



REPUBLIC OF KENYA



**KENYA LAW**  
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**Majanja v Kiniti & 2 others (Petition E021 of 2024)  
[2025] KEELC 4412 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4412 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**PETITION E021 OF 2024**

**JG KEMEI, J**

**JUNE 12, 2025**

**BETWEEN**

**DUNSTAN INGOYI MAJANJA ..... PETITIONER**

**AND**

**JOHN KINITI ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES .... 3<sup>RD</sup>  
RESPONDENT**

**JUDGMENT**

1. Vide the Petition dated the 25/3/24 filed by the Petitioner, the petitioner sought the following orders;
  - a. A declaration be and is hereby made that the Respondent's actions claiming ownership and interference with advertising for sale of the suit property LR. Nairobi Block 101/220 by the Petitioner and his agents violates of Articles 10, 27 (1)(2)(4)(5), 40(1)(3), of the Constitution of Kenya and therefore is unconstitutional.
  - b. A Permanent injunction against the Respondents, their agents, servants, proxies or employees or whomsoever from advertising for sale entering, occupying or interfering with peaceful and quiet possession, sale, advertising for sale/lease, creating charge of the suit property LR. No Nairobi Block 101/220 by the petitioner.
  - c. This Honourable court be pleased and do hereby grant a judicial review order of prohibition restraining the Respondent, his agents, proxies from asserting proprietary rights, advertising for sale or dealing in any manner whatsoever with the suit property.



- d. This Honourable court be pleased and do hereby grant a judicial review order of prohibition restraining the Respondent from interfering with Petitioner's rights or his agents, to advertise for sale or dealing in any manner with the suit property.
  - e. A declaration that the Petitioner is the rightful owner and proprietor of the suit property being LR. No Nairobi Block 101/220.
  - f. Compensation in general damages for loss and injury arising from wrongful interference with the use of the suit property and infringement of property rights to be assessed by court.
  - g. Any other suitable relief that this Honorable Court deems fit and just to grant.
  - h. The cost of Petition be borne by the Respondent
2. The Petition is grounded under several provisions of the Constitution being Articles, 19, 20, 22, 27, 40, 48, 258 & 258 of the Constitution.
  3. The factual basis of the Petition are as enumerated in the following paragraphs; It is averred by the petitioner that he is the registered owner of Nbi/Block101/220 (suit land) measuring 0.1702 Ha or thereabouts. That in the process of advertising the suit land through his land agents he received a demand letter from the Advocates of the 1<sup>st</sup> Respondent laying a claim on the suit land as the proprietor of the leasehold interest in the suit land. The petitioner further avers that he holds title to the suit land and has all the rights to dispose and deal with it in whatsoever way he deems as a land owner. That the 1<sup>st</sup> respondent has no legal right interest or title over the suit land and his actions are at best viewed as unlawful unconstitutional trespass and harassment to the Petitioner. That the petitioner's rights under Article 40 of the Constitutional are being threatened with violation and unless the court issues the orders the 1<sup>st</sup> respondent shall continue to interfere with the Petitioners quiet /peaceful enjoyment of the suit property.
  4. In addition, the Petitioner avers that the 1<sup>st</sup> Respondent has trespassed over the suit land and intends to dispossess him of the suit land in a manner that is unlawful, illegal and arbitrary.
  5. On application by the Petitioner and with leave of the court having been granted, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were enjoined into the suit.
  6. The 1<sup>st</sup> Respondent averred that he acquired the suit land through purchase from the 3<sup>rd</sup> Respondent vide a tenant purchase agreement on 27/6/2005. He obtained consent from the said 3<sup>rd</sup> Respondent upon payment of the full purchase price. Finally, the 3<sup>rd</sup> Respondent handed over the completion documents to his lawyers being the duly executed lease in triplicate consent to transfer from NSSF, the consent from the parent Ministry, KRA, PIN, rent clearance certificate and original title for NAIROBI/Block 101/220. He stated that the original title is still in the name of NSSF as he is yet to pay the stamp duty on transfer of the suit land in his name. He urged that the petition is frivolous, vexations baseless, lacks merit, bad in law and otherwise an abuse of the process of the court and the same be dismissed.
  7. The 2<sup>nd</sup> respondent failed to file any reply to the Petition.
  8. Vide a Replying Affidavit sworn on 16/12/24 by Richard Kasiva, the 3<sup>rd</sup> Respondent opposed the Petition. He deponed that the 3<sup>rd</sup> Respondent owned the suit land having acquired it by way of purchase at the consideration of Ksh 1.250 Million from Kimmo Limited in 1994 and became registered as such on 17/10/1994 vide the certificate of title issued on even date.



9. Upon acquisition of the certificate of lease the 3<sup>rd</sup> respondent placed the suit land under a tenant purchase scheme agreement popularly known as TPS which is a lease to own financing model where a buyer makes down payment (deposit) and subsequent payments to redeem the purchase a monthly basis.
10. That through a tenant purchase agreement dated the 27/6/2005 the 3<sup>rd</sup> respondent sold the suit land to John Guy Kiniti, the 1<sup>st</sup> Respondent herein, at the consideration of Kshs 3.0 Million and upon completion of the payment of the purchase price, the 3<sup>rd</sup> Respondent executed a transfer of lease in favour of the 1<sup>st</sup> Respondent and released all the original title documents , executed transfers of lease consent to transfer from the parent Ministry, NSSF KRA PIN, rent clearance certificate to the advocates of the 1<sup>st</sup> Respondent. That contemporaneously, the 3<sup>rd</sup> Respondent wrote a letter to the Director Land Administration Ministry of Lands confirming consent to have the suit property to the name of the 1<sup>st</sup> Respondent. That the original certificate of title is still in the name of the 3<sup>rd</sup> Respondent because the 1<sup>st</sup> Respondent is yet to pay stamp duty. That the Petitioner has neither produced any evidence in form of an executed sale agreement between it and the 3<sup>rd</sup> Respondent and or its agents.
11. That the 1<sup>st</sup> respondents advocate has presented three different individuals namely Sam Majanja, Patrick Shisanya Majanja and Dustan Ingoyi Majanja who all claim the suit land. That the 3<sup>rd</sup> Respondent's position is that it sold the suit land to 1<sup>st</sup> Respondent.

### **The Written Submissions**

12. I have read and considered the written submissions filed by the parties. The Petitioner filed written submissions on 20/5/2025; the 1<sup>st</sup> respondents written submissions are dated the 22/4/25 while the 3<sup>rd</sup> Respondent filed submissions dated the 29/4/25 which submissions I have read and considered the submissions.

### **Analysis and Determination**

13. The key issues for determination are;
  - a. Whether the petition has met the threshold for a constitutional petition.
  - b. Whether the petition is merited.
  - c. Who meets the cost of the petition?
14. By way of background, it is mutually agreed that the Petitioner and the 1<sup>st</sup> Respondent trace the root of their titles to the 3<sup>rd</sup> Respondent. According to the Petitioner he purchased the suit land from the 3<sup>rd</sup> Respondent and acquired a title. Being desirous of selling the suit land he instructed the property agent namely Pam Golding to market the suit land and it is then that he received a letter form the 1<sup>st</sup> Respondent claiming the suit land.
15. The 1<sup>st</sup> Respondent on the other hand claims that he purchased the Suitland from the 3<sup>rd</sup> Respondent in 2005 and obtained all the duly executed completion documents and that the delay in obtaining title has been caused by the delay in paying stamp duty on the transfer.
16. The 3<sup>rd</sup> Respondent on the other hand acknowledges the commonality of the root of title and supports the claim of the 1<sup>st</sup> Respondent.
17. The gist of the suit as I understand is that this court is being called upon to inquire whether the Petitioners have identified the constitutional entitlements threatened, infringed or violated and to



- demonstrate with some level of precision the manner of violation so as to enable the respondent to mount a defence.
18. To answer the above question, the court relies on the case of *Anarita Karimi Njeru v Republic* [1979] eKLR when the court stated as follows:
- “if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed...
19. That principle was affirmed by the Court of Appeal in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR where the Learned Judges emphasized that;
- (41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated....’
20. The Court of Appeal further added;
- (43) The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of the *Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the *Constitution*, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of the *Constitution* and the rule of law, without any particulars.
- (44) We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru* (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to.
21. In the case of *Re Application by Bahadur* [1986] L.R.C (Cost.) 297 at 298, the Court held as follows;
- “the *Constitution* is not a general substitute for the normal procedures for invoking judicial control of administrative action. Where infringements of rights can found a claim under substantive law, the proper course is to bring the claim under that law and not under the *Constitution*”.



22. In addition, in the case of Minister of Home Affairs vs Bickle & Others (1985) L.R.C. Cost.755, held as follows;

“It is an established practice that where a matter can be disposed off without recourse to the Constitution, the Constitution should not be involved at all. The court will pronounce on the constitutionality of a statute only when it is necessary for the decision of the case to do so (Wahid Munwar Khan vs. The State AIR (1956) Hyd.22). The judge went on to add that: “Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a Court will usually decline to determine whether there has been in addition a breach of the Declaration of Rights.”

23. I am guided by the case of Dhow House Limited v Kenya Power and Lighting Company (Constitutional Petition E058 of 2021) [2022] KEHC 11840 (KLR) where the court held that

“in summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant’s cause. The exceptions to the application of the doctrine of constitutional avoidance are: - (a) where the constitutional violation is so clear and of direct relevance to the matter; (b) in the absence of an apparent alternative form of ordinary relief, and, (c) where it is found that it would be a waste of effort to seek a non-constitutional resolution of the dispute.”

24. Closely tied to the doctrine of constitutional avoidance and ripeness is the question whether this Petition raises a constitutional question as submitted by the Petitioner. It is trite that a constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute. When determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider Constitutional rights or values. Courts abhor the practice of converting every question into a constitutional question which amounts to trivializing the Constitution

25. In my humble view the issue before the court is that of right to title. Courts have for the umpteenth time held that a dispute arising from title to land is such that can be resolved through statutory frameworks as it exists in the statutes. There is therefore no necessity to invoke the constitutional jurisdiction of this court. This is a dispute that is best brought as an ordinary suit to allow evidence be produced and tested by way of cross examination.

26. Final Orders for Disposal

- a. In the upshot the petition does not raise any constitutional questions. The petition is therefore struck out.
- b. I make no orders as to costs.

27. Orders accordingly.



**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. Ms. Achieng for Petitioner
2. Mr. Njehia HB for Mr. Gitahi for 1<sup>st</sup> Respondent
3. NA for the 2<sup>nd</sup> Respondent
4. Ms. Mumbi holding brief for Mr. Omiti for the 3<sup>rd</sup> Respondent
5. CA – Ms. Yvette Njoroge

