



**Gateru v Land Registrar Kiambu County & another (Petition  
E009 of 2023) [2024] KEHC 13967 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13967 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
PETITION E009 OF 2023  
DO CHEPKWONY, J  
NOVEMBER 6, 2024**

**BETWEEN**

**SAMUEL MUREITHI GATERU ..... PETITIONER**

**AND**

**LAND REGISTRAR KIAMBU COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner, Samuel Mureithi Gateru, filed a Petition dated 28th February, 2023, accompanied by a Notice of Motion application evenly dated. However, on 15th March, 2023, the Petitioner’s counsel informed the court that the Notice of Motion application had been abandoned.
2. Consequently, this judgment solely addresses the Petition which seeks among others, the following orders:-
  - a. A Declaration that the 1<sup>st</sup> Respondent’s denial of access to land records relating to Land Parcel Number Kiambu Municipality Block 111/210 to the Petitioner constitutes to breach of fundamental right of Access to Information enshrined in Article 35 (1) of the Constitution of Kenya 2010.
  - b. A Declaration that the 1<sup>st</sup> Respondent’s denial of access to land records relating to Land Parcel number Kiambu Municipality Block 111/210 constitutes to breach of Petitioner’s rights to property enshrined in Article 40 of the Constitution of Kenya 2010.
  - c. An Order of Prohibiting the 1<sup>st</sup> Respondents and or any person acting on their behalf from denying the Petitioner access to records and information relating to Land Parcel number Kiambu Municipality Block 111/210.



- d. An Order of Prohibiting the 1<sup>st</sup> Respondents and or any person acting on their behalf from denying the proprietary rights and services including charging and transfer of Land Parcel number Kiambu Municipality Block 111/210.
- e. Assessment and payment of damages for violation of fundamental constitutional rights of the Petitioner and for loss of business.
- f. Costs of this Petition

### **Factual Background**

3. The Petitioner's case is that he is the sole proprietor of the Land Parcel Kiambu Municipality Block 111/210 (hereafter referred to as the "suit property") and has been in uninterrupted possession of the land since 1999. That his ownership of the property was confirmed through official searches conducted by the 1st Respondent on 3rd December 2020 and 13th September, 2021, both of which confirmed his title to the land.
4. The Petitioner further avers that he has been diligently maintaining the property and paying the requisite land taxes. He states that on 26th January, 2023, he applied for an official search at the 1st Respondent's office with the intention of selling the suit property. However, he was denied access to the land records without any explanation, despite having fulfilled all the procedural requirements for such a request. Additionally, potential buyers also reported being denied access to conduct searches on the property.
5. Consequently, through his advocates on 1<sup>st</sup> February, 2023, the Petitioner wrote a letter on 1st February 2023, formally requesting access to the land records. However, the letter was ignored, and no explanation was given by the 1st Respondent, thus obstructing the Petitioner's right to transact on his property.
6. The Petitioner contends that the actions of the 1st Respondent amount to a violation of his constitutional rights under Articles 35, 40, and 47 of the Constitution of Kenya. He contends that by failing to provide the requested information, the 1<sup>st</sup> Respondent is in breach of Section 10 of the Land Registration Act, 2012, which mandates that land records be made accessible to the public.

### **Legal Basis for the Petition**

7. The Petitioner asserts that under Section 10 of the Land Registration Act, the 1<sup>st</sup> Respondent herein obligation to make the information in the land register accessible to the public. By denying access to the same, the 1st Respondent is not only violating statutory obligations but is also infringing on the Petitioner's constitutional rights. The Petitioner emphasizes that the continued denial of access to land records places him in a precarious position, exposing him to potential fraudulent dealings concerning his property.
8. As a result, the Petitioner contends that his inability to transact on the property constitutes an undue restriction on his enjoyment of his constitutional rights. He fears that, without intervention, he may suffer further loss and harm. Consequently, he urges the court to allow the Petition and grant the orders sought to safeguard his property rights.

### **Proceedings**

9. The court notes that both the Petition and Notice of Motion were duly served upon the Respondents. While no Affidavit of Service has been filed, it is evident from the court record that, on 15th March,



2023, counsel for the Respondents, Mr. Thande Kuria, appeared and sought additional time to file a response to the Petition.

10. On 22nd June, 2023, the same counsel appeared before the court but had not filed any response. In exercise of its discretion, the court granted further time for the Respondents to file their responses. However, by 18th September, 2023, when the matter was next scheduled for mention, only the counsel for the Petitioner was present. The court was informed that the Respondents had not filed any response, prompting the Petitioner's counsel to request that the Petition be deemed as unopposed.

### **Legal Analysis**

11. Notwithstanding the failure by the Respondents to file a response, this court is required to examine the merits of the case. In this case, the Key issues for determination by this court are:-
  - a. Whether the 1st Respondent's refusal to provide access to land records violates the Petitioner's right to access information under Article 35(1) of the Constitution and the right to property as guaranteed by Article 40 of the Constitution.
  - b. Whether the Petitioner is entitled to the reliefs sought, including damages for the alleged violation of his constitutional rights.
12. The Petitioner alleges that his rights under Article 35(1)(a) and Article 40 of the Constitution. Article 35(1)(a) of the Constitution of Kenya, 2010 provides that "every citizen has the right of access to information held by the state."
13. This provision is further reinforced by the Access to Information Act, 2016, which mandates public entities, such as the 1st Respondent, to facilitate access to information by the public. Section 4(1) of the Act stipulates that "subject to this Act and any other written law, every citizen has the right to access information held by a public entity or a private body.
14. In the case of *Katiba Institute v President's Delivery Unit & 3 others* [2017] eKLR, the court held that public bodies have an obligation to make information accessible, particularly where such information is necessary for the protection of fundamental rights.
15. In the instant case, the Respondents have not offered any explanation why the Petitioner was denied the right to access to land records pertaining to the suit property. And without any justifiable reason being presented, this court is persuaded that the 1<sup>st</sup> Respondent's action constitutes an infringement of the Petitioner's right to access information as the Petitioner's request for information regarding the suit property was necessary for him to exercise his rights as the lawful owner of the land. Thus, the failure by the 1st Respondent to provide this information, despite the Petitioner's compliance with procedural requirements, is a clear violation of Article 35(1) of the Constitution, 2010.
16. On the other hand, Article 40 of the Constitution guarantees the right to acquire, own, and dispose of property. In the case of *Isaac Gathungu Wanjohi & Another -vs- Attorney General & 6 Others* [2012] eKLR, the court while addressing an issue similar to the one at hand held that any action that hinders the enjoyment of property rights under Article 40 must be legally justified.
17. In the case at hand, the refusal to grant the Petitioner access to land records without any legal or procedural basis constitutes an unjustifiable interference with his property rights. The allegations that the Petitioner's inability to access records has not only prevented him from completing a sale transaction but also exposed him to the risk of fraudulent dealings and his infringement to his property rights has not been denied by the Respondents.



18. Thus, the Petitioner seeks the court to issue an order prohibiting the Respondents and or any person acting on their behalf from denying him access to records and information relating to the suit property and or denying the Petitioner his proprietary rights including the right to charging and transferring the suit property.
19. In this Court's view, Article 47 of the Constitution guarantees the right to fair administrative action. The Fair Administrative Action Act, 2015, operationalizes this right, providing that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Section 4(3) of the Act mandates public officers to give written reasons for their decisions and actions, especially when such decisions adversely affect an individual's rights.
20. In the case of Republic –vs- Public Procurement Administrative Review Board & Another Ex-Parte Selex Sistemi Integrati [2008] eKLR, the court emphasized the duty of public bodies to act fairly and to provide reasons for their actions.
21. In this case, the 1<sup>st</sup> Respondent has denied the Petitioner his rights to access records in respect to the suit property without providing any reason thereby impeding the intended sale of the land. Thus the 1st Respondent's failure to provide reasons for denying the Petitioner access to the land records amounts to unfair administrative action, thus violating Article 47 of the Constitution.
22. This court is therefore persuaded that the Petitioner has established that the denial of access to land records was unjustified and that it has hindered his ability to exercise his proprietary rights, resulting in financial loss and emotional distress.
23. This court is also guided by the principle of constitutional supremacy, which requires that all public authorities act in accordance with the Constitution. Where violations of constitutional rights occur, it is the duty of the court to grant appropriate remedies as provided for under Article 23 of the Constitution. Therefore, on the above reliefs that have been considered above, this Court is persuaded that the Petitioner has also made a case for grant of the prohibitory order restraining the Respondents from denying the Petitioner his right to access the records with respect to the suit property and or interfering with his proprietary rights over the property.
24. Lastly, among other reliefs, the Petitioner has sought for an award of damages for the alleged violation of his constitutional rights, particularly his right to access information, right to property, and right to fair administrative action, as well as for the loss of business opportunities arising from the Respondents' actions. The Petitioner argues that the refusal by the 1st Respondent to grant him access to land records for Land Parcel No. Kiambu Municipality Block 111/210 not only violated his fundamental rights but also resulted in financial loss, that he was unable to complete a sale transaction.
25. the Constitution of Kenya, 2010, under Article 23(3), empowers the court to grant various forms of relief where constitutional rights have been violated, including the awarding of damages. However, it is well established in the Kenyan jurisprudence that the granting of damages for constitutional violations is not automatic. Courts must exercise discretion and consider the specific circumstances of each case.
26. The Court of Appeal expressed its wisdom in the case of Gitobu Imanyara & 2 Others –vs- Attorney General [2016] eKLR, where it emphasized that damages for constitutional violations must be justified by the circumstances of the case. The court observed that such awards are not intended to be punitive but compensatory and should be reserved for cases where the violation of rights has caused substantial harm to the petitioner. The court further held that it is not enough to simply allege a violation of rights; the petitioner must demonstrate that they suffered actual and measurable harm as a direct result of the violation.



27. In line with this finding, the court in the case of D.K. Njagi Marete v Teachers Service Commission [2020] eKLR reiterated that the remedy of damages is discretionary and must be grounded in evidence showing the extent of the harm suffered by the petitioner.
28. Thus taking cue from the two decisions in the cases cited above, courts should refrain from awarding damages where the evidence does not support the claim, particularly in constitutional petitions, where the violation of rights may not necessarily result in financial or quantifiable harm. In this case, the Petitioner argues that the refusal by the 1st Respondent to provide access to land records violated his rights under Articles 35, 40, and 47 of the *Constitution*. While the court acknowledges that access to information and property rights are fundamental, the Petitioner must demonstrate that the denial of access to the land records caused him actual harm or loss that would justify the granting of damages.
29. It was incumbent for the Petitioner to plead with specificity the rights that have been violated and provide evidence to substantiate the claims. Although he alleges emotional distress and frustration, he has not provided specific evidence to show that he suffered measurable harm or loss that would warrant an award of damages. These were mere allegations of a breach without evidence of actual loss and cannot form the basis for awarding damages.
30. The Petitioner also seeks damages for the alleged loss of business, claiming that he was unable to complete a sale of the suit property due to the 1st Respondent's refusal to provide access to the land records. However, as established in the case of David Bagine –vs- Martin Bundi [1997] eKLR, special damages, such as loss of business, must not only be specifically pleaded but also strictly proved. The Petitioner has not produced any contracts, agreements, or other documentation to demonstrate that he was in the process of selling the property or that he suffered financial loss due to the actions of the 1st Respondent.
31. After considering the evidence presented and the applicable legal principles, the court finds that while there may have been a denial of access to information, the Petitioner has not sufficiently demonstrated that he suffered any substantial harm or financial loss as a direct result of the Respondents' actions. The Petitioner has not met the required threshold for proving the alleged loss of business, and the claim for damages is not supported by the evidence.

## Conclusion

32. For the reasons set out above, this court partly allows the petition and grants the following orders: -
  - a. A Declaration be and is hereby issued that the Petitioner's rights under Articles 35, 40, and 47 of the *Constitution* of Kenya, 2010, were violated by the 1st Respondent's refusal to grant him access to land records related to Land Parcel No. Kiambu Municipality Block 111/210.
  - b. An Order be and is hereby issued prohibiting the 1st Respondent and any person acting on their behalf from denying the Petitioner access to land records and information relating to the suit property.
  - c. An Order be and is hereby issued prohibiting the 1st Respondent from interfering with the Petitioner's proprietary rights, including any transactions involving the charging or transfer of the suit property.
  - d. The Petitioner's claims for damages for the violation of constitutional rights and for loss of business are denied, as he has not provided sufficient evidence of actual harm or loss arising from the violation.
  - e. Each party shall bear its own costs.



It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.(UPLOADED VIA ELECTRONIC MAIL)**

**D. O. CHEPKWONY**

**JUDGE**

**In the presence of:-**

No appearance for and by either party

Court Assistant - Martin

