



REPUBLIC OF KENYA



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**Olang & 18 others v Lake Victoria South Water Works Development
Agency Limited & 7 others (Constitutional Petition E022 of 2021)
[2025] KEELC 6533 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6533 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

CONSTITUTIONAL PETITION E022 OF 2021

SO OKONG'O, J

SEPTEMBER 29, 2025

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

**IN THE MATTER OF ARTICLES 3, 10, 20, 21, 22,
23,70 AND 258 OF THE CONSTITUTION OF KENYA**

**AND IN THE MATTER OF ALLEGED CONTRAVENTION AND VIOLATION
OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUALS AS
ENSHRINED UNDER ARTICLES 47 AND 50 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT
AND COORDINATION ACT, 1999 AND THE ENVIRONMENTAL
(IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2003**

AND

**IN THE MATTER OF KORANDO WASTEWATER FACILITY/SEWERAGE
TREATMENT PLANT PROJECT AND THE RIGHTS OF RESIDENTS
AND AFFECTED PERSONS WITHIN AND ADJACENT TO KORANDO
WASTEWATER FACILITY AT CENTRAL WARD, KISUMU WEST CONSTITUENCY**

BETWEEN

CALVINS OLUOCH OLANG 1ST PETITIONER

PHILIP OLANG 2ND PETITIONER

JOSHUA OGEMBA MBOK 3RD PETITIONER

BENARD ASONYA 4TH PETITIONER



EDWARD KOTINGI	5 TH PETITIONER
PENINA ONEGE	6 TH PETITIONER
VITALIS LEO	7 TH PETITIONER
DOREEN AKINYI	8 TH PETITIONER
ZEPHANIA OYANGE OGOL	9 TH PETITIONER
GEORGE ORINDA	10 TH PETITIONER
GEORGE O OMWA	11 TH PETITIONER
KELVIN O ONOKA	12 TH PETITIONER
ALFRED OMULLO	13 TH PETITIONER
VICTOR ATHEMBO	14 TH PETITIONER
DANIEL OMONDI	15 TH PETITIONER
PHILIP OCHIENG	16 TH PETITIONER
JOAN OKEYO ABUOM	17 TH PETITIONER
JOHN OLANG	18 TH PETITIONER
GEORGE ODHIAMBO	19 TH PETITIONER

AND

LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY LIMITED	1 ST RESPONDENT
COUNTY GOVERNMENT OF KISUMU	2 ND RESPONDENT
INTEGRATED SCIENCE AND ENGINEERING PROJECTS LTD	3 RD RESPONDENT
NATIONAL LAND COMMISSION	4 TH RESPONDENT
NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY	5 TH RESPONDENT
MINISTRY OF WATER SANITATION & IRRIGATION	6 TH RESPONDENT
WATER RESOURCES AUTHORITY	7 TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL	8 TH RESPONDENT

JUDGMENT

1. The Petitioners brought this petition on 18th October 2021 seeking several reliefs against the Respondents. Together with the petition, the Petitioners filed an application for conservatory orders dated 4th October 2021. The petition and the application for conservatory orders were brought on the grounds set out in the petition, the application, and the supporting affidavit and supplementary affidavit of the 1st Petitioner, Calvins Oluoch Olang, sworn on 18th October 2021 and 12th May 2023,



respectively. The court delivered a ruling on the Petitioners' application for conservatory orders on 11th March 2024, dismissing the application. After the said ruling, the petition was heard through written submissions. In support of and in opposition to the petition, the parties relied entirely on the affidavits, grounds of opposition, and the written submissions they had filed in support of and in opposition to the Petitioners' application for conservatory orders, since nothing had changed on the subject matter of the dispute from the time the ruling on the application for conservatory orders was made.

The Petitioners' case

2. The Petitioners averred that they were the landowners and residents of various administrative areas within Korando wastewater and/or sewerage facility location at Central Ward within Kisumu County, where the Ministry of Water and Irrigation, through the 1st Respondent, was to construct a wastewater treatment facility. The Petitioners averred that despite the [Water Act](#) 2016 expressly providing for the formulation of a water service strategy following public participation, the Cabinet Secretary, Ministry of Water, Sanitation & Irrigation, had neither invited public participation nor formulated a water service strategy provided for under Section 64 (1) and (2) of the [Water Act](#), 2016. The Petitioners averred that the available Water Service Strategy was for 2007 - 2015, which had expired. The Petitioners averred that despite the absence of a water service strategy outlining the Government's plans and programs approved by the public, the Government, through the 1st Respondent, had sought to construct a wastewater treatment facility at Korando, Kisumu County, without public participation.
3. The Petitioners averred that on 5th and 26th June 2013, the firm of Otieno Odongo and Partners undertook a public participation exercise on behalf of Lake Victoria South Water Service Board, the predecessor of the 1st Respondent, which is the project proponent, where the Residents of Korando objected to the construction of a wastewater treatment facility/sewage within Korando area. The Petitioners averred that since then, there had been no further engagements between the residents and the project proponent on the subject matter until recently, when the 1st Respondent's new consultant, the 3rd Respondent, fraudulently and clandestinely tried to implement the project without following the due process in accordance with the World Bank safeguards and the Environmental Management and Coordination Act, 1999.
4. The Petitioners averred that on 21st July 2021, the 1st, 2nd, 3rd, 5th and 6th Respondents and the Deputy County Commissioner, Kisumu West met four handpicked residents of Central Ward within Korando at the Deputy County Commissioner's office at Ojola where for the first time since the residents of Korando rejected the construction of a wastewater treatment facility in 2013, the Respondents re-introduced the project to the four residents who were not allowed to respond to any issue or give their opinions on the project.
5. The Petitioners averred that on 27th July 2021, the Respondents, through the area Chief, called another twenty-five (25) people, alleged to be land owners, to the Chief's office where the Respondents' representatives, led by the 3rd Respondent's consultant engineers, Marvin Agama and Cynthia Shitsukane, introduced the project. The Petitioners averred that instead of having an interactive meeting regarding the project and how it would affect the residents and the mitigation factors put in place, the Respondents only addressed the issue of land compensation and threatened those in attendance that if they did not allow the project consultant to work freely, their land would be forcefully acquired because what they were working on was a government project.
6. The Petitioners averred that the residents who attended the meeting were not allowed to ask questions regarding the project, but were asked to allow the project proponents to enter their land on 3rd August 2021 for survey and valuation purposes. The Petitioners averred that the residents were



shocked that such a sensitive meeting was called through phone calls from the area Chief instead of a public notice inviting all the residents to the meeting and giving them sufficient notice. The Petitioners averred that the residents who attended the meeting were neither supplied with the project feasibility study, the project appraisal report, nor the Environmental and Social Impact Assessment Study report, with particular reference to modern wastewater treatment systems and their effect on the environment and human habitation. The Petitioners averred that the proposed project was likely to trigger environmental and social impacts that would need to be mitigated for the project to be environmentally friendly, socially accepted, and economically viable. The Petitioners averred that the manner in which the 1st Respondent was hoarding information from the public showed that the project was neither environmentally friendly, socially acceptable, nor economically viable.

7. The Petitioners averred that the residents called for a public meeting on 1st August 2021 to discuss the manner in which the project proponent was forcing the project upon them without making available a scientific analysis of how the flood-prone Korando area was found to be the most ideal for the wastewater treatment facility. The Petitioners averred that on 2nd August 2021, the Petitioners met the representatives of the 3rd Respondent, Marvin Agama and Cynthia Shitsukane at the Chief's office where they insisted that the project was on course as they had conducted sufficient public participation through the meetings of 21st August 2021 and 27th August 2021(sic) and that they were proceeding to the next phase of acquiring land from the affected land owners. The Petitioners averred that the 3rd Respondent presented a Google map of the project area, which only covered land where the treatment plant was to be constructed although the project was going to affect over 10,000 homes and/or families to whom the 1st Respondent had not offered a solution for their imminent relocation due to the pollution that would be occasioned by the sewage treatment plant. The Petitioners averred that from the said meeting, it was resolved that the 1st Respondent would stop all activities within the project area and provide all the documentation to the residents. The Petitioners averred that they did a follow up on the resolution of the meeting by writing to the Respondents asking them to stop any further implementation of the project until proper public consultation and sensitisation were carried out on the project.
8. The Petitioners averred that despite there being an agreement to stop further activities on the project to allow for proper public consultation as provided for by the law following the meeting held on 2nd August 2021 at the Chief's office and being served with a letter to that effect, the Respondents continued with their activities unabated. The Petitioners averred that as part of the project's activities, the County Executive Committee Member for Environment, Kisumu County had through the radio reinforced the statements made by engineers Marvin Agama and Cynthia Shitsukane by insisting that the implementation of the project was on course as the meetings of 21st August 2021 and 27th August 2021 were sufficient public participation meetings and that they were proceeding to the next phase of acquiring the land from the affected land owners. The Petitioners averred that the said County Executive Committee Member for Environment, Kisumu County, stated that there would be no more public participation over the project.
9. The Petitioners averred that in 2019, an environmental and social impact assessment on the proposed rehabilitation of the Kisumu sewage treatment plant was carried out for Lake Victoria Environment Management Project Phase 2 by Aquaclean Services Ltd. which released a report. The Petitioners averred that the report raised pertinent issues and recommended a plan of action which was not being followed by the 3rd Respondent in the implementation of the current project. The Petitioners averred that the sewerage system in Kisumu town serves an extensive network of sewer lines which were laid in 3 phases between 1955-1965, 1965-1975 and 1975-1985, and the current area under the sewerage system was approximately 358 Ha. The Petitioners averred that it was proposed that the sewerage system be



increased to cover an area of 5,140Ha. The Petitioners averred that currently, only 26 percent of the Kisumu town population, with 10 percent of land coverage, was connected to the sewage system, although settlement areas including Kibuye, Manyatta and Nyalenda had reached the flow thresholds for connection. The Petitioners averred that the sewage system had not been expanded for a higher reach. The Petitioners averred that Kisumu City was being served with 2 sewage treatment facilities, Nyalenda lagoons and Kisat plant, which were operating at 30 percent capacity due to poor design and lack of proper operation and maintenance.

10. The Petitioners averred that the 1st Respondent, having failed to optimally operate and maintain the 2 sewage treatment facilities, wanted to construct another one within a densely populated and highly agrarian area within Korando on land that was prone to flooding due to rainwater and backflow from Lake Victoria. The Petitioners averred that the proposed site was next to Lake Victoria on the 2nd row parcel of land, and any rise in lake water, which causes a backflow flooding, would be a health hazard to the neighbouring community, as raw sewage would mix with the flooded water, thereby contaminating the entire village.
11. The Petitioners averred that Korando community largely depends on fishing as their main economic activity and the proximity of the sewage treatment facility to the lake was a great threat to their main economic activity as any overflow of the raw sewage and/or any surface runoff from parts of the sewer line corridors and the sewage treatment plant would contaminate the fish breeding areas, fishing grounds and beaches. The Petitioners averred that the proximity to the lake further raises the risk of contamination of the lake from the disposal of sludge cake and other matters from the raw sewage. The Petitioners averred that the residents residing within a radius of 2 Kilometers from the project area would suffer from air pollution due to the strong odour emanating from the clarifiers, digesters, drying beds, and ponds. The Petitioners averred that the residents will also suffer from contaminated aerosols emanating from the effluent processing, especially those in the windward direction of the sewage plant. The Petitioners averred that the project site and other points of spillage and/or sewage overflow will potentially encourage vegetation to overgrow, including grass and shrubs, with the risk of attracting birds, snakes, rodents, and other undesirable animals, which will put the residents at risk.
12. The Petitioners averred that because of the proximity to the lake, certain animals, including crocodiles and hippopotamuses, may encroach on the sewage treatment plant and the surrounding area as a result of the overgrown vegetation. The Petitioners averred that this would not only be a nuisance to the plant's operations but would also pose a safety threat to the immediate residents and commercial premises. The Petitioners averred that there will be birds' attraction to the sewage treatment plant arising from the proliferation of insects and aquatic flora suitable for birds' food, and certain species and populations of the birds at the treatment plant will become a safety risk to the flight path, which is a short distance from the project site. The Petitioners averred that the sewage discharge from the treatment plant was a determinant of the macro and microflora and fauna in the lake, and the excessive nutrients would lead to increased eutrophication of the lake water. The Petitioners averred that, at the same time, chemical and organic loading would reduce the capacity for the lake water to support life (low oxygen levels and toxicity), with the result that the water around the beaches in Korando would not be able to support fish growth, thereby forcing the Korando fishermen to go deep into the lake to sustain themselves economically. The Petitioners averred that no fishmonger would want to buy fish caught next to a sewage treatment plant and therefore the intended construction would kill the fishing industry around Korando area.
13. The Petitioners averred that the project site which starts from the 2nd row beach plots was less than 6 meters from the first-row beach plots (as they are separated by a road) where some of the Petitioners and residents of Korando had established multi-million beach homes and marine training schools and who



would be forced to relocate to other places because of the atmospheric pollution due to odour nuisance that would travel a distance of over 1 kilometer, especially the odour from the dewatered sludge in the waste storage yard if the wastewater treatment plant was modernised but if the wastewater treatment plant was the same as the current ones in Nyalenda and Kisat which were not modernised then the distance would be more than 5 Kilometers. The Petitioners averred that the commonly used procedure in the planning of the wastewater treatment plant was to avoid odour annoyance by making use of the separation distance between the emission source and residential areas. In this regard, the Petitioners averred that the 1st Respondent should provide a buffer zone of at least 1kilometers radius between the project site and the residential area. The Petitioners averred that, according to its website, the 1st Respondent, the project proponent, had listed the Korando wastewater treatment plant as an ongoing project, which had been financed by the French Development Agency, the European Investment Bank, the European Union, and the Government of Kenya, at a cost of Kshs. 7.5 billion, yet the project had not even been proposed to the residents, which could be the reason why it was being pushed and/or rushed without adhering to the legal frameworks for undertaking such a project.

14. In their supporting affidavit sworn by the 1st Respondent on 18th October 2021, the Petitioners averred that the 7th Respondent was a statutory body established under Section 11 of the [Water Act](#) 2016, with the responsibility of formulating and enforcing standards, procedures, and regulations for the management and use of water resources and flood mitigation. The Petitioners averred that the 1st Respondent was one of the 9 water works development agencies established under Section 65 of the [Water Act](#) 2016, with the obligation of providing water and sewerage services within the Western Region that covers 8 counties of Kisumu, Kisii, Nyamira, Migori, Homabay, Bomet, Kericho and Siaya. The Petitioners averred that the [Water Act](#) 2016 introduced new water management institutions to govern water and sanitation, and while water remained vested in the state, the water reforms saw the introduction of the commercialisation of the water services as part of the decentralisation process and the participation of stakeholders in the management of national water resources. The Petitioners averred that the separation of policy and regulatory responsibilities and the devolution of responsibilities for water resources management and water services provision to the local level, as envisaged by the [Water Act](#) 2016, had been the principal mechanism for improving accountability and transparency in the water and sanitation sector.
15. The Petitioners averred that the National Policy on Water Resources Management and Development provided the following as its main objectives;
 - a. Preservation, conservation and protection of available water resources and allocation in a sustainable, rational and economical way;
 - b. Supply of good quality water in sufficient quantities to meet various needs and alleviate poverty while ensuring safe disposal of wastewater and environmental protection;
 - c. Establishing an efficient and effective institutional framework to guide the development and management of the water sector; and
 - d. Developing a sustainable financing system for effective water resources management, water supply and sanitation development.
16. The Petitioners averred that under Article 42 of [the Constitution](#), the Petitioners were entitled to a clean and healthy environment, which under Section 3(2) of the Environmental Management and Coordination Act 1999 (EMCA) includes the right to access the various public elements or segments of the environment for recreational, education, health, spiritual and cultural purposes. The Petitioners



averred that the intended sewage treatment plant would violate their rights alongside other residents of Korando as follows;

- a) Dignified life in a clean and healthy environment would cease to be possible upon the conversion of the Petitioners' agrarian habitat into a sewage treatment plant.
- b) By its very nature, a wastewater treatment plant is an industrial location/site that is a relatively nutrient-rich, heavily contaminated environment that receives waste from a variety of antimicrobial-resistant genes and organisms loaded environments, including hospitals, industrial and agricultural sites, and releases both solid and liquid by-products that can disseminate antimicrobial-resistant genes and organisms. Influent can also be contaminated with a variety of pollutants, including antimicrobial agents, pharmaceuticals, personal care products, and heavy metals, which can accumulate within a wastewater treatment plant. Many microbial and chemical contaminants in wastewater cannot be degraded by the treatment process or inactivated through disinfection of the effluent. For those contaminants that can be degraded, the resulting metabolites may still have antimicrobial or selective activity. For these reasons, the Petitioners contended that under Article 42 of *the Constitution*, the Respondents were prohibited from compelling them to reside in and eke out their agrarian living in such a contaminated environment and or location.
- c) At the very minimum, the Government of Kenya, its agencies and its officials are enjoined under Article 42 of *the Constitution* to ensure that no wastewater treatment plant is licensed and permitted to operate within a human habitat under residential or agrarian use. In the premises, unless and until the Respondents have acquired by purchase land within a radius of 2 Kilometers as a buffer zone for the sewage treatment plant, the proposed wastewater treatment plant cannot operate in conformity with Article 42 of *the Constitution*.
- d) Given the size of the wastewater treatment plant and its negative effects on land, lake and the atmosphere, there must be a minimum distance of 2000 meters between the wastewater treatment plant and the residential premises.

17. The Petitioners averred that the Respondents had initiated the project and were seeking to implement it in a manner that grossly violated their human dignity, as attested by the following;

- a. In the face of opposition by the affected persons, the Respondents had sought to muzzle their objections by compromising the local political leadership and other purported representatives of the people.
- b. Where and whenever the local political leadership had failed to muzzle the cry and agony of "their people", the administrative and security forces had been deployed to intimidate and suppress the objectors.
- c. Unless and until it had been certified that the people living within Korando area were a sub-human species, their right to human dignity would be irreparably violated by turning their homelands into an industrial site for processing waste.

18. The Petitioners averred that the wastewater treatment plant had and would violate their right to protection of property under Article 40 of *the Constitution* in that;

- a. The conversion of land measuring 78 Ha. in Central Ward into a sewage treatment plant site would degrade and devalue the Petitioners' properties and quality of life.



- b. The implementation and operation of the sewage treatment plant would occasion imminent displacement of the residents within the wastewater treatment plant area and the adjacent areas.
 - c. The implementation and operation of the wastewater treatment plant before the Respondents had acquired the actual area for their industrial needs was a scheme to force the residents to sell their land cheaply.
 - d. Whereas the wastewater treatment plant would affect thousands of land owners, the 1st to 3rd Respondents had not acknowledged the adverse impact on them.
 - e. The 1st to 3rd Respondents were fraudulently forcing and intimidating some land owners to sell them their land within the project area with threats of compulsory acquisition, where they will be paid peanuts.
19. The Petitioners averred that they were gravely concerned by the adversarial and pre-judicial role played by the 2nd, 4th, 5th, 6th and 7th Respondents in the administration and enforcement of laws and regulations in the water sector particularly the public support they had accorded to the construction of the wastewater treatment plant at the expense of the Petitioners who only know Korando as their ancestral home. The Petitioners averred that the impugned actions and omissions of the Respondents constituted a serious mockery of the rule of law and scurrilous contempt for the authority and dignity of *the Constitution* and statutory institutions.
20. In their supplementary affidavit sworn by the 1st Petitioner on 12th May 2023, the Petitioners averred that it had occurred to them that, in disregard of the fact that the dispute over Korando wastewater treatment and sewerage facility project was pending in court, the 1st Respondent was proceeding with the implementation of the project. The Petitioners averred that the said project and its implementation started in 2013. The Petitioners averred that the 1st Respondent, in an effort to circumvent the legal and due process, had hired mercenaries to pose as land owners in the project area to take part in sham public participation. The Petitioners averred that the 1st Respondent set up a Community Project Committee that included a member of a civil society organization approved by the community. The Petitioners averred that the civil society organization whose member was part of the said committee was not approved by the community and did not come from the community.
21. The Petitioners averred that on 9th August 2021, the residents of Korando community held a peaceful demonstration complaining that the sewerage project in their area was being implemented without the community being involved. The Petitioners averred that the 1st Respondent in a subtle scheme and bid to keep the Petitioners and the land owners in the dark about the processes of the implementation of the project, only posted its notices on its website that could not be accessed by the Petitioners, the land owners and the locals and purported that the notices were published. The Petitioners averred that the primary and critical recipients of the 1st Respondent's communication were the people directly affected by the project, which were the Petitioners, the land owners and the residents of the project site. The Petitioners averred that such communication ought to have been made through a medium that was accessible to all and sundry, not a website that was limited in access by the public.
22. The Petitioners averred that the majority of the members of the local community around the project area could not access the internet or the 1st Respondent's website, as some were illiterate, others semi-illiterate, and some not technology savvy to wade through and scavenge the internet for such critical information possessed by the Respondents only. The Petitioners averred that it was the Respondents' obligation to provide the Petitioners with such information in a simple and understandable way and language that assured communication. The Petitioners averred that a public that is ignorant



and uninformed on the issues surrounding the project could not effectively take part in the public participation. The Petitioners averred that the 1st Respondent had sidelined the land owners in the project area, and despite the illegality in the implementation of the project, the 1st Respondent was still not willing to disclose to the Petitioners and the land owners the critical information on the project. The Petitioners averred that the 1st Respondent had neither furnished nor disclosed to them and the land owners in the project area the information on the implementation of the project. The Petitioners averred that the 1st Respondent was deceptively presenting the project as a water treatment plant when it was actually a wastewater treatment plant. The Petitioners averred that it was the 1st Respondent which could furnish the Petitioners and the community with the information on what the project entailed, and it had not done so.

23. The Petitioners prayed for judgment against the Respondents for;

1. A declaration that the implementation and construction of the wastewater treatment plant at Korando is illegal for violating the rights of the Petitioners and other residents of Korando, Central Ward, Kisumu West Constituency, Kisumu County, to a clean and healthy environment.
2. A declaration that pursuant to Articles 28 and 42 of *the Constitution*, the minimum distance between the wastewater treatment plant and residential premises applicable to the wastewater treatment plant at Korando is 2000 meters.
3. An order of a permanent injunction restraining the 1st to 3rd Respondents' implementation and operationalisation of the wastewater treatment plant at Korando until they have acquired land for the wastewater treatment plant that ensures a minimum distance requirement of 2000 meters from the wastewater treatment plant to residential premises within the wastewater treatment plant at Korando and adjacent areas.
4. A declaration that EMCA is inconsistent with Articles 28 and 42 of *the Constitution* to the extent that it does not provide for the minimum distance requirement applicable to wastewater treatment plants.
5. An order of Mandamus be issued to compel the Government of Kenya to provide for the minimum distance requirement applicable to wastewater treatment plants pursuant to its obligations under Articles 21, 42, 43, and 70 of *the Constitution*.
6. An order of prohibition be issued to prohibit the implementation and operationalisation of the wastewater treatment plant at Korando until the Government of Kenya provides for the minimum distance requirement applicable to wastewater treatment plants pursuant to its obligations under Articles 21, 42, 43, and 70 of *the Constitution*.
7. A declaration that the 1st to 8th Respondents have violated the rights of the Petitioners to protection of the law and freedom from discrimination guaranteed under Article 27 of *the Constitution*.
8. A declaration that the conversion of the Petitioners' habitat at Korando, Central Ward, into a wastewater treatment plant site by the 1st to 3rd Respondents amounts to a violation of their rights to human dignity enshrined in Article 28 of *the Constitution*.
9. A declaration that the implementation and operationalisation of the wastewater treatment plant at Korando threatens to violate and will amount to a violation of the rights of the Petitioners and other residents of the Korando Central Ward, Kisumu West Constituency, to the protection of property enshrined in Article 40 of *the Constitution*.



10. A declaration that the 1st, 2nd, 4th, 5th, 6th, 7th and 8th Respondents have violated the Petitioners' rights to fair administrative action enshrined in Article 47 of *the Constitution* in connection with their decisions, actions and omissions in relation to the wastewater treatment plant at Korando.
11. A declaration that the 4th Respondent has violated Article 67(2) of *the Constitution* in relation to the implementation of the wastewater treatment plant at Korando.
12. An order for compensation of the Petitioners for violation of their rights and freedoms under Articles 27, 28, 31, 40, 42, and 47 of *the Constitution*.
13. The costs of the petition to be borne by the Respondent.

The 1st Respondent's Case

24. The 1st Respondent opposed the petition through a replying affidavit sworn by Eng. Paul Agwanda on 16th November 2021. The 1st Respondent averred that it was one of the nine Water Works Development Agencies established under the *Water Act* 2016 by the Ministry of Water, Sanitation and Irrigation, charged with the responsibility of developing and constructing major water infrastructure for the supply of clean water and sanitation services across the counties of Kisumu, Siaya, Homabay, Kericho, Bomet, Kisii, Nyamira and Migori. The 1st Respondent averred that its mandate was to provide access to water and improved sanitation services to the populace within its area of jurisdiction as provided for under Article 43 of *the Constitution* of Kenya 2010 and Section 63 of the *Water Act* 2016. The 1st Respondent averred that the petition before the court was premature, incompetent, frivolous, vexatious, unknown in law, and devoid of merit, whilst the affidavit in support thereof was full of falsehoods and misrepresentations of facts that were misleading and were only tailored to win the sympathy of the court unfairly and unjustly. The 1st Respondent averred that Lake Victoria Water and Sanitation Program (the LVWATSAN Program) was a national government project co-financed by the French Development Agency (AFD), European Investment Bank (EIB), European Union (AITF), and the Government of Kenya (GoK) at a cost of Kshs. 7.5billion.
25. The 1st Respondent averred that the Government of Kenya, through the 1st Respondent, planned to increase access to water and sanitation services under LVWATSAN Program through provision of, infrastructure for increased water supply, a new waste water treatment plant, rehabilitation and upgrade of existing sanitation facilities in Kisumu City and expansion of water supply and sanitation facilities to satellite towns of Maseno, Kiboswa and Ahero. The 1st Respondent averred that the LVWATSAN Program was in two components, namely: provision of infrastructure for increased water supply, and sanitation services, which were both at the inception stage, hence the reason for ongoing public awareness and education about the project. The 1st Respondent averred that the ultimate objective of the program was to increase access to clean water and improved sanitation within Kisumu City and its environs. The 1st Respondent averred that the project stood to protect the world's second largest fresh water lake from pollution caused by direct discharge of unconnected sources of raw sewage through open drains or partially treated sewage systems, homes, industries, petroleum stations, among other polluters. The 1st Respondent averred that that while it was true that the 1st Respondent was desirous of setting up a wastewater sanitation plant within Otongolo area and rehabilitating the existing sewerage facilities at Kisat and Nyalenda, the would be directly project affected persons had not been identified as this would only be possible once the consultant had been allowed to access the project area and members of the public to educate them about the project and undertake designs and feasibility studies in preparation for the Environmental Social Impact Assessment Study.



26. The 1st Respondent averred that while it was also true that the proposed LVWATSAN program would cost approximately Kshs. 7.5 billion, a bigger percentage of the said project amount, approximately Kshs 5.8 billion would be spent on the expansion of water infrastructure to increase the supply of clean and safe drinking water to the residents of Kisumu County and its environs, while Kshs. 1.7 billion would be spent on the construction of the sewerage plant to realise the right to clean water and sanitation services under Article 43 of *the Constitution* of Kenya 2010 and the Sustainable Development Goal (SDG) No. 6. The 1st Respondent averred that, the 1st Respondent (formerly Lake Victoria South Water Services Board) which was alleged in the petition to have engaged the firm of Otieno Odongo & Partners Consulting Engineers in 2013 to undertake Environmental Impact Assessment Study in Kisumu for rehabilitation of Kisat and Nyalenda Sewerage Plants under International Development Association (IDA) was a separate State entity from Lake Victoria Environmental Management Project II (LVEMP II) that engaged Otieno Odongo & Partners Consulting Engineers. The 1st Respondent averred that it was a stranger to the project map, survey report, and Environmental and Social Impact Assessment (ESIA) Report attached to the Supporting Affidavit of Calvins Oluoch Olang and authored by Otieno Odongo & Partners Consulting Engineers and/or Aquaclean Services Limited on the instructions of Lake Victoria Environmental Management Project II (LVEMP II). The 1st Respondent averred that it was not privy to such instructions or the resultant documents. The 1st Respondent averred that the current LVWATSAN Program was an all-inclusive program intended to integrate and take into account all past environmental concerns, design a modern water supply and sanitation facility that would smoothly co-exist with residents of Kisumu while generating sustainable benefits to the populace within the region, creating employment and income, and guaranteeing a disease-free environment.
27. The 1st Respondent averred that the petitioners were being economical with the truth about the proposed project. The 1st Respondent averred that it was not correct that the 1st Respondent had commenced the implementation or construction on the proposed project site. The 1st Respondent averred that the Petition before the court was premature and unknown in law, as the subject wastewater treatment plant was under proposal and as such no feasibility study and project design had been commissioned to give way for public participation and preparation of Environmental and Social Impact Assessment (ESIA) Study Report. The 1st Respondent averred that the Petitioners had denied the Respondents a chance to reach out to the residents of Korando and its environs to educate them on the proposed project and had as a result, misinterpreted facts about the project to mean that the entire proposed project was a wastewater treatment plant, yet the proposed wastewater treatment plant was just but a component of the entire project that would include supply of clean and safe drinking water. The 1st Respondent averred that the Petitioners had also misinterpreted the word "Ongoing wastewater treatment plant" appearing on the 1st Respondent's website to mean that the Respondents had commenced the implementation of the project when in essence, it only meant that the 1st Respondent had engaged a consultant (3rd Respondent) to undertake public awareness of the proposed project, feasibility study and design of the project. The 1st Respondent averred that when the right time comes for public participation and collection of comments from the members of the public, the Respondents would publish notices and engage the media in inviting members of the public to give their views before obtaining the relevant statutory approvals. The 1st Respondent averred that the Respondents were obligated under Section 9 of the Environmental Management and Coordination Act (EMCA) 1999 to cooperate with other lead agencies in initiating environmental programmes intended to enhance environmental education, public awareness and promote the integration of environmental considerations into development policies, plans, programmes and projects to ensure proper management and rational utilisation of environmental resources on a sustainable yield basis and for the improvement of the quality of human life in Kenya.



28. The 1st Respondent averred that it was this very statutory obligation that would lead to the preparation of a project design or plan and a feasibility study, which would, if the time came, be shared with all stakeholders in an intensive public participation exercise where members of the public would give their views and comments about the project. The 1st Respondent averred that in any event, the Petitioners could not accept or welcome the supply of water services and reject the other component of the project, which was sanitation or treatment of used/wastewater.
29. The 1st Respondent averred that the first meeting regarding the LVWATSAN program was held at the Deputy County Commissioner's Office in Ojola on 21st July 2021, between the Respondents, the local administration, and opinion leaders, to educate and inform them about the proposed water and sanitation project. The 1st Respondent averred that the said first meeting resolved that a subsequent meeting incorporating other State Agencies, Ministries, County Government, Non-Governmental Organizations be held on 28th July 2021 at the area Chief's Office as per the project road map/work plan to educate and make them aware of the proposed project as stipulated under Section 9 of EMCA and formulate a strategy and/ or a plan on how to meet, sensitize and educate other members of the public about the project. The 1st Respondent averred that on 23rd September 2021 when the Respondents convened a follow-up meeting at the Chief's office with opinion leaders and area administration to identify a specific venue, date and time when members of the public and other stakeholders would be engaged and made aware of the proposed project while observing the Ministry of Health measures on Covid- 19, the Petitioners and their Advocates forced their way into the meeting and attempted to disrupt it. The 1st Respondent averred that the Petitioners declared that they would stop further public awareness initiatives on the project until project design, feasibility study, and ESIA reports were supplied to them.
30. The 1st Respondent averred that the agenda of the meeting held on 23rd September 2021 at the Chief's office was to plan and organise for public awareness and education on the proposed project through the area administration. The 1st Respondent averred that the Petitioners and their advocate disrupted a meeting to which they had not been invited. The 1st Respondent averred that the Environmental and Social Impact Assessment (ESIA) and Resettlement Action Plan (RAP) had not been done, hence the acquisition of land was not one of the agenda items. The 1st Respondent averred that the said water supply and sanitation project was at a proposal stage and the respondents had just started reaching out to local opinion leaders, local administration, and finally all members of the public to make them aware of the proposed project as per the approved project work plan.
31. The 1st Respondent averred that it was this preliminary public education and awareness exercise that the Petitioners had mistakenly construed to mean intensive Environmental and Social Impact Assessment (ESIA) and had desperately put up a fight to choke the proposed project at its inception stage by not allowing the Respondents to meet members of the public and tell them the truth about the project. The 1st Respondent averred that as a result of the Petitioners' threats to disrupt public meetings, the Respondents were unable to discharge their statutory mandate to undertake initial public awareness and/or education of the members about the proposed project to pave the way for preparation of the project design and feasibility study which would form the basis for an intensive public participation, collection of views and application for relevant approvals before commencement of the project.
32. The 1st Respondent averred that the petition was premature as no ESIA had been conducted and submitted to the National Environment Management Authority (NEMA) and other state agencies for consideration, approval, and issuance of relevant licenses/permits to commence implementation of the project. The 1st Respondent averred that it was wrong for the Petitioners to mislead members of the public that the proposed project would lead to the eviction of over 10,000 families, yet ESIA and



RAP had not been done. The 1st Respondent averred that it was not correct that the 1st Respondent had commenced construction of a wastewater treatment facility at Korando, Kisumu County, without public participation to approve the plan and a feasibility study. The 1st Respondent averred that no evidence of the construction of the wastewater facility had been placed before the court, either in the form of photographs or data to support the allegations set out in the petition. The 1st Respondent denied that public participation meetings were held on 21st July 2021 and 28th July 2021 to discuss land acquisition. The 1st Respondent averred that this was not possible since the would-be Project Affected Persons (PAPs) were yet to be identified and remained unknown, awaiting the commencement of the feasibility study, ESIA Study/Report, and Resettlement Action Plan (RAP). The 1st Respondent averred that it was also not correct that the project would automatically trigger the alleged social-economic and environmental impact since no Environmental and Social Impact Assessment Study/Report had been done, public views taken and submitted to NEMA for consideration, approval, and issuance of necessary licenses.

33. The 1st Respondent averred that it was not true that the Respondents were hoarding information from the general public about the project. The 1st Respondent averred that the Petitioners' petition was cleverly designed to derail the commencement of the proposed project while at the same time demanding undisclosed individual benefits. The 1st Respondent averred that the fears being nursed by the Petitioners in respect of the proposed project would only be addressed if the Respondents were given ample time to review past ESIA Reports on the project, receive comments from the public, and prepare the project design and feasibility study. The 1st Respondent averred that the orders sought were premature and would serve no useful purpose as mechanisms for addressing the Petitioners' interest were provided for under the law, and in particular EMCA and in any event, if the Respondents failed to comply with the law, the Petitioners would be at liberty to invoke the relevant provisions of the law to challenge the project implementation. The 1st Respondent averred that the Petitioners would suffer no harm by allowing the Respondents to undertake their respective statutory mandates, including public awareness/education on the project, since the Petitioners will be at liberty as a matter of right to invoke the relevant provisions of the law to protect their alleged but undisclosed selfish interests. The 1st Respondent averred that the petitioners had come to the court of equity with soiled hands, having admitted that they indeed disrupted a lawful meeting convened at the Chief's Office in Korando Location to prepare for public awareness/education on the project.
34. The 1st Respondent averred that in the absence of relevant data, ESIA Report, and expert opinion on the proposed project, it was not possible for the court to issue orders sought against the Respondents as a matter of law. The 1st Respondent reiterated that the petition was premature and urged the court to strike out the same with costs. The 1st Respondent averred that the entire petition was premised on hearsay and inadmissible evidence contrary to express provisions of the *Evidence Act*, Chapter 80 Laws of Kenya. The 1st Respondent averred that Section 57 of the *Water Act* 2016 did not in any way prohibit a permit holder or the Respondents from accessing the land of another person for purposes of survey at the inception of a project, except where the land owner had opposed a proposal to such access or entry to the land. The 1st Respondent averred that the Petitioners were on a fishing expedition and had not demonstrated any reason why the intended project should be choked at its inception stage. The 1st Respondent averred that the Petitioners' complaints did not raise any cause of action, hence the petition was without merit.
35. The 1st Respondent filed a further affidavit, also sworn by Eng. Paul Agwanda. In the affidavit, the 1st Respondent averred that the Petitioners/Applicants filed the petition and attempted to mislead the court that the 1st Respondent had commenced implementation of a wastewater/sewerage plant project within Korando area in Kisumu County without involving, consulting, and obtaining views



or comments from members of the public. The 1st Respondent averred that the impugned wastewater treatment plant was part of a proposed Western Corridor Water and Sanitation Improvement Project under Lake Victoria Water and Sanitation (LVWATSAN) Program being implemented within the East African Countries of Kenya, Uganda and Tanzania whose main objectives in Kenya included; increasing access to water supply within Kisumu City to at least 90% of the population of about 650,000 people, extension of water supply to the rapidly developing satellite towns of Maseno, Kiboswa and Otonglo areas, extension of water supply pipelines and construction of new wastewater pipeline networks and a wastewater treatment plant for the western corridor of Kisumu to serve over 120,000 residents, reduction of pollution of the environment and Lake Victoria through rehabilitation of the existing waste water treatment infrastructure at Kikat and Nyalenda stabilisation pond systems, building the capacity of KIWASCO and the County Government of Kisumu on sustainable operation of water and sanitation systems, undertaking of Corporate Social Responsibility among the communities within the settlements along the western corridor of the city and establishment of water quality and wastewater pollution monitoring program for rivers, streams and Lake Victoria.

36. The 1st Respondent averred that the LVWATSAN Program was envisaged in the Master Plan for the management of wastewater within Kisumu County. The 1st Respondent averred that the Master plan provided a road map for planning and development of wastewater collection, transmission, and treatment facilities within the Eastern, Central and Western corridors of Kisumu City. The 1st Respondent averred that it began the conceptualisation of the project with the development of a masterplan (concepts) in January 2019 and a pre-feasibility study in June 2021, respectively. The 1st Respondent averred that the pre-feasibility study was a mere desktop review of the project that was to inform the development of project methodology, project objectives, scope and budget of the overall project, detailed stakeholders' engagement plan (ESP), project development plan, choice of technology, proposed community project committee, leadership forum, grievance redress mechanism, estimated size of land for wastewater treatment plant, land compensation and corporate social responsibility.
37. The 1st Respondent averred that the pre-feasibility study would be followed by the feasibility study and design. The 1st Respondent averred that the preparation of the feasibility study would require continuous engagement with the stakeholders within the western corridor and the surrounding areas. The 1st Respondent averred that the study would establish the suitability of a particular location and influence the design of the proposed wastewater treatment plant. The 1st Respondent averred that following the conceptualisation of the project and pre-feasibility study, the Respondents organised and held several meetings. The 1st Respondent averred that the objective of the meetings was to sensitise members of the public on the proposed LVWATSAN Program, and in particular, the Master plan. The 1st Respondent averred that the following meetings were held; (a) National Government Administration Officials (NGAO) held on 21st July 2021; (b) 1st Leadership Sensitisation for Kisumu West corridor held on 28th July 2021; (c) 1st Sensitisation of community members held on 1st August 2021; (d) Local Political Leaders meeting held on 23rd September 2021; (e) 1st Leadership Forum held on 13th January 2023; (f) 2nd Leadership Forum for Korando Community held on 29th March 2023; (g) Community Mobilisation Meeting with area Chiefs, Ass. Chief and Village Elders held on 14th April 2023; (h) Current MP Hon. Rosa Buyu meeting on 17th April 2023, and (i) 1st Korando Community Public Meeting on 19 April 2023.
38. The 1st Respondent averred that the 1st and 3rd Respondents thought that it would be prudent as a matter of protocol to first meet the area leaders and make them understand the proposed project. The 1st Respondent averred that the area leadership would act as a point of entry to the community, assist in the mobilisation of members of the public for ease of access, and dissemination of information about the proposed project by the Respondents. The 1st Respondent averred that the public awareness and



sensitisation meetings, as opposed to public participation forums, were meant to prepare and equip the community and other stakeholders in Kisumu with relevant knowledge and information about the proposed project before undertaking public participation as envisaged under the law and regulation. The 1st Respondent averred that it was these initial or preliminary public awareness meetings on the proposed project that the Petitioners wanted to stop. The 1st Respondent averred that these preliminary engagements with the stakeholders were informed by the extensive nature of the project. The 1st Respondent averred that, due to the nature and sensitivity of the proposed project, the 1st Respondent saw it prudent to first sensitise the members of the public and equip them with the relevant background information for meaningful engagements in future public participation forums.

39. The 1st Respondent reiterated that it was a stranger to the project map, survey report, and ESIA Report referred to in the petition. The 1st Respondent averred that the said documents related to a different project initiated in 1993 by an entity called Lake Victoria Environment Project 2 (LVEMP II). The 1st Respondent averred that this was way back before the establishment of the 1st Respondent. The 1st Respondent urged the court to expunge the documents from the record. The 1st Respondent averred that during the first stakeholders' engagement forum held on the 19th April 2023, the 1st and 3rd Respondents demonstrated that they had not undertaken a feasibility study. The 1st Respondent reiterated that the Environmental and Social Impact Assessment (ESIA) Study for the project and the said feasibility studies could only be conducted and reports thereof availed after preliminary engagement with all stakeholders. The 1st Respondent averred that the Petitioners had been informed that the reports that they were demanding from the 1st Respondent could only be prepared and shared after the completion of public engagement on and awareness of the proposed project.
40. The 1st Respondent averred that the stakeholders' engagement held on the 19th April 2023 was widely publicised on various Radio Stations and notices of the meeting were also circulated and posted in Korando area, the Chief's office at Rainbow, and Kisumu County Government offices. The 1st Respondent averred that the 1st Korando Community Public meeting held on 19th April 2023 was attended by several people, including the Petitioners and their advocate, as a result of advertisement and wide circulation of notices in the area. The 1st Respondent averred that it was therefore not true that the public awareness meetings organised by the Respondents were a sham and that the 1st Respondent only published the notices on its website. The 1st Respondent averred that the truth of the matter was that the Petitioners had deliberately refused to attend and participate in the public engagement forums organised by the 1st Respondent, as acknowledged in their supplementary affidavit. The 1st Respondent reiterated that the impugned project was planned to be implemented in two components, namely, to increase access to water supply, and to provide a wastewater treatment plant. The 1st Respondent averred that the Petitioners had no issue with an increase in access to water supply in their area, but had opposed the wastewater treatment plant meant to treat wastewater and ensure the same was safe before discharge into the environment. The 1st Respondent averred that Article 43 of *the Constitution* not only obligates the 1st Respondent to increase water but also sanitation services. The 1st Respondent averred that the two go hand in hand, and the Petitioners could not therefore elect to have clean water and reject a treatment plant meant to treat used water.

The 3rd Respondent's case

41. The 3rd Respondent filed grounds of opposition and a replying affidavit in response to the application for conservatory orders, which it adopted in opposition to the petition. In its grounds of opposition dated 9th December 2021, the 3rd Respondent averred that the petition and the application offended the doctrines of ripeness and exhaustion and were prematurely before the court. The 3rd Respondent



averred that the petition and the application were incompetent and did not meet the threshold set out in *Anarita Karimi Njeru v. Republic* (1976-1980) KLR 1272. The 3rd Respondent averred that the petition disclosed no cause of action against the 3rd Respondent and that the orders sought would serve no useful purpose if granted. The 3rd Respondent contended that the petition and the application were vexatious and a gross abuse of the court process and should therefore be dismissed with costs.

42. In the replying affidavit sworn by its director, Caleb Opati William, on 9th December 2021, the 3rd Respondent averred that it was offering consulting services to the public and private entities in Water Resources Engineering, Water and Wastewater Engineering, and Infrastructure projects, among others. The 3rd Respondent averred that sometime in 2018, the 3rd Respondent, with 2 other foreign companies, entered into agreements to provide consultancy services to the 1st Respondent under a project named "Consultancy Services for Preparation of Water Resources and Wastewater Master Plan and Water Quality Monitoring under the Lake Victoria Water and Sanitation Program (LVWATSAN)". The 3rd Respondent averred that they were also to undertake consultancy services for Technical Studies, Detailed Designs, Tender Documentation, and Supervision of Works for Works Package 1 and 2 in Kisumu County, also under Lake Victoria Water and Sanitation Program (LVWATSAN).
43. The 3rd Respondent averred that the said services to the 1st Respondent were to be provided over 3 years and entailed a series of tasks ranging from (i) development of a water resources and wastewater masterplan, (ii) conducting technical studies, and (iii) design and supervision of various works. The 3rd Respondent averred that in practical terms, the project implementation was phased and designed to be delivered in 3 different stages as follows; (1) Strategic Planning of the Water Resources, Wastewater and Water Quality Monitoring, (2) Preparatory Studies and Priority Interventions including conceptualisation, feasibility studies, field investigations, Technical Studies, Environmental and Social Impacts Assessments (ESIA), Resettlement Action Plans (RAP) and (3) Design and Procurement. The 3rd Respondent averred that, for proper planning and to facilitate monitoring and evaluation of the 3rd Respondent's work by the 1st Respondent, an implementation roadmap and work plan were prepared for each key task.
44. The 3rd Respondent averred that upon approval of the work plan by the 1st Respondent, the 3rd Respondent commenced project implementation in strict compliance with the work plan and, as such, all milestones that had been achieved had been in accordance with a pre-agreed sequence. The 3rd Respondent averred that far from what the Petitioners believed, in July 2021, when the Petitioners' cause of action is alleged to have arisen, the 3rd Respondent was engaged in the implementation of activities under stage 2 of the project, and this primarily entailed field investigations and diagnosis of existing water supply and sanitation systems and review of various studies. The 3rd Respondent averred that as part of that task, the 3rd Respondent was required to initiate a public awareness and sensitisation programme targeting community leaders in Korando area. The 3rd Respondent averred that in fulfilment of that obligation, the 3rd Respondent organised various public awareness and sensitisation meetings, which meetings were duly attended by a section of the Petitioners.
45. The 3rd Respondent averred that, as could be gleaned from the reports and minutes arising out of those meetings, consultations on those material days were general and involved giving brief overviews of various components of the project. The 3rd Respondent averred that the mere fact that certain matters, such as potential impacts of the project, were touched upon did not transform the meetings into ESIA public participation meetings anticipated under Part VI of EMCA. The 3rd Respondent averred that these broad subjects were highlighted with the sole aim of illustrating some of the issues that would be covered within the broader scope of the project. The 3rd Respondent averred that it was not uncommon



- for project deliberations of this nature to straddle across various topics without losing sight of its key objectives. The 3rd Respondent averred that it was desirable that participants be encouraged to ventilate on peripheral matters, as this provides yet another avenue for obtaining information that supports the overall objectives of a project, even if such information is obtained in forums meant for other purposes.
46. The 3rd Respondent averred that the Petitioners' claim that they were not allowed to air their views during these meetings was not true. The 3rd Respondent averred that the organisers of the said meetings offered those in attendance great latitude to deliberate on a wide array of issues in an attempt to cover all key areas in the project as a whole. The 3rd Respondent averred that, as its work plan would demonstrate, during the meeting of July 2021, the agenda on the table was community sensitisation among community leaders. The 3rd Respondent averred that those activities touching on, or concerning ESIA and land acquisition, were scheduled to take place between August and October in the manner anticipated under the EMCA. The 3rd Respondent averred that it was evident from the foregoing that the Petitioners' entire claim was based on a wrongful assumption, as the meetings convened in July were not public participation forums for purposes of ESIA; a fact which would have been easily ascertained by the Petitioners, if only they had exercised a little bit of due diligence. The 3rd Respondent averred that if the Petitioners had been keen to approach the 1st Respondent for clarification and additional information on its activities in the area, they would have been informed that the extension of water network services at Otonglo area was being planned under a different contract whose procurement was already at an advanced stage and would be a forerunner to the sanitation component.
47. The 3rd Respondent averred that *the Constitution* offers relief only in situations where there is an actual controversy meriting judicial intervention and that by the same token, it bars the court from entangling itself in a hypothetical and abstract claim by adjudicating a dispute that has been brought simply out of apprehension and which offends the doctrine of ripeness. The 3rd Respondent averred that this court lacked jurisdiction to hear the Petitioners' application and petition as they were bad in law, incompetent, unmerited, misadvised, baseless, frivolous, scandalous, vexatious, and an outright abuse of court process and hence defective. The 3rd Respondent averred further that the petition and application went against the doctrine of exhaustion, which demands that where there is a clear procedure for redress of any particular grievance prescribed by an Act of Parliament, that procedure should be strictly followed before a litigant approaches a court of law. The 3rd Respondent averred that in satisfaction of the doctrine of exhaustion, the Petitioners should have followed the procedure set out under Part VI of the *Water Act* 2016 to address the claims made concerning the absence of a water strategy before approaching the court. The 3rd Respondent averred that, in the alternative, the Petitioners ought to have offered the court a satisfactory explanation for their avoidance of that remedy.
48. The 3rd Respondent averred that the mere absence of a water strategy would not have hindered the commencement of the impugned project, as government development plans are incorporated across several policy documents, and the project at hand was well entrenched in the 1st Respondent's development plans and thus, its implementation was not reliant solely on the water strategy. The 3rd Respondent averred that the Petitioners had not shown with clarity or precision how the actions of the 3rd Respondent had contravened the law or the basis for any apprehension. The 3rd Respondent averred that the issues in dispute were primarily based on ESIA-related processes, which were firmly anchored in EMCA. The 3rd Respondent averred that the Petitioners ought to have approached institutions created under that Act, with the requisite capacity to interrogate ESIA Study Reports and inspect the projects for compliance because a court of law has no such tool or capacity and can only supervise the actions of a statutory agency which in the instant case, it could not be called upon to do, as no action requiring the court's supervision had been taken by any agency.



49. The 3rd Respondent averred that Section 31 of EMCA establishes the National Environmental Complaints Committee (NECC) and mandates it under Section 32 thereof to investigate “any allegations or complaints against any person or against the Authority in relation to the condition of the environment in Kenya” and that NECC resolves a wide array of environmental disputes through Alternative Dispute Resolution methods. The 3rd Respondent averred that *the Constitution* requires that appropriate forms of alternative dispute resolution mechanisms be promoted and that usurpation of their jurisdiction by this court would not be promoting but rather undermining a clear constitutional objective. The 3rd Respondent called upon the court to construe its mandate in a way that accommodates alternative dispute resolution mechanisms and to lay down its tools in favour of the NECC.
50. Regarding allegations of impropriety on the part of the local administration and the 3rd Respondent’s employees, the 3rd Respondent averred that the Petitioners had made grave allegations without offering an iota of supporting evidence. The 3rd Respondent averred that it was not uncommon that consultants such as the 3rd Respondent would work closely with the local administrators when implementing projects of this nature. The 3rd Respondent averred that to imply that such working arrangements were improper was a clear demonstration of the Petitioners’ attitude towards the local leadership, which ultimately led to the chaos that disrupted the meeting of 23rd September 2021 without any valid reason. The 3rd Respondent averred that the right to public participation is to be exercised with due consideration for government administrative processes following the holding in the “Mui Coal Case”. The 3rd Respondent averred that the impugned project and its various components were founded upon contractual agreements which were by their very nature time-bound and economically taxing. The 3rd Respondent averred that it had demonstrated that it was being unduly harassed by the Petitioners. The 3rd Respondent averred that it would suffer great harm if the orders sought were granted.
51. The 3rd Respondent averred that the prayers sought by the Petitioners were extremely drastic and, if granted, the same would have the effect of halting an extremely urgent and much-needed project, and this would gravely prejudice Kisumu County’s interests and Kenya’s international obligations. The 3rd Respondent averred that it would not be in the public interest nor would it be consistent with constitutional principles to issue orders that would have the effect of staying the 1st Respondent’s core functions, which are geared towards serving the larger public whose interests far surpass the private and sectarian interests of the Petitioners. The 3rd Respondent averred that the petition and application did not merit the grant of the orders sought. The 3rd Respondent urged the court to find that the entire petition and application had been brought in bad faith for the sole purpose of crippling the operations of the 1st Respondent and scandalising the 3rd Respondent.

The 5th Respondent’s case

52. The 5th Respondent adopted its replying affidavit sworn by Tom Togo on 3rd October 2023, in response to the Petitioner’s application for conservatory orders as its reply to the petition. The 5th Respondent averred that it is the principal instrument of the government established under Section 7 of the Environmental Management and Coordination Act 1999 (EMCA) to exercise general supervision and coordination over all matters relating to the environment. The 5th Respondent averred that it is tasked with issuing Environmental Impact Assessment Licenses as provided under EMCA. The 5th Respondent averred that no formal complaint had been raised by the Petitioners with the 5th Respondent that any alleged or actual construction was ongoing without an Environmental Impact Assessment (hereinafter referred to as “EIA”) License. The 5th Respondent averred that any actual or implied allegations by the Petitioners imputing blame on the 5th Respondent for inaction or otherwise



were unfounded and were aimed at painting the 5th Respondent in a bad light. The 5th Respondent averred that in response to the allegation that the construction of the intended project was ongoing, it carried out investigations which revealed that there was no construction work going on as the 1st Respondent was still at the speculative stage of the project. The 5th Respondent averred that, in addition, no specific parcel of land for the project had been identified or land ownership documents provided, and no architectural drawings for the project had been presented, all of which were required in the EIA licensing process. The 5th Respondent averred that there was neither a current EIA License application filed with the 5th Respondent nor any existing and/or current license issued in respect of the project. The 5th Respondent averred that, in light of this, the 5th Respondent could not have acted on a non-existent project site, especially in the absence of any formal complaint or EIA application by the intended project proponent.

53. The 5th Respondent averred that in response to the allegation that it had already issued an EIA license, the 5th Respondent averred that the alleged Environmental and Social Impact Assessment Project Report (ESIA Report) was not signed, and there was no evidence either from the Petitioners or in its records that the same was submitted to the 5th Respondent. The 5th Respondent averred that be as it may, the unsigned copy of the ESIA Report attached to the Petitioners' supporting affidavit indicated that the same was carried out in respect of Lake Victoria Environment Management Project Phase 2 (LVEMP II) and that the assignment was "Carrying out Environmental and Social Impact Assessment on the Proposed Rehabilitation of Kisumu Sewage Treatment Plant", a different proponent from the 1st Respondent herein and a different project from the one proposed and contested in this petition.
54. The 5th Respondent averred further that Section 65(1) of EMCA provides that an environmental impact assessment license may be transferred by the holder to another person only in respect of the project in relation to which such license was issued. The 5th Respondent maintained that no application for a license had been received and thus an EIA license had never been issued to the 1st Respondent in respect of the proposed project. The 5th Respondent averred that Section 65 (1) of EMCA would not apply in the instant case, even if the alleged ESIA Report was valid, as it related to a different project.
55. The 5th Respondent averred that a license could not be issued in a vacuum, as no evidence had been tendered before the court of any ongoing project as alleged by the Petitioners. In response to the alleged lack of public participation, the 5th Respondent averred that it only organises and spearheads formal platforms for public participation in consultation with a project proponent once an application for a grant of EIA license has been formally lodged by way of submission of an Environmental Impact Assessment project or study report, both of which were missing from the current proposed project. The 5th Respondent averred that Section 58 of EMCA, which spells out the role of the 5th Respondent in respect of projects, was yet to kick in as far as the project in dispute was concerned, as neither an application for an EIA license had been received from the 1st Respondent nor any administrative action undertaken by the 5th Respondent relating to this case. The 5th Respondent averred that the petition was premature and not ripe for determination by the court or the National Environment Tribunal under Section 129 of EMCA. The 5th Respondent averred that considering that the alleged project was still at speculative stages, the orders sought against the 1st Respondent that were meant to bar it from meaningfully engaging the residents of the area in relation to the proposed project should not be granted as this would not be in the interest of the general public and the principles of sustainable development which require the court and the government to continually seek ways of improving the general welfare of the public, especially in light of socio-economic rights such as water and sanitation. The 5th Respondent averred that the court and the Respondents, particularly the 1st, 2nd, 4th, 5th and 7th Respondents, have differing but complementary statutory and constitutional roles towards addressing the socio-economic and environmental needs of the public in an effort towards the realisation of



Sustainable Development Goals. The 5th Respondent urged the court not to halt the project at the stage where it was by issuing the orders sought. The 5th Respondent averred that it was through the process being undertaken by the 1st Respondent and the one to be spearheaded by the 5th Respondent after the EIA process begins that would help in determining whether the project should be allowed or not. The 5th Respondent prayed that the petition be dismissed with costs on the grounds of being premature and frivolous.

The 7th Respondent's case

56. The 7th Respondent adopted its grounds of opposition dated 16th November 2021, filed in response to the Petitioners' application for conservatory orders in opposing the petition. The 7th Respondent averred that the petition made no allegation of any infringement or violation of the Petitioners' rights by the 7th Respondent. The 7th Respondent averred further that the petition failed to plead any particulars of any infringement of rights by the 7th Respondent as required for a case to meet the constitutional threshold. The 7th Respondent averred that no reasonable cause of action had been disclosed against the 7th Respondent.
57. The 7th Respondent averred that, in any event, the Petitioners had filed the Petition prematurely since the implementation of the impugned project was still at the feasibility study stage. The 7th Respondent averred that it had not taken any part in the project in question and, as such, it should not have been made a party to the petition. The 7th Respondent averred that the petition dated 4th October 2021 was bad in law, an abuse of the court process, and ought to be dismissed with costs to the 7th Respondent.

The 6th and 8th Respondents' case

58. The 6th and 8th Respondents opposed the petition through the grounds of opposition dated 2nd November 2021, which they filed in response to the Petitioners' application for conservatory orders. The 6th and 8th Respondents averred that the petition lacked merit and was an abuse of the court process. The 6th and 8th Respondents averred that there were grave misrepresentations of facts in the petition, rendering it scandalous, frivolous, and vexatious.

Submissions

The Petitioners' submissions

59. As mentioned earlier, the parties relied on their submissions in support of and in opposition to the application for conservatory orders. The Petitioners' submissions were therefore in support of the application for conservatory orders or interim protection rather than the main petition. The Petitioners submitted that the impugned project had to be halted to ensure that all the constitutional, statutory, and policy frameworks were complied with to avoid or minimise adverse impact on the environment. The Petitioners submitted that the 1st Respondent commenced the process of actualising the impugned project in contravention of Section 58 of EMCA. The Petitioners submitted that the 1st Respondent claimed that it had not started implementing the project, and yet it had already sought and obtained financing for the same and had even undertaken a sham public participation exercise whose basis was not known. The Petitioners submitted that nothing signified the commencement of the implementation of the project more than those two activities. The Petitioners submitted that under the Second Schedule to EMCA, the project in dispute required an Environmental Impact Assessment Study Report (EIA Study Report) to be prepared in accordance with the Environmental (Impact Assessment and Audit) Regulations, 2003 (EIA Regulations). The Petitioners submitted that the 5th Respondent, which was charged with the responsibility of receiving the EIA Study Report, had



not filed any document in court (sic) and as such could not confirm or deny that an EIA Study was conducted on the project before the commencement of its implementation. The Petitioners submitted that the 7th Respondent was charged under Section 2 of the Water Act to regulate the project, and yet it was feigning ignorance of the existence of the project, although, on the other hand, it was claiming that the project was in its feasibility study stage. The Petitioners submitted that the Water Act 2016 provides for the formulation of a water service strategy that outlines the government's plans and programs as approved by the general public. The Petitioners submitted that there was no water service strategy in place since the last one for 2007-2015 had expired, and yet the government, through the 1st Respondent, had sought to implement the project in the disputed area. The Petitioners submitted that the project was being implemented without following the due process provided by the World Bank safeguards and EMCA.

60. On the issue of whether the public interest lies in granting the orders sought by the Petitioners, the Petitioners submitted that the project would affect over 10,000 homes occupied by tens of thousands of families. The Petitioners submitted that the project would affect many other people and generations. The Petitioners submitted that it was in the public interest that the orders sought were granted. The Petitioners submitted that the petition promoted Articles 3 and 10 of the Constitution of Kenya, 2010, on upholding and defending the Constitution and the national values and principles of governance, and specifically Article 10 sub-article (2)(a), (b), (c) and (d) thereof.
61. The Petitioners submitted that the Respondents had not complied with the environmental laws and regulations in the execution of critical steps that posed a threat to the environment. The Petitioners submitted that the gist of their petition was that there was noncompliance with environmental laws in the execution of the project that the Petitioners sought to be remedied. The Petitioners submitted that the petition presented the court with an opportunity to facilitate ordered functioning in the execution and implementation of the project, and the granting of the orders sought would ensure compliance by the Respondents with all the constitutional, statutory, and regulatory prescriptions on the project. The Petitioners submitted that granting the orders sought would also serve and protect the public interest.

The 1st Respondent's submissions

62. The 1st Respondent submitted on two issues, namely, whether the fact that an EIA study was not done before the commencement of the impugned project's cycle rendered the LVWATSAN Program legally infirm, and whether it was justifiable to engage and educate members of the public about the proposed project before the actual implementation. The 1st Respondent submitted that the contractual commitments by the Government of Kenya, donor organisations, and financial sponsors of the project were made to ensure that the entire project succeeded. The 1st Respondent submitted that the Petitioners' argument that the commencement of the project before the EIA study was undertaken contravened Section 58 of EMCA was absurd and demonstrated a clear misinterpretation and application of the law. In support of this submission, the 1st Respondent relied on *Mui Coal Basin Local Community & 15 others v. Permanent Secretary Ministry of Energy & 17 others* [2015]eKLR.
63. The 1st Respondent submitted that the 1st and 3rd Respondents thought that it would be prudent, as a matter of protocol, to first meet the area leadership and make them understand the proposed project. The 1st Respondent submitted that this was planned to be done through a Stakeholders' Engagement Plan developed by the 1st Respondent to ensure that all stakeholders were on board before the actual project implementation. The 1st Respondent submitted that, as per the plan, engagement meetings were to begin with area leadership who would act as a point of entry to the community and would assist in the mobilisation of members of the public for ease of access and dissemination of information regarding the proposed project by the Respondents. The 1st Respondent submitted that



these, as opposed to public participation, were forums meant to prepare and equip the community and other stakeholders with relevant knowledge and information about the proposed project before public participation forums envisaged under the law and regulations.

64. The 1st Respondent submitted that public participation was a continuous process and had to run throughout the project implementation cycle, and in any case, public engagement and project awareness that was being undertaken by the 1st Respondent were planned in good faith to aid in the preparation of a feasibility study report, EIA report, and project design. The 1st Respondent submitted that these three documents were key to public participation and the EIA license application. The 1st Respondent submitted that it was necessary to involve the public during the feasibility study. In support of this submission, the 1st Respondent cited *Simon Otworu & 7 v. Lake Victoria South Water Service Board & 6 others* [2018] eKLR.
65. The 1st Respondent submitted that the actual implementation of the project had not commenced. The 1st Respondent submitted that the land owners who would be affected by the project were still unknown, and the EIA license was yet to be obtained. The 1st Respondent submitted that it was not in the public interest that the public awareness exercise be stopped. The 1st Respondent reiterated that the petition was filed prematurely. The 1st Respondent urged the petitioners to cooperate and participate in the planned public awareness meetings to allow the 1st and 3rd Respondents to conduct a feasibility study, project design, and EIA study.

The 3rd Respondent's submissions

66. The 3rd Respondent submitted that the Petitioners' case was that the 1st Respondent had initiated the development of a wastewater treatment plant in Korando area, Kisumu County, without following due process. The 3rd Respondent submitted that the 3rd Respondent, which was the 1st Respondent's project consultant, had been accused, together with the 1st Respondent, of carrying out public participation in the area without involving the Petitioners. The 3rd Respondent submitted that the application did not meet the threshold for granting the orders sought. The 3rd Respondent submitted that the Respondents had placed evidence before the court showing that the Petitioners' case was based on a misapprehension of facts. The 3rd Respondent submitted that the project work plan showed that at the time the petition was filed, the project proponent was merely undertaking public sensitisation as a pre-requisite to the development of a feasibility study. The 3rd Respondent submitted that the allegation that the 3rd Respondent had:
- (a) embarked on public participation for purposes of obtaining an EIA licence and
 - (b) denied landowners an opportunity to participate in its meetings was false because, at the pre-feasibility study stage, no public participation meetings had been held and no land had been identified as the potential project location.
67. On the Petitioners' claim that the project was being implemented in the absence of a Water Resource Strategy prepared by the Cabinet Secretary under Section 10 of the [Water Act](#), the 3rd Respondent submitted that the [Water Act](#) provides a remedy for non-compliance with its provisions. The 3rd Respondent submitted that Part VI of the Act establishes the Water Tribunal. The 3rd Respondent submitted that if the Petitioners were aggrieved by the Cabinet Secretary's failure to prepare a Water Resource Strategy, they should have exhausted the remedies available under the [Water Act](#) by appealing to the Water Tribunal before approaching the court. In support of this submission, the 3rd Respondent cited *Speaker of the National Assembly v. James Njenga Karume* [1992] eKLR and *Martin Kabubii Mwangi v. County Government of Laikipia* [2019] eKLR.



68. On whether the petition offended the doctrine of ripeness, the 3rd Respondent submitted that the doctrine of ripeness focuses on the time when a dispute is presented for adjudication. The 3rd Respondent submitted that the doctrine calls upon courts to desist from deciding disputes that are hypothetical, premature, or academic. That is to say, disputes which have not fully matured into justiciable controversies must be struck out. In support of this submission, the 3rd Respondent cited Black's Law Dictionary 10th Edition, where ripeness is defined as: "The state of a dispute that has reached but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made". In support of this submission on ripeness, the 3rd Respondent relied on *Wanjiru Gikonyo & 2 others v. National Assembly of Kenya & 4 others Nairobi*, Constitutional Petition No. 453 of 2015 [2016] eKLR, and *National Assembly of Kenya & Another v. The Institute for Social Accountability & 6 others*.

The 7th Respondent's submissions

69. The 7th Respondent submitted that the project in question was at a feasibility study stage and several stakeholder engagement meetings were already scheduled to take place, within which the Petitioners could raise their concerns. The 7th Respondent submitted that it had not yet undertaken any action in respect to the project in question, and as such, it ought not to have been made a party to the petition.

Analysis and Determination

70. Article 22(1) of *the Constitution* provides as follows:

Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

71. Article 23(3) of *the Constitution*, which deals with remedies for violation of or threat to fundamental rights or freedoms, provides as follows:

In any proceedings brought under Article 22, a court may grant appropriate relief, including--

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

72. In *Anarita Karimi Njeru v. Republic* [1979] eKLR, it was stated that:

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."



73. In *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, the court stated as follows:

We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not conterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude *ex ante* is to miss the point...Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice as they give fair notice to the other party. The Principle in *Anarita Karimi Njeru* (*supra*) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.”

74. I have considered the petition together with the affidavits filed by the Petitioners in support thereof. I have also considered the replying affidavits and grounds of opposition relied on by the respondents in opposition to the petition. Finally, I have considered the submissions by the advocates for the parties. The Petitioners have challenged the proposed construction of a wastewater treatment plant at Korando, Central Ward, Kisumu West Constituency, Kisumu County. The Petitioners have contended that the Respondents have violated their constitutional rights in the process of implementing the said wastewater treatment plant project.
75. The Petitioners averred that they are entitled to a clean and healthy Environment. The Petitioners contended that the 1st Respondent intended to construct a wastewater/sewage treatment plant at Korando, Kisumu West Constituency, which would violate their right to a clean and healthy environment. The Petitioners have set out in the petition the manner in which their environment would be negatively affected by the said wastewater treatment plant. The Petitioners averred that the Respondents intended to implement the project in a manner that would deprive them of human dignity in that their homes would be turned into an industrial site for processing waste.
76. The Petitioners averred that the wastewater treatment plant would also violate their right to the protection of property under Article 40 of *the Constitution*. The Petitioners averred that the conversion of land measuring 78 Ha. in Central Ward, Kisumu West Constituency, into a wastewater treatment plant site would degrade and devalue the Petitioners' properties and quality of life, and occasion imminent displacement of the residents within the wastewater treatment plant area and the adjacent areas. The Petitioners averred that the commencement of the wastewater treatment plant project before the Respondents had acquired the land, they would require for the project was a scheme to force the residents to sell their land to the Respondents cheaply. The Petitioners averred that whereas the wastewater treatment plant would affect thousands of landowners, the 1st to 3rd Respondents had not acknowledged the adverse impact of the project on the said landowners. The Petitioners also claimed that the wastewater project was being undertaken without the Water Service Strategy formulated under Section 64 (1) and (2) of the *Water Act* 2016, and public participation.
77. In response, the 1st and 3rd Respondents contended that the 1st Respondent was implementing a project known as Lake Victoria Water and Sanitation (LVWATSAN) Program. They contended that the project was being implemented in the East African countries to reduce pollution of Lake Victoria through discharges of untreated wastewater and to provide clean potable water to the urban



population around the lake. The 1st and 3rd Respondents averred that the implementation of the project in Korando-Kisumu West Constituency had not commenced and that the same was at the proposal stage. The 1st and 3rd Respondents contended that no feasibility study and project design had been undertaken, and no Environmental Social Impact Assessment (ESIA) had been done. The 1st and 3rd Respondents averred that the project had not reached the public participation stage and that what they were doing was to sensitise the public residing around the project site about the project. The 1st and 3rd Respondents averred that it was the public awareness and sensitisation that they were undertaking at that stage of the project that the Petitioners mistook for public participation. The 1st and 3rd Respondents averred that they had not even identified the land that the 1st Respondent would require for the project. The 1st and 3rd Respondents averred that, in the circumstances, they could not discuss the issue of land compensation in the public awareness and sensitisation meetings that they were holding. The 1st and 3rd Respondents averred that at the stage where the project was, there was no way the Petitioners' rights to a clean and healthy environment and property rights could be said to have been violated.

78. On its part, the 5th Respondent averred that there was no evidence that the 1st Respondent had commenced the construction of the intended wastewater treatment plant. The 5th Respondent averred that, since the 1st Respondent had not started the development of the said wastewater treatment plant, had not applied for an EIA license, and there was no formal complaint lodged with it by the Petitioners, there was no legal basis on which it could get involved in the project. The 1st, 3rd, 5th, 6th, 7th and 8th Respondents contended that the Petitioners' petition was brought prematurely.
79. The Petitioners had the burden of establishing that their right to a clean and healthy environment, as well as the other rights on which the petition was based, guaranteed under *the Constitution*, had been threatened, denied, violated, or infringed by the Respondents. I am not satisfied that the Petitioners have discharged this burden. The Petitioners have set out several constitutional provisions that they claim were violated or threatened with violation. They have, however, not demonstrated the alleged violation or threatened violation. It is not enough to allege that a right has been violated or is threatened with contravention.
80. In this court's ruling delivered on 11th March 2024, the court stated as follows in part:

The Petitioners have not persuaded me at this stage that the Respondents violated or threatened to violate their constitutional rights in the manner they intended to implement the Lake Victoria Water and Sanitation (LVWATSAN) Program which had two main components namely; increasing access to water supply within Kisumu City and its environs, and construction of wastewater treatment plant. There is no evidence placed before the court showing that the 1st Respondent had commenced the construction of a wastewater treatment plant at Korando without following due process. There is no evidence that the 1st Respondent had even acquired land for the project. The Petitioners did not rebut the 1st and 3rd Respondents' contention that they had neither carried out a feasibility study on the project nor prepared a project design. The 1st Respondent admitted that it had not applied to the 5th Respondent for an EIA license. The 1st Respondent averred that it had not reached that stage of the project. The 1st Respondent averred that it would make the EIA license application to the 5th Respondent when it reached that stage of the project implementation and the Petitioners and other residents of Korando would be involved. The Petitioners did not rebut the evidence placed before the court by the 1st and 3rd Respondents which showed that what the 1st and 3rd Respondents were involved in were public awareness and sensitisation meetings. The Petitioners have not persuaded me that



their right to a clean and healthy environment and property had been violated or threatened with violation by the Respondents. Without information on the land that would be taken up by the wastewater treatment plant, the type of the wastewater treatment plant the 1st Respondent intends to put up, and an environmental and social impact assessment study report on the project, the social and environmental impacts of the project alluded by the Petitioners are mere speculation. The project had not been approved by the 5th Respondent and the construction of the wastewater treatment plant had not commenced at the time the Petitioners came to court. There are procedures for challenging development approvals if not carried out in accordance with the law. I am not persuaded that the Respondents had breached any constitutional, statutory or regulatory requirements concerning the impugned project at the time the present petition was filed. I am not persuaded that any provisions of *the Constitution*, EMCA or the *Water Act* were breached by the Respondents. On the Petitioners' claim that they were not allowed to attend the public awareness and sensitisation meetings that were being undertaken by the 1st and 3rd Respondents, I am satisfied with the explanation given by the 1st Respondent that they had planned different meetings for different groups as per their project action plan and as such, the Petitioners could not be allowed into meetings that were not meant for them. Since the Petitioners have failed to demonstrate that their constitutional rights were violated or threatened with violation, there is no basis for granting the orders sought." (Emphasis added)

81. As I mentioned earlier in the judgment, the parties relied entirely on the affidavits, grounds of opposition, and the submissions which they filed in support of and in opposition to the Petitioners' application for conservatory orders. The parties did not place any new evidence or submission before the court after the court ruled on the application for conservatory orders. I have before me the same material on the basis of which I held that the Petitioners had failed to demonstrate that their constitutional rights were violated or threatened with violation by the Respondents or that the Respondents had breached or violated any provision of *the Constitution*, EMCA, or the *Water Act* in relation to the impugned wastewater project. I have no reason to depart from my earlier findings on the dispute before the court. From the material before me, I agree with the Respondents that the Petitioners' petition was brought to court prematurely. At the time the Petitioners came to court, the 1st and 2nd Respondents were merely engaged in public sensitisation of the project, which was part of the project delivery plan. The 1st and 3rd Respondents had not identified or acquired land on which the project was to be undertaken, and no construction or any material activity relating to the project affecting the environment had commenced in Korando. In the circumstances, it is difficult to appreciate the Petitioners' claim that the project would violate their right to a clean and healthy environment, and that the 2nd, 4th, 5th, 6th and 7th Respondents had failed in their statutory and constitutional duties in relation to the project.

Conclusion

82. In conclusion, I find no merit in the petition. On the issue of costs, I find the conduct of the Petitioners in pursuing this petition, even when there was no new material placed before the court after the decision of the court on the application for conservatory orders, unreasonable. I will therefore condemn the Petitioners to pay the costs of the petition. The petition is dismissed with costs to the Respondents.

DELIVERED AND SIGNED AT KISUMU ON THIS 29TH DAY OF SEPTEMBER 2025

S.OKONG'O

JUDGE



Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Petitioners

Mr. Oundo for the 1st Respondent

Ms. Oduk for the 3rd Respondent

Mr. Maina for the 5th Respondent

N/A for the 2nd, 4th, 6th, 7th and 8th Respondent

Ms. Anne-Court Assistant

