

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC PETITION NO. 3 OF 2024
IN THE MATTER OF ARTICLES 1, 2(4), 10(1) (b) (c)
10(2)(a) (b) (c), 27(1) (2), 35(1) 35(3), 40, 47(1),
47(2), 60(1) (a) (b) (c) & (d), 73(1) (a), 2(b) and
232(1) (a) (b) (c) (d) (e) and (f) of the
CONSTITUTION OF KENYA

LILY JEPKEMOI KURERE
(Suing as a Legal Personal Representative of the Estate of the

ROBERT KIPTALAM CHEBEREK—
(Deceased)-----PETITIONER

VERSUS

COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER, TRANS NZOIA-----1ST
RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT OFFICER-----2ND
RESPONDENT

THE COUNTY LAND REGISTRAR TRANS NZOIA COUNTY-----3RD
RESPONDENT

THE PRINCIPAL SECRETARY OF LANDS, PUBLIC WORKS, HOUSING, AND URBAN DEVELOPMENT-----4TH
RESPONDENT

THE ATTORNEY GENERAL-----5TH
RESPONDENT

AND

**THE MANAGING DIRECTOR, AGRICULTURAL
DEVELOPMENT CORPORATION-----1ST**

INTERESTED PARTY

THE NATIONAL LAND COMMISSION-----2ND

INTERESTED PARTY

**ETHICS AND ANTI-CORRUPTION
COMMISSION-----3RD**

INTERESTED PARTY

QUINCY JESSE KIPTOO-----4TH

INTERESTED PARTY

JUDGMENT

1. Before the court is a petition dated 23/1/2024, where the petitioner seeks:

(a) Declaration that the reallocation of Plot No. 293 Zea Settlement Scheme measuring approximately 1.9 Ha by the 1st and 2nd respondents, to the 3rd interested party, and subsequent issuance of title deed for Land Parcel No. Trans Nzoia/Zea 293 to the 4th interested party contravened the Constitution and is therefore null and void.

(b) Declaration that the management and administration of all public land, including the land contained in settlement schemes, falls within the mandate of the 2nd interested party.

- (c) **An order of mandamus compelling the 3rd respondent to revoke the registration of the interested party as owner of Land Parcel No. Trans Nzoia/Zea 293, and instead, the land be registered to the petitioner.**
- (d) **Mandamus compelling the 1st and 2nd respondents to restore Plot No. 293 Zea Settlement Scheme to the petitioner.**

2. The petitioner avers that though the 1st interested party had submitted a list of all allottees and their respective acreages to the 2nd and 3rd respondents for the final allocation to the beneficiaries before the **2010** Constitution, it appears that the 1st, 2nd and 3rd respondents tampered with the said initial list which was also with altered to dispossess the original allottees and re-allocate the land to corruptible third parties, contrary to the Constitution and the statutes, including failing to involve the 2nd interested party as the custodian and manager of public land.
3. The petitioner avers that upon her deceased husband acquiring the land, he entered, and remained in such occupation openly, quietly, uninterruptedly, peacefully, and continuously till his demise in **2015**, after which his family has retained possession to date.

4. The petitioner avers that the suit land was later, secretly and in a private arrangement, reallocated to the 4th interested party without the deceased's knowledge or that of the public; indeed the petitioner avers that the deceased was neither served with any notice nullifying his allocation, or to show the cause why he should not be dispossessed of the land, until title deed was issued on **18/1/2021** to the 4th interested party.
5. The petitioner avers that there was no basis at all on which the 1st and 2nd respondents could have taken away the land from the deceased, while he or his family were in actual possession, and ought to have been given precedence in any reallocation process, including the 2nd respondent publicizing the availability of the said plot or inviting her to participate in the process.
6. Equally, the petitioner avers that after the Constitution **2010**, and the enactment of the land laws, the 1st and 2nd respondents have no mandate to reallocate public land with the sanction of the 2nd interested party, which has the sole responsibility to alienate, manage, and allocate public land, including that within settlement schemes.

7. The petitioner avers that the process of reallocation of the plot to the 1st and 2nd respondents:
 - (a) ***Was not justified, is unlawful, illegal, and unfair in a free and democratic society.***
 - (b) ***Her husband had made payment for and was in actual possession, hence the process violated her right to property, access to land, right to fair administrative action, equality before the law, and the right against discrimination.***
8. The petitioner avers that the acts of the 1st, 2nd, and 3rd respondents are distinctive of corruptible practice, reveal abuse of office and violation of the Constitution by the 1st and 2nd respondents, and ought to be investigated by the 2nd interested party.
9. The petitioner avers that upon the 2nd interested party investigating the matter, it ought to file a report before the court for proper guidance of the court. Additionally, the petitioner avers that before the court pronounces itself on this matter, it ought to undertake a public inquiry through engagement with the residents of the Zea Settlement Scheme to verify the true occupiers of the disputed parcels of land, including the suit land herein.
10. In view of the foregoing, the petitioner particularized the Constitutional violations, illegalities and or

unlawfulness as based on **Articles 1(1), 2(4), 3(1), 10(1), 10(2)(a) (b) & (c), 27, 40, 47, 60(1) (a) and (b), 61, 67(1), 73(1) (a), 2(b) and 232** of the Constitution as read together with the Land Act, National Land Commission Act, Public Officer Ethics Act, and the Leadership and Integrity Act, **2012**.

- 11.** The petition is supported by a verifying affidavit sworn by Lily Jepkemoi Kurere on **25/2/2024**, attaching a copy of the Grant of Letters of Administration for the estate of Robert Kitalam Cheberek, a copy of the allotment letter dated **2/12/2002**, and a copy of the official search certificate as annexures marked **LJK-1, 2, and 3** respectively.
- 12.** The petitioner is opposed by the Hon. Attorney General through a replying affidavit of C.A. Nyanga, sworn on **13/6/2024**. It is the 1st, 2nd, 3rd, and 4th respondents' defence that the offer by the defunct Settlement Fund Trustees, to the petitioner's late husband was not complied with by paying **Kshs.32,500/=**, leading to a demand notice of cancellation of the offer, reallocation of the land to the 4th interested party, who met the new terms and conditions, whereof a title deed was issued to him.

- 13.** On the other hand, the 3rd interested party relies on a replying affidavit sworn on **16/12/2024** by Joseph Maina.
- 14.** The 3rd interested party avers that upon receipt of the petition, it called for and received through letters dated **14/11/2024** and **24/11/2024**, annexed as **JM-2** and **3**, documents which reviewed that the suit property as part of the Zea zone, was initially owned by the 1st interested party, before government directed that certain farm be transferred from it to the defunct SFT as per letter dated **23/6/1994** annexed as **JM-4**, but there was a delay in implementing the transfers out of lack of funds to compensate the 1st interested party for the farm as per letter attached as **JM-5** dated **3/6/1997**.
- 15.** Equally, the 3rd interested party deposes that by a letter dated **16/6/1997**, attached as **JM-6**, the 2nd respondent wrote to the 1st interested party for them to finalise the transfers of the land and hand over the list of allottees and their allotment documents. It is deposed that a meeting held on **7/8/1994**, the 1st interested party confirmed the allocation of **1000** acres in the Zea zone, and by a minute **No. 8/97**, it was resolved that any further allocation could be

handled by the Settlement Fund Trustees in the implementation, upon the transfer, as per minutes for a meeting dated **7/8/1997**, attached as **JM-7**.

16. The 3rd interested party deposes that in a follow-up meeting on **2/12/1998**, it was noted that the transfer of Zea Settlement Scheme had been effected to Settlement Fund Trustees, but required maps and a list of allottees as per annexure marked **JM-8**, which was followed up with compliance as per annexure **JM-9**, the deceased was to pay **Kshs. 32,500/=**.

17. The 3rd interested party deposes that the Settlement Fund Trustees were to allocate land to landless individuals as part of a government initiative to alleviate landlessness, as per annexure marked **JM-5**. The 3rd interested party avers that from the documents submitted to it, it is evident that there are legitimate questions on the allocation process, the discharge of charge marked **QJK-9** is neither signed nor dated, the title deed attached as **QJK-5** omits crucial details; the boundary confirmation on **22/11/2021** came after the title deed was issued, raising doubts as to whether allocation occurred before a property survey was conducted going by **QJK6**, the survey fees pertaining to plot **No. Zea/298**

and plot No.Zea/293, and lastly, the letter dated **17/5/2022** refers to plot **No. 298** and not plot **No. 293**.

18.The 1st interested party relies on a replying affidavit dated **2/1/2024**, confirming that it initially owned the mother title **LR No. 9078** known as Zea Farm, which it transferred to the SFT, hence relinquished its interest, though it had partially allocated the land, among them the deceased as an allottee of plot **No. 366**.

19.The 4th interested party filed a replying affidavit sworn by Quincy Jesse Kiptoo on **4/4/2024**.

20.The petitioner, with leave of court, filed a supplementary affidavit and a further affidavit sworn by Lily Kipkemoi Kurere and Michael Kimuge on **7/8/2024** and **25/6/2025**, respectively. It is deposed that the deceased, as was required of the initial allottees, did surrender the original letters of allotment together with the original receipts for **Kshs. 32,500/=**, to the Settlement Fund Trustees in exchange for a letter of allotment, which letter did not require any upfront payment of **Kshs 32,500/=**, for he had already paid the same to the Agricultural Development Corporation.

- 21.** The petitioner denies receiving the notice of the cancellation or being told of any such site visit. Further, the petitioner avers that no demand notice was ever issued to the deceased by the Settlement Fund Trustees for payment of any monies; otherwise, he owed no such monies to the Settlement Fund Trustees, in view of prior payment to the predecessor in title. The petitioner avers that if there was any such visit, then the same was made incognito, and that she has a joint store with Micah Kimuge as brother-in-law, who has never occupied plot **No. 293.**
- 22.** Further, the petitioner deposed that she had a caretaker on the land called Benson Kemboi until **2022**, when he was chased away from the land by the 4th interested party. Therefore, the petitioner terms the ground status report as misleading and tailored to the illegalities complained of.
- 23.** The petitioner deposed that it cannot be true that the whereabouts of the deceased were unknown to the settlement office, and for them to say that he did not pay **Kshs. 32,500/=.** The petitioner terms paragraphs **16, 17, 18, 19,** and **22** of the affidavit of C.A. Nyanga as confirming that the reallocation was not open, transparent, and accountable as required

under **Articles 10** and **60** of the Constitution and **Section 134** of the Land Act.

24. The petitioner deposed that it cannot be true that the deceased did not pay or his right did not crystallize, and that it is the respondents who took advantage of his death to disinherit her by the 1st respondent by acting contrary to **Articles 2(4), 3(1), and 132** of the Constitution.

25. The petitioner deposed that the deceased and his family were on the land from **1997** until **2022**, when the 4th interested party forcefully took possession while there was maize planted on the suit land. The petitioner deposed that public officer in this country cannot enforce draconian policies such as are advanced in paragraph **24** of the replying affidavit of C.A. Nyanga, which are inconsistent with ideals of a free and democratic society governed by the rule of law, which include the right to information, fair administrative action, due process, right to be heard and rules of natural justice as set out in **Articles 10, 35, 47 and 132** of the Constitution.

26. The petitioner deposed that there is no public auction through which the Settlement Fund Trustees plots were allocated through public auction; otherwise, it

has to be done in an open, transparent and equitable in line with the tenets of the values and principles enshrined in **Articles 10, 47, 50(1)** of the Constitution as read together with **Section 134(6)** of the Land Act. The petitioner deposed that, contrary to paragraph **35** of the affidavit of C.A. Nyanga, the First Schedule to the Agriculture, Fisheries & Food Authority Act does not mention Settlement Fund Trustees.

27. As to the affidavit of Quincy Jesse Kiptoo, the 4th interested party, the petitioner insists that the process leading to the issuance of a title deed to him was flawed and against the Constitution. In particular, the petitioner insists that the chief's letter dated **22/11/2021** was misleading, the 4th respondent is not a resident of Zea Settlement Scheme, agricultural land is not retable, there are no county levies on the said land, for land rates, and that no valuation roll has been produced.

28. The petitioner admits visiting the offices of the 4th interested party on advice of the 2nd respondent, who unfortunately made an outrageous demand for compensation, including monies he had bribed land people to acquire the land. The petitioner, therefore,

denies that she had offered to buy the land from the 4th interested party, or threatened him with death as alleged or at all, including using orthodox means; otherwise, she was a law-abiding person pursuing a just cause, as a widow.

- 29.** The petitioner confirms that Kiptalam Cheberek and Robert Kiptalam Cheberek refer to the same person in the letter of allotment dated **2/12/2002**; otherwise, her constitutional petition is properly before the court.
- 30.** In the further affidavit sworn by Micah Kimuge, a brother-in-law of the petitioner, the deponent confirms that he owns parcel No. **Trans Nzoia/Zea/294**, a neighbour to plot **No. 293**. The deponent confirms that the petitioner has been on the land until **2022**, cultivating the land, which is fenced and well developed by her. The deponent confirms that he has a joint store for farm produce with the petitioner, who also maintains a caretaker on the land by the name Benson Kemboi, until he was chased away from the land by the 4th interested party in **2002**.
- 31.** The deponent terms the ground status report as misleading; otherwise, the petitioner was in occupation of the land as of **2017**, when the alleged visit took place.

- 32.** This petition was directed to be canvassed by way of written submissions that were to be filed by **30/8/2025**. The petitioner relies on written submissions dated **30/7/2025**, isolating six issues for determination. It is submitted that the petition meets the threshold of a constitutional petition, as held in **Anarita Karimi Njeru -vs- Republic [1979] eKLR and Mumo Matemu -vs- Trusted Society of Human Rights Alliance & Others [2013] eKLR**, given that the respondents contravened **Article 10(2)(a)** of the Constitution by not following due process of the law in repossessing and reallocating the plot to the 4th interested party.
- 33.** It is submitted that there was no public participation as set in **British American Tobacco Kenya PLC - vs- CS Ministry of Health & Others [2019] eKLR**, given that **Sections 134** and **135** of the Land Act as read together with **Article 102(2)(a)** and **(b)** of the Constitution, requires the public to participate in the land allocation process in a meaningful, inclusive and participatory manner. The petitioner submits that the reallocation was undertaken without any public notice, public consultation, or being granted an opportunity to be heard. In the absence of mechanisms or structures

to ensure transparency, clarity, or effective engagement, the petitioner terms the reallocation process as constitutionally invalid.

- 34.** The petitioner submits that **Article 10 (2)(b)** of the Constitution was violated as the natural values and principles set therein were not adhered to by the 1st, 2nd, and 3rd respondents, who failed to publicize the availability of the said plot for reallocation to the public and herself. The petitioner submits that **Article 27(1)(2)** of the Constitution was violated, for her legitimate expectations and prior interests were ignored, hence she was excluded from the process.
- 35.** The petitioner submits that her right to access information under **Article 35(1)(3)** of the Constitution was violated for lack of publication of any important information affecting her and the nation; otherwise, the process was secretly done. Reliance is placed on **Katiba Institute -vs- Presidents Delivery Unit & Others [2017] KEHC 2183 [KLR]**.
- 36.** The petitioner submits that the National Land Commission was disregarded, yet it has a mandate under **Article 67(1)(2)** of the Constitution; hence, the 1st, 2nd, and 3rd respondents acted against their roles

as state officers under **Article 73(1)(a)** and **(b)** of the Constitution.

37. The petitioner submits that the deceased had acquired a legitimate interest in the land after the issuance of an allotment letter dated **2/12/2002**, whose terms and conditions he met, hence security under **Article 40** of the Constitution, rights to the land. The petitioner submits that given those legitimate and protectable interests, the 1st, 2nd and 3rd respondents did not lawfully cancel the original letter of offer over the suit land, by giving sufficient notice, affording him a fair administrative action under **Article 47(1)** and **(b)** as read together with **Article 10(2)** of the Constitution, requiring state officers to be transparent, accountable and participatory in nature.

38. Again, the petitioner submits that pursuant to **Section 134(1)** and **(3)** of the Land Act, the National Land Commission bears the constitutional mandate to administer settlement schemes, yet the 1st, 2nd, and 3rd respondents unilaterally cancelled and reallocated the land without its involvement or approval. Therefore, the petitioner submits that the 1st, 2nd, and 3rd respondents acted ultra vires, rendering the title deed held by the 4th interested party null and void.

- 39.** The petitioner submits that the 1st, 2nd, and 3rd respondents' action of omission and commission without following due process, violated her under **Articles 1(3)(a) and (b) and 47** of the Constitution as read together with **Section 4(3)** of the Fair Administrative Action Act.
- 40.** Regarding the management and administration of public land, especially the one falling under settlement schemes, the petitioner submits that the same falls under the constitutional and statutory mandate of the National Land Commission under **Articles 10, 62(1)(2) and 67(2)(a)** of the Constitution, **Section 5(1)** of the National Land Commission Act, **Section 134** of the Land Act and therefore for the 1st, 2nd and 3rd respondents to ignore the input of the National Land Commission, they therefore lacked the constitutional authority to deal with the reallocation of plot **No. 293** to the 4th interested party.
- 41.** On the reliefs sought, the petitioner submits that since the process leading to the issuance of a title deed to the 4th interested party by the 1st, 2nd and 3rd respondents is full of illegalities, procedural irregularities and disregarding constitutional and

statutory requirements, he is entitled to the reliefs sought to impeach the said title deed under **Section 26(1)(b)** of the Land Registration Act, otherwise, the respondents have been unable to demonstrate any legal basis upon which they lawfully cancelled the letter of allotment and proceeded to reallocate the same land to the 4th interested party. Reliance is placed on **Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC 30 KLR.**

42. Therefore, the petitioner urges the court to grant the reliefs sought under **Article 23(3)** of the Constitution with costs guided by **Rai & Others -vs- Rai & Others [2014] KESC 31 [KLR]**, as she vindicates her legal rights, otherwise, the 4th interested party ought to have undertaken due diligence as to the validity and efficiency of the process of allocation before accepting the land as required of him under **Article 3(1)** of the Constitution.

43. The 4th interested party relies on written submissions dated **30/7/2025**, isolating six issues for determination. It is submitted that the petition offends the doctrines of constitutional avoidance and exhaustion for the cause of action in a simple

contractual claim based on a letter of offer dated **2/12/2002**, christened as a constitutional violation, which ideally is not a proper way of litigation without calling for evidence to be subjected to cross-examination.

- 44.** The 4th interested party terms the dispute as not ripe to justify the court's intervention, for it involves a land within a settlement scheme and an allottee, which is governed by the repealed Agriculture Act and the Land Adjudication Act. It is submitted that the petitioner had not written to the Settlement Funds Trustees before rushing to the court, or raised the issue under the enabling legislation to be dealt with by the statutory organ set therein.
- 45.** For instance, the 4th interested party submits that the issue of tampering with the allotment list was not objected to under **Sections 26 and 29** of the Land Adjudication Act since February **2002**, as held in **Pembe as legal representative Kaingu Pembe Mwachaka -vs- Ngonyo & 2 others. (Civil Appeal E064 of 2021) [2024] KECA 562 (KLR) (24 May 2024) (Judgment).**
- 46.** The 4th interested party submits that the petitioner has never moved the Settlement Fund Trustees under

Sections 134 and **135** of the Land Act, and therefore, a constitutional court should not be turned into a thoroughfare for resolutions of every kind of common grievances.

- 47.** On the right to information, the 4th interested party submits that evidence to show that the petitioner sought for and was denied information under **Section 8** of the Access to Information Act, and with the Commission of Administration of Justice as condition precedent to coming to court is lacking.
- 48.** On the right to fair administrative action, the 4th interested party submits that the petitioner has yet to move the court by way of Judicial Review under **Sections 7, 8, and 9** of the Fair Administrative Action Act. Reliance is placed on **Night Rose Cosmetics [1972] Ltd -vs- Nairobi County Government & Others [2018] eKLR**. The 4th interested party submits that the petition is not supported by evidence, including a supporting or verifying affidavit as required under **Article 22(1)** of the Constitution.
- 49.** On *locus standi*, the 4th interested party submits that the petitioner relies on an expired letter of allotment, which was not perfected with the Settlement Fund Trustees, by way of payment receipts, since the letter

of allotment was self-executing in terms of mandatory payment within **12** months of the letter of offer dated **2/12/2002**. The 4th interested party submits that the failure to follow up and regularize the terms and conditions of the letter of allotment, followed by the opening of a file, charge, and discharge of title, shows that the allottee went to slumber. Reliance is placed on **Oruko (Suing as the Legal Personal Representative Ad Litem of the Estate of Alfred Nabiswa Oruko) -vs- County Land Adjudication & Settlement Officer, Trans-Nzoia & 3 others; Bernard (Interested Party) [2025] KEELC 4399 (KLR)**. The 4th interested party submits that the petitioner did not communicate the death of the initial allottee to the settlement office, or even deposit a grant or a death certificate. Therefore, based on **Torino Enterprises Ltd -vs- Attorney General, Petition No. 5 (E006) of 2022 [2023] KESC 79 [KLR]**, the 4th interested party submits that such a document is incapable of conferring any interest in land.

- 50.** The 4th interested party submits that the respondents and the Ethics and Anti-Corruption Commission, or Agricultural Development Corporation, have not

annexed any receipts by the government to show that the petitioner perfected the letter of offer, why the deceased was not issued with a title before transferring the mother title to Settlement Fund Trustees, and if the same was for plot **No. 293 or 366**.

51. On the procedure for allocation of title, the 4th interested party termed the same as regular, transparent and above board, making him a bona fide allottee with no evidence or notice of fraud, otherwise, paragraphs **6-14** of the replying affidavit of C.A. Nyanga shows that due process was followed including the introduction letter by the area chief dated **22/11/2021**, he followed up with an application letter, that was accepted, he received an offer which he accepted and paid the requisite fees by way of a receipt, executed a discharge of charge on **20/12/2018**, later a transfer form was signed, effectively completing the process of allocation by the Settlement Funds Trustees, after which he acquired a title to the land.

52. The 4th interested party submits that the petitioner did not follow the said steps, yet it was her responsibility to do so, and neither has she attached evidence to

that effect. The 4th interested party submits that in **National Land Commission -vs- Attorney General & Others Kituo Cha Sheria & Another Advisory Opinion Reference No. 2 of 2014**, the court pronounced itself on the need for the National Land Commission to work in consultation, and in this case, the National Land Commission has not bothered to enter an appearance to clarify its role. As regards **Law Society of Kenya -vs- Kinyua, Head of Public Service & Others [2022] KEELC 3962 [KLR]**, the 4th interested party submits that it was clarified that land held by a national state organ, such as the Settlement Fund Trustees, was neither vested in the two levels of government nor administrable by the National Land Commission as per **Section 12** of the Land Act.

53. The 4th interested party submits that his reading of **Articles 62(1)** and **63(2)(a)** and **(b)** of the Constitution is that the National Land Commission is barred from dealing with land held, used, or occupied by a state organ, including allocation of such land. The 4th interested party submits that it has not been shown that the mandate of implementing settlement schemes as per **Section 134** of the Land Act

contravenes or countermands **Article 62(2)** and **(3)** of the Constitution. Needless to say, the 4th interested party submits that the Attorney General has asserted that the role of reallocating plots under Settlement Fund Trustees was different from the role of the National Land Commission under **Section 134(1)** of the Land Act, hence there is a difference between Settlement Fund Trustees and Land Settlement Fund, which the petitioner conflates.

54. The 4th interested party submits that the replying affidavit by Agricultural Development Corporation, though it had no mandate to settle landless persons. The 4th interested party submits that the Agricultural Development Corporation is not specific whether plot **No. 366** was the same as plot **No. 293**. Moreover, the Agricultural Development Corporation fails to attach any agreement between it and the Settlement Funds Trustees or to explain whether any payment for the letter of offer, survey fees, and conveyance fees had been paid for plot **No. 366**; hence, the discrepancies thereof have not been explained.

55. As to the attack on his title by the Ethics and Anti-Corruption Commission, 4th interested party terms the same as blind and without focus, since it does not

demonstrate that plots **No. 366** and **293** refer to the same parcel of land. Reliance is placed on **James Kiterie Alfayo -vs- Margaret Wambete [2018] KECA 665 [KLR]**. The 4th interested party submits that the Ethics and Anti-Corruption Commission was on a fishing expedition, insinuating without reconciling the records, or consulting the Settlement Fund Trustees on what may have happened, or stating that the National Land Commission had a role in plots held by the Settlement Fund Trustees, yet it had to wind up its roles under the repealed Agriculture Act. On public participation, the 4th interested party submits that public participation as a doctrine was never intended to apply to private contractual relationships, such as in allotment letters between the state and individual allottees.

- 56.** In this case, it is submitted that the deceased did not perfect the letter of offer, visit the settlement office to ascertain the boundaries, or pay the requisite premium within the **12** months; hence, a letter she holds conferred no interest in the land as held in **Torino Enterprises** (*supra*). Therefore, the 4th interested party submits that it was contradictory for the petitioner to invoke the right to be consulted and

on public participation, yet the deceased had ceased to have any legal, equitable, or constitutional claim over the private property, where she held no recognizable interest.

- 57.** The 4th interested party terms the argument as tantamount to rewriting the letter of offer, yet it was in clear and self-executing terms, with no clause on public participation before it could expire for non-compliance; otherwise, courts do not rewrite agreements.
- 58.** Again, the 4th interested party submits that for **22** years, the deceased was silent on engagement with the Settlement Fund Trustees, the petitioner never wrote a letter or sought extension of time, never notified the office of the death of her husband in **2015**, never developed the property or fenced it or raised a query which effectively shows that she had abandoned the claim whose offer lapsed by operation of the law and the contract.
- 59.** The 4th interested party terms the conduct of the petitioner as amounting to a waiver and the relinquishment of any right flowing from the letter offer, which expired on **2/2/2003**, and not when reallocation occurred in **2018**.

60. The 4th interested party submits that the petitioner was absent as per the ground status report, inactive and untraceable for over two decades, and therefore, public participation, which came up in **2010**, was not a substitute for personal compliance with contractual obligation, or intended to revive expired allotments, before its advent in **2010**.

61. The 4th interested party submits that to interpret the concept of public participation as requested by the petitioner would be absurd and administratively impossible every time an allottee defaults, for it is impossible to police every defaulting allottee, which may ground the land administration to a halt, and or open floodgates for lapsed allotments across the country to re-surface decades later, claiming that the reallocation was unconstitutional for want of public participation.

62. Further, the 4th interested party submits that the petition was a classic example of a party that ignored its obligation, abandoned the allotment, failed to act for **22** years, and seeks to hide behind a constitutional principle, which cannot apply to a private contract. Reliance is placed on **Botwa Farm Co. Ltd -vs- Settlement Fund Trustee & another [2015] eKLR**

and in **Dr. Joseph Ng'ok -vs- Justice Moiyo Ole Keiwua & Others C.A. No. 60 of 1997.**

63. The 4th interested party submits that the petition is urging the court, guided by **Kimechwa -vs- County Land Adjudication & Settlement Officer, Trans Nzoia & 3 others; Simeon (Interested Party) (Environment & Land Petition E002 of 2023) [2025] KEELC 308 (KLR) (3 February 2025) (Ruling)**, to find that it cannot compel the respondents to reallocate property to a petitioner who had breached the letter of offer with its timelines, otherwise, he was a bona fide allottee without any notice of fraud.

64. The court has carefully read the petition, replying affidavits by both the respondents and the interested parties. Equally, the court has looked through the written submissions filed by the parties. The issues calling for my determination are:

a. If the petition meets the constitutional threshold.

b. If the petition offends the doctrines of exhaustion and avoidance.

c. If the petitioner is entitled to the reliefs sought

d. What is the order as to costs?

- 65.** A cause of action is defined as an action on the part of the respondents that gives rise to an applicant to complain. See **DT Dobie -vs- Muchina [1980] eKLR**. The petitioner complains that her late husband was issued with a letter of offer dated **2/12/2002**, by the 2nd respondent on behalf of the Settlement Fund Trustees for plot **No. 293**, approximately **1.9 Ha** at Zea Settlement Scheme.
- 66.** The petitioner deposes that the terms and conditions of the offer letter were duly met, she took vacant possession and developed the land, only for the 1st, 2nd and 3rd respondents to unlawfully, unfairly, and unconstitutionally, recall the offer, reallocate and issue a title deed to the 4th interested party on **18/1/2021**, without due process as set out in **Articles 1, 2(a), 10(1)(b) and (c), 10(2)(a),(b) and (c), 21(1) and (2), 27, 35(1),(3) and (4), 40, 47(1) and (2), 60(1)(a), (b), (c) and (d), 73(1)(a),(2)(b) and 232(1)(a),(b),(c),(d),(e) and (f)** of the Constitution as read together with **Sections 135 and 135** of the Land Act.
- 67.** The petitioner terms the process of recall of her letter of offer and the reallocation as secretive, unilateral,

biased, tainted with irregularities against national values and principles, among them public participation, and in breach of her right to property, equality before the law, freedom from discrimination, and fair administrative action. In support of the petition, there is a verifying affidavit sworn on **25/2/2024**, in which the petitioner attaches the Limited Grant, a letter of offer, and a certificate of official search as annexures marked **LJK-1, 2, and 3**, respectively.

68. The petitioner relies on a letter of offer dated **2/12/2002** as the basis of her late husband's claim or interest in the land. It is not the duty of courts to rewrite contracts but to enforce them except where they were vitiated by fraud, illegality, corrupt scheme, unconscionability, or are against public policy. See **National Bank of Kenya -vs- Samkolit (K) Ltd & Another [2001] eKLR.**

69. In **Torino Enterprises Ltd -vs- Attorney General Petition 5 (E006) of 2022 [2023] KESC 79 LRK (2nd September 2023) (Judgment)**, the court held that an allotment letter was incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfillment of conditions stipulated, and

that an allottee had to perfect the same by fulfilling the conditions therein, which includes but are not limited to, the payment of a standard premium, within the prescribed timelines. Further, the court observed that even after the perfection of an allotment letter, an allottee could not pass a valid title to a third party, unless and until he acquired title to the land through registration under the applicable law.

70. The petitioner has the onus to discharge to show that the late husband had met the terms and conditions of the letter of offer within the stipulated timeline of **12** months and thereafter complied with the applicable law to perfect the registration before he passed on in **2015. Section 3(1)(d)** of the Evidence Act defines a fact in issue as one from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows.

71. Facts and proof are the cardinal things in the law of evidence. Proof under **Section 3(2)** and **(3)** of the Evidence Act when, after considering the matter before it, the court either believes its existence or considers its existence so probable that a prudent

man ought in the circumstances to act upon the supposition that it exists. The 1st, 2nd, and 3rd respondents have averred that the letter of offer was not complied with on time or at all, it expired by effluxion of time, efforts to notify the offeree to remedy the default were unsuccessful, and hence the repossession, reallocation, and issuance of title to the 4th interested party were regular, formal, and procedural. On the other hand, the 4th interested party has availed the root of his title, terming the claim by the petitioner as an ordinary civil or contractual claim christened as a constitutional petition.

72. Section 107(1) of the Evidence Act provides that whoever desires a court to give judgment on any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. In **Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC [KLR]** and **Munyu Maina -vs- Hiram Gatiha Maina [2013] KECA 94 [KLR]**, the court said that where a title is under challenge, it is not enough to waive the instrument without showing that the allocation was legal, proper, and regular.

- 73.** The burden of proof is on the petitioner to prove that the subject matter is beyond an offeree and offeror relationship to the extent that it created enforceable legal and constitutional rights in favour of her late husband to qualify as a constitutional petition. In **M'Magwika M'Rugongo -vs- Settlement Funds Trustee & Another [2022] eKLR**, this court cited **Arthur Matere Otieno -vs- Dorina Matsanza [2003] eKLR**, that the right to repossess or forfeit land was the preserve of the Settlement Funds Trustees Central Land Board, which has to be proved through minutes, notices of repossession, the approval of forfeiture, and relocation by the board thereof. The court also cited **Benja Properties Limited -vs- H.H. Dr. Syedna Mohamed Burhannuddin Saheb & 2 Others [2007] KECA 82 (KLR)**, that an allotment of an interest in land was a transaction in rem attaching to and running with a specified parcel of land.
- 74.** In this petition, there are two plot numbers, **No. 366** and **293**, which the petitioner is alleged to have been issued to her late husband. The only way to prove compliance is by availing the payment of the standard premium, acceptance letter of the offer, a visit to the

locus in quo to ascertain the boundaries, a letter of confirmation of the plot before documentation, and lastly, a report to the 1st and 2nd respondents before the offer expired on **3/2/2003**.

75. In Kide & Another -vs- Sawe & Others ELC E007 of 2024 [2025] E007 of 2024 [2025] KEELC 2902 KLR (26th March 2025) (Judgment), this court said that the law relating to the creation of a settlement scheme before the enactment of the Land Act **2012** was the repealed Agriculture Act, the retired Registered Land Act, and its regulations. The court said that under Legal Notice **No. 352 of 1963** made under **Cap 318**, the Settlement Fund Trustees would receive monies from the government to acquire land that would then be planned, surveyed, subdivided and given to settle landless Kenyans on loan or standard premium until it was discharged or transferred to an allottee upon full payment of the premium, or through an one-off payment, whichever applied. The court set out the process of applying for land by a landless person and the conditions to follow once the committee verifies the application, followed by payment of the **10%** deposit, and the issuance of receipts and statements. The court said that allocation

of land in a settlement scheme entailed three things, namely, the ground, the map, and numbering. The court further discussed the role of the Land Adjudication and Settlement office as well as the Survey Department, both in the allocation, recall, and cancellation of the letter of offer.

76. In **Green & Another -vs- Kazungu & Others Civil Appeal E017 of 2020 [2023] KECA 991 KLR (23rd September 2022) (Judgment)**, the court held that the doctrine of legitimate expectation could not be invoked where an allottee did not comply with the terms and conditions of the offer since legitimate expectation cannot override the law and that a letter of offer was subject to revocation by the offeror. The court further held that an offer letter may not be used to cancel, through the back door, a certificate of title, since **Section 26** of the Land Registration Act is specific on when a title deed can be impeached.

77. In **Joel Kipkosgei Sigei -vs- Peter Maina Macharia & Another [2019] eKLR**, the court observed that the 2nd defendant had by then procured an acceptance letter and the documents to discharge the loan. The court said that under **Section 174** of the Agriculture Act (repealed), the Settlement Fund Trustees had

power to terminate any interest in land in respect of which the advance was made, otherwise mere occupation of the suit land by the defendant who had no allotment letter in his favour, did not confer ownership to him, hence had not established any proprietary interest or right capable of being protected in law.

78. In this petition, the events leading to the issuance of the letter of offer took place in **2002**. The holder of the letter of offer passed on in **2015**. There is no evidence that the offer had been accepted and perfected before he passed on in **2015**. Evidence that the suit parcel of land was part of the free property of the deceased on his death, as per the Law of Succession, is lacking.

79. It is a trite law that a letter of offer does not constitute a contract between the offeror and the offeree and does not confer any interest in land at all. See **Gladys Wanjiru Ngacha -vs- Teresa Chepsat & Others [2018] eKLR**, and **Dr. Joseph Ngok (supra)**. In **James Kiprono Tinego -vs- Virginia Nasambu Khisa & another [2013] eKLR**, the court observed that a contract could only come into existence after a deposit is made. The court also held that the law has

procedures and processes to be adhered to, which neither the court nor the defendant could ignore without consequences.

80. In this petition, the role of this court is to interpret the law as it is and apply it to the facts as presented without any sympathy, fear, or favor. It is the parties who opted to contract in the manner they did in **2002**. Acceptance of and meeting of the terms and conditions of the letter of offer dated **2/12/2002** before **2015**, later in **2018**, and **2021** is all that the petitioner has to prove before she can ever be heard to invoke the constitutional and statutory framework governing settlement schemes.

81. Between **2002** and **2015**, there is no evidence tendered that the offeree had met the terms and conditions of the offer letter to avoid the default clause consequences. A fresh application for the land after the death of the initial offeree, in favour of the petitioner, and an acceptance letter to that effect is missing. Letters written to the 1st, 2nd, and 3rd respondents informing them of the demise of the deceased and seeking to revive, regularize, and extend the offer to the deceased's family or estate are missing. Evidence of efforts by the petitioner to

update the respondents on the status of the land and to express interest in the land before **2018** is lacking.

- 82.** The principle of the four corners of an instrument in contract interpretation is what is required in this petition. A constitutional court should not be trivialized by an otherwise ordinary civil suit on the construction of a contract. See **Fidelity Commercial Bank Ltd -vs- Kenya Grange Vehicle Industries Ltd [2017] eKLR.**
- 83.** Parties are bound by their pleadings, and issues for determination arise from the pleadings. The respondents and the interested parties have raised issues on the primary hurdle to surmount, whether or not the letter of offer had expired, been accepted, perfected, and translated into a valid contract on land under **Section 3(3)** of the Law of Contract Act to crystallize into protectable rights under **Articles 40** and **47** of the Constitution.
- 84.** Instead of addressing those pertinent issues or rights in the further and supplementary affidavits sworn on **25/2/2025** and **7/8/2024**, the petitioner has skirted around the issue of payment of standard premium, production of payment receipts, whether the deceased obtained a letter of allotment, indicating

when the documents, if they ever existed, were surrendered, avail the same as evidence and above, explain whether after the offer expired and or died with the deceased in **2015**, she ever sought to regularize, revive, comply with and follow up the necessary documentation to perfect the offer if at all the late husband had already paid **Kshs.32,500/=**, to the predecessor to title and perfected the same with the Settlement Fund Trustees.

85. Strangely, the petitioner has not sued the Settlement Fund Trustees and its successor, the Land Settlement Fund Trustee, which, under **Section 135 Part 1X** of the Land Act, are answerable on matters settlement scheme. The nexus between the breach of the offer, the role of the 1st, 2nd, and 3rd respondents, who ideally, under **Sections 134** and **135** of the Land Act, are members of the committee of a settlement scheme, has not been established.

86. The failure to join the Settlement Fund Trustees, who are mentioned in the letter of offer as the offeror, makes the petition fatal, for the basis upon which the respondents can answer for acts of omission and commission of the offeror remains a mystery. There is no indication that it was the 1st, 2nd, and 3rd

respondents or the 1st and 2nd interested party who recalled, canceled, and or re-allocated the suit land to the 4th interested party. Privity of contract of any existing and or valid letter of offer, an acceptance letter, and payment of the requisite and standard premium to the respondents, which the respondents ignored, neglected, and or breached in preference to or in favour of the 4th interested party, is lacking. See **Wandemi Developers Ltd -vs- Ndegwa Civil Appeal No. 217 of 219 [2025] KECA 431 [KLR] (7th March 2025) (Judgment)**.

- 87.** It is the petitioner who is alleging non-conformity with the statutes and the constitution on the part of the respondents. The non-conformity is based on an alleged contractual relationship. In **Bia Tosha Distributors Limited -vs- Kenya Breweries Limited & 3 others [2016] eKLR**, the issue was whether the goodwill that the appellant had paid for created a protected property under **Article 40** of the Constitution, and could therefore amount to a constitutional question, or a mere commercial dispute capable of resolution under ordinary commercial dispute resolution mechanisms. The court said that where a dispute transcends a commercial dispute into

a constitutional sphere, every person is free to access courts and have their day in court.

88. The instant petition appears built on a false or mistaken premise that the petitioner holds protectable, legitimate, and discernible legal rights or interests over the land capable of breach, under **Articles 40** and **47** of the Constitution. A constitutional question or issue is one whose resolution requires the interpretation of constitutional values, principles, roles, and functions of state organs, and or whose answers flow from the constitutional and not a statute. See **James Kuria -vs- Attorney General & others [2018] eKLR.**

89. In **Communications Commission of Kenya -vs- Royal Media Services Limited others [2014],** the court defined constitutional avoidance as where the court will not determine a constitutional issue, when a matter may properly be decided on another basis outside the constitutional parts. In **Geoffrey Muthinja Kabiru & Others -vs- Samuel Munga Henry & Others [2015] eKLR,** the court said that where alternative dispute resolution mechanisms exist outside court, courts should be the last port of call. In **Zehrabanu Jan Mohamed SC & Another -vs-**

Nathaniel K. Lagat & Others, Petition No [E002] of 2022, as consolidated with **Petition No. 24 (E027) of 2022**, the court said that whereas **Articles 40** and **47** of the Constitution generally may apply retrospectively, the language of the constitution has to act as a guide and in the case of **Article 40** thereof it has element of retrospectivity under **Section 75** of the retired Constitution embodied the right.

90. As to whether the constitutional claim of violation of property rights under **Article 40** of the Constitution is bound by the Limitation of Actions Act, the court said that the constitutional petitions generally are not subject to the limitation of actions, but have to be applied on a case-by-case basis to avoid a claimant riding on mischief. The court found a delay of between **1983** and **2014** inordinate and warranting a credible explanation. The court said that the right to move the court under **Article 22** of the Constitution arose **31** years after the cause of action arose and long after the **2010** Constitution. The court said that the responsibility to prove the legitimacy of the title is not only limited to the party whose title is being challenged, but also extends to the party claiming infringement of his property rights to prove his

entitlement warranting the attendant constitutional protection sought.

- 91.** Applying the foregoing case law, it is my finding that the petitioner has failed to discharge the burden that the subject parcel of land had been perfected to enable her deceased husband to have any protectable constitutional rights capable of amounting to a cause of action that his estate, through the petitioner, can enforce as a constitutional.
- 92.** Further guided by **Gabriel Mutava & Others -vs- Managing Director KPA & Another [2018] eKLR**, I find the issue is a simple contractual relationship governed by **Section 3** of the Law of Contract Act, **Section 38** of the Land Act, and the defunct Agriculture Act and not the Constitution. Equally, a fundamental right regulated by statute should not be used to turn the Constitution into a thoroughfare for the resolution of common grievances. See also **CIS -vs- Directors of Crawford International School & Others [2020], KEHC 3394 KLR**, **Bernard Murage -vs- African Ltd & Others [2015] eKLR** and **CCK & Others -vs- Royal Media Services & Others [2014] eKLR**.

- 93.** Moreover, the core of the matter, as pleaded by the petitioner, is an ordinary breach of an alleged contract on land between her late husband and the Settlement Fund Trustees that was communicated through a letter of offer dated **2/12/2003** by the 2nd respondent. There is no evidence that the contractual dispute is exceptional, the contract is peculiar, the remedies set out under contractual law are inadequate, and the only recourse available to the petitioner is the constitutional route to the garden of justice.
- 94.** The issues raised by the petitioner and supported by the 3rd interested party in its replying affidavit, sworn on **16/12/2024** at paragraphs **7-10**, are not constitutional questions or issues. On the contrary, they relate to ordinary contractual land relationships between an allocating authority and the allottee. They do not require the interpretation of the Constitution, its organs, the roles of state and public officers in the allocation of land to landless persons in settlement schemes.
- 95.** Further, to this and as demonstrated through case law, there are adequate statutory remedies other than constitutional reliefs for and against those who may

flaunt the statutes governing allocation, repossession, and reallocation of plots within a settlement scheme.

96. Similarly, the issues of whether or not the petitioner was in occupation throughout until **2022**, if there was adequate notice before the relating or the repossession of the suit land and if there was compliance with the law on repossession and reallocation pre-and post-**2010** and if the petitioner ought to have been granted a preference in the reallocation are matters which ought to be determination in an ordinary suit against the repossessing or reallocating authority which unfortunately has not been joined to this petition.

97. As to whether the petitioner has proved any breach if the court were to find constitutional questions or issues raised or the petition meeting the constitutional threshold, still, a constitutional petition must be supported by tangible and credible evidence. There is no evidence tendered to show that the petitioner's late husband had met the terms and conditions of the letter of offer dated **2/12/2002**, before it expired by effluxion of time on **3/2/2003**. There is no evidence that the deceased had protectable land rights or interests capable of transmission or enforcement as

part of his estate. See **Karl Wehner Claasen -vs- Commissioner of Lands & 4 others [2019] KECA 766 (KLR).**

98. The existence of the constitutional right is a condition precedent to a claim that they have been breached, violated, or threatened with a breach. The nexus between the right holder, the duty bearer, the nature, and the particulars of breach must be pleaded and proved. See **Gitobu Imanyara & Others -vs- Attorney General, CCK & Others -vs- Royal Media Services & Others, Kimaru v Inspector General of Police & another; Independent Medico-Legal Unit & another (Interested Parties) [2025] KEHC 1782 (KLR).**

99. In **Arthur Njuguna Kamau -vs- Eunice Wangare Karanja & Another Petition No. E005 of 2024**, the Supreme Court of Kenya held that the failure to particularize or present evidence on how the respondents breached the petitioner's rights was fatal to the petition; hence, the preliminary objection was properly upheld in the courts below.

100. In **Mitubel Welfare Society -vs- Kenya Airport Authority & Others Petition No. 3 of 2018**, the court said that an illegal occupation of

private land cannot create prescriptive rights over that land in favour of the occupants. The court said that where the landless occupy public land, establish homes thereon, they acquire no title to land but a protectable right to housing over the same. In this petition, the petitioner admits that she has only been tilling the land with no established homes therein.

101. In the premises, and the circumstances obtaining in this petition, in the absence of evidence that the deceased had perfected the letter of offer, and the subsequent letter of allotment through a charge, discharge of charge, and registration of the land in his name before **2015**.

102. As to some of the issues raised by third parties to support the petition, it is a trite law that in a constitutional petition, the primary issues for the court's determination remain those of the principal parties. See **Mohamed Fugicha -vs- Methodist Church in Kenya (Through its registered trustees) & 3 others [2020] eKLR and Muruatetu & another -vs- Republic; Katiba Institute & 4 others (Amicus Curiae) [2021] KESC 31 (KLR)**. Notwithstanding this binding caselaw, I have nevertheless addressed the same as indicated above

insofar as they were relevant to the determination of the main issues raised by the primary parties.


103. The upshot is I find the petition incompetent, lacking merit, and an abuse of the court process. It is dismissed with no order as to costs.

104. Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **1st** day of **October 2025**.

In the presence of:

Court Assistant - Dennis
Lichuma for the petitioner present
Kiptoo IP present
4th IP present
Kavita for Githinji for 3rd IP present
Auta for 1st IP present
1st - 5th respondents absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**