



**Embakasi Community Empowerment Initiative v Cabinet Secretary, Ministry of Lands and Physical Planning & 3 others (Constitutional Petition E310 of 2020) [2024] KEHC 2248 (KLR) (Constitutional and Human Rights) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2248 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E310 OF 2020**

**LN MUGAMBI, J**

**MARCH 7, 2024**

**BETWEEN**

**EMBAKASI COMMUNITY EMPOWERMENT INITIATIVE ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORK .... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL, NATIONAL POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The petition is dated 1<sup>st</sup> October 2020. After the Petition was instituted, a Notice of Preliminary Objection dated 1<sup>st</sup> March 2023 was filed by the 4<sup>th</sup> Respondent. The Preliminary Objection challenges the jurisdiction of this Court to hear the Petition.
2. On 4/7/2023 when the matter came up for oral highlighting of the submissions, Counsel for the Advocate for the Petitioner, Mr. Were informed this Court that Justice Ongundi had directed that the Preliminary Objection stood dismissed since it was never served as directed hence did not bother to submit on the same.



3. Ms. Ruth Wamuyu for the Respondent protested this contention and insisted that she had not only filed the said Notice of Preliminary Objection but also corresponding written submissions to both the Petition and the Preliminary Objection in question.
4. After listening to both Counsel, I opined and directed that a jurisdictional issue is not a matter to be ignored by the Court as for it can be raised at any stage of the proceedings. I thus directed that the Petitioner can only be cushioned from ambush but not from responding to the Preliminary objection. I allowed Counsel for the Petitioner to submit on the main Petition that particular day in line with what he had prepared for in his written submissions. However, I gave him further date of 25/7/2023 to enable him prepare and respond to the issue of jurisdiction that the respondents had raised.
5. Further, going back to the record, I discovered that the Petitioner Counsel's had apparently misrepresented the directions issued by Lady Justice Ongundi on the Preliminary Objection. The directions by the Judge issued on 18<sup>th</sup> April, 2023 were as follows:

“...The Attorney General has caused a lot of uncalled for delays in this matter by not filing submissions as directed by Court. I therefore direct that the Preliminary Objection be heard alongside the Petition...”
6. The directions were thus clear that the Preliminary objection was to be heard together with the Petition hence treated as part of the responses to the Petition.

### **Petitioner's Case**

7. The petition dated 1<sup>st</sup> October, 2020 and supported by the affidavit of James Waweru Gikunga contests planning and upgrading of Mukuru Kwa Reuben settlement by the Respondents.
8. The petitioner states that through letters of allotment issued to members between 1980 and 1990 they settled on Mukuru kwa Reuben and have been living there for the last over 40 years. Over the course of time, they have been applying for and obtaining the requisite government approvals thereby developing the land in question by building permanent houses and other related developments that including NGO projects, installing electricity, schools, health centers, churches and worship buildings, water installation and other social amenities.
9. In or around year 2019, the area residents were informed by County Government that space was need for construction of a road which proposal the residents welcomed. However, they subsequently came to learn that a plan to construct houses for tenants and residents in the estate was on line, which position was confirmed by President of Kenya during a visit to the area.
10. The Petitioner complains that is a stakeholder in that area but was not involved before the decision was made as there was no public participation carried out in regard to the proposed construction. Further, the petitioner is aggrieved because the existing developments were approved by the government that now seeks to re – develop the area. It is the Petitioner's contention that these residents are entitled to compensation because demolition will lead to loss of their investment in property.
11. The petitioner in the alternative asserts that its members are persons of means and given an opportunity, they can develop the area as may be specified by the Government. The Petitioner states such option was given to Mukuru Kwa Njenga residents hence it would amount to discrimination if the Respondent denies Mukuru Kwa Reuben a similar option.



12. The Petitioner contended that unless government action is restrained, its members will become homeless, suffer inhumane and degrading treatment as this is the only home known to its members and their families which the government has a duty to protect.
13. The Petitioner prayed for the following reliefs:
  - a. An Order of prohibition barring the respondents from demolishing, destroying, interfering and/or affecting the houses constructed within the slum known as Mukuru Kwa Reuben within Nairobi County.
  - b. Declaration that the respondents do engage and involve the petitioners in public participation on the planning and upgrading of Mukuru Kwa Reuben slum.
  - c. A declaration that taking over the land by the Government will amount to compulsory acquisition hence the Government should compensate the petitioners before taking any action if the Government is interested in the land.
  - d. A declaration that the intended upgrading to be conducted by the Government is discriminatory.
  - e. That an Order do issue against the respondents to protect and secure the rights of the petitioners.
  - f. Costs of this Petition be provided for.

#### **Respondents' Case**

14. The respondents filed a replying affidavit sworn by Kang'ethe Thuku, the then Deputy Director General, Nairobi Metropolitan Services (NMS), sworn on 23<sup>rd</sup> July 2021.
15. He stated the mandate of Nairobi Metropolitan Service (NMS) as which had been established through Executive Order No. 3 of 2020 in line with Article 7.1 of the Deed of transfer of functions. These functions were: to perform County Health Services, County Transport Services, County Planning and Development Services and County Public Works, Utilities and Ancillary Services.
16. That in line with this said mandate, NMS declared Mukuru kwa Reuben a Special Planning Area (SPA) vide Gazette Notice No.7694 dated 11<sup>th</sup> August 2017 and suspended development in that area for two years to facilitate planning. Subsequently, it was extended for a further period of 2 years vide a Notice dated 28<sup>th</sup> May 2020.
17. That a Special Planning Area is necessitated by the need to address unique development and environmental challenges of the area while addressing the significant urban challenges.
18. He contended that contrary to the petitioner's allegation, Gazette Notice No.7694 informed the public of the intended public participation process by the Nairobi City County Government in accordance with the *Physical and Land Use Planning Act*, 2019 hence the Respondent followed the dictates of public participation.
19. He deponed that indeed, several stakeholder engagements on the development of the subject land were held in September 2017, February 2018 and July 2018. This engagement took the form of 10 household cells making up a baraza where were the issues were discussed and proposals arrived at.



20. The exercise also involved seven committees namely, Housing, Infrastructure and Commerce; water sanitation and energy; environment and natural resources; education, youth affairs and culture; health services and institutional frameworks and finance.
21. He further contended that the petitioners have not demonstrated that the respondents are incapable paying compensation for the loss that might be incurred in the implementing the development. He asserted that majority of the members welcomed the development plan and hence petitioner is merely advancing a personal interest rather than public interest and therefore granting the orders sought will be prejudicial to the larger community which is supportive of the development plan.

### **Petitioner's Submissions**

22. The petitioner through Odera Were Advocates filed submissions and a list of authorities dated 26<sup>th</sup> July 2021.
23. Counsel submitted that the petitioner stands to suffer loss of its land and irreparable damage, if the respondents are permitted to proceed with the intended demolition in violation of Articles 32(2) and 43(1) (a) of *the Constitution*.
24. Further, he pointed out that Article 10 of *the Constitution* will be violated since no public participation was conducted. Counsel also submitted that the planned demolition is discriminatory and in violation of Article 27 of *the Constitution* because their neighbours, Mukuru kwa Njenga residents were given the option of developing their area.
25. He posited that the right to dignity under Article 28 of *the Constitution* will be violated if the demolitions are allowed to take place. That it would also violate the petitioner's right to property under Article 40 of *the Constitution*.
26. On lack of jurisdiction, the Petitioners submissions were made orally on 25<sup>th</sup> July, 2023 through Mrs. Omondi as a rebuttal to the Respondent's submissions. Counsel relied on the ELC case of Petros Mutoki v Jeremiah Matoke Nyangwara and invited this Court to apply the predominant purpose test. She argued that what is complained of relates to construction works about to be undertaken by the Respondents hence this Court has jurisdiction to hear the matter.

### **Respondent's Submissions**

27. On 30<sup>th</sup> May 2023, State Counsel Ruth Wamuyu, filed submissions in support of the respondents' case. Relying on the averments in the respondent's affidavit, Counsel submitted that Section 52 of the *Physical and Land Use Planning Act* No.13 of 2019 gives the County Government power to declare an area as a Special Planning Area so as to enable preparation of a participatory, economically, feasible, socially and environmentally sustainable Physical Development Plan in accordance with the Act.
28. In compliance with the said law, Gazette Notice No.7694 notified the public of the intended public participation process by Nairobi City County Government. This was followed by stakeholder's engagement meetings in the first two years which discussed the intended development as detailed in the respondents' affidavit. In view of this, Counsel submitted that the principle of public participation



as held in *Robert N. Gakuru & Others vs. Governor Kiambu County & 3 Others* (2014) eKLR was observed and quoted the following excerpt from the Judgment:

“... public involvement or public participation refers to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process...”

29. The Respondents submitted that declaring a Special Planning Area or Compulsory Acquisition are both processes recognized under the laws of Kenya. Further, the petitioner had not demonstrated how the process of declaring Mukuru kwa Reuben amounted to compulsory acquisition or violation of their fundamental rights and freedoms. She argued that the Petition does not meet the threshold laid down in *Anarita Karimi Njeri v R* (1976-1980) KLR 1272. Moreover, that the petitioner did not demonstrate how the respondents by applying the provisions of *Physical and Land Use Planning Act* No.13 of 2019 to declare a Special Planning Area had contravened *the Constitution*.

30. It was further contended that the *Physical and Land Use Planning Act* No.13 of 2019 enjoys the presumption of constitutional validity which had not been rebutted by the petitioner. In support of this contention, she placed on *Katiba Institute & Another v. Attorney General & Another* (2017)eKLR, where it was held thus:

“... In examining the constitutionality of a statute it must be assumed the legislature understands and appreciates the needs of the people and the law it enacts are directed to problems which are made manifest by experience and the elected representatives assembled in a Legislature enacts laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is therefore in favor of the constitutionality of an enactment...”

31. On jurisdiction, Ms. Wamuyu referred to the 4<sup>th</sup> respondent’s preliminary objection which was premised on the following grounds:

- i. By dint of Articles 162 (2) (b) of *the Constitution* as read with Section 150 of the *Land Act* 2012, this Court is not vested with the requisite jurisdiction to hear and determine both the application and petition.
- ii. By dint of Articles 162 (2) (b) of *the Constitution* as read with Section 13 of the Environmental and Land Court Act No.19 of 2011, this Court is not vested with the requisite jurisdiction to hear and determine both the application and petition.
- iii. Both the application and petition be struck off with no orders as to costs.

32. Counsel also referred to her written submissions dated 14<sup>th</sup> April 2023 in support of their preliminary objection. She cited the case of *Mukisa Biscuit Manufactures Ltd –vs- Westend Distributors Ltd*, (1969) E.A. 696, on the definition and purport of a preliminary objection pointing the Court to the following passage in the Judgment:

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

33. In this regard, Counsel submitted that the preliminary objection raised in this matter contests the jurisdiction of this Court as the issues raised belong to the exclusive jurisdiction of the Environment and Land Court established under Article 162 (2)(b) of *the Constitution*. She argued that the dispute



relates to environment and land and claims on breaches of fundamental rights stem from this particular issue hence the entire claim falls under the jurisdiction of Environment and Land Court. Counsel relied on Christopher Ngusu Mulwa & 28 others v County Government of Kitui & 2 others (2017) eKLR where it was held that:

“Consequently, and considering that a dispute to land or environment can be commenced by way of a constitutional petition, it is only the Environment and Land Court that has jurisdiction to entertain such matter.”

34. Also cited was the case of Owners of Motor Vessel ‘Lilian S’ –VS- Caltex Oil (Kenya) Limited (1989) KLR 1 where the Court famously remarked:

“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”

35. The Respondents Counsel also relied on Jamal Salim vs Yusuf Abdulahi Abdi & Another Civil Appeal No. 103 of 2016 (2018) eKLR.

Analysis and Determination

- a. Whether the preliminary objection dated 1<sup>st</sup> March 2023 is merited.
- b. Whether the petitioner’s constitutional rights were violated.

### **Whether the preliminary objection dated 1<sup>st</sup> March 2023 is merited**

36. Jurisdiction defines the scope of a court’s exercise of judicial authority. As to who has the power to circumscribe the jurisdiction of the Court, the Supreme Court of Kenya in Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR held that it is conferred by the Constitution or by the Statute. The Court stated:

“... A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

37. The Jurisdiction of the High Court is set out in Article 165 (3) of the Constitution. It provides thus:

High Court

- (3) Subject to clause (5), the High Court shall have—
  - (a) unlimited original jurisdiction in criminal and civil matters;



- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
  - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
  - (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;
    - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
    - (iv) a question relating to conflict of laws under Article 191; and
  - (e) any other jurisdiction, original or appellate, conferred on it by legislation. (4) Any matter certified by the court as raising a substantial question of law under clause (3)(b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
- (5) The High Court shall not have jurisdiction in respect of matters—
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution;
- Or
- (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice

38. The 4<sup>th</sup> respondent's main contention is that the subject matter of this petition falls within the jurisdiction of the special courts, in this case, being the Environment and Land Court pursuant to Article 162(2)(b) of *the Constitution*, as the jurisdiction of the High Court in matters falling within the competence of special courts is excluded by dint of Article 165 (5) (b).

39. Article 162 (2) authorizes Parliament to establish Courts under Article 162 (2) (a)& (b) whereas Article 162 (3) gives it authority to determine their jurisdiction. The two Articles read thus:



- 162 (2) -Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
- a. employment and labour relations; and
  - b. the environment and the use and occupation of, and title to, land.
3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
40. Parliament enacted the *Environment and Land Court Act* No.19 of 2011 to exclusively adjudicate over disputes concerning the environment and use and occupation of, and title to land. The scope of the Jurisdiction of the Environment and Land Court is provided for in Section 13 (2) of the Act which states 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.
41. Although the Jurisdiction of the High Court is quite expansive, *the Constitution* specifically ousts its jurisdiction in matters set aside for Special Courts under Article 165(5) by stating thus:
- The High Court shall not have jurisdiction in respect of matters-
- i. Reserved for the exclusive jurisdiction of the Supreme Court Under this Constitution; or
  - ii. Falling within the jurisdiction of the Courts contemplated in Article 162(2).
42. In *Republic vs Karisa Chengo & 2 others* [2017] eKLR, the Supreme Court had the following to say:

“... 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. In their words:

“By being of equal status, the High Court therefore does not have the jurisdiction to superintend, supervise, direct, guide, shepherd and/or review the mistakes, real or perceived, of the ELRC and ELC administratively or judiciously as was the



case in the past. The converse equally applies. At the end of the day however, ELRC and ELC are not the High Court and vice versa. However, 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...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... 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.”

43. Further in *RW v JMN* (2022) eKLR the Court said:

“ 13. The jurisdiction of the ELC Court is limited by Article 162(2) and (3) of *the Constitution* of Kenya and Section 13(2) of the ELC Act No. 19 of 2011. Article 162(2)(b) which states that ELC Court has the mandate to hear and determine disputes relating to use and occupation and title to land...”

44. Courts have also considered the mongrel-type cases in which issues cross - cut between the High Court and Environment and Land Court. In such instances, two main tests emerged; the predominant purpose test and the predominant issue test. The case of *Benson Makori Makworo v Nairobi Metropolitan Services & 2 others* (2022) eKLR laid bare what the two schools of thought were all about, the Court stated:

“...It was on the cases raising ‘cross-cutting’ or ‘cocktail’ or ‘mixed grill’ issues within either Courts... Initially there were two schools of thought in the High Court on the matter. One school favoured the ‘pre-dorminant purpose test’ whereas the other school rooted for the ‘pre-dominant issue before Court’... The proponents of the former include Ngugi, J who rendered himself in *Suzanne Achieng Butler & 4 Others vs Redhill Heights Investments Limited & Another* (2016) EKLR as follows: -

When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works. The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.



Munyao, J was for the other test. In *Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another* [2018] eKLR the Learned Judge argued as follows: -

... On my part, I would modify the above test, and hold the position that what is important when determining whether the court has jurisdiction, is not so much the purpose of the transaction, but the subject matter or issue before court, for I think that the purpose of the transaction, may at times be different from the issue or subject matter before court. Let us take the transaction of a charge as an example. The predominant purpose of creating a charge is for one to be advanced some financial facilities. However, when it comes to litigation, the predominant issue may not necessary be the money, but the manner in which the chargee is exercising its statutory power of sale. Here, I trust that you will see the distinction between the predominant purpose of the transaction and the predominant issue before court. That is why I hold the view, that in making a choice of which court to appear before, one needs to find out what the predominant issue in his case is, and not necessarily, the predominant purpose of the transaction. If the litigant's predominant issue will touch on the use of land, or occupation of land, or a matter that affects in one or another, title to land, then such issue would fall for determination before the ELC.

The Court of Appeal had an occasion and dealt with the issue. In *Co-operative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 others*, Civil Appeal No. 83 of 2016 [2017] eKLR, the Court dealt with the issue as follows: -

Article 260 aforesaid echoes the traditional definition of land under the common law doctrine known as *Cujus est solum, eius est usque ad coelum et ad inferos* (*cujus doctrine*) which translates to 'whoever owns [the] soil, [it] is theirs all the way



[up] to Heaven and [down] to Hell'. As with our Constitution, the doctrine defines land as the surface thereof, everything above it and below it as well.....

Indeed, considering the above definitions, the inevitable conclusion to be drawn is that land connotes the surface of the land, and/or the surface above it and/or below it.”

...[F]or land use to occur, the land must be utilized for the purpose for which the surface of the land, air above it or ground below it is adapted. To the law therefore, land use entails the application or employment of the surface of the land and/or the air above it and/or ground below it according to the purpose for which that land is adapted.

The Court of Appeal,



therefore,  
settled for the  
'pre-  
dorminant  
purpose test'.  
Therefore,  
that is the test  
I will use in  
this case."

45. Turning now to the instant Petition, it is crystal clear that the main thrust upon which this Petition is founded is an apprehension by the Petitioner that the right to occupation of the land in question by the residents of Mukuru Kwa Reuben which they have lived on and developed for many years now, is on the verge of being extinguished by the actions of the Respondent through demolition of their structures to pave way for the building of proposed new houses and related infrastructure. The substratum of the Petition is thus based on imminent interference with the right of occupation to land. In the circumstances, I am persuaded by the Respondents contention that this is a which matter falls within the jurisdictional competence of the Environment and Land Court as Article 162 (2) (b) ousts the jurisdiction of the High Court in disputes relating to use, occupation and title to land and by dint of Section 13 (2) of the *Environment and Land Court Act*, confers this jurisdiction to the Environment and Land Court. I therefore find that this Petition was filed in the wrong forum. This Court lacks the jurisdiction to entertain it.
46. Without jurisdiction, it is not possible to consider any other issue in the Petition. In the words of Nyarangi J.A, in the Owners of Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Ltd [1989] eKLR
- “...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”
47. The inevitable action for this Court to take is therefore to strike out the Petition forthwith.
48. On costs, Rule 26 (1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 reaffirm the long-held principle of law that costs are awarded at the discretion of the Court. This Petition by its nature is a public interest litigation having been filed for the benefit of many residents of Mukuru Kwa Reuben whose occupation of the subject land was being threatened by the actions of the Respondent. The only reason I could not deal with the issues raised to the ultimate conclusion is due to lack of jurisdiction as this matter lies within the jurisdictional mandate of the Environment and Land Court. In the circumstances I will not condemn the Petitioner to pay costs. Each party to bear its own costs of the Petition.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH, 2024.**

.....

**L N MUGAMBI**

**JUDGE**

