



REPUBLIC OF KENYA



KENYA LAW
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**Chiriwacho v Elephant Oil Mills Limited & 3 others (Petition
E009 of 2024) [2025] KEELC 6605 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
PETITION E009 OF 2024
LL NAIKUNI, J
SEPTEMBER 30, 2025**

BETWEEN

MWANALIMA MWINYIKAI CHIRIWACHO PETITIONER

AND

ELEPHANT OIL MILLS LIMITED 1ST RESPONDENT

SALIM ALI NYAWA 2ND RESPONDENT

KWALE COUNTY LAND REGISTRAR 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

I. Introduction

1. Before this Honorable Court for hearing and determination is the Notice of Motion application dated 19th May, 2025. It was filed by Elephant Oils Mills Limited, the 1st Respondent/Applicant herein.
2. Upon service of the Application, the Petitioners responded to the application through a Replying affidavit dated 15th July 2025 and a supplementary affidavit dated 14th August 2025. The Honourable Court shall be dealing with the matter in-depth at a later stage.

II. The 1st Respondent/ Applicant's case

3. The 1st Respondent/Applicant sought for the following orders before this Honourable Court:-
 - a. Spent.
 - b. Spent.



- c. That this Honourable Court has no jurisdiction to hear and determine the Petition dated 20th November 2024 and the said Petition be struck out with costs to the 1st Respondent/Applicant.
 - d. That further and/or in the alternative the Petition dated 20th November 2024 be struck off for being an abuse of the court process.
 - e. That further and/or in the alternative, the Petition dated 20th November 2024 be struck out on account of the principles of justiciability, mootness and deference
 - f. That the 1st Respondent/Applicant be awarded the costs of this application.
4. The application herein was premised on the grounds, testimonial facts on the face of the application and averments made out under the 12 Paragraphed supporting affidavit of Ravi Kumar Kohli the Director of the company for the 1st Respondent/Applicant herein together with a bundle of several annexures marked as “RKK – 1”. The Applicant averred that:
- a. The Deponent was a Director to the company by the 1st Respondent/Applicant and hence duly authorised and competent to swear this affidavit herein.
 - b. The 1st Respondent/Applicant was the registered proprietor of all that property known as title number Kwale/Galu Kinondo/351 (Hereinafter referred to as “The Suit Property”).
 - c. The suit property no longer existed as it was sub - divided into forty-eight [48] other parcels and had been the subject of several court cases as listed under Paragraph 4 of the affidavit.
 - d. The suit property had been the subject matter of numerous Court cases as listed herein under:-
 - i. (MSA) HCCC No. 109 of 2005 (OS);
 - ii. (MSA) ELC No. 43 of 2014;
 - iii. (MSA) HCCC No. 136 of 2014;
 - iv. (MSA) ELC No. 212 of 2015 (later on renamed to Kwale ELCC No. 101 of 2021);
 - v. (MSA) COA Civil Application No. E011 of 2022;
 - vi. (MSA) COA Civil Application No. E028 of 2024; and
 - vii. (MSA) COA Civil Application No. E037 of 2024;
 - e. The deponent went ahead to give a brief history of the suits before court over the suit property. He averred that in the case of MSA HCCC 109 of 2005 the suit was for adverse possession which was determined by being struck off and hence the 1st Respondents ownership of the suit property was not interfered with.
 - f. In MSA ELC 43 of 2014 was also struck out on 8th October 2014. That during the pendency of the said suit, it was discovered that Mwanalima Mwinyikai and Salim Ali Nyawa who had sold the suit property to one Mavji Karsan Hirani were not the registered lawful owners and were thus ordered in MSA HCCC 136 of 2014 to make a refund of the deposit paid for the purchase of the property in a decision delivered on 15th June 2015.
 - g. The 1st Respondent caused sub - division of the suit property into 48 plots but the titles were issued to one Stephen Njenga Njoroge but the 1st Respondent contested the said registration vide MSA ELC NO 212 of 2015.



- h. Via a consent recorded on 9th March 2022 between the 1st Respondent, Mavji and the Land Registrar and Attorney General Judgement was entered for the 1st Respondent.
- i. A decree was issued on 30th May 2022 which confirmed and vested the 48 sub - divisions to the 1st Respondent. That Mwanalima Mwinyikai and Salim Ali Nyawa were not parties to the consent and thus filed several appeals contesting the consent. The appeals were consequently dismissed.
- j. The deponent then turned to the instant petition and stated that it has been confirmed the suit property was sold to Mavji Karsan Hirani. That it was also confirmed at Paragraphs 25, 26 and 29 that in KWALE ELC NO. 101 of 2021 the Petitioners Defence and Counter - Claim were struck out on 4th May 2021 and the Hon. Judge Dena discharged the Petitioner and the Respondent from the proceedings through an error.
- k. The Petitioner then moved the court to set aside the Judgement through an application dated 4th October 2023 which was dismissed on 11th March 2024. The Petitioner was seeking in her Counter - Claim to be declared the owner of the suit property and for cancellation of the sub - divisions held by the 1st Respondent.
- l. At Paragraph 7, it was averred that the Petition was an invitation of the court to sit on an appeal over the decision by Judge Yano and Judge Dena and this court lacked such jurisdiction.
- m. The Petition offended the principle that litigation must come to an end. That the Petitioner does not indicate the rights infringed.
- n. The Applicant stated that the Petition ought to be struck out for the reasons stated.

III. The Response to the Notice of Motion application

- 5. The Petitioners responded to the application through a 33 Paragraphed Replying Affidavit sworn by Mwanalima Mwinyikai Chiriwacho the Petitioner. The deponent averred that:-
 - a. There had never been proof of ownership of suit property known as Kwale/Galu/Kinondo/351 by the 1st Respondent and if the 1st Respondent had any Title to the suit property it was obtained by fraud and it was the reason for filing this Petition.
 - b. That the Petitioner was the registered owner of the suit property and had always been paying Land Rates to the Kwale County Government.
 - c. Also that she was not a party in case HCC No. 109 of 2005 (OS) but her father and his brother Mwinyikai B. Kiriwacho and Ali Ramadhani had filed a suit against the 1st Respondent and were granted ownership by vesting orders granted in Court and they owned the suit property after Gazette Notice No. 8059. Her father owned the Land ever since to date and NOT the 1st Respondent. By that order the 1st Respondent was to surrender any Title if any to the Registrar for cancellation.
 - d. Upon her fathers' demise she filed succession Cause KWALE NO. 41 of 2015 and the Title was registered in her name and the Cousin Brother Salim Ali Nyawa the 4th Respondent herein on their own behalf and entire family. No other Gazettment Notice was done restoring Title to the 1st Respondent until case Kwale No. 101 of 2021 was filed and Consent Judgement entered for the 1st Respondent without giving the Petitioner an opportunity to be heard.



- e. In reference to Mombasa ELCC 43 of 2014 the applicant averred that she filed the case but was not prosecuted - so was dismissed. That Mombasa HCCC 136 of 2014 was between a buyer and herself on behalf of the family but was aborted when the Plaintiff who later became 2nd Defendant in Kwale ELC No. 101 of 2021 (formerly Mombasa ELC CASE No. 212 of 2015) came up with allegation that the suit property did not belong to the Petitioner and her family but another being the 1st Respondent herein that he was referring.
- f. The case was not defended. However, the claim resulted in the Petitioner's brother's LAND REF. NO. KWALE/DIANI/414 the 4th Respondent herein being sold to the Claimant's wife to offset the deposit claimed without his knowledge or notice as was whereabouts has remained unknown since the year 2018 to date.
- g. That Mombasa ELC No. 212 of 2015 (later Kwale ELC 101 of 2021) the 1st Respondent sued the Claimant in ELC 136 OF 2014 the Petitioner and her brother Salim Ali Nyawa as 3rd and 4th Defendant and another Stephen Njenga Njoroge as 1st Defendant. The said Mr. Njoroge never appeared in Court nor entered appearance or file Defence yet all subdivisions of the suit Land Titles were in his name. That before this case was heard and determined the 1st Respondent filed an application to have the Petitioner, her brother, 3rd and 4th Defendants discharged from the case. That she was not granted an opportunity to be heard to defend her case. That she was not party to the Consent Judgement Recorded awarding the 1st Respondent ownership of the suit property.
- h. The deponent also referred to MOMBASA (COA Civil Application No. E011 of 2022 and averred that she attempted to challenge the Courts Direction discharging her from the case KWALE ELC NO.101 of 2021 but before she was heard the 1st Respondent and his other parties who were Defendants of the suit KWALE ELC No.101 of 2021 had rushed to Court to record a Consent granting the 1st Respondent ownership. The application had been over taken by events hence dismissed.
- i. On the suit in Mombasa COA Civil Application No. E028 of 2024. The Petitioner stated that she had sought stay of Execution pending Appeal after being apprehensive that anytime the 1st Respondent would evict her family from my ancestral home where they live to date. The 1st Respondent then filed Mombasa COA Civil application No. E037 of 2024 to stop the Petitioner herein from Appealing against case No. Kwale ELC No. of 2021, on grounds that she was not a party to case No. KWALE 101 of 2021 on grounds that she did not have "locus standi" since she was not party in the suit. That both COA Civil Application No. E028 and No. E037 was pending ruling.
- j. The Petitioner stated that she filed this Petition to this Honourable Court seeking Conservatory Orders pending the hearing of the Petition as it was her Constitutional Right to be protected and her proprietorship right to the suit property known as KWALE/GALU/KINONDO/351 since she was the owner of the suit property.
- k. The Petitioner asked the court to dismiss the instant application with costs.

IV. The Further affidavit by the 1st Respondent/Applicant

- 6. The Applicant Ravi Kumar Kohli in response to the Replying Affidavit of the Petitioner/Respondent sworn on 15th July 2025 swore a further affidavit dated 25th July 2025 and stated that:-



- a. Certain depositions in the Replying Affidavit were out rightly false and meant to mislead the court.
- b. The Petitioner's title to the Property was surrendered to the Land Registrar for cancellation and it was cancelled on 12th March 2019 as clearly captured in the court decisions annexed at pages 16, 21 and 25 of the Application.
- c. The depositions at Paragraphs 7, 8 and 9 of the Replying Affidavit to the effect that the result of [MSA] HCCC 109 of 2005 (OS) was the issuance of a vesting order and Gazette Notice was false or misleading because the end result of that suit was captured in the ruling of Kasango J. delivered on 25th June 2015 in [MSA] HCCC 136 of 2014 at Paragraph 4 thereof at page 24 of the Application.
- d. The purported vesting orders and gazette notice were set aside and the suit was struck out on 8th October 2009. The deponent averred further that on 18th July 2025, the Court of Appeal delivered two (2) rulings in respect of [MSA] COA Civil Application No. E028 OF 2024 and [MSA] COA Civil Application No. E037 OF 2024, the result of which was that the Petitioner's application for stay of execution was dismissed with costs and Petitioner's Notice of Appeal was struck out.
- e. The issue of ownership had been fully litigated as evidenced through the various decisions annexed the issue has reached the end of the judicial road.
- f. The Petition was clearly an abuse of court process, which is deliberate conduct that the Petitioner has implicitly admitted to being capable of at paragraph 12 of the Replying Affidavit and which she has been found guilty of by Justices P.J. Otieno, J. and C.K. Yano, J. at pages 22 and 26 of the Application.

V. The Supplementary Affidavit by the 1st Respondent/Applicant

7. In response to the further Affidavit sworn by Ravi Kumar Kohli dated 25th July, 2025 the 1st Respondent/Applicant filed a supplementary affidavit and stated as follows:-
 - a. The title surrendered to the Land Registrar for cancellation was not for the Petitioner but for one MR. Mavji Karsan Hirani who had obtained it by fraud.
 - b. The Petitioner's Title was NOT cancelled by the Land Registrar as alleged by the Applicant.
 - c. At no time was the Kenya Gazette Notice No. 8059 granting Title to the Petitioner's father cancelled.
 - d. The case No. Mombasa HCCC No. 136 of 2014 did not grant Title or any interest of the suit property to the 1st Respondent, in fact the 1st Respondent was not a party to that suit.
 - e. At no time had ownership been litigated between the Petitioner and the 1st respondent and this Petition is intended to provide such flatform or opportunity to be heard the issue of ownership of the suit property on merit.
 - f. The Petitioner was entitled to be heard to defend her interest in the suit property and not be condemned un heard as a Constitutional Right.
 - g. It was true for a fact that the Petitioner was not a party in the proceedings at Kwale ELC No. 101 of 2021 so could not Appeal against its Judgement.



- h. This Honourable Court has the jurisdiction to hear and determine this Petition and it was for the interest of justice that this application be dismissed with costs.

VI. Submissions

8. On 19th March, 2025 while all parties were present in Court, they were directed to dispose off the application dated 19th May, 2025 by way of written submissions. However, by the time of penning down this Ruling, only the 1st Respondent/Applicant had obliged. Thus, the Honourable Court proceeded on to deliver its Ruling on its own merit as per the schedule accordingly.

The Written Submissions by the 1st Respondent/Applicant

9. The 1st Respondent/Applicant through the Law firm of Messrs. Wanjiku Mohamed Advocates filed their written Submissions. Mr. Karega Advocates commenced his submissions by providing a brief background of the matter. Accordingly, the Learned Counsel submitted that the following issues fell for determination:
- i. Whether the matters in issue in this Petition dated 20th November 2024 (the Petition) were the same matters in issue in previous suits including [KWALE] ELCC NO.101 OF 2021 (formerly [MSA] ELCC NO.212 OF 2015);
 - ii. If so, whether this Court has jurisdiction to hear and determine this Petition in view of the fact that the determinations in [KWALE] ELCC No.101 of 2021 (formerly [MSA] ELCC No.212 of 2015) were made by judges of concurrent jurisdiction;
 - iii. Whether the Petition is otherwise an abuse of the court process and/or offends the principles of justiciability, mootness and deference; and
 - iv. What orders should issue?
10. Whether the matters in issue in this Petition were the same matters in issue in previous suits, including [Kwale] ELCC No.101 of 2021 (formerly [MSA] ELCC NO.212 of 2015, it was submitted that the issue of the Petitioner's purported title, rights and interests in the Suit Property has been litigated and determined with finality through various decisions. In the civil suit [MSA] HCCC No.109 of 2005 (OS) Ali Ramadhan – Versus - Raj Mohamed Hussein Virji and Elephant Oil Mills Limited”, the primary prayer sought were captured by this Honourable Court in the ruling delivered by C.K. Yano J. on 20 May 2021 as: “...The Defendants’ registration as the proprietors of the Suit Land known as Kwale/Galu Kinondo/351 be revoked and the said titles be issued in the name of the Plaintiffs/ Applicants herein...”
11. Counsel submitted further that in the civil suit “[MSA] HCCC No.109 of 2005 (OS) Ali Ramadhan – Versus - Raj Mohamed Hussein Virji and Elephant Oil Mills Limited which was also captured in the ruling of this Honourable Court in [Kwale] ELCC NO.101 of 2021 delivered on 20th May 2021 (formerly [MSA] ELCC No. 212 of 2015) and which indicated that the petitioners suit be struck out as the vesting order previously in place had been set aside. It was submitted that all the suits regarding the suit property herein had been discharged and that the current petition was res judicata as the same prayers sought have been previously dealt with by the other courts.
12. On whether this Court has jurisdiction to hear and determine this Petition in view of the fact that the determinations in [Kwale] ELCC No.101 of 2021 (formerly [MSA] ELCC NO.212 of 2015) were made by Judges of concurrent jurisdiction. It was submitted that the petition was simply a review of



the decisions previously made by this court over the same subject matter and as such this court was devoid of the jurisdiction to sit on appeal of its previously made decisions.

13. Lastly, it was submitted that the petition is an abuse of the court process as the same offends the principles of justiciability, mootness and deference and thus the same ought to be struck out with costs.

VII. Analysis and Determination

14. I have carefully read and considered the pleadings herein being the Notice of Motion application dated 19th May 2025 the relevant provisions of the Constitution of Kenya, 2010 and the statutes.
15. In order to arrive at an informed, reasonable, fair and Equitable decision, the Honorable Court has three (3) framed issues for determination as follows: -
 - a. Whether the court has jurisdiction to determine the Petition
 - b. Whether the Petition meets the threshold of a Constitutional Petition.
 - c. Who bears the costs of the application?

Issue No. a). Whether the court has jurisdiction to determine the Petition

16. Under this sub – heading, the Honourable Court will examine the issue of whether it has jurisdiction to deal with the matter or not. For ease of reference I will reproduce the prayers sought in the petition dated 20th November 2024
 - a. A declaration that the Petitioner’s right of hearing in the case ELC No. 101 of 2021 was denied/infringed while determining ownership of the suit property known as Kwale/Galu Kinondo/351 and sub divisions Kwale/ Galu Kinondo/1713 to 1760
 - b. An order to compel the Respondents to surrender the unlawfully constituted title known as LR No Kwale/Galu Kinondo/351 and all its subdivisions Kwale/Galu Kinondo/1713 to 1760 to the Land Registrar Kwale county for cancellation and destruction
 - c. An order to compel the 3rd Respondent Land Registrar Kwale County to cancel and destroy the title no’s Kwale/Galu Kinondo/1713 to 1760 issued to the 1st Respondent and re - issue title to the Petitioner
 - d. A declaration that the Petitioners right to ownership of land parcel no Kwale/Galu Kinondo/351 has been infringed
 - e. An order that the 3rd and 4th Respondents rectify the ministry of lands register and issue title deed to Kwale/Galu Kinondo/351 in the name of the petitioner
 - f. A declaration that the Petitioner’s rights to the suit property they hold within the Ukunda area being LR No Kwale/Galu Kinondo/351 is constitutionally guaranteed and it should not be taken away or altered to their detriments
 - g. A conservatory orders permanently restraining the 1st Respondent either by themselves, their officers, juniors, agents, servants and/or employees from removing, altering, trespassing and/ or dealing whatsoever to the suit property known as LR No Kwale/Galu Kinondo/351
 - h. An order that the 1st Respondent or any other third parties actions entering into possession, occupying, developing, renting out, digging, constructing, harvesting coral stones or



cultivating or handing over possession or dealing in any other way with the suit property are unconstitutional, unlawful illegal null and void.

- i. The suit property is freehold owned by the petitioner and the 2nd Respondent and any other purported agreement involving the same entered by any third parties is declared a nullity
- j. An order of permanent injunction issue against the Respondents from further trespass on the suit property
- k. An order for eviction or vacant possession to issue against the 1st Respondent or any other persons, agents, servants or employees on the suit property
- l. The OCS Diani Police Station to effect the orders granted by the honourable court
- m. Costs of the petition be awarded to the Petitioner
- n. Any other further relief this honourable court may deem fit to grant

17. The jurisdiction of the Environment and land Court is provided in Article 162 (2) (b) of the Constitution of Kenya, 2010 and Section 13 of the Environment and Land Court Act, No. 19 of 2011.

18. Article 162. (1) of the Constitution provides as follows:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

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).

19. Pursuant to Article 162(2) of the Constitution, Parliament proceeded to enact the Environment and Land Court Act 2011, which clearly confers the Environment and Land Court, with jurisdiction as follows under Section 13(2) of the Act;

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

- a. Relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b. relating to compulsory acquisition of land;
- c. Relating to land administration and management;
- d. Relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
- e. Any other dispute relating to environment and land.”

20. It is now settled that that a dispute relating to land and or the environment can be commenced by way of a constitutional petition and it is only the Environment and Land Court that has jurisdiction



to entertain such matters. It is therefore this court's finding that it has the requisite jurisdiction to determine the petition before it.

21. I however will point out that the jurisdiction of this court to determine the instant petition has been questioned based on "the doctrine of res judicata". According to the 1st Respondent/Applicant, the petitioner was a habitual litigant as there have been several other matters before this court with regard to the ownership of the suit property. These suits have been conclusively dealt with by this court.

22. The provision of Section 7 of the Civil Procedure Act, 2010 provides as hereunder:

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

23. The Black's law Dictionary 10th Edition defines "res judicata" as

"An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties..."

24. The Supreme Court in a decision rendered on 6th August, 2021 in the case of:- "John Florence Maritime Services Limited & Another – Versus - Cabinet Secretary for Transport and Infrastructure & 3 Others [2021] eKLR extensively dealt with the different components making up the doctrine of res judicata. The Apex Court went ahead and rendered itself on the threshold for proving the applicability of the doctrine. The Court stated as follows: -

(86) We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata. For res judicata to be invoked in a civil matter the following elements must be demonstrated:

- a) There is a former Judgment or order which was final;
- b) The Judgment or order was on merit;
- c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d) There must be between the first and the second action identical parties, subject matter and cause of action

25. Having looked at the petition in its form, the Petitioner has filed the same alleging abuse of her rights to ownership of property and seeks that a declaration be made that she is the rightful owner of the suit property and further that the 1st Respondent's ownership documents being the title deeds to the numerous subdivisions be cancelled.

26. I would very much wish to delve into interrogating the decisions made by this court previously as rendered by my predecessors. This will be in a bid to make a conclusion on the issue of res judicata, however before doing so, I first wish to give my views on whether the Petition is properly before court and once the same is done then a comparison can be made on the nature of the prayers previously sought in the other suit in comparison to those in the petition herein.



27. The Petitioner alleges abuse of her rights by the court in making determination as to the ownership of the suit property. She maintains that her rights to use and ownership of the suit property have been infringed upon and the same ought to be rectified by this court through cancellation of the 1st Respondents title amongst other prayers. It is not however, enough to allege that one's fundamental freedoms or rights have been violated. The violation must be proved. I hold that the principle of "the burden of proof" comes in here handy. Section 107 (1) of the Evidence Act Cap. 80 Laws of Kenya is clear in this regard and provides as follows:-
- "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist"
28. The letter and spirit of the above provision has been captured in several decisions of the superior courts including but not limited to the cases of "Anarita Karimi Njeru – Versus - Republic [1979] eKLR and Mumo Matemu – Versus - Trusted Society of Human Rights Alliance & 5 others [2013] eKLR". Ancillary to the foregoing is the requirement that any prospective Petitioner ought to set out his or her complaint with precision and clarity to enable the court to ascertain whether or not a given right or fundamental freedom has been infringed.
29. Further, in the case of:- "Anarita Karemi (Supra) Trevelyan & Hancox, JJ, threshold for proof of infringement and violation of Fundamental rights was summarized as follows;
- "We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."
30. The Court of Appeal in the Case of "Mumo Matemu – Versus - Trusted Society of Human Rights, Alliance & 5 others (2013) eKLR where it was observed as follows:-(44) We wish to reaffirm the principle holding on this question in "Anarita Karimi Njeru (Supra). In view of this we find 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 the 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."
31. I have carefully perused through the petition as filed. The gist of the same surrounds ownership of the suit property herein. The Petitioner further challenges the 1st Respondents acquisition of the property but in my opinion has not outlined with precision how her rights have been infringed upon. In my opinion, the court is being called upon to make a determination on the ownership of the suit property but the pleadings are being clothed with a veil of abuse of rights which does not fit. It is my considered view that the Petition as drafted does not meet the threshold of a petition as set out in the "Anarita Karimi's case" and emphasized in the "Mumo Matemu's case. (Supra)".
32. Based on the foregoing I do not wish to belabour much into the issue of res judicata as the same will be an exercise in futility having already made a conclusive decision that the petition does not meet the set standards of what a petition should entail.



33. On the issue of costs, it is trite that the same follow an event. The factors to be considered while determining the issue of whether to award costs or not were set out in the case of “Morgan Air Cargo Limited – Versus - Everest Enterprises Limited [2014] eKLR, held as follows:-
- a. the conduct of the parties.
 - b. the subject of litigation
 - c. the circumstances which led to the institution of the proceedings
 - d. the events which eventually led to their termination
 - e. the stage at which the proceedings were terminated
 - f. the manner in which they were terminated
 - g. the relationship between the parties and
 - h. The need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the Constitution.
34. The court has considered the circumstances of the instant application and the Petition generally coupled with the fact that there has been previous rigorous litigation between the parties herein and opines that it will be proper for each party to bear its own costs.

VIII. Conclusion & Disposition

35. Ultimately, having caused an indepth analysis of the framed issues herein, the Honourable Court based on the principles of Preponderance of Probabilities and the balance of convenience, have arrived at the following specific order. These are:-
- a. That the Notice of Motion application dated 19th May 2025 be and is thus allowed as prayed.
 - b. That the instant Petition dated 20th November, 2024 be and is hereby found to be without merit and is accordingly dismissed.
 - c. That each party to bear its own costs.

It is ordered accordingly.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 30TH DAY OF SEPTEMBER, 2025.

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**HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT AT KWALE.**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. M/s. Chesaro Advocate for the Petitioner/Respondent.
- c. M/s. Ongeso Advocate holding brief for Mr. Karega Advocate for the 1st Respondent/Applicant.
- d. No appearance for the 2nd, 3rd & 4th Respondents.

HON. JUSTICE L.L NAIKUINI

