



**Tuwan Farm Limited, 1965 v Tuwan Farm Limited, 2011 & 154 others;
Mutembei & 17 others (Interested Parties) (Constitutional Petition
E004 of 2023) [2024] KEHC 3026 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CONSTITUTIONAL PETITION E004 OF 2023
AC MRIMA, J
MARCH 14, 2024**

BETWEEN

TUWAN FARM LIMITED, 1965 PETITIONER

AND

TUWAN FARM LIMITED, 2011 & 154 OTHERS RESPONDENT

AND

JOHN JOGOO MUTEMBEI & 17 OTHERS INTERESTED PARTY

RULING

Introduction:

1. This ruling relates to the Notice of Preliminary Objection dated 7th August, 2023 and a Notice of Motion dated 19th July 2023.
2. The objection was filed by Messrs. Katama Ngeiywa & Co. Advocates for and on behalf of one Rebecca Mwashu, sued as the 113th Respondent herein. The Notice of Motion was filed by Messrs. David Ingosi & Co. Advocates for the 1st, 12th, 28th, 31st, 33rd, 40th, 41st, 46th, 48th, 49th, 51st, 52nd, 53rd, 54th, 55th, 60th, 62nd, 67th, 75th, 77th, 78th, 91st, 98th, 102nd & 109th Respondents.
3. The Petitioner, which appeared through one of its alleged Directors, Erastus Bruce Mwavali, opposed both the objection and the application.
4. By directions of this Court, parties filed written submissions to the objection and the application.

The Objection and Application:

5. The objection as raised, is as follows: -



- a. There is no specific fundamental right which the Petitioner alleges to have been violated by the 113th Respondent.
 - b. The Petition does not reveal any cause of action.
 - c. The Petition is an abuse of the process of the Court.
 - d. The suit is bad for misjoinder.
6. On the other part, the application by way of a Notice of Motion dated 19th July 2023 sought the following prayers: -
1. That the Petition filed herein be struck out.
 2. That in the alternative, the names of the Respondents/Applicants be struck out.
 3. That the costs of this application and of the entire petition be awarded to the Respondents/Applicants.
7. The proponents of the objection and the application strongly submitted, among other grounds, that there is no competent Petition for adjudication before Court since what has been filed raises no constitutional issues.
8. The Petitioner was of the contrary position. He filed dispositions and submissions urging this Court to sustain the Petition.

Analysis:

9. It is, therefore, the duty of this Court to satisfy itself whether there are any constitutional issues worth consideration.
10. Long before the downing of the new constitutional dispensation under *the Constitution* of Kenya 2010, Courts have variously emphasized the need for clarity of pleadings. This Court echoes the position.
11. *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as 'the Mutunga Rules')* also provide for the contents of Petitions. Rule 10 thereof provides seven key contents of a Petition as follows: -

Form of petition.

10.
 - (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.
 - (2) The petition shall disclose the following—
 - (a) the petitioner's name and address;
 - (b) the facts relied upon;
 - (c) the constitutional provision violated;
 - (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;



- (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
 - (f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
 - (g) the relief sought by the petitioner.
12. Rule 10(3) and (4) of the Mutunga Rules also have a bearing on the form of Petitions. They provide as follows: -
- (3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.
 - (4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.
13. Rules 9 and 10 are on the place of filing and the Notice of institution of the Petition respectively.
14. The Supreme Court in *Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others* [2014] eKLR had the following on Constitutional Petitions: -
- Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru vs. Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.
15. What then is a constitutional issue? In *Fredricks & Othman vs. MEC for Education and Training, Eastern Cape & Others* (2002) 23 ILJ 81 (CC), the Court, rightly so, delimited what a constitutional issue entails and the jurisdiction of a Constitutional Court as follows:
- The Constitution* provides no definition of ‘constitutional matter’. What is a constitutional matter must be gleaned from a reading of *the Constitution* itself: if regard is had to the provisions of... Constitution, constitutional matters must include disputes as to whether any law or conduct is inconsistent with *the Constitution*, as well as issues concerning the status, powers and functions of an organ of State.... the interpretation, application and upholding of *the Constitution* are also constitutional issues. So too is the question of the interpretation of any legislation or the development of the common law promotes the spirit, purport and object of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of *the Constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly on extensive jurisdiction...
16. In the United States of America, a constitutional issue refers to any political, legal, or social issue that in some way confronts the protections laid out in the US Constitution.



17. Taking cue from the foregoing, and broadly speaking, a constitutional issue is, therefore, one which confronts the various protections laid out in a Constitution. Such protections may be in respect to the Bill of Rights or other provisions of *the Constitution*. In any case, the issue must demonstrate the link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened or threatened and the manifestation of contravention or infringement. In the words of Langa, J in *Minister of Safety & Security vs. Luiters*, (2007) 28 ILJ 133 (CC): -
- ... When determining whether an argument raises a constitutional issue, the Court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the Court to consider constitutional rights and values...
18. Whereas it is largely agreed that *the Constitution* of Kenya, 2010 is transformative and that the Bill of Rights has been hailed as one of the best in the world, as Lenaola, J (as he then was) firmly stated in *Rapinder Kaur Atal vs. Manjit Singh Amrit* case Petition No. 236 of 2011 (2011) eKLR ‘... Courts must interpret it with all liberation they can marshal...’
19. Resulting from the above discussion and the definition of a constitutional issue, this Court agrees with the position in *Turkana County Government & 20 Others vs. Attorney General & Others* (2016) eKLR where a Multi-Judge bench affirmed the profound legal standing that claims of statutory violations cannot give rise to constitutional violations.
20. Having said as much, I now revert to the Petition in this matter. The Petitioner filed an original Petition which it later amended to introduce more parties. The original Petition had 123 Respondents and 15 Interested Parties.
21. The original Petition had three parts. They were the Description of the parties, the background and facts of the Petition which constituted the Petitioner’s case and the Reliefs sought. The amended Petition did not have much other than introducing 22 more Respondents and 3 more Interested Parties.
22. A closer observation of the parties in these proceedings include Judge, Magistrates, Prosecution Counsel, Court staff, Advocates, all who dealt with previous matters involving the Petitioner herein, in one way or the other.
23. The gravamen in the Petition mainly seems to be wrangles relating to two companies allegedly having more or less similar names. The wrangles have been in Court over time and even yielded to some criminal prosecutions.
24. In the main, and on the basis of the foregoing, the Petitioner sought the following reliefs in the Petitions: -
- a. An order of Certiorari be removing into the High Court and quashing and cancelling the certificate of registration and the decision of the Registrar General of Companies whether by himself, his agents, servants or personal assigns to deregister the 1st Respondent Company hereinafter Tuwan Fam Limited, 2011 Company By Shareholdings Registration No.40610 and its Subsidiary Company known as Skitex Cleaning Services Company Limited, 2011 Registration No.40682 by the Registrar General of Companies.
 - b. An Order of Prohibition be granted against Tuwan Farm Limited, 2011 Company By Shareholdings Registration No.40610 from issuing any freehold titles in respect of the land parcel known as Kitale Municipality Block 11/tuwan Farm approximately comprised of 4953 Plots hereinafter LR No.8813 measuring approximately 347 acres to Cancel and/or Revoke



all certificates of title issued by the 1st respondent company, forthwith having fraudulently and improperly executed.

- c. An order of Mandamus be granted directing the 1st respondent company hereinafter Tuwan Farm Limited, 2011 Company By Shareholdings Registration NO.40610 compelling it to recognize, confirm, affirm and/or pronounce and/or compensate the petitioner company for damages and/or mesne profits it being the due bona fide and legally registered owners of the company name reserved and registered as “tuwan Farm Limited’ names after the land LR No.8813 known as Tuwan Farm measuring approximately 347 acres situated along Kitale-matisi-endebeess road adjacent to Kitale Town within Trans-Nzoia County which original company is under cessation awaiting reinstatement by the alternate director of the petitioner company hereafter Erastus Bruce Mwavali and henceforth the Registrar General of Companies do issue the petitioner company with all the prerequisite registration documents an instruments conferring the company the legal registration certificates and full user rights and interests in the afore said company.
- d. A permanent Order of injunction do issue restraining Tuwan Farm Limited, 2011 Company By Shareholdings Registration No.40610 whether by itself or its agents, servants, or personal assigns or associates or any other person claiming through its name from impersonating the reserved name of the petitioner company hereinafter Tuwan Farm Limited, 1965 Company by Shareholdings Registration No.6563 by dealings in any way or manner and/or interfering with the reserved name of the petitioner company until further orders.
- e. A declaratory order do issue declaring the 1st respondent company hereinafter Tuwan Farm Limited, 2011 Company By Shareholdings Registration No.40610 fraudulent, improper, invalid, null and void.
- f. An order do issue declaring the 1st respondent company’s right to exercise its leave to commence both criminal proceedings for damages against the respondents for being in breach violation, threat, denial and infringements if the rights and fundamental freedom of the petitioner company in the bill of rights in *the Constitution* of Kenya, 2010 particularly pursuant to the provisions of Articles 22 and 23 (3) of *the Constitution* of Kenya, 2010 as read with orders 53(1), (2) and (3) of the *Civil Procedure Rules* 2010 and all other enabling provision of the law relied on as relevant empowering statutes.
- g. An order nullifying the parcel Kitale Municipality Block Ii/tuwan Farm Pltos 1-4953 freehold titles to Trans-nzoia/tuwan Farm Pltos 1-4953 leasehold plots titles.
- h. An order of Mandamus compelling Tuwan Farm Limited, 2011 Company By Shareholdings Registration No.40610 to surrender all moveable and immovable properties including documents, instruments and building premises belonging to the petitioner company with immediate effect.
- i. An order of Mandamus compelling Tuwan Farm Limited, 2011 Company By Shareholdings Registration No.40610, 3rd respondent and the 9th respondent to severally, jointly and collectively pay mesne profits to the petitioner company herein forthwith in the ratio 1st respondent Kshs.72,000,000/-, 3rd respondent Kshs.168,000,000/- and the 9th respondent Kshs.168,000,000/- with interests respectively together with damages.
- j. An order of Mandamus do issue adopting the order of Hon. Jus tice Martha Koome dated 15th February, 2011 in Kitale High Court civil suit No.52 of 2011 restraining the respondents herein whether by themselves, agents, servants, employees, from entering,



encroaching, damaging, wasting, alienating, dispensing off, sub-dividing or in any way whatsoever interfering with the suit property herein being LR No.8813 Tuwan Farm measuring approximately 347 acres.

- k. An order of Mandamus do issue directing the DCIO Kitale Police Station to immediately commence criminal investigations and to institute criminal proceedings against any of the respondents or any of the respondents variously, severally, jointly and/or collectively in this matter if found to be liable or culpable of any criminal offence committed through fraud, forgery or any improper dealings against the petitioner company and/or the petitioner companies properties herein.
 - l. Costs of this petition be awarded the petitioner company herein against the respondents severally, jointly and collectively.
 - m. The court be pleased to grant any other relief deemed fit, just and expedient in this matter.
25. For the Petitioner to, therefore, succeed in its endeavours, it must demonstrate compliance with at least the basic requirements in the presentation of constitutional Petitions. The baseline being that the issues must demonstrate the link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened or threatened and the manifestation or manner in which the contravention or infringement was visited upon the Petitioner by the rest of the parties.
33. In this case, whereas the Petitioner pleaded the background facts of its case, that was all. Apart from listing some Articles of *the Constitution* in the heading of the Petitions, the Petitioner failed to plead how each of the 155 Respondents had infringed which of its particular rights or fundamental freedoms whether jointly or otherwise. There was also no nexus on how the Interested Parties were intertwined in this web.
33. In such a scenario, the cardinal challenge to the Respondents is how they would respond to the Petition. Given that there is no connection between the problems bedeviling the Petitioner and the manner in which each of the Respondents allegedly infringed any of the Petitioner's rights or fundamental freedoms as guaranteed in *the Constitution*, the Respondents and the Interested Parties are now left to grapple in the dark alleys of the Petitioner's uncertain pleadings wondering what ill they committed against the Petitioner.
33. The above state of affairs cannot be legally permissible. Even though this Court may accept an oral application, a letter or any other informal documentation under Rule 10 of the Mutunga Rules, such must disclose denial, violation, infringement or threat to a right or fundamental freedom. The Petition fails even in that limb.
33. Therefore, the Petition as laid before this Court does not in any manner whatsoever, satisfy the basic requirements in demonstrating any denial, violation, infringement or threat to any of the Petitioner's right or fundamental freedom.
33. This Court, hence, agrees with the Respondents that there are no constitutional issues raised in these proceedings and as such there is no competent Petition before Court for adjudication.

Disposition:

33. Flowing from the foregoing findings and conclusions, the following orders of this Court do hereby issue: -
- a. The Preliminary Objection dated 7th August, 2023 and the Notice of Motion dated 19th July 2023 are hereby allowed to the extent that the Petition raises no constitutional issues.



- b. The Petition, the Amended Petition and any application filed thereto are hereby struck out.
- c. The Petitioner shall bear the costs of the Petition.
- d. Leave to appeal is hereby granted to any willing party.
- e. This file is marked as CLOSED.

Orders accordingly.

VIRTUALLY DELIVERED, DATED AND SIGNED AT KITALE THIS 14TH DAY OF MARCH, 2024.

A. C. MRIMA

JUDGE

Mr Ingosi Counsel for 1st, 18th, 24th, 26th, 28th, 31st, 23rd, 38th, 40th, 41st, 46th, 47th, 48th, 49th, 51st, 53rd, 54th, 55th, 60th, 62nd, 67th, 75th, 77th, 78th, 91st, 92nd, 102nd, 10th-121st Respondents.

No appearance for rest of the parties.

Court assistants: Duke/Chemosop

