



**Ethics and Anti-Corruption Commission v Wandavuu Limited & another; Wandavuu Limited (Cross Petitioner); County Government of Machakos & 4 others (Respondent); National Land Commission (Interested Party) (Environment and Land Case Civil Suit E089 of 2024) [2025] KEELC 6924 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6924 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE CIVIL SUIT E089 OF 2024**

**AY KOROSS, J**

**OCTOBER 14, 2025**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**WANDAVUU LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**WILSON GACANJA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**WANDAVUU LIMITED ..... CROSS PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MACHAKOS ..... RESPONDENT**

**COMMISSIONER OF LANDS ..... RESPONDENT**

**CHIEF LAND REGISTRAR ..... RESPONDENT**

**DIRECTOR OF SURVEYS ..... RESPONDENT**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**



## RULING

### Background

1. This ruling seeks to determine four notices of motion, three of which have been filed by the 1<sup>st</sup> defendant, respectively dated 20/01/2025, 20/01/2025 and 28/03/2025 and one by the plaintiff dated 27/01/2025. There is also a notice of preliminary objection (“PO”) filed by the 1<sup>st</sup> defendant dated 20/01/2025 that is also the subject of this ruling. For the sake of order, this court will shortly highlight each application, in chronological order based on their respective dates of filing, and also highlight the relevant responses thereto.

Points of law raised in the 1<sup>st</sup> defendant’s PO 20/01/2025 & 1<sup>st</sup> defendant’s motion dated 20/01/2025

2. In the PO, the 1<sup>st</sup> defendant raises the following points of law: -
- a. The claim contravenes Articles 62, 67 and 68 of *the Constitution* of Kenya and Clauses 6 and 7 of the Sixth Schedule.
  - b. The court has no jurisdiction to hear the claim.
  - c. The claim is time-barred under the *National Land Commission Act*.
  - d. The plaintiff has no legal, statutory or constitutional authority to lodge or maintain the claim.
  - e. The only constitutional body with the capacity to review the propriety or legality of dispositions of public land is the National Land Commission, the interested party.
3. Simultaneously, with filing the PO, the 1<sup>st</sup> defendant also filed a motion that presented similar grounds as the PO, and it sought the following reliefs: -
- a. The plaint dated 24/10/2024 and the claim herein be dismissed.
  - b. Costs of the motion be in the cause.
4. As well as the grounds, the motion is supported by the affidavit of 20/01/2025 by the 1<sup>st</sup> defendant’s director, Cyrose Nduku Kilonzo, who maintained as follows: a) the only statutory body with the capacity to review the propriety or legality of dispositions of public land is the National Land Commission (“NLC”) and, b) the claim is time barred under *the Constitution* and NLC Act.
5. In response not only to the PO and other spent issues that were dealt with in a consent that was adopted as an order of the court on 3/04/2025, the plaintiff’s further affidavit deposed on 11/02/2025 by Salad Wato Boru who is the plaintiff’s investigator stated in summary that: a) NLC’s jurisdiction to review all grants and dispositions of public land as provided under Section 14 of the NLC Act, lapsed on 2/05/2017; b) the role to determine the propriety or legality of grants or dispositions over public land now falls on the Environment and Land Court; and
6. C) Under Section 11 of the *Ethics and Anti-Corruption Commission Act* (“EACC Act”) and Section 55 of the *Anti-Corruption and Economic Crimes Act*, No. 3 of 2003, the plaintiff has the mandate to undertake investigations into allegations of corruption or economic crimes, and in appropriate cases, to institute civil proceedings against any person for the recovery of public property or confiscation of proceeds of corruption or related to corruption; d) the plaintiff’s suit is properly before this court which has jurisdiction to hear and determine it, and at last, e) Sections 41 and 42 of the Limitation



of Action Act expressly exclude the application of the Act on matters concerning government land, including proceedings towards recovery of government land.

### 1<sup>st</sup> defendant's motion dated 20/01/2025

7. In this one, the 1<sup>st</sup> defendant sought the following reliefs from this court: -
  - a. Leave is given for the 1<sup>st</sup> defendant (cross-petitioner) to file its defence and cross-constitutional petition out of time.
  - b. The defence and cross-constitutional petition on record be deemed duly filed.
  - c. Costs of the motion be in the cause.
8. This motion is supported on the grounds set out therein and the supporting affidavit of Cyrose Nduku Kilonzo and annexures thereto. Briefly, it was stated that a) the 1<sup>st</sup> defendant ought to have filed its defence by 4/12/2024; however, its defence and cross-constitutional petition dated 20/01/2025 were filed 21 days late; b) the delay is not unreasonable and the period between 21/12/2024 and 13/01/2025 is excluded in computing time; c) the 1<sup>st</sup> defendant's managing director passed away on 27/04/2013 and Machakos/Municipality Block 1/678 ("suit property") was purchased in 1998, and finally, d) the late Senator Mutula Kilonzo had archived the file and they had made significant efforts to locate it, hence the delay.
9. In response to this motion, which it sought for its dismissal with costs, the plaintiff filed grounds of opposition dated 23/01/2025 that raised the following grounds:
  - a. The motion is fatally defective as it has been filed by a cross-petitioner (a stranger) to the plaintiff's suit, which suit pertains to proprietary rights over the suit property, which the plaintiff seeks to recover. The suit was instituted vide a plaint as prescribed by the [Civil Procedure Act](#), Cap 21 and the Civil Procedure Rules, 2010.
  - b. The pleadings to be filed by the 1<sup>st</sup> defendant ought to have been filed in adherence to Sections 2 & 19 of the [Civil Procedure Act](#) & Order 1 Rule 15, Order 7 Rules 1, 3, 5 and 12 of the Civil Procedure Rules. Failure to so comply renders the motion, defence, and cross-constitutional petition and any other document, incurably defective.
  - c. The cross-petitioner's motion, defence, and cross-constitutional petition as filed are fatally defective as neither the [Civil Procedure Act](#) nor the Civil Procedure Rules contemplate the filing of a cross-petition to a plaint. The motion, defence, and cross-constitutional petition are to be struck out with costs to the plaintiff.
  - d. The motion is bad in law, frivolous, and an abuse of the court process as the cross-petitioner (a stranger) has not stated the provisions of the law under which its motion is premised. The cross-petitioner, by filing a cross-constitutional petition in the plaintiff's suit and introducing new parties, has totally caused a disjointed cause of action; allowing the same to stand as filed will cause the plaintiff great prejudice.
  - e. A cross-constitutional petition presupposes the existence of a petition (which is not the case herein) and the same is contemplated under Rule 2 and Rule 15(3) of [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules Legal Notice 117 of 2013.
  - f. The cross-petitioner cannot use shortcuts to access the court where there are laid down procedures to be followed. The cross-petitioner is free to file an independent suit if it so wishes.



- g. The cross-petitioner's motion is incompetent, bad in law, embarrassing, and the sole intent is to delay and complicate the plaintiff's suit.
  - h. The motion and the defence, and cross-constitutional petition are fatally defective, misconceived and ought to be struck out or dismissed with costs to the plaintiff.
10. In a similar manner to the plaintiff, Mr. Peter Kuria, Senior State Counsel for and on behalf of the Hon. Attorney General (AG) and acting for the 2<sup>nd</sup> to 5<sup>th</sup> respondents, raised the following grounds in opposition to the motion: -
- a. That the motion is incurably defective, incompetent, frivolous and scandalous and devoid of substance in law or at all, while the verifying affidavit is full of falsehoods and misrepresentations tailored to win the sympathy of the court.
  - b. The cross-petitioner miserably failed to demonstrate by evidence or at all which of its rights were violated by the respondents; hence, the motion is and remains unproven, hearsay and devoid of substance and specificity.
  - c. The motion is woefully and fatally defective as it offends the provisions of the Civil Procedure Rules and Constitution of Kenya (protection of rights and fundamental freedoms) practice and procedure rules, 2013, which do not contemplate the filing of such pleadings in the current suit.
  - d. The motion is a non-starter, unknown in law and an abuse of the court process, as the cross-constitutional petition offends set out procedures for instituting such pleadings, as no petition is on record to anchor the said cross-constitutional petition.
  - e. The motion is defective and a non-starter as the cause of action as against the 2<sup>nd</sup> respondent in the cross-constitutional petition cannot stand as the office does not exist.
  - f. The motion is bad in law as the cross-petitioner has alleged facts and actions that are unfounded and without basis.

**Plaintiff's motion dated 27/01/2025**

- 3. This motion, whose grounds and affidavit in support thereof were deposed by counsel Culent Simiyu Lunyolo on 27/01/2025, is a repetition of the grounds of opposition dated 23/01/2025, and it is hence superfluous to rehash them. In this motion, the plaintiff prayed for orders that: -
  - a. The court be pleased to strike out the 1<sup>st</sup> defendant's defence and cross-constitutional petition dated 21/01/2025 for being prejudicial, embarrassing, fatally defective and an abuse of the process of the court.
  - b. The costs of this motion be provided for.
- 12. The 1<sup>st</sup> defendant opposed this motion by a replying affidavit sworn by Cyrose Nduku Kilonzo, on 19/02/2025. Concisely and to sum it up, she averred that: a) The plaintiff's claim raises various constitutional issues, including whether Section 11 (1) (j) of the [Ethics and Anti-Corruption Commission Act](#), a pre-2010 constitution law, was altered, amended, qualified or, rendered void because of Articles 62, 67, 68 and Schedule 6 of [the Constitution](#) and the NLC Act, whether the plaintiff has capacity to lodge and or to maintain the claim, whether the plaintiff is usurping the role of the NLC, whether the claim is time-barred and, whether there is a threatened violation of the 1<sup>st</sup> defendant's fundamental rights by reason of the claim; and



13. B) that the cross-petition counters the claim by the plaintiff and seeks constitutional interpretation and remedies; c) a cross-constitutional petition is a pleading recognised by law and does not contravene any provisions of the law, thus, it is not substantively or technically flawed; d) Articles 22 and 23, which offer remedies for constitutional violations, supersede the Civil Procedures Act and there is a conflict between Articles 22 and 23 of *the Constitution* and the *Civil Procedure Act* and Rules; the latter is void to the extent of any inconsistency; e) the suit as filed is brought by the wrong party, before the wrong forum and is deliberately drafted to deny the 1<sup>st</sup> defendant its day in court; f) this court has jurisdiction under Articles 22, 23 and 165 of *the Constitution* to consider the cross-petition as a complete defence and cross-constitutional petition against the claim; and
14. G) that separating the plaintiff's claim from the constitutional issues that arise for determination by another High Court of the same status will be duplication in court proceedings concerning the same subject matter, which flies in the face of the principle of sub judice, and lastly, h) the defendant will be prejudiced if it is denied and shut-out from bringing to court the constitutional questions and constitutional violations.

#### **1<sup>st</sup> defendant's motion dated 28/03/2025**

15. For the key reason that it erroneously failed to join the plaintiff as a party to the cross-constitutional petition, as is demonstrated by the grounds in support thereof and supported by the affidavit of Cyrose Nduku Kilonzo, on 28/03/2025, the 1<sup>st</sup> defendant sought the following orders: -
  - a. The 1<sup>st</sup> defendant be granted leave to amend its defence and cross-constitutional petition dated 21/01/2025.
  - b. The costs of the motion be in the cause.
16. In response, the plaintiff opposed the motion, by its grounds of opposition dated 7/05/2025, which raises grounds inter alia;
  - a. The motion is fatally defective as the pleadings to be filed by the 1<sup>st</sup> defendant ought to have been filed in adherence to Sections 2 & 19 of the *Civil Procedure Act* and Order 1 Rule 15 & Order 7 Rules 1, 3, 5 and 12 of the Civil Procedure Rules. Failure to so comply renders the motion, amended defence and cross cross-constitutional petition and any other document incurably defective.
  - b. The motion is premature as there is another pending motion dated 20/01/2025 seeking leave for the 1<sup>st</sup> defendant's defence and cross-constitutional petition to be deemed duly filed. The motion is yet to be heard and determined by the court.
  - c. The amended defence and cross-constitutional petition are fatally defective as there is no petition on record to anchor the 1<sup>st</sup> defendant's cross-constitutional petition.
  - d. The motion is incompetent, bad in law, embarrassing and an abuse of the court process whose sole intent is to delay and complicate the plaintiff's suit.
  - e. The motion and the amended defence and cross-constitutional petition are fatally defective, misconceived and ought to be struck out or dismissed with costs to the plaintiff.

#### **Hearings and submissions**

17. As directed by the court on 3/04/2025, the PO and various motions were to be canvassed by a single set of written submissions, and parties were to file and serve them within 30 days thereof.



Nevertheless, apart from the well-articulated submissions of M/s. Lunyolo, counsel for the plaintiff, dated 7/05/2025, none of the other parties has filed any written submissions to the time of penning this ruling. If at all, they will be filed; this court will consider them as having been filed out of time.

### **Issues for determination, Analysis and Determination**

18. Having carefully considered the PO, motions, their grounds, affidavits either in support or opposition to the motion and the plaintiff's submissions together with provisions of law and judicial precedents relied upon, it is the considered view of this court that though the precedent setting case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors (1969) EA 696 has long established the principles of POs and settles that a PO must consist of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit, it would be needless to deal with the issue of whether the PO has met the legal threshold as one of the motions dated 20/01/2025 which introduces matters of facts has raised similar points as those contained in the PO.
19. Now, back to the issues for determination, it is the considered view of this court that the following issues, which shall be handled sequentially, shall adequately address the matters at hand: -
  - a. Whether this court has jurisdiction to hear the claim.
  - b. Whether the plaintiff has the legal capacity to lodge and maintain the claim.
  - c. Whether a cross-constitutional petition is properly suited in this matter, and if so, should the 1<sup>st</sup> defendant be granted leave to file its pleadings out of time?
  - d. Whether the motion dated 28/03/2025 is premature, if not, should it be allowed?

We shall now proceed.

#### **a. Whether this court has jurisdiction to hear the claim.**

20. Concerning the jurisdiction of this court, it is paramount that this court highlights the relevant law and prevailing jurisprudence on it. On matters of law, in exercise of its role under Article 162(2)(b) of our Constitution that establishes this court, parliament under the *Environment and Land Court Act* ("ELC Act") created this court, which is a court of equal status to the High Court, whose jurisdiction is to hear and determine disputes relating to the environment and the use and occupation of and title to land. Of particular interest is Section 13 of the Act, which sets out in detail the jurisdiction of the court.
21. As concerns the prevailing jurisprudence, it is settled law that once the court finds it has no jurisdiction, it must not move one step further but down its tools. In this regard, this court associates itself with the decision of the Supreme Court of Kenya in the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, where it stated: -

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both... It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
22. In another decision of In the Matter of Advisory Opinions of the Supreme Court under Article 163(3) of *the Constitution*- Constitutional Application No. 2 of 2011, the apex Court cited with approval the



celebrated case of Owners of the Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Limited [1989] eKLR which expressed itself as follows: -

“Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.”

23. Turning to this case, it has not been disputed that the issue in dispute concerns the use and occupation of and title to land. However, the 1<sup>st</sup> defendant challenges the court's jurisdiction on 2 grounds: that the NLC Act divests this court off its jurisdiction and the claim is statutorily barred. The plaintiff has rebutted this, and in arguing on the 1<sup>st</sup> limb of this contest, Ms. Lunyolo's submissions contend that these lines of argument are misplaced, as by Section 14 of the NLC Act, the jurisdiction of the NLC to review all grants and disposition of public land terminated on 2/05/2017 and relied on the decision of Karaini Investment Limited v National Land Commission & 2 others [2021] eKLR which held: -

“Parliament deemed it fit to limit the period within which NLC could review grants over public land to establish their legality to five years when it enacted the National Land Commission Act even though the Constitution did not set time limits in Article 68. In this court's view, the role to determine the propriety or legality of grants or dispositions over public land now falls on the ELC and subordinate courts in proceedings commenced under the Ethics and Anti-Corruption Commission Act for the recovery of lost or irregularly alienated public assets or other legislation.”

24. With reference to this limb, Section 14 (1) of the NLC Act, which gave the NLC power to review grants and dispositions, provides as follows: -

“(1)Subject to Article 68(c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.”

25. Accordingly, this Act commenced on 2/05/2012, and the power of the NLC to carry out its mandate under this provision of the law automatically lapsed on 2/05/2017 or thereabouts, and this court fully associates itself with Karaini Investment Limited (Supra). This court is privy that currently, a Bill is pending in parliament seeking such an extension of time. As this court concludes that it is worth pointing out that even at the time of application of this Section 14 (1), which is now lapsed, this proviso never removed this court's jurisdiction to entertain claims of fraud and illegality as alleged in the plaint. This position stems from this court's reading of Article 67 (e) of the Constitution as read together with Section 15(3) (b) of the NLC Act. See also the Court of Appeal decision of Safepak Limited v Henry Wambega & 11 others [2019] KECA 510 (KLR).

26. Respecting the 2<sup>nd</sup> limb, Ms. Lunyolo submits that Sections 41 and 42 of the Limitation of Action Act expressly exclude the application of the Act on matters concerning government land, including proceedings towards recovery of government land. To buttress this, counsel relies on the decision of Kenya Anti-Corruption Commission v Onyango & 4 others (Environment & Land Case 58 of 2009) [2023] KEELC 22231 (KLR) (14 December 2023) (Judgment), which affirmed this position. This court wholly concurs with counsel, as these provisions specifically state that: -

Section 41: -

“This Act does not—



- (a) enable a person to acquire any title to, or any easement over—
  - (i) Government land or land otherwise enjoyed by the Government;
  - (ii) mines or minerals as defined in the *Mining Act* (Cap. 306);
  - (iii) mineral oil as defined in the Mineral Oil Act (Repealed);
  - (iv) water vested in the Government by the *Water Act* (Cap. 372);
  - (v) land vested in the county council (other than land vested in it by section 120(8) of the Registered *Land Act* (Repealed)); or
  - (vi) land vested in the trustees of the National Parks of Kenya; or
- b) .....

Further, Section 42(1)(d) and (j) :-

- “(1) This Act does not apply to—
- a) .....
  - b) .....
  - c) .....
  - d) proceedings by the Government to recover possession of Government land, or to recover any tax or duty, or the interest on any tax or duty, or any penalty for non-payment or late payment of any tax or duty, or any costs or expense in connexion with any such recovery; or
  - e) .....
  - f) .....
  - g) .....
  - i) .....
  - (j) a proceeding to recover an amount for which a person is liable under section 51 or 52 of the *Anti-Corruption and Economic Crimes Act* (Cap. 65) or a proceeding under section 55 or 56 of that Act;
  - k) .....

27. Having considered the law and judicial precedents, this court agrees with M/s. Lunyolo's submissions on both limbs and finds that the plaintiff's suit is incapable of being time-barred, finds that the NLC does not have jurisdiction to entertain the claim herein and finally, finds that this court has jurisdiction to entertain the suit.

**b. Whether the plaintiff has the legal capacity to lodge and maintain the claim.**

28. For this issue, the 1<sup>st</sup> defendant did not set the legal basis as to why it believes the 1<sup>st</sup> defendant does not have legal capacity but be that as it may, Section 11 (1) (j) of the Ethics & Anti-Corruption Commission Act, Section 55 of the *Anti-Corruption and Economic Crimes Act* and read together with Section 42(1)(d) and (j) of the *Limitation of Actions Act*, confers the plaintiff with mandate to



undertake investigations into allegations of corruption or economic crimes, and in appropriate cases, to institute civil proceedings against any person for the recovery of public property or confiscation of proceeds of corruption or related to corruption. To buttress this, this court is guided by the Court of Appeal decision of *Boniface Katana Kalaveri v Ethics & Anti-Corruption Commission & another* [2015] KECA 530 (KLR), which held: -

‘It is by virtue of this that Parliament enacted EACCA which gave the 1<sup>st</sup> respondent the statutory powers contained in the Act as well as the enforcement of Chapter 6 of *the Constitution*. Indeed, the heading of Section II of the EACCA is “Additional functions of the Commission.” Section II (1) thereof provides as follows: “In addition to the functions of the commission under Article 252 and Chapter six of *the Constitution*, the commission shall:

- “(k) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.”

This in our view was not a curtailment of the powers of the 1<sup>st</sup> respondent but an expanded mandate that includes the protection of public property, in addition to the powers vested in Chapter 6 and Article 252 of *the Constitution*. It should be remembered that the Kenya Anti-Corruption Commission, the predecessor of the 1<sup>st</sup> respondent was not anchored in *the Constitution* but in an Act of Parliament i.e. ACECA. As the title of that Act suggests, the focus was on corruption and economic crimes.”

In consequence, this court agrees with the plaintiff’s counsel’s arguments and finds that the plaintiff has the legal capacity to institute these proceedings.

**b. Whether a cross-constitutional petition is properly suited in this matter, and if so, should the 1<sup>st</sup> defendant be granted leave to file its pleadings out of time?**

29. As concerns the law, Section 19 of the *Civil Procedure Act* (“CPA”) provides that every suit shall be instituted in such manner as may be prescribed by Rules. About the matter in dispute, the plaintiff has filed the suit by way of a plaint as envisaged by Order 3 Rule 1 of the Civil Procedure Rules (“CPR”), which provides that every suit shall be instituted by presenting a plaint to the court, or in such other manner as may be prescribed. This mode of instituting the suit has not been challenged by any party.
30. Accordingly, once served with a plaint, it is anticipated that the defendant in this case, the 1<sup>st</sup> defendant, would file its defence and counterclaim (if need be) as required by Order 7 Rules 1, 3, 4, 5, 8, and 12 of the CPR. In this case, although the 1<sup>st</sup> defendant has filed a defence and has sought leave for it to be deemed as properly filed, which this court would have no difficulty in allowing such a plea, as this would serve the interests of justice as anticipated by law, it has, in addition to the defence, filed a cross constitutional petition which not only offends Section 19 of the *Civil Procedure Act* as it has been filed in a strange manner but contravenes Order 2 Rules 6 of the CPR which specifically bars any party to a pleading to make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading in the same suit.
31. In the circumstances of this case, the court agrees with Ms. Lunyolo and the AG’s grounds of opposition that a cross-constitutional petition without a primary constitutional petition is unusual in law. Notably, regarding constitutional petitions-which are heard only in certain exceptional



circumstances, the procedure for initiating such petitions, which address redress for violations of fundamental rights and the enforcement of human rights as outlined in the Bill of Rights, is governed by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013.

32. It follows from reading this law that constitutional petitions are governed by their own strict set of Rules within a distinct regime, and the CPR, which covers, among other pleadings, complaints, does not apply when dealing with a cross-constitutional petition. Guidance is also sought from the Supreme Court's decision in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited*; *Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR), where at paragraph 76 it stated:

“...alleged breaches of *the Constitution* cannot be properly introduced by way of an application to set aside an arbitral award. Breaches of *the Constitution* are properly governed by articles 165(3) and 258 of the said Constitution and cannot by litigational ingenuity be introduced for adjudication by the High Court by way of invocation of section 35 of the *Arbitration Act*.”

33. Hence, this court associates itself with this decision, which applies in the present case, where, in a dubious and improper manner, the 1<sup>st</sup> defendant has filed the alleged cross-constitutional petition alleging a violation of *the Constitution* in response to the complaint, which is not permitted by law. Consequently, this court finds and holds that the cross-constitutional petition is an abuse of court process, it is inadmissible, and it is non-suited in these proceedings. Additionally, it finds that it could not be filed along with the defence. These findings make the determination of issue (d) unnecessary.

34. In the end, and for the above reasons and findings, the 1<sup>st</sup> defendant's PO and notices of motions are hereby dismissed, while the plaintiff's notice of motion dated 27/01/2025 is allowed. Therefore, the following final disposal orders are hereby issued;

- a. The 1<sup>st</sup> defendant's notice of preliminary objection dated 20/01/2025 and notices of motion respectively dated 20/01/2025, 20/01/2025 and 28/03/2025 are hereby dismissed with costs being in the cause.
- b. The 1<sup>st</sup> defendant's defence and cross-constitutional petition dated 21/01/2025 are hereby struck out with costs being in the cause.
- c. The defendants are hereby granted leave to file their defences and counterclaims (if need be) within 21 days hereof.
- d. Parties are directed to fully comply with Order 11.
- e. A mention date shall be given for purposes of pretrial directions.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 14<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**14. 10.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Josephine Court Assistant



Miss Lunyolo for plaintiff.

M/s Kethi Kilonzo for 1<sup>st</sup> defendant.

Mr. Kuria for 2<sup>nd</sup> - 5<sup>th</sup> respondents.

