



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

ELC PETITION NO. 9 OF 2016

**IN THE MATTER OF CHAPTER FOUR THE BILL OF RIGHTS
ARTICLE 19, 20, 21, 22, 23, 25, 28, 40, 159 (2) AND 165 OF
THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLES
19, 20, 21, 22, 23 OF THE CONSTITUTION, RULES 11 AND
12 OF THE PROTECTION OF FUNDAMENTAL RIGHTS AND
FREEDOM PRACTICE AND PROCEDURE RULES, AND ALL
OTHER ENABLING PROVISIONS OF THE LAW**

AND

**IN THE MATTER OF ARTICLE 25 OF THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS**

BETWEEN

JOEL OGADA ANGOGO..... 1ST

PETITIONER

JONATHAN KAHINDI... ..2ND

PETITIONER

JOSEPHINE NGOMBO KALU..... .3RD

PETITIONER

NGOMBO KALU TSUMA.4TH

PETITIONER

TIMOTHY KAZUNGU MWAROME..... ..5TH

PETITIONER

PASCAL ZIRO WANJE.6TH

PETITIONER

MAPENZI KAHINDI.....7TH PETITIONER

PATIENCE MBEYU CHOGA.8TH

PETITIONER

MARIGA NGOMBO KALU.....9TH

PETITIONER

KATANA SULUBU CHARO..... .10TH

PETITIONER

KAINGU KARISA TUNGU..11TH

PETITIONER

KAZUNGU BAYA.12TH

PETITIONER

AND

KURAWA INDUSTRIES LIMITED1ST

RESPONDENT

NATIONAL LAND COMMISSION2ND

RESPONDENT

THE HON ATTORNEY GENERAL 3RD

RESPONDENT

JUDGMENT

1. The Petitioners filed an Amended Petition dated 26th July 2018 against the Respondents seeking the following prayers:

a) The declaration that the Petitioners are the legal and beneficial owners of part of the land located at Kurawa Kanagoni Fundisha, identified as Plot No. 22138 (herein referred to as the community land), having acquired and/or assumed ownership by prescription from their ancestral parents as indigenous persons, and that the Petitioners are subjected to forceful eviction from there

and potentially face homelessness, contravenes the provisions of Article 2(5), 25, 28, 29, 40, 43(1)(b), and 47(1) of the Constitution of Kenya 2010, which guarantee adequate housing, dignity, respect, protection of fundamental rights, and the right to fair administrative action.

b) A declaration that the Petitioners' rights under Article 40 of the Constitution of Kenya 2010 regarding the protection of property ownership have been violated, and that the right to prompt, full, fair, and just compensation in cases of compulsory acquisition for public use or appropriation has been breached by the Kenyan State.

c) A declaration that the Petitioners' rights to human dignity, freedom, and security of person, as guaranteed under Articles 28 and 29 of the Constitution of Kenya 2010, have been violated by the Kenya State, and additionally, that the Petitioners' right to access justice, as guaranteed under Article 48 of the Constitution of Kenya 2010, has also been violated by the Kenya State.

d) A declaration that the cruel, inhuman, and degrading treatment inflicted on the Petitioners during their arrest, police custody, detention, and conviction constitutes serious violations of their fundamental rights and

freedoms. These include rights to liberty, humane treatment, protection against arbitrary interference with their privacy, family, and home, as well as the right to earn an honest living, as guaranteed by the Constitution of Kenya. Furthermore, these actions grossly violated the Petitioners' right to fair administrative action and legitimate expectations as outlined in Article 47 of the Constitution.

e) A permanent prohibitory injunction restraining the Respondents, jointly and severally, including their agents or servants, from selling, leasing, or otherwise disposing of any interest in the suit property. It also prohibits them from entering, remaining, demolishing, harassing, or interfering with the suit property and the petitioners' quiet possession thereof. Additionally, an order should be issued directing the 2nd Respondent to register the Petitioners' portion as their property or offer an alternative portion of the suit property.

f) General damages resulting from the declarations of violations of the Petitioners' fundamental rights and freedoms.

g) Costs of this Petition

- 2.** The Amended Petition was supported by the affidavit of Joel Ogada Angogo, the 1st Petitioner, sworn on August 27, 2018. The Petitioners stated that they were members of a community that had, for several generations, occupied and lived on the parcel known as Plot No. 22138, located at Kurawa Kanagoni Fundisha Location (the suit property). Therefore, they argued that they had acquired legal ownership rights over the land and that it was recognized as community land.
- 3.** The Petitioners claimed that the 1st Respondent operated a salt-mining company on Plot No. 13332, which shared a boundary with the suit property. They argued that, in collusion with certain government officials, the 1st Respondent encroached on the suit property and forcibly removed the Petitioners along with other community members who had lived there. The Petitioners also stated that, despite reporting their concerns to the 2nd Respondent and being aware that the suit property had traditionally belonged to them under the Community Land Act, the 2nd Respondent failed in its legal duties and refused to help protect their rights to the property.

- 4.** The Petitioners alleged that their rights under Articles 4, 40, 43 of the African Charter on Human and Peoples' Rights (ACHPR) as well as Articles 28, 29, 35 of the Constitution of Kenya have been violated.
- 5.** The 1st Respondent relied on a replying affidavit sworn on January 20, 2021, by Mohamed Hussein Kaderdina, its director. Although the affidavit indicated it was sworn in response to an application dated September 21, 2020, Mr. Ole Kina, counsel for the 1st Respondent, as will be evident hereinafter, argued that the affidavit actually served as the 1st Respondent's response to the Petition. The deponent stated that the Petitioners have no legitimate interest in the suit property, and he denied the allegation that the 1st Respondent had trespassed onto the suit property.
- 6.** The 2nd Respondent opposed the Petition by filing a Replying Affidavit sworn on April 20, 2023, by Brian Ikol, Director of Legal Affairs and Dispute Resolution. He stated that the mandate of the 2nd Respondent under Article 67(2)(a) of the Constitution is to manage public land on behalf of the national and county governments. He further explained that under the

Community Land Act, 2016, county governments hold unregistered community land in trust for the respective communities, and that the process of registering community land begins with the establishment of a Community Land Management Committee. Such a committee, he noted, is appointed by the Community Land Registrar after a public notice invites community members to elect between seven and fifteen members.

- 7.** Mr. Ikol added that, upon election, the Committee would apply for registration using Form CLA 3 and that, once registered, community land could be converted to private land for adjudication purposes. He asserted that the mandate regarding community land does not fall within the scope of the 2nd Respondent, except for land reserved for public purposes under Section 26 of the Community Land Act.
- 8.** He further asserted that the 2nd Respondent neither infringed nor threatened to infringe the Petitioners' constitutional rights, and that the Petitioners had not provided evidence to support the allegations against the 2nd Respondent. In his opinion, the Petition did not establish a reasonable cause of action against

the 2nd Respondent. It failed to satisfy the constitutional pleading standard as outlined in *Anarita Karimi Njeru v Attorney General* (1979) KLR.

9. The 3rd Respondent relied on some undated grounds of opposition filed on September 2, 2016. The grounds were numbered as follows:

- 1) The order sought against the 3rd Respondent is not available because prosecuting criminal cases is solely within the mandate of the Director of Public Prosecution, who has not been named as a party to the petition.**
- 2) The petition does not reveal any valid cause of action against the 3rd Respondents.**
- 3) The petition is invalid, legally defective, and should be struck out and/or dismissed with costs.**
- 4) The Petitioner has not demonstrated that they have utilized the recourse provided by the Land Commission Act, which requires the National Land Commission to investigate land grievances like the Petitioner's.**
- 5) The Petitioner has not proven ownership of the suit property, so the petition is therefore unlikely to succeed.**
- 6) The allegations of fraud, collusion, and breach of the Petitioners' fundamental rights contained in paragraphs 3,**

5, 6, 7, and 9 of the Petition are vehemently denied by the 3rd Respondent.

7) The applicants have not satisfied the criteria for granting the Orders requested.

8) The application lacks merit, is frivolous and vexatious, or is otherwise an abuse of the process of this honorable court.

Evidence

10. The court ordered that the petition proceed via viva voce testimony.

11. The 1st Petitioner (**PW1**) adopted his supporting affidavit dated 26th August 2018 and statement dated 3rd February 2023 as his evidence in chief. He also produced as evidence all the documents listed and a further list dated 26th May 2016 and 23rd February 2023, respectively. He testified that he had been in occupation of the suit property since 1957, whereas the 1st Respondent only came onto the land in 1977. He stated that the dispute arose in 2002 when the 2nd Respondent expressed an intention to expand. He further told the Court that he engaged their father with a view to agreeing to relocation to an alternative parcel of land. He added that, after about two

months, demolitions were carried out, prompting them to approach the High Court for injunctive relief.

12. He stated that, at the time of his testimony, their houses had been demolished, and they had been forcefully evicted. He also claimed that the Petitioners continued to face harassment and that some community members had been charged in court on what he called manufactured charges.

13. During cross-examination by Mr. Ole Kina, PW1 stated that the 1st Respondent owned Plot No. 13332 and that the survey conducted did not show who owned the property. He insisted that he was requesting the court to decide that he is the owner of the property and reiterated that his father was buried there. He also acknowledged an ongoing case, Suit No. 6 of 2004, in which they claimed Plot No. 13332, and mentioned that although he was aware that an appeal had been filed, he was not informed of the outcome.

14. During further cross-examination by Mr. Kiilu, learned counsel for the 2nd Respondent, PW1 insisted that he was born on the suit property and that his family had lived there since

1972. He emphasized that the suit property was community land and was still unregistered.

15. On further cross-examination by Mr. Ojwang, learned State Counsel, the witness confirmed that his identification card listed his place of birth as Bura in Tana River County. He nevertheless maintained that the suit property was community land and that the residents there referred to themselves as members of the Kupuka Farmers Association. He also stated that the dispute involved boundaries and that the Petitioners had sued the 3rd Respondent due to the conduct of its agents (the police) and the alleged illegal evictions. PW1 added that the Petitioners had not been compensated and that the suit property is approximately 202 acres. PW1 further stated that over 500 people live on the suit property and that the Petitioners represent 12 families.

16. During re-examination, the witness clarified that their claim was not a boundary dispute and affirmed that they were entitled to the suit property.

17. Similarly, Ngombo Kalu Tsuma (PW2), the 4th Petitioner, adopted his witness statement dated February 3, 2023, as his

evidence-in-chief. He testified that he has lived on the suit property since 1953, the year he was born, and that he still resides there as of the date of his testimony. During cross-examination by Mr. Ole Kina, the witness stated that although he could not identify the specific plot by number where he resides, he knows that his residence borders Kurawa and that Kurawa has encroached onto a portion of the suit property. However, he was unaware of the extent of the alleged encroachment. He also testified that the Petitioners filed this proceeding to seek compensation, asserting that he had settled on the suit property and had planted trees and crops there, which were later destroyed.

18. On further cross-examination by Mr. Kiilu, PW2 maintained that the suit property had always been his home. However, he conceded that there was no title document registered in favor of the Petitioners. He also stated that he did not know why the 2nd Respondent had been sued. When cross-examined by Mr. Ojwang, the learned State Counsel, he testified that he had not expressly authorized the 1st Petitioner to represent him.

19. Mohamed Hussein Abdikadir (DW1) testified that Malindi Sea Salt owns the suit property and that he is unaware of the exact land where the Petitioners live. He denied the trespassing allegation and stated that the boundaries are clearly marked.

20. On cross-examination by Mr. Onyango, learned counsel for the Petitioners, the witness stated that he had no personal dispute with the Petitioners and that he knew them through their fishing activities in the area. He confirmed that the suit property bordered their land, Plot No. 13332. He also stated that the Petitioners had never occupied the suit property, but later claimed that they actually resided on Plot No. 22138, which is the suit property allocated to a salt company. He added that the land registered in their name was assigned to them in 1974 and measured roughly 1,500 acres. He explained that, when the land was allocated, it was vacant and unoccupied. Regarding the letter written by the 1st Respondent to the District Commissioner, the witness clarified that it simply notified the Commissioner about the presence of squatters on their land who had requested to occupy it. He stated that the people settled on their land were employees of the 1st

Respondent, and that those who were paid to vacate had received compensation purely as an act of charity. The witness further explained that the squatters who remained were later either evicted or chose to move out voluntarily.

21. In re-examination, DW1 stated that, as evidenced by the letter on page 8 of their bundle, the 1st Respondent had, in 2003, listed the persons on its land, and discussions had been held on how to address the issue of squatters. He testified that some of the squatters vacated. In contrast, the Petitioners refused to do so and continued to encroach on their land, calling for a survey whenever the 1st Respondent planned to expand its business operations. He stated that the 1st Respondent eventually succeeded in evicting them after 2010. He further explained that any compensation paid was only given to those who had erected structures on the 1st Respondent's land.

22. He testified that the Petitioners' occupied area was about 60 acres and stated that the land has been used for salt production. He denied involvement in the survey process. The

witness was later recalled to submit his replying affidavit and annexures as part of the case for the 1st Respondent.

23. Abbas Khalid (DW2) identified himself as a surveyor and worked at the Coast Regional Survey Office (Mombasa) in 2021. He testified that DW1 instructed him to conduct a survey, which he did, and he prepared a report dated January 15, 2021, which he presented as evidence.

24. During cross-examination by Mr. Onyango, DW2 confirmed that the regional surveyor's office handles matters across the entire coast region and that district surveyors within Kilifi or Kwale could assist whenever needed. He stated that the regional office has the authority to conduct surveys. He admitted that the court order for a joint survey was specifically addressed to the Kilifi County Surveyor's office. He added that when the 1st Respondent asked him to carry out the survey, he was not aware of the court order. However, he testified that before conducting the survey, he wrote to the area chief to inform the neighbors. He stated that, based on his findings, it is the suit property that has encroached on Plot No. 13332.

25. On re-examination, the witness told the court that his instruction was only to establish the boundaries for Plot 13332 and not the acreage of the two plots, and he did so by going to the ground where he was able to establish the beacons.

Submissions

26. As of the time of writing this judgment, only the 1st and 2nd Respondents had filed written submissions. The 3rd Respondent chose to rely on its grounds of opposition, while the Petitioners did not submit any further submissions. This may be because, as noted from the record, Mr. Onyango appeared to have been taken ill, and the court insisted on service on him to appear multiple times, which caused a significant delay in issuing the judgment in this matter. He could not appear.

The 1st Respondent's submissions dated 5th May 2025

27. Citing the case of Faraj & 3 others v Police & 2 others [2022] KEHC 287 (KLR), Mr. Ole Kina argued that the 1st Respondent had proved ownership of Plot No. 13332 and demonstrated that all its activities occurred within that plot. He added that no evidence was presented to show that the suit property meets

the criteria outlined in the Community Land Act, 2016. Neither did the Petitioners present any evidence to show they fit the definition of the term “community” as provided in the Act. Therefore, he contended that prayers a and b of the amended petition are not available to the petitioners.

28. Counsel contended that land acquired through adverse possession can only be against a registered owner. Since the owner of the suit property was never sued, the petitioners cannot, therefore, obtain those declarations based on this suit. Regarding prayers C and D of the amended petition, counsel argued that the petitioners have not established a proper basis for the granting of the orders they seek.

29. Counsel further reasoned that the petition violates the rules on constitutional avoidance and ripeness outlined in the case of *Faraj & 3 others v Police & 2 others* [2022] KEHC 287 (KLR).

30. Regarding the prayer for injunction, counsel argued that the Petitioners failed to establish a prima facie case. He challenged the photographic evidence submitted under section 78A of the Evidence Act. He maintained that the survey report obtained by the 1st Respondent is neither illegal nor suspicious, as it

originates from a government survey tasked with demarcating boundaries within the coastal region. The Surveyor was called to attest to the report. Additionally, counsel contended that the petitioners did not prove the report's illegality; as the saying goes, whoever alleges must prove. Counsel further argued that the petitioners' reference to photographic evidence, which they claim was taken on plot 13332 owned by the 1st Respondent, does not demonstrate how they would suffer irreparable harm, if at all.

31. In support of this argument, counsel cited the cases of Moses C Muhia Njoroge & 2 others v Jane W Lesaloi and 5 others, (2014) eKLR, Shiva Carriers Limited v Imperial Bank Limited & another [2018] KEHC 2292 (KLR), Kenleb Cons Ltd v New Gatitu Service Station Ltd & another (1990) eKLR, Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] Vol. 1 EA 86, and Gitwany Investment Limited v Tajmal Limited & 3 Others [2006] eKLR.

32. In conclusion, counsel argued that the petition fails to meet the criteria for granting constitutional relief or injunctive orders. The petition must be dismissed as it is unsubstantiated and a

frivolous waste of the Honourable Court's time and resources. The balance of convenience favors not granting the requested orders, and counsel therefore asked that the Honourable Court dismiss this petition with costs to the 1st Respondent.

The 2nd Respondent's submissions dated March 13, 2025

- 33.** Mr. Kiilu, counsel for the 2nd Respondent, identified two issues for determination: whether the Petition raises a valid cause of action against the NLC and whether the NLC failed in its constitutional duty to protect the Petitioners' land rights.
- 34.** Counsel said that the Petition did not present a valid cause of action against the National Land Commission (NLC). It was contended that the Petitioners' claims about the NLC's failure to protect their land rights, handle customary ownership, or stop evictions were baseless because the NLC does not own or adjudicate community land. He pointed out that under the Community Land Act, 2016, unregistered community land is held in trust by county governments, and no legal obligation had been shown that requires the NLC to register or settle the Petitioners' rights.

35. Counsel further maintained that the Petition did not meet the constitutional pleading standard of requiring precision and specificity. He relied on *Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* (2014) eKLR, where the Supreme Court reaffirmed the principle from *Anarita Karimi Njeru v Republic* (1979) KLR 154 concerning the need to specify the constitutional provisions allegedly violated and the manner of their violation. The Respondents argued that the Petitioners failed to prove any direct or indirect violation attributable to the NLC.

36. Mr. Kiilu submitted that the National Land Commission did not breach any legal duty to protect the Petitioners' alleged land rights. He argued that Article 67(2)(a) of the Constitution limits the NLC's authority to manage public land on behalf of the national and county governments. If, as alleged, the suit property is community land, the legal framework stipulates that responsibility for unregistered community land lies with county governments under Section 6(1) of the Community Land Act, 2016.

37. Counsel further contended that the NLC had no legal role in the registration, adjudication, or recognition of community land interests, except for land reserved for public purposes under Section 9(2)(d) of the Land Act, 2012. The authority to initiate and oversee the registration of community land is assigned to the Cabinet Secretary and the Community Land Registrar, as specified in Sections 8 and 9 of the Community Land Act. Therefore, counsel contended that the claim that the NLC failed to register or protect the Petitioners' claimed interest lacks legal basis.

38. Counsel implored the Court to dismiss the Amended Petition with costs awarded to the 2nd Respondent.

Analysis and Determination

39. I have had the opportunity to read and analyze the pleadings, documentary evidence tendered, viva voce testimony, and the submissions filed by the 1st and 2nd Respondents. From the record, the following issues arise for determination:

- i) Whether the Petitioners have established any enforceable proprietary or community land interest***

over the suit property that is protectable under Article 40 or the Community Land Act.

- ii) Whether the Petitioners have demonstrated that the Respondents violated their rights under Article 2(5), 25, 28, 29, 40, 43(1)(b), 47(1) of the Constitution of Kenya 2010.***
- iii) Whether a permanent prohibitory injunction should be issued against the Respondents.***
- iv) Whether the Petition satisfies the constitutional pleading standards under the Anarita Karimi Njeru and Mumo Matemu case criteria.***
- v) Whether the remedies the Petitioners seek are available.***

40. The Petitioners' case is twofold. First, they argue that the land qualifies as community land under Article 63 of the Constitution and the Community Land Act. Alternatively, they claim to have acquired rights through prescription due to prolonged and continuous occupation spanning several decades. The burden of proof is on them to establish either claim.

41. Article 63 of the 2010 Kenyan Constitution characterizes community land in the following way:

(1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

(2) Community land consists of—

(a) land lawfully registered in the name of group representatives under the provisions of any law;

(b) land lawfully transferred to a specific community by any process of law;

(c) any other land declared to be community land by an Act of Parliament; and

(d) land that is—

(i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;

(ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or

(iii) lawfully held as trust land by the county governments,

but not including any public land held in trust by the county government under Article 62(2).

(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(5) Parliament shall enact legislation to give effect to this Article.

42. Section 2 of the Community Lands Act, 2016, defines community land as land declared as such under Article 63(2) of the Constitution or land converted into community land under any law. The same section defines a “community” as a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—(a) common ancestry; (b) similar culture or a unique mode of livelihood; (c) socio-economic or other similar common interests; (d) geographical space; (e) ecological space; or (f) ethnicity.

43. Based on the material presented in this case, the Petitioners do not identify any organized, traceable, or legally recognized

community within the meaning of Article 63(1) and Section 2 of the Community Land Act. Their claim is based on individual occupation. Notably, PW1, in his testimony, attempted to suggest that the residents identified themselves as members of the Kupuka Farmers Association. However, no documentary evidence of registration or membership in such an association was provided. This unsupported assertion alone cannot meet the burden of proof required to establish a legally recognizable collective interest over land. In any case, the interpretation under Article 63 requires demonstrable community identity and continuity.

44. Therefore, without evidence of a clearly distinct group with shared ancestry, culture, ecological space, or other common communal attributes, I am not convinced that the suit property qualifies as community land under the constitutional definition.

45. I now address the Petitioners' alternative argument that they have, through long, open, and uninterrupted occupation over several decades, gained rights by prescription.

46. The doctrine of adverse possession in Kenya is embodied in **Section 7** of the Limitation of Actions Act (Cap 22) in these terms:

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

47. Section 13 of the Limitation of Actions Act further provides:

(1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of Limitation can run (which possession is this Act referred to as adverse possession), where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued and a fresh right of action

does not accrue unless and until some person again takes adverse possession of the land.

(3) For the purpose of this section, receipt of rent under a lease by a person wrongfully claiming in accordance with section 12 (3) of this Act, the land in reversion is taken to be adverse possession of the land.

48. The burden was on the Petitioners to present credible evidence, based on a preponderance of the evidence, showing that they had acquired prescriptive rights over the disputed property. They needed to prove that their occupation was lawful and did not infringe upon the registered owner's rights. In other words, that their possession was open, actual, continuous, unbroken, peaceful, exclusive, and made without the owner's consent or permission for at least twelve years. Most importantly, the identity of the registered owner against whom the time is claimed to have run is a crucial element, and such an owner must be named appropriately and included in the case.

49. It was accepted that the 1st Respondent is not the registered owner of the suit property, Plot No. 22138. The 1st Petitioner also stated that the 1st Respondent owns Plot No. 13332, which

only borders the suit property. Under these circumstances, the doctrine of adverse possession cannot be applied against someone who is not the owner. Additionally, a claim of adverse possession cannot be made when the occupation is also claimed to be based on ancestral rights. In *Haro Yonda Juaje v Sadaka Dzengo Mbauro & Kenya Commercial Bank* (2014) eKLR, the Court expressed this dictum:

“20. Can one claim to have acquired land by adverse possession if he claims that the land he is occupying is his ancestral land and that he only learnt of the true owner a few years ago (less than 12 years)? I do not think so. I say so because as was held in the Wambugu case (supra), the mere fact that one has been in possession of land for more than 12 years is not enough. In fact, the assertion by a claimant that he was not aware that the land was registered in favour of some person against whom time could start running means that he did not have the animus possidendi to acquire the land by way of adverse possession and he can therefore not be able to succeed to defeat the title of the true owner.”

50. Having failed to establish any legally recognized interest in the suit property, the claim of alleged violation of constitutional

rights, as well as the request for an injunction, necessarily fails. It is equally important to emphasize that, in constitutional petitions, the assertion of infringement of constitutional rights must be clearly articulated by the Petitioner. The Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) held:

“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. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement.”

51. The Amended Petition fails to clearly specify the particular violations allegedly committed by each Respondent and how these violations are said to have occurred. Notably, PW2 was

unable to explain the basis for suing the 2nd Respondent in these proceedings.

52. Given the situation, I see no merit in the Petition. It is therefore dismissed with costs.

Dated, signed, and delivered virtually at Malindi on October 29th , 2025.

E. K. MAKORI

JUDGE

In the presence of

Mr. Ole Kina for the 1st Respondent

Mr.Kiilu for the 2nd Respondent

Happy: Court Assistant

In the Absence of:

Mr.Onyango for the Petitioners

Mr.Ojwang for the 3rd Respondent