



Wangai & 10 others v County Government of Laikipia & 4 others (Environment & Land Petition E004 of 2021) [2022] KEELC 14897 (KLR) (6 October 2022) (Judgment)

Neutral citation: [2022] KEELC 14897 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND PETITION E004 OF 2021**

AK BOR, J

OCTOBER 6, 2022

BETWEEN

FREDRICK WANGAI 1ST PETITIONER
ISAAC NJAU KAREMA 2ND PETITIONER
DAVID MWANGI NGUGI 3RD PETITIONER
JOE WAGURA WANJAU 4TH PETITIONER
STEPHEN G. KAMAU 5TH PETITIONER
JOHN MACHARIA MUTHEE 6TH PETITIONER
MWANGI MUHOHO 7TH PETITIONER
KAKAKA COMMERCIAL AGENCIES LTD 8TH PETITIONER
NGAWA 2019 ASSETS LIMITED 9TH PETITIONER
FOUR FACE INVESTMENTS CO. LTD 10TH PETITIONER
CHAMBER OF COMMERCE, LAIKIPIA 11TH PETITIONER

AND

COUNTY GOVERNMENT OF LAIKIPIA 1ST RESPONDENT
COUNTY EXECUTIVE COMMITTEE 2ND RESPONDENT
**MEMBER ROADS, TRANSPORT, LAND HOUSING, ENGINEERING AND
PUBLIC WORKS 3RD RESPONDENT**
LAND USE PLANNING 4TH RESPONDENT
PLANNING CONSULTATIVE FORUM 5TH RESPONDENT



JUDGMENT

1. The 1st to 7th Petitioners are residents of Laikipia County, where they transact as land surveyors or agents and own land for agricultural, residential and commercial use. The 8th to 11th Petitioners are limited liability companies with interests in surveying, buying and selling of land within Laikipia County.
2. The 1st Respondent is established under Article 126 of the Constitution of Kenya, 2010 (‘the Constitution’) and is mandated to implement county legislation as well planning and development within the County of Laikipia. The 2nd Respondent is appointed under Article 179 of the Constitution and Section 35 of the County Governments Act. The 3rd Respondent is established by Section 18 of the Physical and Land Use Planning Act for Laikipia County while the 4th Respondent is established under Section 14 of the same Act.
3. The Petitioners filed this petition on 12/05/2021 claiming that it had been brought to their attention and that of other residents of Laikipia County in May 2021 that the 1st Respondent had issued guidelines which were stamped 31/03/2021 (“the Guidelines”) purporting to prohibit the subdivision of agricultural, residential and commercial land within Laikipia County in some zoned areas. Further, the Guidelines provided minimum acreages with the restriction for agricultural land being a minimum of 10 acres for land situated within 6 to 10 kilometres (kms) of the Nanyuki- Meru Road, one-acre buffer on land situated along the Nyahururu- Nakuru Highway and 2.5 acres on land situated within 1 to 10 kms of the Nyahururu- Nakuru Highway. The Guidelines also stipulated that where land measuring more than 5 hectares is to be subdivided, the owner would be required to surrender 4% of the total area of land (excluding the roads), to the County to be used for public utility through the National Land Commission.
4. The Petitioners contended that the Guidelines were formulated in gross violation of the Constitution and the laws in that there were no consultative meetings held to create public awareness; the public and stakeholders were not notified of the intention to formulate the Guidelines; members of the public and stakeholders were not invited to lodge their objections; the Guidelines were not published in the Kenya Gazette; and that no meetings were held in each ward for stakeholders before the preparation of the County physical and land use development plan. The Petitioners faulted the Respondents for failing to comply with the legal requirement for public participation before formulating the Guidelines.
5. The Petitioners gave particulars of the Respondent’s breaches of their constitutional rights touching on the right to public participation and the need to involve the people in policy making. They argued that restricting subdivision of agricultural land would curtail the right to bequeath small portions of land to beneficiaries of a deceased proprietor; that it would deny land owners the right to sell small portions of land for economic and social development and raise funds for education, hospital bills and for self-sustenance. They contended that the Guidelines failed to integrate economic, social and environmental needs of present and future generations. They urged that the Guidelines violated the right to earn a living and generate income through the sale and development of land.
6. The Petitioners contended that compelling land owners to forfeit 4% of their land for public utility where the land being sub-divided exceeded 5 hectares would amount to compulsory acquisition without following due process and paying compensation to the land owners.
7. The Petitioners sought a declaration that the Guidelines formulated by the 1st Respondent and any County physical and land use development plan prepared pursuant to the Guidelines were unconstitutional and void. They sought an order of certiorari to quash the Guidelines and any County



physical and land use development plan on minimum subdivision of land prepared pursuant to the Guidelines. In the event that the Guidelines had been gazetted, the Petitioners sought to have the Gazette Notice quashed. Further, the Petitioners sought an injunction to restrain the Respondents from formulating guidelines and preparing a County Physical and Land Use Development Plan on permitted minimum subdivision for the 1st Respondent without adhering to the Constitution and the law.

8. The petition was supported by the affidavit of the 1st Petitioner who deponed that he had the authority of the other Petitioners to swear the affidavit. Mr. Fredrick Wangai deponed that he was a resident of Laikipia County practicing as a Land Surveyor and that he owned land for agricultural, residential and commercial use within Laikipia County. He deponed that they brought this petition on behalf of persons residing within Laikipia County affected by the Guidelines formulated by the Respondents. He produced an illegible copy of the Guidelines which he deponed was brought to their attention sometime in May 2021.
9. He averred that the Guidelines do not meet the principles and norms of physical and land use planning. He produced a copy of the letter dated 3/05/2021 vide which the Petitioners sought particulars and information regarding the Guidelines from the 2nd Respondent. He averred that the Guidelines had infringed on the Petitioners' and other land owners' rights within Laikipia County on ownership of private land by purporting to limit the subdivision of agricultural land to 1 acre, 4 acres and 10 acres in zoned regions on the basis that it would deny the owners the right to subdivide their land into smaller portions for sale for purposes of raising funds for education, hospital bills and self-sustenance which he argued would encourage poverty. Further, that this would curtail the right to distribute land among children and family members. On the issue of forfeiting 4% of the land where the total land measured 5 hectares and above for public utility, he maintained that that would amount to compulsory acquisition.
10. He deponed that the Respondents were imposing the Guidelines yet the Petitioners could not access the County Physical and Land Use Development Plan that would support the Guidelines. He contended that the Petitioners' right to access information on the Guidelines had been violated and argued that the Guidelines were being forced on the residents of Laikipia County arbitrarily. He annexed the authority to act signed by the other Petitioners as well as documents from the Institute of Surveyors of Kenya and Land Surveyors Board. He also attached copies of the title deeds held by some of the Petitioners.
11. Joseph Njalis Shuel swore the replying affidavit opposing the petition. He denied the averments in the petition. He contended that the Petitioners had prematurely invoked the jurisdiction of this court without exhausting the other available remedies. He urged that Section 15 of the [Access to Information Act](#) provided that an applicant may write to the Commission on the Administrative Justice requesting review of a decision of a public entity in relation to a request for access to information and argued that the Petitioners had failed to utilise the dispute resolution mechanisms provided under the [Access to Information Act](#).
12. The Respondents contended that the petition ought to be dismissed because it was not supported by an affidavit while pointing out that the deponent stated in the supporting affidavit that it was in support of the application. Paragraph 1 of the affidavit Mr. Fredrick Wangai states that that affidavit was in support of the application.
13. The Respondents relied on Article 60(1) of the [Constitution](#) which provides that land in Kenya shall be held and used in a manner that is equitable, efficient, productive and sustainable and in line with the principles of equitable access to land, security of land rights and sustainable and productive management of land resources. They also cited Article 60 (2) of the [Constitution](#) which stipulates that



- the principles of land policy under sub-article 1 should be implemented through a National Land Policy developed and reviewed regularly by the National Government through legislation.
14. The Respondents emphasised that land was finite and the essence of proper and controlled planning was to ensure that land was utilised in a manner that ensures optimal utilisation while balancing the interests of citizens and those of the future population.
 15. He averred that the policies developed and which were being implemented included the National Spatial Plan, vision 2030, the National Land Policy and the Physical Planning handbook. Mr. Shuel deponed that the Laikipia County Government was in the process of developing its physical and land use policy in accordance with Section 17 of the [*Physical and Land Use Planning Act*](#) and this would eventually form the background of the County's legislation.
 16. He deponed that being surveyors and land agents, the Petitioners ought to be aware of the existence of the Physical Planning Handbook of 2007 ("the Handbook") which gives user friendly guidelines and minimum standards on physical planning. He added that since its development, the Handbook was a primary guide on all matters relating to physical planning and that it was applied uniformly in all counties. Part of his mandate was to ensure proper implementation of the Guidelines and the minimum standards prescribed in the Handbook, the National Spatial Plan and Legal Notice No. 140 of 1998.
 17. He maintained that extraction of the guidelines and minimum standards set out in the Handbook would not require any public participation due to the fact that the Guidelines have been in existence and have been implemented since 2007. He added that as the County Executive Committee Member in charge of physical planning in Laikipia County he had observed laxity in the implementation of the [*Constitution*](#), the [*Physical and Land Use Planning Act*](#), the [*Land Act*](#), the [*Land Registration Act*](#), the [*County Governments Act*](#), the [*Urban Areas and Cities Act*](#), the [*National Land Commission Act*](#), the National Spatial Plan, Vision 2030, the National Land Policy and the Physical Planning Hand book by the stakeholders in the land sector leading to illegal or irregular decisions being made.
 18. He averred that on 26/03/2021, the County Government of Laikipia organised a multi-agency consultative meeting on pertinent issues on land, infrastructure, environment and natural resources aimed at resolving issues within the land sector. One of the issues emphasised at that meeting was the need for proper developmental control and physical planning within the County.
 19. Mr. Shuel deponed that he circulated a letter on 31/03/2021 as a reminder of the Guidelines for land subdivision in Laikipia County after noting the rampant increase in the subdivisions particularly in the fringe zones of markets and urban areas of mainly agricultural land into small and uneconomical units across the County. He exhibited an extract of the Guidelines which the Petitioners are challenging in this petition while maintaining that the Guidelines were an extract from the Physical Planning Handbook 2007, the National Spatial Plan and Legal Notice No. 140 of 1998 which are the points of reference on all matters physical planning. He argued that since the Guidelines were already applicable within Laikipia County they did not require public participation or gazettelement unlike new guidelines.
 20. He averred that he was in the process of preparing the Laikipia County Physical and Land Use Policy in accordance with Section 17 of the [*Physical and Land Use Planning Act*](#) which would have to be approved by the County Executive Committee and taken through public participation before being approved by the Laikipia County Assembly. As at 9/07/2021, they had already prepared the second draft of the policy and it was being polished before it could be forwarded to the County Executive Committee.



21. He deponed that if at all the Petitioners obtained planning or development related approvals which were contrary to existing laws, policies and the Handbook in the past, then such approvals were obtained illegally or irregularly and, in his view, should be revoked. He argued that this court should not issue orders that are a misnomer since quashing his reminder circulated in 31/03/2021 would not serve any useful purpose because the policies and the Handbook which were the subject of his reminder are already in force.
22. He produced copies of the minutes of the multi-agency consultative meeting held on 26/03/2021, the reminder dated 31/03/2021 on the guidelines for Land subdivision in Laikipia County, the Laikipia County Land Subdivision Guidelines with effect from 1/4/2021 and the Handbook.
23. The court directed parties to file written submissions together with a legible copy of the Guidelines and the original Handbook. The Respondents did not furnish the original Handbook to the court. In their written submissions, the Petitioners submitted that the Guidelines were not anchored on any existing legislation both nationally and county wise. They argued that the Handbook which the Respondents mentioned was only supposed to be used as a guide or reference in the formulation of regulations on land use and planning. They contended that the Respondents proceeded to formulate the Guidelines dated 31/03/2021 without following the Constitution and the law. They pointed out that the minutes which the Respondents relied on showed that the issue of minimising subdivision of land in different zones was not discussed at all.
24. The Petitioners pointed out that Section 115 of the [County Government Act](#) made public participation in the county planning process mandatory. Further, that Section 87 of that [Act](#) sets out the principles of citizen participation in counties which includes timely access to information, data, documents, and other information relevant to policy formulation and implementation. They relied on Article 10 of the Constitution on the principles of governance and Article 174 where the object of devolution of government is to give the power of self-governance to the people and enhance the participation of the people in the exercise of State power and in making decisions affecting them. They adverted to Article 232 of the [Constitution](#) which gives involvement of the people in the process of decision making as one of the principles of public service.
25. The Petitioners relied on [Ndegwa \(Suing on his behalf, in the public interest and on behalf of other bar owners in Nyandarua County v County Assembly of Nyandarua County and Another\)](#) (2021) eKLR on the issue of public participation. They cited the South Africa decision in [Doctors for Life International v Speaker of the National Assembly](#) (CTI 12/05) (2006) as well as the decision in [Republic v Independent Electoral and Boundaries Commission \(IEBC\) ex parte National Super Alliance \(NASA\) Kenya and 6 Others](#); and [Legal Advice Center and 2 Others v County Government of Mombasa and 4 others](#) (2018) eKLR. They pointed out that [Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy and 17 others](#) (2015) eKLR prescribed the principles to be employed in determining whether or not the requirement for public participation had been met.
26. The Respondents in their submissions gave a chronology of the relevant events regarding the formulation of the Handbook and the development of Vision 2030 as well as the enactment of the [Physical and Land Use Planning Act](#) of 2019. They maintained that the Guidelines did not originate from Laikipia County but rather, that they were imported and domesticated from laws and policies in force at national level and therefore they were not subject to the requirement for public participation.
27. They relied on Sections 17 and 18 of the [Physical Land Use Planning Act](#) which in their view distinguished the roles played by the County Executive Member and the County Director of Physical and Land Use Planning. They submitted that in coordinating the two roles, the County Director of Physical and Land Use Planning and the County Executive Committee Member responsible for



- formulating county physical and land use planning policies came up with the Laikipia County land subdivision guidelines which were to take effect on 1/04/2021. They maintained that the Guidelines were formulated as a guide to the National Legal and Policy Framework with the intention of guiding the concerned officers at the county level on the national legal and national framework for implementation. They were categorical that the Guidelines were imported from national laws and were not formulated by the County Executive Committee Member so as to require public participation.
28. The Respondents argued that public participation was a requirement only where a public body utilised its statutory powers to make decisions that have an impact on the public. They relied on the court's finding in *William Odhiambo Ramogi and 3 Others v Attorney General and 4 Others; Muslims for Human Rights and 2 Others (Interested parties)* [2020] eKLR that requiring an entity to subject its internal operational decisions to public participation was unreasonable and would definitely forestall the operations of such an entity.
 29. The Respondents pointed out that Article 189 of the *Constitution* required the national and county governments to coordinate the performance of their functions in a manner that respected the functional and institutional integrity of government at both levels. That based on this constitutional premise, the County government through the County Executive Member imported the national legal and policy framework in the form of guidelines to be followed at county level. That that was an internal operational decision not subject to public participation because it only imported laws, policies, and decisions which were already in force in Kenya for implementation in line with Article 189 (1) (b) and (c) of the *Constitution*.
 30. The Respondents contended that the limitation of land related rights emanated from Chapter 5 of the *Constitution* more so Article 60 of the *Constitution* which stipulates that land in Kenya should be held, used and managed in a manner that is equitable, efficient, productive and sustainable in accordance with the principles relating to access to land, security of land rights, sustainable and productive management among others. Article 60 (2) provides that those principles should be implemented through a national policy developed and reviewed regularly by the national government and through legislation.
 31. The Respondents submitted that Article 66 (1) of the *Constitution* provides for the regulation of the use of any land or interest or right over land in the interest of defence, public safety, public order, public morality, public health, or land use planning by the state. They emphasised the aspect of land use planning by the State and submitted that the *Constitution* empowered the national government to legislate and develop policy with aim of limiting proprietary rights in land in the interest of land use planning. They contended that the national legislative and policy framework had the force of law to limit the enjoyment of the rights alluded to by the Petitioners in the interest of sustainable and efficient land use planning.
 32. They argued that the rights which the Petitioners highlighted with respect to bequeathing of small portions of land to beneficiaries of deceased proprietors; subdividing land into small portions for sale to raise funds; and distribution of land among children and family members so that they can hold separate titles were not absolute. They submitted that Article 24 of the *Constitution* provides for the limitation of rights and fundamental freedoms including the right to own property based on the importance and purpose of the limitation.
 33. The Respondents pointed out that Article 10 (2) (d) of the *Constitution* which prescribes national values and principles of governance also included sustainable development and added that sustainable development was the premise upon which land proprietary rights are limited by national legislative and



policy framework. The Respondents relied on the decision on [*Ngunjiri Wambugu v Inspector General of Police and 2 Others*](#) (2019) eKLR.

34. The issue for determination is whether the court should grant the reliefs sought by the Petitioners, whose case is that the Respondents prepared and intends to implement Guidelines restricting the subdivision of land to specific sizes in different zones within the County and requiring landowners to surrender 4% of their land for public purposes where the total land is more than 5 hectares without adhering to the Constitutional requirement for public participation. The Petitioners contend that the Guidelines have infringed on their right and that of other land owners in the County of ownership of private land. The Respondents' position is that the letter giving the Guidelines was sent merely as a reminder of existing national laws and policy on land use and planning. They placed a lot of reliance on the Handbook which they asserted was the primary guide on matters planning across all the counties within the country.
35. The gravamen of the Petitioners' case is that the Respondents developed and rolled out land subdivision guidelines for the County stamped on 31/3/2021 without public participation, which they seek to have quashed. They seek to have the Respondents restrained from formulating guidelines and preparing a County physical land use development plan without adhering to the [*Constitution*](#) and the applicable statutes. The Petitioners contend that the Guidelines will restrict the subdivision of agricultural land so that small portions cannot be bequeathed to beneficiaries of estates of deceased persons; that the Guidelines violate the right to earn a living and generate income through sale and development of land; and that in limiting subdivision of agricultural land as prescribed, landowners will be denied the right to sell or distribute small portions of land.
36. The impugned Guidelines were sent by the County Executive Committee Member to various offices within the Laikipia County vide the letter dated 31/3/2021 whose reference terms it a reminder of the Guidelines for land subdivision in Laikipia County. The Guidelines set out the permitted minimum subdivision portions in hectares for specified areas or zones within Laikipia County while giving the permissible use for those zones. They state that any comprehensive subdivision of land measuring more than 5 hectares will be subject to surrender of 4% of the total land for public utility through the National Land Commission.
37. The court understood the Petitioners' contention to be that the Respondents have formulated and wish to implement Guidelines on subdivision of land within Laikipia County without public participation which is a constitutional tenet; and that by purporting to restrict the minimum sizes for subdivision of land in specified zones and requiring land owners subdividing land measuring more than five hectares to surrender 4% of their land for public utility would be in breach of their right to ownership of property since it would curtail the right to subdivide the land into small portions for sale or to bequeath to beneficiaries.
38. Chapter 5 of the [*Constitution*](#) sets out limitation of land related rights with Article 60 of the [*Constitution*](#) stipulating that land in Kenya shall be held, used and managed in an equitable, efficient, productive and sustainable manner and in accordance with the principles set out in that Article which include sustainable and productive management of land resources. The principles for holding, using and managing land are to be implemented through a national land policy developed and reviewed regularly by the national government and through legislation, which would include the [*Physical Planning and Land Use Act*](#), which came into force in 2019. Article 66 (1) provides for the regulation by the State of the use of any land or interest or right over land in the interest of defence, public safety, public order, public morality, public health, or land use planning by the State.



39. An owner of private land is therefore subject to the limitations set out in the Constitution and other laws and cannot freely deal with or subdivide his land in total disregard of the principals of land policy and land use planning. Article 60 denotes that there is regulation over how private land is used by a landowner with the overall aim of planning and control being to achieve the efficiency, productivity and sustainability of land as a natural resource even where the land is classified as private under the Constitution.
40. The Respondents did not point out the specific parts of the Handbook that they relied on in support of the contention that the impugned letter dated 31/3/2021 was merely a reminder of the guidelines contained in the Handbook. The Handbook states that its purpose is to provide clear and user-friendly guidelines and minimum standards on the process and practice of physical planning. It outlines the statutes and subsidiary legislation referred to in the Handbook. These are the [Physical Planning Act](#), the [Survey Act](#), the [Roads and Roads of Access Act](#), the [Local Government Act](#), the [Public Health Act](#), the [Electricity Act](#), the [Communications Act](#) and the [Environmental Management Coordination Act](#) of 1999.
41. The Handbook was prepared in 2007 before the promulgation of the 2010 Constitution which necessitated the repeal of some of the legislation mentioned in the Handbook and the enactment of new statutes to conform to the new legal dispensation. The [Local Government Act](#) was repealed and, in its place, other legislation such as the [County Governments Act](#) and the [Urban Areas and Cities Act](#) dealing with devolution are now in place prescribing a somewhat different framework regarding land use and planning. The [Physical Planning Act](#) was also repealed and replaced by the [Physical and Land Use Planning Act](#) of 2019.
42. Chapter three of the Handbook deals with Regional Planning and Environment and defines a regional physical development plan as a long-term plan which provides a framework for development of a region for about 30 years. Paragraph 3.3 states that guidelines and standards for a region will focus on natural resource planning and conservation, planning for rural and agricultural land, planning infrastructural services and human settlements.
43. Paragraph 3.3.2 of the Handbook deals with Rural and Agricultural Land Planning. Sub paragraph (a) (iii) which deals with land subdivisions in rural areas gave minimum land sizes for low, medium and high potential areas. It also stipulated that during subdivision, a landowner would be required to surrender 4% of his land for public utility purposes excluding the road reserve. The Handbook makes provision for other planning issues and infrastructure and provides the policy framework in land use planning.
44. Some of the objectives of county planning under Section 103 of the [County Governments Act](#) are: to ensure harmony between national, county and sub-county spatial planning requirements; facilitate development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county; develop urban and rural areas as integrated areas of economic and social activity.
45. Section 104 of the [County Governments Act](#) enjoins the county government to plan for the county with provision for public participation. To guide, harmonise and facilitate development within a county, there must be a county integrated development plan, county sectoral plans, county spatial plan as well as cities and urban areas plans according to Section 107 of the [Act](#). The manner in which the plans are to be developed is set out in an elaborate way in Sections 108 to 111. Section 115 makes public participation in county planning processes imperative.



46. It was not clear from the parties whether the five-year county integrated development plan for Laikipia County contemplated by Section 108 of the [County Governments Act](#) had been prepared. Planning in the county is aimed at ensuring integrated development planning within that county and ensure linkages between county plans and the national planning framework.
47. Use of private land is subject to the [Physical and Land Use Planning Act](#) which is the legislation that makes provision for the planning, use, regulation and development of land and connected purposes. Section 17 of this [Act](#) makes it the responsibility of the County Executive Committee member to formulate a county policy on physical and land use planning, and promote the integration of county physical and land use planning functions and sectoral planning levels. The Act gives the content of the National Physical and Land Use Development Plan, its preparation, approval and implementation. It also gives the scope of the Inter-County Physical Land Use Development Plan and its implementation and enjoins a county government to prepare a county physical and land use development plan for the county once in every ten years.
48. Some of the objects of a county physical and land use development plan under Section 37 of the [Physical and Land Use Planning Act](#) are to provide an overall physical and land use development framework for the county, guide rural development and settlement; provide a basis for infrastructure and services delivery; guide the use and management of natural resources; identify the proper zones for industrial, commercial, residential and social development; and enhance environmental protection and conservation.
49. Section 40 of the [Physical and Land Use Planning Act](#) makes public participation in the preparation of a county physical and land use development plan mandatory. Section 46 requires a county government to prepare a local physical and land use development plan for amongst other objectives, zoning, urban renewal or redevelopment and for regulating land use and development. The Act provides for development control under Section 55, with one of its objectives being to ensure optimal land use. The Third Schedule made pursuant to Section 55 of the Act gives the parameters for the development control process. Some of the factors to be considered in the processes of land use planning include location, size of the land and the area zoning regulations. Surrender of land for public utility is also a factor to be considered in subdivision and amalgamation proposals as well as the minimum size of sub plots created from subdivisions of land.
50. The 2nd Respondent averred in his affidavit that he was in the process of preparing the Laikipia County Physical and Land Use policy in accordance with Section 17 of the [Physical and Land Use Planning Act](#) and that the policy would be forwarded to the public for public participation after being embellished. The Petitioners failed to prove that the Respondents had prepared a County Physical Land Use Development Plan on permitted minimum subdivision pursuant to the Guidelines, the court cannot quash that which does not exist.
51. It was not controverted that the Guidelines were prepared pursuant to the Handbook of 2007 and therefore the requirement for public participation does not apply to the Guidelines. The Petitioners failed to prove that their rights and those of other land owners in Laikipia County to own property had been infringed upon by the Guidelines.
52. Neither the Petitioners nor the Respondents addressed their minds to Article 68 (c) (i) of the [Constitution](#) which enjoined Parliament to enact legislation to prescribe minimum and maximum land holding acreages in respect of private land. Based on this, it is clear that a law ought to be in place prescribing the minimum and maximum acres of land that a person can hold in Kenya hence one cannot argue as the Petitioners did, that they have an unfettered right to subdivide their land to miniscule portions.



53. Unfortunately, the legislation contemplated by Article 68(c)(i) of the Constitution is not in place twelve years after the promulgation of the Constitution despite the fact that such legislation should have been enacted within 18 months of the date the Constitution came into force. Article 261 contemplates that where Parliament fails to enact any particular legislation within the time specified, any person may petition the High Court on the matter. The Registrar of this Court is directed to bring this lapse to the attention of the Honourable Attorney General and the Clerk of the National Assembly by serving copies of this judgment on those offices.
54. The court declines to grant the orders sought in the petition dated 12/5/2021. Each party will bear its own costs.

DELIVERED VIRTUALLY AT NANYUKI THIS 6TH DAY OF OCTOBER, 2022.

K. BOR

JUDGE

In the presence of: -

Mr. Martin Waichungo for the Petitioners

Mr. Wachira Muthee for the Respondents

Ms. Stella Gakii- Court Assistant

