



**Ng'ang'a & 11 others v Cabinet Secretary Ministry of Land & Public Works,
Housing and Urban Development & another (Petition E459 of 2024)
[2025] KEHC 13143 (KLR) (Constitutional and Human Rights) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E459 OF 2024
LN MUGAMBI, J
SEPTEMBER 18, 2025**

BETWEEN

GODFREY MAINA NG'ANG'A & 11 OTHERS & 11 OTHERS PETITIONER

AND

**CABINET SECRETARY MINISTRY OF LAND & PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Respondents filed a Notice of Preliminary Objection dated 30th September 2024 against the Petition dated 5th September 2024.
2. The Preliminary Objection is based on the grounds that:
 - a. The Petition does not meet the test of a constitutional petition laid down in the case of Anarita Karimi Njeru v Republic (No.1) [1979] KLR 154 and emphasized in the case of Mumo Matemu v Trusted Society of Human Rights alliance [2014] eKLR, and on that ground alone, we urge that this Petition should fail. That apart from citing omnibus provisions of the Constitution, the Petition has provided neither particulars of the alleged complaints, nor the manner of alleged infringements.
 - b. The Petitioners complain of an enumeration exercise carried out circa 2004 to 2005 which would make such complaint time barred pursuant to Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya which provides that an action may not be brought by any person



to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

- c. The Petition and Notice of Motion seek to stop the eviction of residents in zone C and D therefore it would necessarily need the Court to exercise its mind on entitlement to the said zones by the parties.
- d. This Court lacks jurisdiction to hear this matter pursuant to Article 162(2)(b) of the Constitution, Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to— the environment and the use and occupation of, and title to, land.
- e. This Petition is an abuse of the Court Process and ought to be dismissed as against the Respondents.

Respondents' Submissions

3. Principal State Counsel Stephen Terrell filed submissions dated 15th October 2024 that singled out the following twin issues: whether the Petition meets the threshold of a Constitutional Petition and whether this Court has jurisdiction to hear the Petition.
4. Counsel submitted that this Petition does not meet the test of a constitutional Petition as laid down in Anarita Karimi Njeru (supra). It was argued on behalf of the Respondents that apart from citing omnibus provisions of the Constitution, the Petition does not provide particulars of the alleged complaints and the manner of alleged infringements hence should be dismissed.
5. Like dependence was placed in Kenya Bus Services Ltd & 2 others v Attorney General & 2 others [2005] eKLR, Matiba V Attorney General H C Misc Appl 666 of 199, Cyprian Kubai V Stanley Kanyonga Mwenda – Nairobi – HC MISC 612 of 2002 and Benson Makori Makworo v Nairobi Metropolitan Services & 2 others [2022] eKLR.
6. On the second issue, it was argued that the Petitioners complaint is relates to an enumeration exercise carried out in circa 2004 to 2005 which is time barred pursuant to Section 7 of the Limitation of Actions Act. Moreover, Counsel submitted that the Petitioners seek to stop the eviction of residents in zone C and D, therefore this Court would have to exercise its mind on entitlement to the said zones by the parties; a matter pertaining to land which falls under the exclusive jurisdiction of the Environment and Land Court under Article 162(2)(b) of the Constitution.
7. Reliance was placed on the Supreme Court decision of Karisa Chengo & 2 others v Republic (2015) eKLR where it was held that:

“ Article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of the Constitution intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts. Concurring with this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of “equal rank and none has the jurisdiction to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other”. Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these Courts is subject to supervision or direction from another.”
8. Also cited was the case of Co-operative Bank of Kenya Limited v Patrick Kang’ethe Njuguna & 5 others [2017] eKLR.



Petitioners' Submissions

9. Ndegwa and Ndegwa Advocates for the Petitioners filed submissions dated 13th February 2025 in opposition to the Preliminary Objection and responded to the two issues, namely: whether this Court has the jurisdiction to hear and issue the orders sought and whether the Petition meets the threshold of a constitutional petition.
10. On the first issue, Counsel submitted that this Court has jurisdiction to entertain this Petition pursuant to Article 165(3) (b) of the Constitution. That is to hear and determine the question as to whether the rights and fundamental freedoms in the Bill of Rights have been denied, violated or threatened. Additionally, questions concerning interpretation of the Constitution under Article 165(d) of the Constitution. Reliance was also placed in Article 22 and 23(1) of the Constitution. To buttress this point reliance was placed in *Felix Njagi Marete v Attorney General* (1987) KLR 690 where it was held that:

“ the Constitution is not a toothless bulldog nor is it a collection of pious platitude. It has teeth and those teeth in particular are to be found under Section 84.”
11. Counsel further submitted that Article 2(5) & (6) of the Constitution inform that general rules of international law form part of the law in Kenya including ratified treaties and conventions. In this regard, Counsel submitted that Articles 25.1 of the Universal Declaration of Human Rights (UDHR) together with UN Guidelines on Eviction, General Comment No.7 form part of the laws that are applicable in Kenya and thus applicable in the context of this case.
12. Counsel equally submitted that in respect of Articles 10, 28, 29 and 43(1)(b) of the Constitution, the Court ought to ensure a balance is struck between the Petitioners intention to stay on the suit land and the government intention of evicting the Petitioners with the responsibility to develop the public land.
13. On the second issue, Counsel submitted that the Petitioners had sufficiently outlined the factual background of the Petition, the legal background of what the Petition is relying on and the legal grounds upon which the rights are violated by the Respondents at Section D paragraph 44 to 62 of the Petition. As such, the Respondents' assertion was denied. Reliance was placed in *Independent Electoral and Boundaries Commission V Jane Cheperenger & 2 others* (2015) eKLR where the Court held that:

“ A Preliminary Objection should not be used as a sword to win a case and deny the Petitioners an opportunity to be heard on merit”

Analysis and Determination

14. Having considered the pleadings and submissions of the Parties, I opine that the only question for determination is:



Whether the Respondents' Preliminary Objection is merited.

15. The fundamental characteristics of a Preliminary Objection are now very well settled and need not require further elaboration. The Court restated them in *Kyule v Gitaari* [2024] KEHC 5819 (KLR) as follows:

“7. The case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection. The court observed thus:-

.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

8. Sir Charles Newbold P. stated:-

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.

9. Similarly the Supreme Court in the case of *Hassan Ali Joho & another v Suleiman Said Shabal & 2 others* SCK Petition No 10 of 2013 [2014] eKLR held that:-

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

10. Further in the case of *Hassan Nyanje Charo v Khatib Mwashetani & 3 others*, [2014] eKLR the court held that:-

Thus a preliminary objection may only be raised on a ‘pure question of law.’ To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

11. Evidently, a preliminary objection must be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with the point of law.”

16. This principle was also reiterated in *Oraro vs. Mbaja* [2005] 1 KLR.

17. The preliminary objection raised herein touches on the issue jurisdiction and the pleadings. The issue of jurisdiction goes to the core of any suit because if the Court lacks jurisdiction, it lacks the competence to entertain the suit which it must divest from. Raised successfully, it marks the end of the road of that particular matter in a Court that lacks jurisdiction. A jurisdictional issue this forms a proper basis



for raising a Preliminary Objection as it has the capacity of disposing the matter without going to the merits of the decision.

18. Likewise, a generic and inelegantly pleaded case that embarrasses a Party may bring about injustice because it does not confine the adverse party to a particular issue they are required to defend. This was affirmed by the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2014] eKLR which cited with approval the locus classicus case of *Anarita Karimi Njeru v Republic* (1979) KLR 154. The Court stated:

“... Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

(43) The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of the *Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements...

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

19. A constitutional petition must thus satisfy threshold of precision by citing the provisions of the *Constitution* that are alleged to have been violated and a descriptive account of the said violation. Mere regurgitation of the constitutional provisions followed by general statements is not enough. A Petitioner must identify the provisions that are alleged to be violated and show how the said provisions were violated from the facts and evidence of the case. This can be ascertained by examining the Petition alone without delving into the evidence hence is an issue for which a Preliminary Objection can be raised.



20. Having carefully read through the instant Petition, I do not think it is nonspecific for it has a narration of the factual background upon which the Petition is founded and then proceeds to enumerate the specific constitutional violations.
21. That ground of the objection thus has no merit and must fail.
22. May I now consider the jurisdictional issue?
23. Article 162(2)(b) of the Constitution provides as follows:

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

- a.; and
- b. the environment and the use and occupation of, and title to, land.

24. Relying on the authority granted by Article 162 of the Constitution, Parliament proceeded to enact the Environment and Land Court Act No.19 of 2011 that established the Environment and Land Court to exercise jurisdiction as provided for in Section 13 of the Act as follows:

In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

- i. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- ii. relating to compulsory acquisition of land;
- iii. relating to land administration and management;
- iv. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- v. Any other dispute relating to environment and land.

25. The Supreme Court in *Karisa Chengo* (supra) guided as follows:

“(50) ... it needs to be emphasized that status is not the same thing as jurisdiction. the Constitution though does not define the word ‘status’. The intentions of the framers of the Constitution in that regard are obvious given the choice of... words they used; that the three Courts (High Court, ELRC and ELC) are of the same juridical hierarchy and therefore are of equal footing and standing. To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialised jurisdiction but they are not the High Court.”

(51) Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court’s operation. Courts can therefore be of the same status, but exercise different jurisdictions...”



26. The Superior Court went on to further state that:

“...[52] ... The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

27. Additionally, in *Mohammed Said v County Council of Nandi* [2013] KEELC 139 (KLR) the Court observed that:

“The general jurisdiction is set out in Section 13 (1) which emphasizes that the E&LC has both 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 the Environment & Land Court Act, or any other law applicable in Kenya relating to environment and land.... A plain reading of Section 13 (3) will demonstrate that the jurisdiction of the court is not limited only to hearing matters touching on violations of Articles 42, 69, and 70 of the *Constitution*. That section does not state that the E&LC is only to hear the matters set out in Articles 42, 69 and 70 of the *Constitution*. The section for whatever reason, is emphasizes the jurisdiction of the court to hear petitions touching on the environment. There is no preclusion to hear any other petition, grounded on any other Article of the *Constitution*, so long as it falls within the purview of land and environment.

18. Indeed, the High Court has no jurisdiction in respect of matters that fall within the jurisdiction of the Environment and Land Court or that falling within the jurisdiction and the Industrial Court. This is set out in Article 165 (5) of the *Constitution*.”

28. Equally in *Mugweru & 4 others (Being the administratrices of the Estate of Maaka Mukuhi Mugweru (Deceased)) v National Land Commission & 5 others; Estate of Samuel Mugweru Wathirwa & another (Interested Parties)* [2022] KEHC 13252 (KLR) the Court held that:

“134. My interpretation of the preceding Section is that the jurisdiction of the Environment and Land Court is founded on the existence of any dispute with relation to land or environment. In essence therefore where the substratum of a dispute is founded on such, the matter should be exclusively dealt with in the Environment and Land Court...

I am guided by the Court of Appeal who speaking to this matter in the case of *Chimweli Jangaa Mangale & 3 others v Hamisi Mohamed Mwawasaa & 15 others* [2016] eKLR opined as follows:

“This Court considered the issue in *Prof. Daniel N. Mugendi v. Kenyatta University & Others*, CA No 6 of 2012 and in *Judicial Service Commission v. Gladys Boss Shollei & Another*, CA No 50 of 2014, involving the Labour and Employment Court, which, like the ELC, is a court of equal status as the High Court under Article 162(2) of the *Constitution*. The Court concluded that the High Court did not have exclusive jurisdiction to enforce the Bill of Rights and that the *Constitution* contemplates enforcement and protection of fundamental rights and freedoms by other courts,



other than the High Court. Accordingly, where issues involving the environment or land raise constitutional issues or issues of protection and enforcement of the right to land as property, the ELC will have jurisdiction to hear and determine the dispute. We are satisfied that the appellant’s claim that the ELC lacks jurisdiction to enforce constitutional rights is totally bereft of merit.”

138. Similarly, the Court in the case of *Joyce Mutindi Muthama & another v Josephat Kyololo Wambua & 2 others* [2019] eKLR held that:

“ 16. It is true, as submitted by the Respondents’ counsel, that under Section 13(3) of the *Environment and Land Court Act*, the court has the mandate to hear and determine applications for redress of a denial, violation or infringement of, or threat to rights or fundamental freedoms relating to a clean and healthy environment under Articles 42, 69 and 70 of the *Constitution*. However, the Act does not limit or preclude the court from hearing applications for redress of a denial or violation of any other right, if that right is in furtherance of a dispute relating to land and the environment.

17. It is trite that the right to own land and the right to a clean and healthy environment cannot be dealt with in isolation from other rights like the right to a fair hearing, the right not to be discriminated against, the right to a fair administrative action, the right to equal protection and equal benefit of the law, the right to adequate housing, amongst other rights.

18. All these rights have to be interpreted in the context of the Petitioners’ right to own land and the right to a clean and healthy environment, and not in isolation as argued by the Respondents.”

29. The Respondents argued that the substance of this Petition is a matter that falls within the jurisdiction of the Environment and Land Court under Article 162(2) (b) of the *Constitution*. The Petitioners opposed and asserted that the Petition is founded purely on the violation of fundamental rights and freedoms which is a matter within this Court’s jurisdiction.

30. The Petition primarily questions the manner in which the Respondents have been implementing the Strategy by KENSUP set for 2005 – 2020 and thus seek the following reliefs against the Respondents:

- a. A declaration that the Petitioners are entitled to full enjoyment of all the rights enshrined under Article 43 and 47 of the *Constitution*.
- b. An order of certiorari to quash the notice of the Respondents dated 27th August 2024 and 3rd September 2024 to evict the Petitioners from Kibera (Soweto).
- c. An order of mandamus compelling the Respondents to allocate members of Soweto already enumerated and issued with Unique ID numbers procedurally, with the units and/or houses



that are due to them and further compelling the Respondents herein to jointly identify the project affected members with the Petitioners to prevent infiltration by none residents of Kibera (Soweto).

- d. An order of prohibition do issue prohibiting the Respondents from entering Zone C and D to start the project therein without solving the pending issues in Zone A and B, solving in the sense that the members of Zone A & B entitled to a house, via the unique card that proofs enumeration be allocated the said houses without delay.
 - e. An order of permanent injunction do issue restraining the Respondents through themselves, their servants and/or agents whatsoever from evicting the Petitioners and their members from Kibera (Soweto) Zone C and D or in any way interfering with the petitioners occupation on Zone C and D.
31. Evidently, the pre-dominant purpose/objective that informs this Petition is the management and administration of slums and informal settlements in urban areas through KENSUP. Without any shred of doubt in my mind, I believe this is a dispute for the Environment and Land Court to adjudicate even if they are ensuing constitutional violations as it touches on land and environment, it is not for the High Court.
32. This preliminary objection is upheld and the Petition is struck out.
33. As this is a public interest litigation, each Party shall bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

.....

L N MUGAMBI

JUDGE

