



Okoti v Kenya National Highways Authority (KENHA) & 4 others; Project Affected Persons (PAPS) Ad Hoc Committee (Interested Party) (Environment & Land Petition 11 of 2019) [2022] KEELC 2753 (KLR) (6 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2753 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION 11 OF 2019
BM EBOSO, J
JULY 6, 2022
(FORMERLY MILIMANI HIGH COURT PETITION NO 40 OF 2019)**

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

AND

KENYA NATIONAL HIGHWAYS AUTHORITY (KENHA) ... 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

NATIONAL TREASURY 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

CHINA WU YI COMPANY LTD 5TH RESPONDENT

AND

PROJECT AFFECTED PERSONS (PAPS) AD HOC COMMITTEE INTERESTED PARTY

RULING

1. Through a petition dated 4/2/2019, Mr Okiya Omtatah Okoiti [the petitioner] challenged alleged failures by the respondents to promptly indemnify persons affected by the James Gichuru Road Junction – Rironi Highway (A104) Project, and their decision to commence construction works while the said persons were still on site. He invited this court to intervene and grant appropriate reliefs to address delays in compensation payment for land, businesses and developments thereon, and other related issues, including health and safety aspects of the project; dust emissions from the construction works; blocked access to homes and businesses due to the road construction works; and restoration of



water connections and other communal social amenities. He contended that all attempts by the Project Affected Persons [the PAPs] to resolve the dispute through administrative means had failed.

2. The petitioner contended that under the Constitution, PAPs were supposed to be indemnified through prompt payment in full, of just compensation, resettlement, or/and the taking of other corrective actions to mitigate adverse impacts to them before the commencement of the Project. It was his case that the PAPs were supposed to have been removed from the site upon being fully compensated by December 2017. He contended that the 5th respondent moved on site and commenced construction works on the Project with the PAPs still on site due to delayed compensation and resettlement. The petitioner contended that the respondents' actions and omissions violated Articles 1, 2, 3(1), 4(2), 10, 19, 20, 21, 24, 27, 28, 40, 42, 47, 73, 232 and 259(1) of the Constitution.
3. The petitioner sought the following verbatim reliefs against the respondents:
 - i. A declaration that the respondents failed to promptly compensate and resettle persons affected by the rehabilitation and capacity enhancement of the James Gichuru Road Junction-Rironi Highway (A104) Project.
 - ii. A declaration that by delaying to promptly compensate and relocate persons affected by the rehabilitation and capacity enhancement of the James Gichuru Road Junction-Rironi Highway (A104) Project, the 1st, 2nd, 3rd and 4th respondents violated Articles 1, 2, 3(1), 4(2), 10, 19, 20, 21, 24, 27, 28, 40, 42, 47, 73, 232 and 259(1) of the Constitution of Kenya.
 - iii. A declaration that by allowing the commencement of the rehabilitation and capacity enhancement of the James Gichuru Road Junction-Rironi Highway (A104) Project before the project affected persons were compensated and removed from the site, the 2nd respondent violated Articles 249(1) and (2) of the constitution of Kenya 2010.
 - iv. A declaration that by commencing the rehabilitation and capacity enhancement of the James Gichuru Road Junction-Rironi Highway (A104) Project before the project affected persons were compensated and removed from the site, and by failing to take corrective action to mitigate the project's impact on the general population, the 5th respondent violated Articles 1, 2, 3(1), 4(2), 10, 19, 20, 21, 24, 27, 28, 40, 42, 47, 73, 232 and 259(1) of the Constitution of Kenya.
 - v. A declaration that by proceeding to procure land for the rehabilitation and capacity enhancement of the James Gichuru Road Junction-Rironi Highway (A104) Project without having sufficient funds to meet the obligations of indemnifying the persons affected by the Project, the 1st respondent violated Section 53(8) of the Public Procurement and Asset Disposal Act.
 - vi. A declaration that the 1st, 2nd, 3rd and 4th respondents should indemnify the project affected persons through the payment of 30% of the award value as compensation for the delay.
 - vii. An order compelling the 1st to 4th respondents to immediately indemnify the project affected persons by, among others, compensating and resettling them.
 - viii. An order compelling the 1st to 4th respondents to immediately indemnify the project affected persons through the payment of 30% of the award value as compensation for the delay.
 - ix. An order suspending the ongoing works on the rehabilitation and capacity enhancement of the James Gichuru Road Junction-Rironi Highway (A104) Project until all persons affected by the Project are fully indemnified.



- x. An order that the costs of the suit be provided for.
 - xi. Any other relief the court may deem just to grant.
4. The petition provoked two notices of preliminary objection from the 1st respondent, dated 11/2/2019 and 5/4/2019 respectively, urging this court to strike out the petition in limine for various reasons. In addition, the 1st respondent filed a notice of motion dated 8/9/2021, inviting this court to strike out the petition in limine. The two notices of preliminary objection dated 11/2/2019 and 5/4/2019 respectively, and the application dated 8/9/2021, are the three items that fall for determination in this ruling.
 5. The application dated 8/9/2021 was supported by an affidavit sworn on 8/9/2021 by Nathaniel Chisenga Munga and a supplementary affidavit sworn by the same deponent on 4/11/2021. The two notices of preliminary objection and the application were all canvassed through written submissions dated 24/11/2021. Counsel for the 1st respondent identified the following as the three issues that fell for determination in the two notices of preliminary objection and the application: (i) Whether or not the petition was filed contrary to the doctrine of exhaustion of remedies and is an abuse of the due process of this court; (ii) Whether or not the petitioner has locus standi to institute these proceedings; and (iii) Whether this dispute can properly be ventilated through a constitutional petition.
 6. On whether or not this petition was filed contrary to the doctrine of exhaustion of remedies and is therefore an abuse of the due process of this court, counsel cited Section 29 of the [Kenya Roads Act](#) and submitted that the framework in the said Act was similar to the framework in Section 62 of the [Kenya Ports Authority Act](#). Counsel cited the decision of the Supreme Court of Kenya in [Modern Holdings \[EA\] Limited v Kenya Ports Authority](#) [2020] eKLR where the Supreme Court of Kenya upheld the framework in Section 62 of the Kenya Ports Authority, terming it as one which provides for alternative dispute resolution mechanisms [ADR] by way of negotiation and arbitration in settlement of disputes.
 7. Counsel argued that Section 29 of the [Kenya Roads Act](#) provides a clear mechanism for ventilating the grievances raised in the petition. Counsel added that the Environmental Management & Coordination Act [the EMCA] provides a mechanism for adjudication of disputes relating to environmental issues. Citing the Court of Appeal decision in [Mutanga Tea & Coffee Company Ltd v Shikara Limited & another](#) [2015] eKLR, counsel submitted that where a specific dispute resolution mechanism is prescribed by [the Constitution](#) or by a statute, a party is obligated to exhaust that mechanism before invoking the jurisdiction of the court. Counsel argued that if there are persons who have suffered damages and are aggrieved with the manner the project is being implemented, those persons have a right to seek redress through the mechanism prescribed under the [Kenya Roads Act](#) and the EMCA. Counsel urged the court to find that this petition was filed prematurely and is an abuse of the due process of the court.
 8. On whether the petitioner has the locus standi to institute these proceedings, counsel submitted that this petition offends Section 34 of the [Advocates Act](#) as read together with Sections 9 and 31 of the same Act because the petitioner took instructions to act for other persons yet he is not an advocate within the meaning of the [Advocates Act](#). Citing the High Court decision in [Abraham M Njihia v IEBC & 2 others](#), counsel submitted that the petitioner was an unqualified person within the meaning of the [Advocates Act](#) and had no right to institute the present petition on behalf of other persons.
 9. On whether this dispute can properly be ventilated through a constitutional petition, counsel cited the provisions of Sections 113 and 115 of the [Land Act](#) and submitted that once the 2nd respondent determines the persons who have interest in the land being acquired, it is obligated to compensate the said persons and any dispute arising out of the process of compulsory acquisition is supposed to be



- referred to court through a reference filed under Section 127 or Section 128 of the [Land Act](#). Counsel submitted that Section 24 of the [Land Registration Act](#) does not envisage a situation where a person who is not a proprietor can have locus to seek redress from a court through a general constitutional petition. Counsel contended that the petitioner lacked the locus standi to make the above claims on behalf of a non-specific group alleged to be proprietors.
10. Counsel added that the petition as filed did not particularize the names, land reference numbers, and awards offered to each and every land owner who claims to be aggrieved. Counsel contended that a constitutional petition was not the proper platform on which to ventilate the factual issues raised in the petition which related to proprietorship of land and rights to property. Counsel further submitted that the original jurisdiction of this court should not be abused and used to circumvent the procedure established by law on ascertaining proprietors' interest in land and grant of remedies. Counsel added that the petitioner was not a proprietor within the meaning of Section 2 of the [Land Registration Act](#). Counsel urged the court to strike out the petition.
 11. The petitioner responded to the application through a replying affidavit dated 21/10/2021 and a further affidavit dated 15/11/2021. He deposed that the 1st respondent's application dated 8/9/2021 was a replica of its earlier application dated 2/9/2019 which was filed in court on 4/9/2019. He added that the two notices of preliminary objection by the 1st respondent raised the same issues. The petitioner faulted the 1st respondent for duplicity and accused the 1st respondent of coming to court with dirty hands. The petitioner added that this court had earlier given directions that the petition together with the two preliminary objections were to be canvassed by way of written submissions. It was the case of the petitioner that this court pronounced itself on the issue of jurisdiction through its ruling dated 23/7/2020 hence it had become functus officio. Further, the petitioner deposed that Articles 22 and 258 of [the Constitution](#) gave him the locus standi to initiate this petition. The petitioner added that Section 29 of the [Kenya Roads Act](#) provides for entitlement to compensation to an aggrieved party, hence it cannot be relied upon by the 1st respondent as a bar to this court's jurisdiction. The petitioner contended that the present petition seeks reliefs which can only be determined and granted by this court. Lastly, the petitioner deposed that Section 129 of the EMCA only provides for a mechanism for challenging decisions made by the National Environment Management Authority and does not bar an aggrieved party against seeking redress in a court of law in relation to general environmental grievances.
 12. The petitioner filed written submissions dated 16/12/2021 opposing the application and the two notices of preliminary objection. The petitioner submitted that this court has jurisdiction to entertain this petition because Section 29 of the [Kenya Roads Act](#) is limited to issues relating to compensation by the 1st respondent. The petitioner contended that the dispute in this petition is an environmental dispute that calls for a constitutional petition. Citing Article 162(2) of [the Constitution](#) and Section 13 of the Environment and [Land Act](#), the petitioners argued that this court has jurisdiction to entertain the dispute in this petition.
 13. On locus standi, the petitioner argued that the petition was premised on Articles 22 and 258 of [the Constitution](#) which allows every person the right to institute court proceedings to ventilate grievances relating to the Bill of Rights. Citing the decision of the Supreme Court of Kenya in [Mumo Mutemu v Trusted Society of Human Rights Alliance and 5 others](#) [2014] eKLR, among other decisions, the petitioner submitted that [the Constitution](#) granted him the right to ventilate the grievances raised in the petition.
 14. On whether this petition raises constitutional questions that require this court's intervention, the petitioner submitted that he had alleged violations of various Articles of [the Constitution](#) and elaborated how various rights were violated. The petitioner added that the petition fully complied with Rule 10(1)



of *the Constitution* of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules 2013 and the requirements spelt out by the Supreme Court of Kenya in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR. The petitioner further submitted that this petition raises pure and serious constitutional issues that require consideration by this court.

15. On the doctrine of exhaustion of remedies, the petitioner submitted that the said doctrine was not applicable to the petition. The petitioner argued that Section 29 of the *Kenya Roads Act* is limited to compensation while the present petition raises constitutional questions. The petitioner submitted that the doctrine of exhaustion of remedies is not applicable where a tribunal lacks jurisdiction, adding that this court is bound by the provisions of Articles 23(3), 50(1) and 28(1) of *the Constitution* to admit the petition and stop the respondents from violating the rights and fundamental freedoms in the Bill of Rights. The petitioner urged the court not to strike out the petition.
16. The 5th respondent supported the application and the preliminary objections through written submissions dated 1/12/2021, filed through M/s Law Advocates LLP. On whether the petitioner has locus standi before this court, counsel for the 5th respondent cited Article 22 of *the Constitution* and submitted that the petitioner did not fit in any of the five (5) categories that are permitted to ventilate grievances relating to the Bill of Rights. Counsel added that the petitioner had taken instructions to act on behalf of able persons yet he was not an advocate of the High Court of Kenya. The 2nd, 3rd and 4th respondents did not file written submissions.
17. I have considered the application together with the two notices of preliminary objection. I have also considered the response to the application and the parties' respective submissions on the three items that fall for determination. The following are the issues that fall for determination in the application and in the two preliminary objections: (i) Whether the question of jurisdiction raised in the three items was determined by this court in its ruling rendered on 23/7/2020; (ii) If the answer to the above is in the negative, whether this petition offends the doctrine of exhaustion of remedies and therefore constitutes an abuse of the process of this court; (iii) Whether the petitioner has locus standi to initiate this petition; (iv) What order should be made in relation to costs.
18. The first issue is whether the question of jurisdiction raised in the three items under consideration was determined by this court in its ruling rendered on 23/7/2020. The ruling of 23/7/2020 was rendered by Gacheru J. It was rendered in an application dated 2/9/2019, through which the 1st respondent sought a certification to the effect that its preliminary objection dated 5/4/2019 raised substantial questions of law and that the said preliminary objection needed to be referred to the Chief Justice to constitute a bench of an uneven number of Judges, being not less than 3 in number, to hear it. The court considered the said application and determined that, as a single judge court, this court had the jurisdiction to dispose the issue raised in the preliminary objection.
19. Mr. Omtatah relied on the following excerpt from the said ruling to advance the view that the question of jurisdiction that the 1st respondent has raised in the three items under consideration was determined:

“.....the court finds and holds that the notice of motion dated 2nd September 2019 by the 1st respondent/ applicant is not merited and the same is dismissed entirely with costs. Let the matter be prosecuted in this court and be determined on merit.”
20. The above excerpt did not in any way dispose the issues raised in the application and in the two preliminary objections under consideration. To understand the tenor and import of the ruling rendered on 23/7/2020, one has to read the entire ruling and at the same time understand the issue



that fell for determination in that ruling. Having read the ruling, it is clear that the court was invited to determine whether the criteria for certification for the purpose of constituting a bench of three or more judges of this court to hear the issue raised by the 1st respondent had been satisfied. The issue that fell for determination in the said ruling is whether that criteria had been satisfied. That is the context in which the above excerpt should be interpreted. I have no doubt in my mind that the ruling rendered by Gacheru J on 23/7/2020 merely disposed the plea for a bench of an uneven number of judges of this court as sought by the 1st respondent. The said ruling did not dispose the preliminary objection in respect of which certification was sought. Put differently, the question of jurisdiction of the Environment and Land Court to adjudicate the dispute in this petition was neither raised nor determined in the said ruling. That is my finding on the first issue.

21. The second issue is whether this petition offends the doctrine of exhaustion of remedies and therefore it is an abuse of the process of the court. While urging this court to strike out this petition in limine, the 1st respondent relied on Section 29 of the [Kenya Roads Act](#) which provides as follows:

“29. In exercising the powers conferred by Sections 23, 24, 25, and 26, an Authority shall do as little damage as possible, and, where any person suffers damage, no action or suit shall lie against the Authority, but he shall be entitled to such compensation therefor as may be agreed between him and the concerned Authority, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice”.

22. The 1st respondent further relied on Section 129 of the Environment Management & Coordination Act [the EMCA] which provides as follows:

- (1) Any person who is aggrieved by—
 - a. the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;
 - b. the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;
 - c. the revocation, suspension or variation of the person’s licence under this Act or its regulations;
 - d. the amount of money required to paid as a fee under this Act or its regulations;
 - e. the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.
- (2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.
- (3) Upon any appeal, the Tribunal may—
 - a. confirm, set aside or vary the order or decision in question;
 - b. exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or



- c. make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
 - d. if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
 - e. if satisfied upon application by any party, review any orders made under paragraph (a).
- (4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3)(a).
23. The dispute in this petition dominantly relates to grievances relating to the state’s compulsory acquisition of private lands that were required for the James Gichuru Road Junction-Rironi Highway (A104) Road Expansion Project. The petitioner contended that the respondents failed to promptly indemnify persons affected by the project and commenced works before compensating and relocating the affected persons. He contended that incidental health and safety issues and issues relating to social amenities and restoration of water connections had arisen as a result of the respondent’s omissions. The dominant issue is, however, compensation and relocation of the persons whose land was acquired and those who were affected by the state’s compulsory acquisition of private lands.
24. In my view, reliance on Section 29 of the *Kenya Roads Act* at this point in time may not be the proper approach through which to deal with this dispute. The framework in Section 29 of the *Kenya Roads Act* is a pre-2010 legal framework. Any interpretation of the pre-2010 framework in the Act ought to be aligned with the principles and the framework in *the Constitution* of Kenya 2010.
25. In so far as compulsory acquisition of private land is concerned, Article 40(3) of *the Constitution* contains the following constitutional framework:
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - i. requires prompt payment in full, of just compensation to the person; and
 - ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.
26. Further, Article 68(c)(ii) of *the Constitution* required Parliament to enact a law to regulate the manner in which any land may be converted from one category to another. Put differently, Article 68(c)(ii) obligated Parliament to legislate a framework on how the state should exercise its power of eminent domain. It is in furtherance of the objects of *the Constitution* of Kenya 2010 that the legal framework in Part VIII of the *Land Act*, relating to compulsory acquisition of private land by the state, was enacted. Part VIII of the *Land Act* contains two fora where disputes relating to compulsory acquisition of private land are supposed to be ventilated and adjudicated. The first forum is the public inquiry established under Section 112 of the Act. The second forum is the Land Acquisition Tribunal



established under Section 133A of the Act. Under Section 133D of the Act, this court is granted appellate jurisdiction over disputes relating to compulsory land acquisition by the state.

27. In my view, in so far as disputes relating to compulsory acquisition of private land by the state is concerned, the above frameworks in *the Constitution* of Kenya 2010 and in the *Land Act* of 2012 have rendered Section 29 of the *Kenya Roads Act* redundant. In the present circumstances, Section 29 of the *Kenya Roads Act* cannot be a proper basis for invoking the doctrine of exhaustion of remedies. The proper basis would be Part VIII of the *Land Act* which establishes the Public Inquiry and the Land Acquisition Tribunal and vests in the Tribunal jurisdiction to deal with disputes relating to compulsory acquisition of private land, including allegations of violation of rights under the Bill of Rights [See Section 133C(8) of the *Land Act*].
28. Should this court down its tools and refer this dispute to the Tribunal established under Section 133A of the *Land Act* in tandem with the Supreme Court pronouncement in *Benson Ambuti Adegga & 2 others v Kibos Distillers Limited & 5 others* [2020] eKLR? Ordinarily, this would be the proper thing to do. However, though established under Section 133A of the *Land Act*, currently the Land Acquisition Tribunal is not constituted and is therefore not available to adjudicate the dispute in this petition. This court cannot, in the circumstances, send this dispute to the Land Acquisition Tribunal. For this reason, this court is expected to exercise its original jurisdiction under Article 162(2)(b) and Section 13 (2) (b) of the *Environment and Land Court Act*.
29. For the above reasons, it is my finding on the second issue that, Section 29 of the *Kenya Roads Act* has been rendered redundant by the framework in *the Constitution* of Kenya 2010 and the framework in the Part VIII of the *Land Act* 2012. It is my further finding that, given the fact that the Land Acquisition Tribunal established under Section 133A is, at the moment, not constituted, this petition is properly before this court by dint of the provisions of Article 162(2)(b) of *the Constitution* and Section 13(2)(b) of the *Environment and Land Court Act*. Parties will be at liberty to apply for transfer of the dispute to the Tribunal should it be constituted before this dispute is determined.
30. The third issue is whether the petitioner has the locus standi to bring these proceedings. The 1st respondent relied on Section 34 of the *Advocates Act* and contended that the petitioner took instructions to act for other persons yet he is not an advocate. In response to that contention, the petitioner relied on Articles 22 and 258 and argued that the two articles grant every person the right to institute court proceedings to ventilate grievances relating to the Bill of Rights.
31. Article 22 of *the Constitution* provides as follows:
 - (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.
 - (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
 - (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—



- (a) the rights of standing provided for in clause (2) are fully facilitated;
 - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the Const2010 [Constitution of Kenya, 2010](#) 18 court shall, if necessary, entertain proceedings on the basis of informal documentation;
 - (c) no fee may be charged for commencing the proceedings;
 - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
 - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.”

32. Article 258 of [the Constitution](#) provides as follows:

- (1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.

33. The petitioner has not disputed the fact that he is not an advocate of the High Court of Kenya within the meaning of the [Advocates Act](#). He relies on Article 22 of [the Constitution](#) which empowers a person, acting in the interest of a group or class of persons, to initiate proceedings to enforce the Bill of Rights. He also relied on the provision of Article 258 which empowers any citizen to initiate proceedings to enforce [the Constitution](#). Our courts have been reluctant to strike out in limine petitions brought to enforce the Bill of Rights on the ground of locus standi. Indeed, the Supreme Court reflected itself on this subject in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR and opined that locus standi should not be invoked to strike out petitions initiated to ventilate issues relating to the Bill of Rights.

34. Further, as correctly pointed by counsel for the 5th respondent, the line between public interest litigation and private litigation is, in many instances, thin. Often, a clear boundary emerges only after trial. For this reason, it would be premature to declare at this point that the petitioner lacks locus standi.

35. The result is that the application dated 8/9/2021 and the two notices of preliminary objection dated 11/2/2019 and 5/4/2019 are all rejected. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 6TH DAY OF JULY 2022

B M EBOSO



JUDGE

In the Presence of: -

Ms Ekesa standing in for Mr Omtatah - Petitioner

Ms Mukwo holding brief for Ms Akech for the 5th Respondent

Court Assistant: Ms Lucy Muthoni

