



**Wanjohi & 2 others v Attorney General & 2 others (Environment and Land  
Petition 74 of 2013) [2025] KEELC 6937 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6937 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND PETITION 74 OF 2013  
OA ANGOTE, J  
OCTOBER 9, 2025  
IN THE MATTER OF SECTION 22 AND 23 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**ISAAC GATHUNGU WANJOHI ..... 1<sup>ST</sup> PETITIONER  
ISABELLA NYAGUTHI WANJOHI ..... 2<sup>ND</sup> PETITIONER  
IGANYA LIMITED ..... 3<sup>RD</sup> PETITIONER**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
ETHICS AND ANTI-CORRUPTION COMMISSION ..... 2<sup>ND</sup> RESPONDENT  
THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Background**

1. Vide a Petition dated 12<sup>th</sup> July, 2012, the Petitioners seek the following reliefs:
  - i. It be declared that the Respondents have contravened the Petitioners rights under Article 40(2) of *the Constitution* not to be arbitrarily deprived of any interest of any property of any description and not to have a limitation or restriction of enjoyment of any right over L.R No 209/674.
  - ii. It be declared that the Respondents have contravened the Petitioner’s rights under Article 47 of *the Constitution* to an administration action that is expeditious, efficient, lawful, reasonable and procedurally fair.



- iii. A permanent injunction restraining the Respondents from interfering in any way with the Petitioners' right to charge the said L.R number 209/674 or deal with it in any other way allowed by the law.
  - iv. An order of certiorari to bring to this Honourable Court and quash the 3<sup>rd</sup> Respondent's decision contained in its letter addressed to Muri Mwaniki & Wamiti Advocates.
  - v. A mandatory injunction requiring the 2<sup>nd</sup> Respondent to withdraw forthwith its instructions to the 3<sup>rd</sup> Respondent that it prohibits the Petitioners' dealings with L.R No 209/674.
  - vi. A mandatory injunction requiring the 3<sup>rd</sup> Respondent to register the Petitioner's charge.
  - vii. As an alternative to (vi) above, a mandatory injunction requiring the 3<sup>rd</sup> Respondent to consider the Petitioner's application for registration of a charge in accordance with the law.
  - viii. General and exemplary damages.
  - ix. An order that the costs of this petition be provided for.
2. The Petition is supported by the Affidavit of Isaac Gathungu Wanjohi, the 1<sup>st</sup> Petitioner, sworn with authority and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners on the 13<sup>th</sup> July, 2012. Mr. Wanjohi deponed that him and the 2<sup>nd</sup> Petitioner, his wife, serve as board members of the 3<sup>rd</sup> Petitioner and that, together, they acquired L.R. No. 209/674 (hereinafter "the suit property").

### **The Petitioners' case**

- 3. According to Mr. Wanjohi, in early 2011, in the course of developing another of their parcels, L.R No 209/1877, it became necessary for them to apply to the Investments and Mortgages Bank Ltd (I & M Bank) for a loan of Kshs 70 million to complete the development; that the loan was to be secured by a charge over the suit property and that they duly made an application for the loan, which the bank granted on 21<sup>st</sup> March, 2011.
- 4. It was averred that on the 11<sup>th</sup> April, 2011, I&M Bank instructed the firm of Muri Mwaniki & Wamiti Advocates to draw up and register the charge over the suit property to secure the loan amount. According to the terms of the facility letters, its Advocates, the said Muri Mwaniki were to act for the Petitioners in that transaction.
- 5. Mr. Wanjohi deponed that the Petitioners executed a charge prepared by the aforesaid firm of Advocates and entrusted it to them for registration; that on 22<sup>nd</sup> August 2011, the Advocates lodged the charge with the 3<sup>rd</sup> Respondent, but it was not registered; that between August 2011 and April 2012, he made several follow-up calls to the offices of Messrs. Muri Mwaniki & Wamiti Advocates to inquire about the progress and that he was informed that the charge remained unregistered and despite their repeated inquiries, the Advocates had not been given any explanation for the delay or refusal to register it.
- 6. The 1<sup>st</sup> Petitioner deposed that aggrieved by the delays, he decided to directly reach out to the 3<sup>rd</sup> Respondent where he met one Mr. R.N Mule on the 28<sup>th</sup> March, 2012 and that Mr. Mule informed him that no one had registered any caveat on the property under Section 57 of the Registration of Titles Act.
- 7. However, it was his deposition that he was informed that there was in the office file pertaining to the suit property, a letter from the former Kenya Anti-Corruption Commission, making inquiries on the



purchase and transfer of the suit property, and that as a result of the inquiries, the charge could not be registered.

8. The 1<sup>st</sup> Petitioner deposed that in an effort to resolve the issue, he further reached out to the 2<sup>nd</sup> Respondent and held a meeting with Ms. Jane Muthaura, the 2<sup>nd</sup> Respondent's Acting Director at the time during which he requested the withdrawal of the directive. In response, she suggested that him together with his Advocates meet her and her officers and present their case.
9. It is the Petitioners' case that a meeting was held on the 7<sup>th</sup> June 2012 and that at the meeting, they offered not to seek redress before the court if the instructions forbidding dealings with the suit property were removed within 14 days. They also offered to supply to the 2<sup>nd</sup> Respondent with all documents pertaining to the purchase of the suit property and that the 2<sup>nd</sup> Respondent promised to communicate its decision within 14 days.
10. It was deposed that they subsequently reduced their representations into writing by way of a letter dated 12<sup>th</sup> June 2012 and that vide the aforesaid letter, they informed the 2<sup>nd</sup> Respondent that they would be seeking the reliefs they now seek before this court.
11. Mr. Wanjohi deposed that, as advised by Counsel, Kenya operates a market economy in which land is treated as a commodity, exchanged as efficiently as possible to enable economic actors to achieve their objectives; that this objective, within a market-driven system, is advanced through the Torrens System of Registration, whose defining features include reliance on the register in determining whether to engage in a transaction, the guarantee of title by the State, and the facilitation of rapid dealings in land such as sales, charges, and leases.
12. He further noted that in *P.G. Shah v Attorney General*, Civil Appeal No. 24 of 1985, the Court of Appeal outlined the limitations on the powers of the police to seize and retain private property in the course of investigations. He deposed that these principles equally apply to the 2<sup>nd</sup> Respondent when undertaking investigations relating to land.
13. Specifically, it was deposed, a public authority must comply with all statutory procedures governing restrictions on dealings in land, including Section 57 of the Registration of Titles Act, and must have reasonable cause to believe that the registered proprietor has committed a wrongful act in relation to the suit property.
14. He urged that the foregoing provisions must be considered alongside the constitutional guarantees enshrined in Articles 23, 40, and 47 of *the Constitution*; that the charge remains unregistered to date, a circumstance that has occasioned immense difficulties to the Petitioners and resulted in the stalling of their project and that had the charge been registered promptly upon presentation, the Petitioners would have completed their project and commenced the sale of the houses.

### **The 1<sup>st</sup> and 3<sup>rd</sup> Respondents' response**

15. In response to the Petition, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed Grounds of Opposition dated 20<sup>th</sup> December, 2012 premised on the grounds that:
  - i. The Petition is frivolous, misconceived and an abuse of the court process.
  - ii. The rights alleged by the Petitioner are not absolute, they are subject to certain limitations as envisaged in Article 24 of *the Constitution*.
  - iii. The orders sought cannot issue as the same would muzzle an ongoing valid process that seeks to resolve the issue of possible crime surrounding the suit property.



- iv. The Petition does not disclose any denial, violation, infringement or threat to the Petitioners' fundamental rights and freedoms.
- v. The actions complained of by the Petitioners constitute the legitimate obligations of the Respondents under the relevant statutes therefore no triable issues arise.
- vi. The Petition lacks merit and the same ought to be dismissed.

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

16. The 2<sup>nd</sup> Respondent, through its Financial Forensic Investigator, Mr. Jeremiah Arodi, filed a Replying Affidavit on 3<sup>rd</sup> December 2012. He deponed that the 2<sup>nd</sup> Respondent is mandated by law to investigate the conduct of any person that, in its opinion, amounts to corruption or economic crimes, pursuant to the provisions of the *Anti-Corruption and Economic Crimes Act*, No. 22 of 2011.
17. He conceded that the 2<sup>nd</sup> Respondent is indeed investigating the Petitioners' acquisition of the suit property; that in that regard, by a letter dated 12<sup>th</sup> September 2012, the 2<sup>nd</sup> Respondent formally requested the 1<sup>st</sup> Petitioner to present himself for an interview to assist the Commission in its investigation and that the 1<sup>st</sup> Petitioner declined to grant it an interview and his Advocates wrote to them alleging, inter-alia, that the request amounted to contempt of court.
18. He deponed that as advised by Counsel, no orders have been issued barring them from carrying out investigations and they cannot be said to be in contempt of non-existent orders and that despite the Petitioners' refusal to co-operate, they have continued with their investigations which are at the final stages.
19. According to Mr. Arodi, the investigations being carried out are legitimate and there is no evidence that the 2<sup>nd</sup> Respondent has violated the Petitioners' constitutional rights or that the same are abusive, brought mala fides for a purpose other than the one envisaged in the statute or that the factual and legal issues that arise therefrom are trivial, unconstitutional, baseless and doomed to fail.
20. It was deposed that the objection by the 2<sup>nd</sup> Respondent against the registration of any dealing in respect to the suit property is to preserve the same pending investigations and that no reasonable grounds have been advanced warranting the removal of their objection. In any event, it was deposed, should it find that the property was not irregularly or illegally acquired, it will withdraw the objection and let the matter rest.
21. The Petitioners and other players, he noted, are being investigated for conduct that constitutes corruption and economic crimes leading to immense loss of property and that it would be against public policy to allow the property to be charged by third parties thereby further compounding the ownership and/or property.
22. According to Mr. Arodi, contrary to the Petitioners' assertions, the history of the suit property commenced on 28<sup>th</sup> October, 1989 and not the year 1998; that the present grant I.R 84529 was granted on 17<sup>th</sup> July, 2000 after the original grant expired by way of effluxion of time and a new title thereof issued and that at the time the new grant was issued, there was in place a court order registered against the property in the original grant and investigations will reveal whether, and how a new grant was issued and failed to maintain the existing court order.



### Further/Supplementary Affidavits

23. The 2<sup>nd</sup> Respondent, through Ms. Wambeti Margaret, an Investigator, filed a Supplementary Affidavit on 26<sup>th</sup> November, 2019. She deponed that the investigations were initially handled by Jeremiah Arodi and the duly completed investigations file was handed over to her.
24. By way of an overview, she deponed that the Union of Kenya Civil Servants (UKSC)(the Union) was registered as a trade union in 1956 with the mandate of representing all civil servants in matters relating to terms and conditions of service as well as other related issues; that the Union remained operational until its deregistration in 1980 and that at the time of its deregistration, the Union owned several properties, among them L.R. No. 209/674, I.R. 84529, the suit property herein, commonly known as “Nature House,” which had been acquired on 1<sup>st</sup> July 1974.
25. It was averred that following the deregistration of the Union, the Kenya Civil Servants Welfare Association (KCSWA) (the Association) was registered on 20<sup>th</sup> August 1985, under the Societies Act, as a welfare association, to promote the welfare of civilian government employees and that through a letter dated 14<sup>th</sup> February 1986, from the then Solicitor General addressed to Joseph Mutie Gitonga, it was confirmed that while there were no instructions to wind up the affairs of the defunct Union, its assets would be taken over by the Association.
26. It was deposed by the 2<sup>nd</sup> Respondent’s Investigator that investigations by the 2<sup>nd</sup> Respondent revealed that a charge to Barclays Bank of Kenya Limited for Kshs 1, 520,000 was registered against the suit property on the 1<sup>st</sup> July, 1974 and that in the year 1986, an intended auction of the suit property was put up by Barclays Bank of Kenya Limited to recover monies owed to the bank by the defunct Union.
27. According to EACC, vide a letter dated 12<sup>th</sup> September, 1986, addressed to the Managing Director, Barclays Bank, PLC by the then Chief Secretary, Office of the President, the bank was informed of the existence of the Association and that the said Association should settle the balance of the loan because the suit property was security so as to safeguard the interests of the civil servants who in effect, own the property.
28. It was deposed that the Association duly settled the amount owed to Barclays Bank and the bank forwarded the title documents to the Office of the President for safe custody pending resolution of who would lawfully succeed the Trustees registered as Trustees for and on behalf of the Union.
29. Nonetheless, she deponed, efforts by the Association to effect transfer of the suit property into their name encountered difficulties after the Trustees of the defunct Union instituted proceedings against it and its Trustees seeking to restrain them from collecting rent from the tenants occupying the suit property and that the record reflects that the dispute was ultimately resolved through a settlement that was recorded before the High Court on 28<sup>th</sup> October 1988.
30. It is the 2<sup>nd</sup> Respondent’s case that under the terms of the said settlement, the Association undertook to pay the Trustees of the Union the sum of Kshs. 1,295,411 in full and final settlement of their claim; that thereafter, the Trustees of the defunct Union were to transfer all its assets and liabilities to the Association and that the Advocates of the Union were to hold the sum of Kshs. 1,295,411, being the total amount due to the employees of the defunct Union as terminal benefits pending completion of the execution of the transfer documents in favour of the Association.
31. It was deposed that it was also a term of the agreement that the Union would execute transfer documents in respect of their verified moveable and immovable properties in favour of the Association on or before the 30<sup>th</sup> November, 1988 and that the Association was only to assume



- responsibility over the liabilities of the defunct Union on the registration of the transfer of the moveable and immovable property aforesaid.
32. Ms. Wambeti deponed that despite the Association having paid the sum of Kshs 1,295, 411 to the Trustees of the Union on 28<sup>th</sup> October, 1998, the transfer of the suit property could not be effected as the defunct Union owed the City Council land rates and water bills and that after the same were cleared, the property, registered as L.R 209/674 was transferred to John Silas Nyamato, Suleiman Rashid Shakombo and David Nzioka Mbai as Trustees of the Association on 28<sup>th</sup> August, 1989.
  33. Investigations by the Commission, it was deposed, revealed that although the consent recorded in court empowered the Association to acquire all the property of the defunct Union, it was only interested in the suit property and made no attempts to acquire other property and that several issues were raised concerning the management of the Association and that its then Secretary directed that the monthly contributions/deductions be stopped with effect from the 1<sup>st</sup> August, 1998.
  34. Despite the transfer of the property to it, it was deposed, the Trustees of the Association failed and/or neglected to pay land rates and through one Nyamato intimated that this was because of the retirement of most of its members rendering the organization nearly moribund. They therefore sought permission to dispose off the property vide the letter of 23<sup>rd</sup> November, 1998.
  35. Notwithstanding the foregoing, she deposed that on 14<sup>th</sup> September 2000, a purported transfer was executed between John Silas Nyamato, Donald Kamuru Kibera, and Joseph Bonnie Munyoki Katungu on the one part, and Isaac Gathungu Wanjohi, Mrs. Isabella Nyanguthii Wanjohi, and M/s Igainya Limited on the other; that the original title registered as L.R. 209/674 had by then expired by effluxion of time, leading to the issuance of a new title, I.R. 84529, in the names of the Association's Trustees, namely John Silas Nyamato, Donald Kamuru Kibera, and Joseph Bonnie Munyoki Katungu and that these Trustees are distinct from those reflected under Item No. 1, Entry No. 46 of the original title, and no evidence or resolution of the Association was produced to explain the change in trusteeship.
  36. According to Ms Wambeti, investigations further revealed that one of the Trustees involved in the transfer of the property, Mr. John Silas Nyamato, had retired in 1996, well before the transfer was effected in the year 2000; that it was noted that the Association had not conducted any investigations since its registration in 1985 and that Mr. Nyamato subsequently tendered his resignation through a letter dated 5<sup>th</sup> November 2001, wherein he expressly acknowledged that, having retired in 1996, he was not legally qualified to be a member of the Association or to hold office therein. Notwithstanding this knowledge, he nonetheless actively participated in the disposal of the suit property.
  37. She asserted that there are no bid documents showing the suit property was disposed off through competitive bidding and the purported payments which the Petitioners state was done indirectly through settling the many liabilities of the then registered proprietor and a banker's cheque for Kshs 6,055, 754.80/= are un-supported by receipts. This, according to the 2<sup>nd</sup> Respondent, raises questions as to whether the purported payments totaling Kshs 16,000,000/= were indeed paid.
  38. It was deposed that there is further no evidence as to how the purported amount was ever received by the Association and how the same was utilized. Equally, there is no evidence to show that the proceeds were distributed to the branches proportionately according to membership as directed by the government. She asserted that the Petitioners should co-operate to shed light on the aforesaid contentious issues and provide proof of payment.
  39. The Petitioners, through the 1<sup>st</sup> Petitioner, filed a Further Affidavit on 20<sup>th</sup> January, 2020. He deponed that, as advised by Counsel, it is evident from the Respondents' reply that the nature of the Petition has shifted, and the central issue now concerns the validity of the title held by the Petitioners. He further



noted that their Petition is analogous to a judicial review application, in which evidence is ordinarily tendered by way of affidavits.

40. He explained that, as held by a three (3) Judge bench in *Kenya African National Union v Mwai Kibaki & 6 others* [2005] KEHC 3188 (KLR), questions of ownership of property cannot be conclusively determined within the framework of a judicial review application. Accordingly, it was urged that the Petition ought to proceed by way of viva voce evidence, as in an ordinary suit which plea this court has jurisdiction to grant pursuant to Legal Notice No 117 of 2013.
41. According to Mr Wanjohi, the Petitioners have at all times acted according to the law being innocent purchasers for value as explained in *Elizabeth Wambui Githinji and Others v Kenya Urban Roads Authority and 4 Others* [2019] KECA 706 (KLR). The Petitioners maintain that they will, to the requisite standard, demonstrate that they hold an indefeasible title within the meaning of Section 26 of the *Land Registration Act*.

### Hearing and Evidence

42. The Petition was canvassed by way of viva voce as well as Affidavit evidence. The matter first proceeded for hearing on the 19<sup>th</sup> March, 2024. PW1 was Engineer Isaac Gathungu Wanjohi, the 1<sup>st</sup> Petitioner. He adopted his witness statement dated 15<sup>th</sup> July, 2021 as his evidence in chief and produced the bundle of documents of an even date as Exhibits. He also relied on the Further Affidavit sworn on the 28<sup>th</sup> January, 2020.
43. PW1 stated that he holds the title deed for the property in question, which was transferred to them on September 21, 2000, for Ksh. 16 million; that they applied for a Ksh 70 million loan from I&M Bank, which was to be secured by the property and that when the bank's lawyers tried to register the charge, the Lands Registry refused to do so.
44. PW1 testified that, through official correspondence, the Chief Land Registrar indicated that he was unable to register the charge as the title was under investigation by the 2<sup>nd</sup> Respondent. He further testified that the charge has never been registered and that the vendor has never raised any complaint with respect to the purchase of the suit property.
45. It was his evidence on cross-examination that the suit property is known as Nature House and was previously owned by the Kenya Civil Servants Welfare Association; that the vendors were the Trustees of the Association and that at the time of the purchase, he did not ascertain whether they were still the Trustees.
46. It was his further evidence on cross-examination that he had no reason to conduct an official search. He added that they have been in occupation of the suit property, utilizing it and leasing it out, and apart from the refusal to register the charge, they continue to enjoy possession.
47. According to PW1, a real estate company known as Shelle Alliance informed him of the sale of the suit property. He testified that they made an offer, and that the transaction was not through an auction and that the company was to furnish details of existing liabilities, which he confirmed were paid.
48. While he was given some details, he could not recall whether such information was furnished through letters. He further admitted that he had not annexed any agreement demonstrating settlement of liabilities, nor had he recorded a witness statement.
49. Upon re-examination, he explained that the transfer expressly set out the consideration, and receipt of the same was acknowledged therein. He stated that the transfer was duly executed by the Trustees. He



further emphasized that the 2<sup>nd</sup> Respondent was not the owner of the property, and that none of the vendors had ever raised a complaint against them.

50. He pointed out that the Kenya Union of Civil Servants was not reflected in the title. He also referred to a consent recorded in HCCC No. 4799 of 1987, which authorized the transfer of the land to the Trustees of the Association, who thereafter willingly transferred it to him. He confirmed that although the charge was booked in August 2011, it has never been registered, and that the investigations have remained inconclusive for over twelve years.
51. PW1 testified that notwithstanding the absence of any caveat registered against the property, he has been unable to transact with it. He stated that together with their Advocates, they attended a meeting with the 2<sup>nd</sup> Respondent, furnished all the required documents, responded to all questions, and fully cooperated with the investigations. He added that a letter was issued in 2006 restraining them from utilizing the land. In his view, the actions of the Respondents have hindered the realization of economic development.
52. DW1 was Margaret Wambeti, an Investigator at the 2<sup>nd</sup> Respondent. She adopted the two affidavits sworn on behalf of the 2<sup>nd</sup> Respondent on the 3<sup>rd</sup> December, 2012 and 26<sup>th</sup> November, 2019 reiterating the averment's therein as her evidence in chief and the annexures in the affidavits as exhibits.
53. It was her evidence on cross-examination stated that the Commission declined to register the charge owing to the letter it had issued. She explained that the refusal to register the charge arose as a consequence of the caution lodged, but emphasized that the decision to impose a restriction lay within the discretion of the Land Registrar. She maintained that their role was only to request for the preservation of the land, noting that Article 40 of *the Constitution* provides for property rights subject to limitations.
54. It was also her evidence that the property had been purchased by the Union and not by the Government of Kenya. She clarified that the Association of Civil Servants was not a governmental body but a private civil association and that the transferors of the property to the Petitioners were the Trustees of the Association. She added that the Commission was investigating to establish whether the Government had suffered any financial loss.
55. It was her evidence that where an allegation is made, the Commission is duty-bound to establish the complaint, and if the matter is found to be purely private in nature, the investigations are discontinued and referred to the relevant body.
56. She testified that the investigations stalled because the Petitioners did not present themselves to record statements. She clarified that the Commission does not investigate all land-related cases but only those involving allegations of corruption and economic crimes. She further observed that even land rates payable to the County had not been settled.
57. According to her, had the investigations been concluded, the matter would have been referred to the appropriate authority. She concluded that investigations are still ongoing.

### **Submissions**

58. The Petitioners relied on their submissions dated 19<sup>th</sup> December 2012 and 10<sup>th</sup> March, 2025. Counsel submitted that under Article 23 of *the Constitution*, this court is clothed with jurisdiction to grant the reliefs sought, the primary objective being to secure an effective remedy. In support, reliance was placed on the cases of *Gairy v Attorney General of Granada* [2001] 4 LRC (Const) and *Methodist Church in Kenya Trustees Registered v Attorney General & Others*, Meru High Court Petition No. 4 of 2010.



59. Counsel argued that the Petitioners enjoy a constitutionally guaranteed right to property under Article 40 of *the Constitution*. As proprietors, they are entitled to deal freely with their land, including by charging it. The refusal by the Respondents to register the charge amounts, in their view, to a direct violation of this right.
60. It was further contended that the directive issued by the 2<sup>nd</sup> Respondent to the 3<sup>rd</sup> Respondent to restrict dealings in the suit property was devoid of any legal foundation and contrary to Section 57 of the Registration of Titles Act. Such conduct, it was urged, runs counter to the transformative spirit of *the Constitution* which requires that state action be justified and forbids arbitrary deprivation of rights. In support of this contention, Counsel cited the Court of Appeal decision in *Speaker of the Senate & Another v Attorney General & 3 Others* [2013] KESC 7 (KLR).
61. In addition, Counsel emphasized that no state organ or officer is above *the Constitution* or the law. Reference was made to *John Mining Temoi & Another v The Governor of Bungoma County* [2014]KEHC 5453(KLR) where the court reaffirmed that all public authorities are subject to constitutional dictates. It was thus urged that this court bears the mandate to ensure compliance with constitutional principles, values and prescriptions.
62. Counsel submitted that Article 47 of *the Constitution* guarantees the Petitioners the right to fair administrative action, action that is expeditious, efficient, lawful, reasonable, and procedurally fair. It was argued that the 2<sup>nd</sup> Respondent, in discharging its mandate under the Ethics and Anti-Corruption Act, is bound by this provision. Reliance was placed on *P.G. Shah v Attorney General*, Civil Appeal No. 24 of 1985, where the court set out the parameters for restricting the manner of handling of property by the Police and which applies to the 2<sup>nd</sup> Respondent.
63. Counsel emphasised that the law requires that public authorities comply with all statutory procedures including Section 57 of the Registration of Titles Act; that there must be reasonable cause to believe the proprietor has committed a wrong in relation to the property; that the restriction must be for a reasonable period not exceeding one month; and that the proprietor must be notified of the restriction.
64. On this basis, Counsel argued that the 2<sup>nd</sup> Respondent's action in directing the 3<sup>rd</sup> Respondent to prohibit dealings with the suit property, without affording the Petitioners an opportunity to be heard, and in clear disregard of Section 57 of the Registration of Titles Act, violated their rights under Article 47 of *the Constitution* as read with Section 3 of the Fair Administrative Actions Act.
65. Counsel concluded that the impugned directive lacked any lawful foundation, and that the 2<sup>nd</sup> Respondent's reliance on an informal request was equally irregular, unlawful, and unconstitutional. It was urged that the Petitioners are entitled to the sum of Kshs 2million as general damages and a similar sum as exemplary damages.
66. The Respondents did not file submissions.

### **Analysis and Determination**

67. Having considered the Petition, responses and submissions, the issues that arise for determination are:
  - i. Whether the Petitioners have established violations or threats of violations of their constitutional rights under Articles 40 and 47 of *the Constitution*?
  - ii. What are the appropriate remedies, if any?



**Whether the Petitioners have established violations or threats of violations of their constitutional rights under Articles 40 and 47 of *the Constitution*?**

68. Vide the present Petition, the Petitioners seek, inter alia, declarations that their rights under Articles 40 and 47 of *the Constitution* have been violated, permanent injunctive orders restraining any interference with the suit property, the quashing of the 3<sup>rd</sup> Respondent's decision contained in its letter, and a directive compelling the 2<sup>nd</sup> Respondent to withdraw its instructions to the 3<sup>rd</sup> Respondent.
69. It is the Petitioners' case that they are the duly registered proprietors of the suit property. They contend that sometime in 2011, they sought to register a charge over the property to secure a loan sought by them from I & M Bank. Despite lodging the charge for registration, the 3<sup>rd</sup> Respondent declined to register the same. It was later revealed that the 3<sup>rd</sup> Respondent's refusal was instigated by the 2<sup>nd</sup> Respondent who stated that they were investigating the acquisition of the suit property.
70. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents did not file any substantial response, only contending that the Petitioners do not have any cause of action and that the Petitioners' proprietary rights under Article 40 of *the Constitution* can be lawfully limited. They urged that the Petitioners did not demonstrate the alleged violation of their rights.
71. The 2<sup>nd</sup> Respondent, on its part, conceded that it issued a directive to the 3<sup>rd</sup> Respondent to restrain dealings with the suit property. It explained that investigations are ongoing to ascertain whether the acquisition of the property was lawful. It maintained that permitting the Petitioners to charge the property before the conclusion of investigations could alter proprietorship and potentially lead to loss of public land.
72. It is trite law that a party seeking redress for an alleged violation of constitutional rights must plead such violation with clarity, specificity, and particularity. A Petitioner must identify the constitutional provision said to be infringed, describe the manner of infringement, and establish a link between the impugned action and the alleged violation. The principle is well-captured in the oft-cited case of *Anarita Karimi Njeru v Republic* (1979) KECA 12(KLR).
73. In addition, the court is guided by the principles of the law of evidence, key among them being that he who alleges must prove. This is rooted in Sections 107(1) and (2) of the *Evidence Act*, Cap 80 which provides:
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
74. And Sections 109 and 112 of the same Act which states:
- “109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”



75. Reinforcing the foregoing, the Supreme Court in *Communications Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others* [2014] KESC 53 (KLR) stated as follows:

“Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance.”

76. Lastly, Article 22(3) (d) of *the Constitution* provides that in determining matters brought under Article 22, the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities. The court will be guided by the above principles in the determination of the alleged violations of the Petitioners’ rights.

77. As aforesaid, the Petitioners allege violations under their constitutionally guaranteed rights under Articles 40 and 47 of *the Constitution*. Article 40 expressly secures the right to property in the following terms:

“(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property — (a) of any description; and (b) in any part of Kenya.”

78. However, Article 40(6) carves out an express exception by excluding from constitutional protection “property found to have been unlawfully acquired.” The protection is therefore not absolute, and a registered title is not an impregnable shield if the process of acquisition was tainted by fraud, illegality, or corruption.

79. The jurisdiction in this regard is settled. The Supreme Court in *Dina Management Ltd v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment) underscored that while Article 40 protects property rights, it does not sanctify titles obtained contrary to law, and courts must interrogate the root of title before affording constitutional protection.

80. Whereas the right to property is not an absolute right and is capable of being limited, the law provides strictures that should be observed when limiting this right. Article 24 of *the Constitution* is instructive in this regard and provides as follows:

“(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including— (a) the nature of the right or fundamental freedom; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.”



81. Affirming this position, the Supreme Court in *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) (28 December 2023) (Judgment) noted:

“While Article 40 has an internal limitation on the right to property, the general limitation of rights provision at article 24 of *the Constitution* provides that any limitation on a right shall be by law, and only to the extent that the limitation is reasonable and justifiable, in an open and democratic society based on human dignity, equality and freedom. Other relevant factors to be taken into account include the nature of the right, the importance and purpose of the limitation, and relation between the limitation and the purpose of such limitation. It further, provides that the person seeking to justify a particular limitation has the obligation to justify the limitation.”

82. On the other hand, Article 47 of *the Constitution* provides:

- “(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
  - a. provides for the review of administrative action by a Court or, if appropriate, an independent and impartial tribunal; and
  - b. promote efficient administration.

83. The legislation that was contemplated under Article 47(3) is the *Fair Administrative Action Act*, Sections 4(1), (2) & (3) thereof provide:

- “(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision.”

84. Pursuant to Section 2 of the Act, an administrator is a person who takes an administrative action or who makes an administrative decision. On the other hand, administrative action means the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or, any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates. Finally, decision means any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be.



85. The Court of Appeal in *Benson Wekesa Milimo v National Land Commission & 2 others* [2021] eKLR addressed itself to Article 47 as follows:

“In addition, Article 47 of *the Constitution* provides a right to fair administrative action. This right includes, amongst others, the right to administrative action that is lawful, reasonable and procedurally fair, and the right to have prior adequate notice of the nature and reason for the proposed administrative action, and an opportunity to be heard.”

86. The court is so guided.

87. In the present case, the material facts are uncontested. The Petitioners are the registered owners of the suit property and they attempted to register a charge over the same which was declined by the 3<sup>rd</sup> Respondent. The basis of this refusal was the fact of ongoing investigations by the 2<sup>nd</sup> Respondent. The questions that arise therefore are whether the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents undertook administrative actions, contrary to the law and whether such actions infringed upon the Petitioners’ proprietary rights.

88. The 3<sup>rd</sup> Respondent is entrusted with the custody and maintenance of the land register and with effecting entries as provided for in statute. The Registrar’s functions are exercises of statutory power that directly impact the proprietary rights of landowners. As such, decisions by the Registrar including whether to register, to decline registration, or to defer registration are acts of a public authority with binding legal consequences. It follows that such decisions amount to administrative actions within the meaning of Section 2 of the *Fair Administrative Action Act* and Article 47 of *the Constitution*.

89. Moving now to the 2<sup>nd</sup> Respondent, the court is mindful that investigations undertaken by the 2<sup>nd</sup> Respondent under the *Anti-Corruption and Economic Crimes Act* do not, in themselves, amount to administrative actions. The Court of Appeal in *Ethics and Anti-Corruption Commission v County Government of Kitui* (Civil Appeal No. 385 of 2019) [2025] KECA 311 made this clear noting thus:

“We hold the view that the Apex Court has authoritatively spoken that investigative powers of EACC cannot be described as administrative action within the meaning of Article 47. Yet, we have no doubt in our minds that some of the canons of fair administrative action which include efficiency, lawfulness, reasonableness and procedural fairness applies in certain aspects of the investigative functions of the Commission without making the investigative powers an Article 47 administrative action. If, when and how these principles or tenets apply, will differ from case to case and are context based.”

90. In the circumstances however, what is in issue is not the investigations in themselves but the directive to the 3<sup>rd</sup> Respondent instructing it not to register dealings in the suit property. The court opines that this was an administrative decision.

91. Turning to the governing statutory framework, the Petitioners’ title is registered under the Registration of Titles Act (now repealed). Section 57 of that Act provided for the mechanisms by which dealings in registered land could be restrained, namely, through the lodging of a caveat.

92. The section detailed who may lodge a caveat, the prescribed form, the requirement of notice to the caveatee, the legal effect of the caveat, and the process for opposition or removal.

93. Section 76 of the *Land Registration Act* now provides:

“76.



- (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
- (2) A restriction may be expressed to endure—
  - (a) for a particular period;
  - (b) until the occurrence of a particular event; or
  - (c) until the making a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.
- (3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.”

94. In this case, it is undisputed that no caveat/restriction has been registered against the suit property. The question, therefore, is whether the 2<sup>nd</sup> Respondent’s directive to the 3<sup>rd</sup> Respondent was by itself sufficient to justify its refusal to register the Petitioners’ charge.

95. Answering this question requires an examination of the mandate and powers of the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent is established under Article 79 of *the Constitution* which provides:

“Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under Chapter Fifteen, for purposes of ensuring compliance with, and enforcement of, the provisions of this Chapter.”

96. Pursuant to these provisions, Parliament enacted the *Ethics and Anti-Corruption Commission Act*. Section 11 of that Act provides that in addition to the functions of the Commission under Article 252 and Chapter Six of *the Constitution*, the Commission’s additional functions include development and promotion of integrity standards, receipt of complaints, investigation and recommendation of prosecutions, recommending action against State officers, monitoring public bodies for corrupt practices, and instituting proceedings for recovery or protection of public property, or for freezing or confiscation of proceeds of corruption.

97. Section 12 thereof prescribes that, in fulfilling its mandate, the Commission must observe the values and principles of Article 10 and, in particular, impartiality, accommodation of diversity and the rules of natural justice.

98. Supplementing this is the *Anti-Corruption and Economic Crimes Act*, (ACECA), which is an Act of Parliament to provide for the prevention, investigation and punishment of corruption, economic crimes and related offences and for matters incidental thereto and connected therewith



99. Section 56 thereof grants the 2<sup>nd</sup> Respondent the power to seek court orders preserving public property that is corruptly or unlawfully acquired. It provides thus:

- “(1) On an ex parte application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property if it is satisfied that there are reasonable grounds to suspect that the property was acquired as a result of corrupt conduct.
- (2) An order under this section may be made against a person who was involved in the corrupt conduct or against a person who subsequently acquired the property.
- (3) An order under this section shall have effect for six months and may be extended by the court on the application of the Commission.
- (4) A person served with an order under this section may, within fifteen days after being served, apply to the court to discharge or vary the order and the court may, after hearing the parties, discharge or vary the order or dismiss the application.
- (5) The court may discharge or vary an order under subsection (4) only if the court is satisfied, on the balance of probabilities, that the property in respect of which the order is discharged or varied was not acquired as a result of corrupt conduct.
- (6) A person who is served with an order under this section and who contravenes it is guilty of an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both.”

100. It is apparent from the foregoing that where the 2<sup>nd</sup> Respondent uncovers conduct that may justify the restraint of dealings in land, the law provides it with specific, lawful avenues of action. These include instituting court proceedings for preservation or freezing orders under its statutory mandate to protect public property, requesting or facilitating the lodging of a caveat/restriction or making a formal request to the Registrar supported by lawful authority and, where necessary, an order of the court.

101. In the circumstances of this case, it is undisputed that no caveat/restriction was ever registered against the Petitioners’ title. Nor did the 2<sup>nd</sup> Respondent invoke Section 56 of ACECA by seeking a court-issued preservation order. The directive relied upon by the 3<sup>rd</sup> Respondent appears to have been informal in character, with no written evidence beyond an undated letter emanating from the 3<sup>rd</sup> Respondent itself. Such informality falls short of the statutory thresholds designed to regulate interference with property rights.

102. A combined reading of Section 57 of the Registration of Titles Act(now repealed), Section 76 of the [Land Registration Act](#) and Section 56 of ACECA demonstrates the legislative intention that property rights should only be limited in accordance with clear procedural safeguards. These safeguards, consistent with [the Constitution](#), serve to ensure that restrictions are lawful, transparent, and contestable.

103. The 2<sup>nd</sup> Respondent contends that investigations are still on-going and the delay has been occasioned by the Petitioners’ refusal to heed to its summons. This assertion, however, is contradicted by documentary evidence, the Petitioners’ letter dated 12<sup>th</sup> June 2012 referencing a meeting held with



the 2<sup>nd</sup> Respondent. In any event, the record reveals only a single summons issued in 2012, with no evidence of subsequent follow-up.

104. Further still, it is trite that the 2<sup>nd</sup> Respondent is duly vested with powers of arrest pursuant to Section 32 of the ACECA, a mandate it may exercise in the course of its investigation. It is unclear why this has not been resorted to. More than a decade has since lapsed without resolution while the Petitioners remain unable to fully utilize their property. Such indefinite pendency of investigations, without justification cannot lawfully be invoked to justify a continuing restraint upon constitutionally protected property rights.
105. Whereas the court appreciates that the 2<sup>nd</sup> Respondent's role is of great constitutional importance, the same must be carried out within constitutional dictates. Where investigatory conduct affects legal rights, the Commission must act in a manner consistent with the tenets of fair administrative action under Article 47 of *the Constitution*.
106. It is the ultimate finding of the court that the combined conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents infringed the Petitioners' constitutional rights under Articles 40 and 47 of *the Constitution*.

### **What are the appropriate remedies?**

107. The Petitioners have sought a wide array of reliefs, including declarations that their constitutional rights have been violated, the issuance of permanent injunctive orders, prerogative orders of mandamus and certiorari, and an award of general and exemplary damages.
108. Having found that the Petitioners have indeed demonstrated breaches of their rights under Articles 40 and 47 of *the Constitution*, the court is persuaded that the declaratory reliefs sought are appropriate. In addition, the court finds that the circumstances warrant the issuance of injunctive relief to restrain further violations and to protect the Petitioners' proprietary rights from continuing or future encroachment.
109. Equally, the impugned administrative decisions made by the Respondents, having been shown to be unconstitutional, irregular, and procedurally unfair, are liable to be quashed by orders of certiorari. The court is further satisfied that orders of mandamus are necessary to compel the Respondents to discharge their statutory duties in accordance with the law
110. The Petitioners also seek general and exemplary/punitive damages for breaches of their constitutional rights. The Court of Appeal in *Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others* (Civil Appeal 243 of 2017) [2021] KECA 328 (KLR) (17 December 2021) (Judgment) succinctly discussed the principles guiding the award of damages in constitutional petitions thus:

“The guiding principle to be gleaned from these decisions is that an award of general damages in constitutional petitions is discretionary and will depend on the circumstances of each case, and can indeed be granted as compensation for proven loss.

17. Special damages on the other hand are awarded for losses that are not presumed but have been specifically proved and that can be quantified, such as out-of-pocket expenses or earnings lost during the period between the injury and the hearing of the action. The attendant common law rules of proof are also applicable, in the absence of specific rules that regulate awards of compensation in constitutional petitions. It is trite under common law in this regard that special damages must be specifically pleaded and proven.



As regards the other types of damages that can be awarded in constitutional petitions, nominal damages typically consist of an insignificant allocation awarded upon proof that the defendant has violated the plaintiff's legal and constitutional rights. They are awarded for the purposes of declaring and vindicating legal and constitutional rights, and do not require proof of harm. Punitive damages are awarded in addition to compensatory or nominal damages, and proof of a highly culpable state of mind is necessary to support an award of punitive damages. Punitive damages primarily serve penal and deterrent functions in cases of gross constitutional violations, as well as vindicatory function.”

111. The Petitioners claim general and exemplary damages to the tune of Kshs 2 million each. As regards punitive and/or exemplary damages, the court does not consider that the same are appropriate in the circumstances, there being no proof of a highly culpable mind, as expressed by the court in Peter Ndegwa(supra).
112. Moving on to general damages, in light of the breaches found as against the Respondents, the court considers that the claim under this head is also not merited.
113. I say so because the Respondents acted in good faith, although illegally, in the belief that the status quo in respect to the suit property should be maintained pending the finalization of investigations on the legality of the Petitioners' property.
114. Indeed, this court cannot stifle the powers of the EACC to continue with its investigations, which it had commenced. The only thing that it (EACC) cannot do is to restrict any dealings in the suit property by the Petitioners, unless and until they either register a caution over the title or obtain a preservative or inhibition order from the court.
115. In the end, the Petition partly succeeds in the following terms:
  - i. A declaration does hereby issue that the Respondents' actions with respect to the refusal to register the charge over the suit property have contravened the Petitioners' rights under Articles 40 and 47 of *the Constitution*.
  - ii. A permanent injunction does hereby issue restraining the Respondents from interfering in any way with the Petitioners' right to charge the said L.R number 209/674 or deal with it in any other way allowed by the law, unless the court orders otherwise.
  - iii. A mandatory injunction does hereby issue requiring the 2<sup>nd</sup> Respondent to withdraw forthwith its instructions to the 3<sup>rd</sup> Respondent prohibiting the Petitioners' dealings with L.R No 209/674, unless the court orders otherwise.
  - iv. A mandatory injunction does hereby issue requiring the 3<sup>rd</sup> Respondent to consider and allow the Petitioner's application for registration of a charge in accordance with the law, unless the court orders otherwise.
  - v. The 2<sup>nd</sup> Respondent shall bear the costs of the Petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**O. A. ANGOTE**

**JUDGE**



In the presence of;

Mr. Mwenda for Dr. Kamau Kuria (SC) for Petitioners

Mr. Allan Kamau for Attorney General

Ms Kenduiye for the 2<sup>nd</sup> Respondent

Court Assistant: Tracy

