



**Tonui & 13 others v County Government of Kajiado & another (Environment & Land Petition E001 of 2023) [2025] KEELC 4712 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4712 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND PETITION E001 OF 2023  
LC KOMINGOI, J  
JUNE 19, 2025**

**IN THE MATTER OF ALLEGED CONTRAVENTION AND  
VIOLATION OF CONSTITUTIONAL PRINCIPLES UNDER  
ARTICLES 10(1), 28, 29 (F) AND 40 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF RULES 3,4,11 & 13 OF THE CONSTITUTION OF KENYA  
(PROTECTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS) PRACTICE AND PROCEDURE RULES.**

**AND**

**IN THE MATTER OF LANDS ACT SECTION 103 TO 133, ALLEGED VIOLATION  
OF PROCEDURES OF COMPULSORY ACQUISITION OF INTERESTS IN LAND**

**AND**

**IN THE MATTER OF NATIONAL LAND COMMISSION ACT SECTION 5 (H),  
ALLEGED VIOLATION OF FUNCTIONS OF NATIONAL LAND COMMISSION  
WITH RESPECT TO OVERSIGHT OVER LAND USE PLANNING**

**BETWEEN**

**KENNETH TONUUI ..... 1<sup>ST</sup> PETITIONER  
SAUL GEHNDA MBELA ..... 2<sup>ND</sup> PETITIONER  
ANN NTAGUTHI CHIRA ..... 3<sup>RD</sup> PETITIONER  
BERNAD NUTHU KABUTU ..... 4<sup>TH</sup> PETITIONER  
DAVID NAMALALE MAMATI ..... 5<sup>TH</sup> PETITIONER  
JOHN LOTO SEGELAN ..... 6<sup>TH</sup> PETITIONER  
JAMES NDIRANGU MURAGE ..... 7<sup>TH</sup> PETITIONER**



HARRIET RINGAI ..... 8<sup>TH</sup> PETITIONER  
JOSEPH KIMATU MUNYAO ..... 9<sup>TH</sup> PETITIONER  
GERALD KABUI MWANGI ..... 10<sup>TH</sup> PETITIONER  
JANE MORAGWA ONKUNDI ..... 11<sup>TH</sup> PETITIONER  
MARK KINOTI UHURU ANGATWA ..... 12<sup>TH</sup> PETITIONER  
CHRISTINE NASIPWANI WASIKE ..... 13<sup>TH</sup> PETITIONER  
JANE MORAGWA ONKUNDI KARORI ..... 14<sup>TH</sup> PETITIONER

AND

THE COUNTY GOVERNMENT OF KAJIADO ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT

### JUDGMENT

1. The Petitioners herein have filed this Petition dated 30<sup>th</sup> June 2023 against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents seeking the following reliefs;
  - a. A declaration that the demolition of the Petitioners' property by the Respondent is illegal, irregular, un procedural and contrary to Articles 27,28,40, and 43 and 47 of *the Constitution* and is therefore null and void;
  - b. A declaration that the forceful eviction and demolition without a relocation or compensation is illegal oppressive and violates the rights of petitioners, their families and tenants.
  - c. An order permanently restraining any further demolition and forceful eviction by the Respondent against the petitioners their families and their tenants; and
  - d. General damages.
2. The grounds are set on the paragraphs 1 to 41 of the Petition.
3. The Petition is supported by the Affidavit of Kenneth Tonui, the 1<sup>st</sup> Petitioner, sworn on the 30<sup>th</sup> June 2023. It is stated that he swore the affidavit also on behalf of his Co - petitioners and the tenants.

#### **The Petitioners' Case.**

4. It is the Petitioners' case that the 1<sup>st</sup> Respondent issued an illegal notice dated 11<sup>th</sup> May 2023 authorizing and directing the illegal demolition and vandalizing of the Petitioners' property which amounts to deprivation of their lawfully owned property.
5. The Petitioners are residents and owners of properties situated at Helena Estate Kajiado North Sub-County. It is stated that they have erected permanent residential houses and are currently residing thereon with their families and their tenants.
6. They further claim case that the 1<sup>st</sup> Respondent has issued a 14 day Notice to demolish their structures failure to which the 1<sup>st</sup> Respondent would carry out the demolition. That though their properties do



not encroach on the road reserve, the 1<sup>st</sup> Respondent, on 27<sup>th</sup> June 2023 positioned bulldozers ready for demolition.

7. It is their case that the Respondents' actions amounts to compulsory acquisition of private property without following due process as set out in Section 107-133 of the Land Act, 2012. They further claim that this violates their rights under Articles 40[1] and 43 of the Constitution.

#### **The 1<sup>st</sup> Respondent's Case.**

8. In response to the Petition, the 1<sup>st</sup> Respondent filed a Replying Affidavit through Joshua Lemaikai, the County Land Surveyor. The same is sworn on the 20<sup>th</sup> December 2024. It is the 1<sup>st</sup> Respondent's case that there is a road reserve known as Fatima Road which road has been used as an access road within Helena Estate and the neighborhood. The 1<sup>st</sup> Respondent noted that, land owners had illegally and unlawfully encroached on the said road reserve. It was then that the 1<sup>st</sup> Respondent commissioned survey works to be done between 5<sup>th</sup> to 7<sup>th</sup> June 2023 hence the public Notice dated 11<sup>th</sup> May 2023.

9. He further deponed that the notice was specific to those land owners who had encroached on the road reserve to demolish the offending structures.

He also stated that land owners who have erected structures on the road reserve never obtained approvals from the 1<sup>st</sup> Respondent as required hence the 1<sup>st</sup> Respondent is justified to proceed with the demolition of the offending structures.

10. He also deponed that a road reserve is a public land hence the process of compulsory acquisition alluded to by the Petitioners is not applicable. Further that the actions of the 1<sup>st</sup> Respondent advance public interest noting that road reserves are necessary for the development of the road as well as safety of the road users and the public.

It prays that the Petition be found to be un merited and be dismissed.

#### **The 2<sup>nd</sup> Respondent's Case.**

11. The 2<sup>nd</sup> Respondent neither filed any response to the Petition nor did it participate in these proceedings.
12. On the 22<sup>nd</sup> July 2024, the court directed that the Petition be canvassed by way of written submission.

#### **The Petitioner's Submissions.**

13. They are dated 30<sup>th</sup> October 2024.  
They raised four issues for determination;
  - i. Whether the petition herein is competent.
  - ii. Whether the developments on the suit property encroaches on a road reserve.
  - iii. Whether the petitioner's right to property protected under Article 40 had been violated by the respondents?
  - iv. What relief is available to the petitioner.
14. Counsel submitted that the Petitioners' right to own property has been violated by the Respondents and have established the facts forming the basis of the grievance. She has put forward the case of Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others [2014] eKLR.



15. It is also submitted that the Petitioners have not encroached on the 6 metres road reserve as intimated by the 1<sup>st</sup> Respondent. Reliance is placed on the case of Republic v KURA & 2 others Ex parte Tamarind Village Ltd [2015] eKLR.
16. It is submitted that the Petitioners have attached copies of Titles as proof of ownership of the respective parcels and the sanctity of the said Titles has not been challenged by the Respondents. She has put forward on the case of Rutongot Farm Ltd v Kenya Forest Service & 3 Others [2018] eKLR.
17. Counsel also submitted that the Government of Kenya can only acquire private properties through compulsory acquisition process as elaborated in Section 107 to 133 of the *Land Act*, 2012. She has put forward the case of Kamlesh Panya [suing as the legal representative of the estate of Latitchandra Durgashanker Pandya v Kenha [2021] eKLR .

It is the Petitioner's case that the issuance of the Notice dated 11<sup>th</sup> May 2023 with threats to demolish the buildings on the suit properties violates the Petitioners constitutional right to own property under Article 40 of *the Constitution*.

18. It is also submitted that this Honourable Court has power to grant the reliefs sought including an award of damages. Reliance placed on Section 13 of the ELC Act and the case of A.G. v Zinj Limited [2021] KESC 23 [KLR].

They urge that the prayers sought in the petition be granted.

#### **The 1<sup>st</sup> Respondent's Submissions.**

19. They are dated 14<sup>th</sup> February 2025.  
They raise three issues for determination
  - a. Whether the Petitioners' suit is competent?
  - b. Whether the constitutional rights and fundamental freedom of the Petitioners has been breached, violated and/or infringed upon?
  - c. Whether the Petitioners are entitled to the reliefs sought?
20. Counsel submitted that the Respondents will be extremely prejudice if this suit is allowed to proceed as a constitutional petition noting that there are contested facts which can only be determined by way of a normal suit as opposed to a petition. He has put forward the cases of; Awino v Njenga [2024] KEELC 3349 [KLR]; Benard Murage v Fine Serve Africa Ltd & Others [2015] eKLR; Gabriel Mutava & 2 Others v Managing Director KPA [2016] eKLR; Patrick Mbau Kanya v Kenyatta University [2012] eKLR.  
He prays that the Petition herein be struck out.
21. It is also submitted that in a constitutional petition; the petitioners are required to cite the provisions of *the constitution* which have been violated and the manner in which it has been violated. He has put forward the case of Consortium For the Empowerment & Development of Marginalized Communities v The Chairman The Selection Panel for Appointment of Chairperson and Commissioners to Kenya Nation Human Rights Commission High Court Petition No. 385 of 2012, whereby the court observed as follows at paragraph 32 thereof;

“As a basic minimum, the petitioners are re required to not only cite the provisions of *the constitution* which have been violated, and the manner in which they have been violated



with regard to them-see Anarita Karimi Njeru [1976-80] 1 KLR 1272 and Trusted Society of Human Rights Alliance v Attorney General & Others High Court Petition No. 229 of 2012. In demonstrating the manner in which there has been a violation of their rights or of *the Constitution*, the petitioners should present before the court evidence or a factual basis on which the court can make a determination whether or not there has been a violation.”

22. It is submitted that the petitioner’s have failed to prove that the 1<sup>st</sup> Respondent has breached their rights under Articles 27,78,43 and 47 of *the Constitution*. Article 40 has also not been breached as this only applies where the party owns the property.
23. It is also submitted that the petitioner’s affirm that there is a 6 metre road reserve known as Fatima Road which road has been used as an access road within Helena Estate and the neighbourhood. The road reserve is therefore public land. It is submitted that the Petitioners’ cannot be deprived of that which they do not have. He has put forward the case of Veronica Njeri Waweru & 4 Others v City Council of Nairobi & 2 Others [2012] and section 29 of the physical Planning Act.
24. It is submitted that the public notice issued on 11<sup>th</sup> May 2023 was to inform those who had encroached on the road reserve to demolish the structures hence the 1<sup>st</sup> Respondent complied with the proper procedure.
25. It is also submitted that the petition herein lacks merit as the petitioners have not established that their property rights have been or are about to be violated and that they are entitled to protection thereof.
26. It is submitted that public interest weighs heavily in favour of the Respondents given the fact that encroachment on road reserve will deprive the public the use of the road reserve. He has put forward the cases of John Kamau Kenneth I. Mpapale v City Council of Nairobi & 7 Others [2014] eKLR; Stephen Njuguna Kiragu & Another v Kenha [2018] eKLR.

The 1<sup>st</sup> Respondent prays that the Petition be dismissed with costs.

### **Analysis and Determination.**

27. I have considered the Petition, the grounds, the Affidavit in support the Response thereto, the rival submissions and the authorities cited. The issues for determination are;
  - i. Whether the Petition herein is competent.
  - ii. Whether the Petitioner’s rights and fundamental freedoms have been breached, violated and an infringed upon.
  - iii. Whether the Petitioners’ are entitled to the reliefs sought.
  - iv. Who should bear costs?
28. It is the Petitioner’s claim that the 1st Respondent intends to demolish their houses on the ground that they have encroached on a road reserve. That this will violate their rights under Articles 27, 43, 40 and 47 of *the constitution*.
29. The genesis of this Petition is the public notice dated 11<sup>th</sup> May 2023 issued by the 1<sup>st</sup> Respondent. The same reads;

#### “PUBLIC NOTICE

The County Government Department wishes to notify all land owners along Fatima Road, 5<sup>th</sup> Avenue and Helena – Olekasasi that the County Government surveyors will commence



the marking and surveying of the above mentioned roads reserves between 5<sup>th</sup> – 7<sup>th</sup> June, 2023.

The surveyors will also indicate the width of the road reserves after which all land owners must realign their fences and/or developments accordingly within [14] days from the date of this notice to allow for road construction.

This is therefore to give notice to all people who have encroached on the reserve areas to demolish their structures within 14 days failure to which the County Government will out the demolition without any further notice.

Hamilton Parseina.

CECM – Lands, Physical Planning, Housing, Urban

Development & Municipalities.

CC;

Co-Lands & Physical Planning.

Sub County administrator – Kajiado North.

Municipal Manager – Ngong

Dated: 11/5/2023”.

#### **Whether the Petition herein is competent.**

30. The onus is in the Petitioners to establish which of their rights have been violated.

In the case of *Anarita Karimi Njeru v The Republic* [1976-80] 1KLR 1272. The court observed thus;

“This court is at a loss in so far as any declaration of infringement of the petitioner’s right can be made. The claimant provides little or no particulars as to the allegations and the manner of the alleged infringements.....”

Similarly in, *Consortium For the Empowerment & Development of Marginalized Communities v The Chairman The Selection Panel for Appointment of Chairperson and Commissioners to Kenya National Human Rights Commission* High Court Petition No. 385 of 2012, whereby the court observed as follows at paragraph 32 thereof;

“as a basic minimum, the petitioners are required to not only cite the provisions of *the constitution* which have been violated, and the manner in which they have been violated with regard to them-see *Anarita Karimi Njeru* [1976-80] 1 KLR 1272 and *Trusted Society OF Human Rights alliance v attorney General & Others* High Court Petition No. 229 of 2012,. In demonstrating the manner in which there has been a violation of their rights or of *the Constitution*, the petitioners should present before the court evidence or a factual basis on which the court can make a determination whether or not there has been a violation.”

From the foregoing I associate myself with the 1<sup>st</sup> Respondents submissions that the Petitioners have failed to prove any violations under Article 27,28, 43 and 47 of *the Constitution*.

31. As regards Article 40 of *the Constitution*, the Petitioners claim to be owners of the suit parcels. They have annexed the Title Deeds. It is not in dispute that they own the suit properties. They admit that there is a 6 metres road reserve known as Fatima Road. This road reserve is not public land. The 1<sup>st</sup> Respondent noted that there was encroachment on the said road reserve hence the notice. To



this extent I find that the manner in which the petitioners approached the Honourable court was wrong. If indeed the issue was about the ownership of the suit parcels and the question of compulsory acquisition, then they ought to have filed a suit so that the contested facts could be determined.

In the case of *Gabriel Mutava & 2 Others v Managing Director, KPA* [2016] eKLR the Court of appeal held thus;

“Constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional litigation is not a panacea for all manner of litigation; we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.”

32. I find the petition herein incompetent and as it does not satisfy the conditions set out in the *Anarita Karimi Case*.

Whether the Petitioners rights and fundamental freedoms have been breached, violated and infringed upon.

33. Having stated the petitioners acknowledged the existence of a 6 metre road reserve this means that this is public land. I have gone through the notice dated 11<sup>th</sup> May 2023. The same was to notify the petitioners that the County Government surveyors were to mark and survey the road reserve between 5<sup>th</sup> and 7<sup>th</sup> July 2023.

34. I agree with the 1<sup>st</sup> Respondents averments that not all structures were targeted for demolition but only the offending structures.

In my view this notice availed the petitioners the best opportunity to engage the 1<sup>st</sup> Respondent on how bests to resolve the issue of encroachment. There is no mention of demolition of any houses. The road reserve is to serve all members of the public. It is public land and cannot be subject of any compulsory acquisition as it is already public land.

35. The 1<sup>st</sup> Respondent, was undertaking its mandate as per the *physical and Land Use Planning act* and it cannot be faulted.

36. I find that the petitioners have failed to demonstrate that any rights have been violated by this notice. This petition is premature as the petitioners had an opportunity to exhaust dispute resolution mechanism set out in the Act.

37. From the foregoing I find that the Petitioners are not entitled to the reliefs sought.

38. In conclusion I find no merit in the Petition and the same is dismissed. As the petitioners are residents of the 1<sup>st</sup> Respondent I order each party to bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**L. KOMINGOI**

**JUDGE.**

IN THE PRESENCE OF:

N/A for the Petitioners.

Mr. Otieno for the 1<sup>st</sup> Respondent.



N/A for the 2<sup>nd</sup> Respondent.

Court Assistant – Mutisya.

