-1980 KLR 1272 the court held that when a Petitioner approaches the court for redress of a violation of a constitutional right he/she must with precision state the right, the provision of constitution under which that right is provided and the manner in which he alleges that the right has been violated. The observations of courts regarding this issue over time were qualified by the decision of the Court of Appeal in the case *Mumo Matemu -vs- Trusted Society for Human Rights Alliance & 5 Others* [2013] eKLR where the court observed that what is needed is not a formulaic approach to the drafting of the pleadings but that the claim of violation must be discernible from whatever pleadings have been placed before the court. The court observed as follows:
  - (41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point."



41. With the above decision in mind, this court has set out to assess the extent to which the Petitioners have managed to present their case with clarity. Although the Petitioners have produced copies of titles to the suit properties, the said titles do not belong to all of them. I have perused the same and established that there are only three annexed titles registered in the names of the 1<sup>st</sup>, 4<sup>th</sup>, 16<sup>th</sup> and 19<sup>th</sup> Petitioners. The 4 Petitioners' have managed to enumerate the alleged violation, identified the individual Articles in *the Constitution* and linked them with the evidence of actions or inaction on the part of the Respondents which led to the alleged violation of the rights.
42. The Petitioners' have made serious allegations and this court has already established that some of the Petitioners have proved that they are residents of Kwa-Ronda area where the alleged violations are said to have taken place. The photographs attached by the Petitioners depict the true status of the place known as Kwa-Rhodah.

**Whether the Petitioners' rights and fundamental freedoms were violated.**

43. Article 258 (1) of *the Constitution* grants the Court jurisdiction to hear petitions alleging contravention or threat of contravention of *the Constitution*. It provides as follows:

Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention Article 22 is clear that:

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

*The Constitution* grants the Court the jurisdiction to inquire whether any act done by any person or state organ has been done in accordance with *the Constitution*. Article 165 (3) (d) (i) and (ii) of *the Constitution* provide that:

- (3) Subject to clause (5), the High Court shall have—
- a) ...
  - b) ...
  - (c) ...
  - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
    - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
    - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

44. Parliament enacted the [Environment and Land Court Act](#) in compliance with the provisions of Article 162(3). Section 13 of the [Environment and Land Court Act](#) provides as follows:

- (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.



- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land.
- (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*.”

45. It is my finding therefore, and I so hold, that I have the jurisdiction to hear and determine the issues raised in this petition.

### **Applicable Principles**

46. In exercising the jurisdiction to determine the above issues, I do invoke the principles that guide the exercise of the constitutional mandate that is bestowed on this court by law. This court is required to by virtue of article 20(3) of *the Constitution* of Kenya and in applying the bill of rights to develop the law to the extent that it does not give effect to a right or fundamental freedom and to adopt the interpretation that most favors the enforcement of a right or fundamental freedom. The provisions of Article 20(4) of *the constitution* of Kenya 2010 requires this court to interpret the bill of rights in a manner that promotes the values that underlie an open and democratic society based on human dignity ,equality, equity and freedom and the spirit, purports and objects of the bill of rights. Article 10 of *the constitution* of Kenya 2010 requires the court in interpreting *the constitution* to put into context national values and principles of governance that include human dignity, equity , social justice, inclusiveness and human rights.
47. The petitioners have demonstrated that the 1<sup>st</sup> respondent has not put a proper waste disposal at the petitioners properties and that the 2<sup>nd</sup> respondent has failed in his duties to monitor the 1<sup>st</sup> defendant in ensuring that petitioners environment is clean and that the people in Kwa Rhodah live in a clean and healthy environment whether they have title deeds to their property or not. I have perused the photographs and do find that the filth depicted in the photos is evidence of the ineptness of the county government of Nakuru the 1<sup>st</sup> respondent. I do find that the petitioners’ right to dignity has been violated by both respondents.
48. The first principle of interpretation is set out in *the Constitution* itself. Article 259 requires that *the Constitution*:  
shall be interpreted in a manner that—
- a. promotes its purposes, values and principles;
  - (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
  - (c) permits the development of the law; and





- (d) contributes to good governance.
49. Article 159(2) (e) of *the Constitution* mandates the Court, in exercising its judicial authority, to protect and promote the purpose and principles of *the Constitution*. In addition, I bear in mind the provisions of *the Constitution* with respect to its position vis a vis other laws.
50. In the matter before me, the petitioners demonstrated that the county government of Nakuru has failed to establish a drainage system that channels storm and waste water to lake Nakuru and as a consequence water flows into the petitioners lands where it has created deep gullies that are a threat to the petitioners and their children and the water create ponds of smelly water that is a threat to the petitioners and their families.
51. Article 42 of *the Constitution* of Kenya, 2010 provides that every person has the right and is entitled to a clean and healthy environment, which right includes the right to have the environment protected for the benefit of the present and future generations through legislative and other measures particularly those contemplated in Article 69 and to have the obligations relating to the environment fulfilled under Article 70.
52. The right to a clean and healthy environment is bestowed on every person, and has been considered by the courts and eminent authors to be essential for the existence of mankind. In *Adrian Kamotho Njenga vs. Council of Governors & 3 others* [2020] eKLR, it was held that:
18. Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations through the measures prescribed by Article 69. The right extends to having the obligations relating to the environment under Article 70 fulfilled.
19. Unlike the other rights in the bill of rights which are guaranteed for enjoyment by individuals during their lifetime, the right to a clean and healthy environment is an entitlement of present and future generations and is to be enjoyed by every person with the obligation to conserve and protect the environment. The right has three components; the right itself, the right to have unrestricted access to the courts to seek redress where a person alleges the right to a clean and healthy environment has been infringed or is threatened; and the right to have the court make any order or give any directions it considers appropriate to either prevent or discontinue the act harmful to the environment, or compel any public officer to take measures to prevent or discontinue the act that is harmful to the environment or award compensation to any victim of a violation of the right to a clean and healthy environment.”
53. It is important to note that *the Constitution* under Article 69 obligates all persons to protect and ensure a clean and healthy environment, which include but is not limited to elimination of processes and activities that are likely to endanger the environment as well as establish systems of Environmental Impact Assessment and Environmental Audit and Monitoring of the environment.
54. This position was elaborately considered in the case of *Martin Osano Rabera & Another vs. Municipal Council of Nakuru & 2 others* [2018] eKLR where the court adopted the decision in Communication No.155/96: The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights vs. Nigeria where the African Commission on Human and People’s Rights stated as follows:
- These rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, “an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary



to satisfactory living conditions and the development as the breakdown of the fundamental ecological equilibria is harmful to physical and moral health.”

The right to general satisfactory environment, as guaranteed under article 24 of the Africa Charter or the right to healthy environment, as it is widely known therefore imposes clear obligations upon a government. It requires the State to take reasonable measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”

55. Article 70 (1) of *the Constitution* empowers any person who alleges that a right to a clean and healthy environment has been infringed or is threatened to apply for redress from the court in addition to any other legal remedies available in respect of the matter. An applicant alleging that a right to a clean and healthy environment need not demonstrate that any person has incurred loss or suffered injury.
56. Article 70 (2) of *the Constitution* provides that on application for enforcement of the right to a clean and healthy environment, the court may make any order or give any directions it considers appropriate to prevent, stop or discontinue any act or omission that is harmful to the environment, and may compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment.
57. Article 43(1) of *the Constitution* of Kenya 2010 provides:-
- (1) Every person has the right—
    - (a) To the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
    - (b) To accessible and adequate housing, and to reasonable standards of sanitation;
    - (c) To be free from hunger, and to have adequate food of acceptable quality;
    - (d) To clean and safe water in adequate quantities;
    - (e) To social security; and (f) to education.”
58. This court finds favor in the claim that the respondents have been inept in their duties and as a result the petitioners have suffered as their houses become inhabitable during floods due to poor sanitation, inadequate water and social security as envisaged in Article 43 of *the Constitution* of Kenya 2023. I do agree with the petitioners that the respondents have failed to discharge their mandate to ensure that the properties where the petitioners live are in conformity with the required standards for properties to be said to be habitable for human settlement. I do find that the petitioners’ socio economic rights have been violated.
59. The upshot of the above is that this court issues a declaration that the petitioners’ rights guaranteed and protected by Article 28, 29, 40, 42 & 43 of *the constitution* have been violated by the Respondent and that the Respondents have breached obligations imposed upon them in respect of the environment by Article 69 of *the constitution*.
60. Consequently, I do direct the 2<sup>nd</sup> respondent to issue an environmental restoration order requiring the 1st Respondent to take such actions as will prevent the continuation of the violation of the petitioners’ right to restore the petitioners’ parcels of land, to prevent damage to petitioners’ land and environment, and to remove any waste, or refuse deposited on the petitioners parcels of land as enumerated in the petition and to provide proper drainage on the petitioners’ parcels of land. The restoration order to be issued within 30 day giving the 1<sup>st</sup> respondent a period of one year to comply.



61. On general damages, I do find that it is only the 1<sup>st</sup>, 4<sup>th</sup>, 16<sup>th</sup> and 19<sup>th</sup> petitioners who have proved that the own land in the area of dispute and therefore I do order that the three be paid general damages of ksh 300, 000 each as compensation for breach of their constitutional rights and fundamental freedoms. I do award costs of this Petition to the petitioners.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 9<sup>TH</sup> DAY OF FEBRUARY 2023.**

**A O OMBWAYO**

**JUDGE**

