



Rama & 27 others v Police & 2 others (Environment and Land Petition E004 of 2024) [2025] KEELC 5898 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND PETITION E004 OF 2024**

**EK MAKORI, J
JULY 31, 2025**

BETWEEN

LYDIA NJOROGE RAMA & 27 OTHERS & 27 OTHERS PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT 2ND RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. This judgment concerns a Constitutional Petition dated March 5, 2024, filed by Lydia Njoroge Rama and 27 others against the Inspector General of Police, the Principal Secretary of the Ministry of Interior and Coordination of National Government, and the Attorney General. The Petitioners claimed that, despite several valid court orders in their favor directing the eviction of trespassers from parcels of land in Kilifi and Lamu Counties, the Respondents, through directives and inaction, have consistently failed to provide the necessary police protection to enforce these orders. They argued that this failure violates their constitutional rights under Articles 10, 21, 40, and 47 of *the Constitution* of Kenya, 2010, and request a series of mandatory orders to compel the 1st and 2nd Respondents to act.
2. Specifically, the Petitioners seeks the following reliefs:
 - a. An Order directed to the 1st & 2nd Respondents compelling them to withdraw any directive or command issued by them which bars or prevents the Officers Commanding Police Stations from enlisting Police Officers to provide security during execution of Warrants issued by the Court.



- b. An order directed to the 1st Respondent compelling him to direct the Officers Commanding Police Stations to proceed to enlist Police Officers to provide security during execution of Warrants issued by the Court whenever so ordered by the Court.
- c. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit properties known as Plot Nos. 10 Malindi situated at Kwa Ndomo Area within Malindi sub-county.
- d. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit properties known as LR No. 1071 & 1072 situated Malindi within Kilifi County.
- e. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit properties known as Tittle No. Kilifi/Kibokoni Block M13D/12 measuring 0.21 Ha or thereabout situated at Kibokoni village Malindi Sub-County.
- f. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 15482 situated in Malindi
- g. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property situated at Kwachocha area in Malindi Sub-county
- h. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order /decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 5787 situated in Malindi District in Kilifi County.
- i. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 5787 situated in Malindi District in Kilifi County.



- j. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 4175 Malindi situated within Malindi Sub-county.
- k. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 161B situated at Maziwani within Malindi Sub-county.
- l. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as unregistered Plot known as Bill House Formally known as Mwingi House situated in serena area of Kisumu ndogo within Malindi Town.
- m. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 546/168 situated at Maweni within Malindi Sub-county.
- n. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order/ decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 371 Malindi measuring 6.2052 Ha situated within Malindi Town in Kilifi County.
- o. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. LR 7652 situated at Mtangani Village Malindi.
- p. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Malindi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as unregistered parcel of land measuring 6 acres or thereabout situated at Muyeye village in Malindi.
- q. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Mtwapa, Officer Commanding Station Mtwapa Police Station to assist in providing reasonable security in enforcing the order / decree



issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. Kilifi/Mtwapa/3414 situated at Mtwapa within Kilifi County.

- r. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Mtwapa, Officer Commanding Station Mtwapa Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. Kilifi/Mtwapa/1604 situated in Mtwapa area of Kilifi County.
- s. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Kilifi, Officer Commanding Station Kilifi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit properties known as 3 bedroom house on Plot no. 965 Kiwandani, Plot KCC770 Kiwandani airstrip, Plot No 965 Kiwandani and Plot No. 966 Kiwandani situated within Kilifi Town.
- t. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Kilifi, Officer Commanding Station Kilifi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit parcels of land known as MN/ Section III CR 35228 Subdivision No. 4276, MN/ Section III CR 35228 Subdivision No. 4277, MN/ Section III CR 35228 Subdivision No. 4278, MN/ Section III CR 35228 Subdivision No. 4279, MN/ Section III CR 35228 Subdivision No. 4280, MN/ Section III CR 35228 Subdivision No. 4281, MN/ Section III CR 35228 Subdivision No. 4282, MN/ Section III CR 35228 Subdivision No. 4283, MN/ Section III CR 35228 Subdivision No. 4284, MN/ Section III CR 35228 Subdivision No. 4285, MN/ Section III CR 35228 Subdivision No. 4286, MN/ Section III CR 35228 Subdivision. No. 4287, MN/ Section III CR 35228 Subdivision No. 4288, MN/ Section III CR 35228 Subdivision No. 4289, MN/ Section III CR 35228 Subdivision No. 4290, MN/ Section III CR 35228 Subdivision No. 4291. MN/ Section III CR 35228 Subdivision No. 4292, MN/ Section III CR 35228 Subdivision No. 4293, MN/ Section III CR 35228 Subdivision No. 4294, MN/ Section III CR 35228 Subdivision No. 4295 and MN/ Section III CR 35228 Subdivision No. 4296 all situated within Kilifi County.
- u. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Kilifi, Officer Commanding Station Kilifi Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. LR NO. 20252/12 situated at west of Kilifi Township.
- v. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Kilifi, Officer Commanding Station Kijipwa Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. LR 75/ Section IV/Mainland North situated at Junju within Kilifi County.



- w. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Kilifi, Officer Commanding Station Kijipwa Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 268, 269, 276, 299 and 300 all of Section III Mainland North situated within Kilifi County.
 - x. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Watamu Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 42 Watamu situated in Watamu within Kilifi County.
 - y. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Malindi, Officer Commanding Station Watamu Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Plot No. 31, 32 and 33 consolidated together to form one parcel of land situated at Gede trading Centre.
 - z. That there be Order directing the Inspector general of Police, County Commander, Kilifi County, Officer Commanding Police Division Marereni, Officer Commanding Station Gongoni Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as Gongoni Settlement Scheme/2125 situated at Mdodoni village in Gongoni area Magarini Sub-county within Kilifi County.
 - aa. THAT there be Order directing the Inspector general of Police, County Commander, Lamu County, Officer Commanding Police Division Mpeketoni, Officer Commanding Station Witu Police Station to assist in providing reasonable security in enforcing the order / decree issued and in particular provide security to the Petitioners and their agents or servants in taking possession the suit property known as LR NO. 29274 Tittle No. CR57750 situated at Witu in Lamu County.
 - ab. Costs of the Petition be awarded to the Petitioners.
3. The facts leading to this Petition are that the Petitioners, decree holders in various land matters adjudicated before the Environment and Land Court and subordinate courts within Kilifi and Lamu Counties (listed under paragraph B2 of the Petition), alleged that despite obtaining lawful eviction orders, the enforcement of those orders has been hindered by the refusal of the relevant police officers to provide security during execution. They attributed this refusal to directives issued by the 1st and 2nd Respondents, which required police officers not to assist in evictions without prior ministerial clearance. The Petitioners argue that this inaction has rendered valid court orders meaningless, violated their rights under Articles 10, 21, 40, and 47 of *the Constitution* of Kenya, and amounts to an unconstitutional obstruction of justice, abuse of power, and a threat to the Rule of Law.
 4. The Petition is supported by the 1st Petitioner's Supporting Affidavit sworn on March 5, 2024. In response, the Respondents filed Grounds of Opposition dated May 26, 2024. The Respondents opposed the Petition on the following grounds:



- a. That this Honourable court has no supervisory jurisdiction over the 1st and 2nd Respondents by virtue of Article 165(6) which grants the High Court such jurisdiction and further by the provisions of Section 13 of the *Environment and Land Court Act* which limits the hearing and determination on violation of fundamental rights by this Honourable court to only rights related to clean and healthy environment.
 - b. That the Petition falls short of the standard set in the locus classicus case of Anarita Karimi.
 - c. That this Petition aims at returning Kenya to the pre-2010 Constitution in the manner in which evictions were conducted without some proper guidelines which will be against various international instruments incooperated into Kenyan law by dint of Article 2(5) and (6) of *the Constitution* of Kenya, 2010.
 - d. That the Petition has been filed as a substitute of the execution process in the various suits whose decrees are subject of this Petition which is against the doctrine of constitutional avoidance as there exists appropriate for a to address the issues of execution in the various suits.
 - e. That the Petitioners seek the help of this Honourable court to execute various decrees from different courts which is against the rules on execution of decrees.
 - f. That despite the above mentioned, this Honourable court cannot deal with decrees arising from matrimonial causes or civil cases.
 - g. That this Honourable court cannot take up execution of decrees of subordinate courts as the same is to be done in the said courts.
 - h. That the 17th Respondent (sic) is a company and specifically within the Government. It is shocking how the company signed the Authority to Act/Plead in its name and not as required that a director signs on its behalf. Moreso, there is no Board Resolution for its suing in this suit. Be as it may, Government agencies have been directed to mediate their suits and cannot file suits against each other.
 - i. That the Petitioners have not tendered any evidence that they sought assistance to execute their decrees and were denied the assistance by the 1st and 2nd Respondents.
 - j. That the Petitioners are not keen on the follow up of their request for police assistance knowing very well that the same is a process which go through various stages as outlined in annexure LNR-3 of the Petitioners Supporting Affidavit.
 - k. That the Petitioners have run afoul the doctrine of exhaustion of remedies as there exists avenues for them to follow up on execution of their various decrees.
 - l. That the issues raised herein are administrative and the best way to solve them is through the various available fora within the justice sector such as the Court Users Committee as advised by the Court bailiff in his letter dated 16th May, 2023 listed as the 2nd document in the list of documents by the Petitioners.
5. The Petition was canvassed by way of written submissions.

The Petitioners' submissions

6. Counsel for the Petitioners argued that the Petitioners initially filed a case in the High Court in Malindi (HCC Petition No. E001 of 2024), but the Court lacked jurisdiction and referred them to the Environment and Land Court because the orders they sought to enforce stemmed from this Court's



judgments. A preliminary objection by the Respondents challenging jurisdiction was dismissed on December 16, 2024.

7. Counsel urged the Court to uphold the authority and dignity of its orders, citing judicial precedent including *Econet Wireless Kenya Ltd v Minister for Information and Communication of Kenya and Another* [2005] 1 KLR 828, *B v Attorney General* (2004) 1 KLR 431, and *Awadh v Mambu* [2004] KLR 458, where courts underscored the binding nature of judicial pronouncements.
8. Counsel emphasized that the role of the police is confined to maintaining law and order during eviction processes and not to approve or evaluate court orders. In support, they cited decisions such as *Nyawira & Another v Archer Dramond Morgan Ltd* (ELC 110 of 2009) [2024], *Ooko v Oloo and 2 Others* (ELC 437 of 2015) [2023], *Ondari v Obuogi* (ELC 37 of 2021) [2023] and *Sabai and 4 Others v District Land Adjudication and Settlement Officer and 11 Others* (ELC 107 of 2012) [2022], which affirmed that execution is to be done by court bailiffs with the assistance of police for security, not approval.
9. Counsel concluded that unless the Court intervenes, the Petitioners will continue to face constitutional violations and be deprived of the benefits of their judgments. She urged the Court to grant the requested reliefs and costs under Section 27 of the [Civil Procedure Act](#).

The Respondents' submissions

10. Counsel for the Respondents opposed the Petition on three main issues:
 - a. failure by the Petitioners to exhaust available statutory and administrative remedies before approaching this Court;
 - b. the Petition's failure to meet the constitutional threshold for pleading; and
 - c. that the Petitioners are not entitled to the reliefs sought.
11. Regarding exhaustion, counsel argued that the Petitioners too quickly resorted to the Court's constitutional jurisdiction without first exploring statutory procedures for enforcing court decrees under Section 34 (1) of the [Civil Procedure Act](#). He contended that issues related to the enforcement, satisfaction, or discharge of a decree should be addressed by the court that issued the decree, not through a separate constitutional petition. He cited *Speaker of the National Assembly v Njenga Karume* [2008] 1 KLR 425 and *Nyawira & Another v Archer Dramond Morgan Ltd* [2024] to support the principles of exhaustion and constitutional avoidance.
12. Counsel further argued that the Petition was vague, failed to specify the constitutional rights allegedly violated, and did not show how the Respondents' actions caused the harm claimed. Citing *Anarita Karimi Njeru v Republic* [1979] and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, counsel contended that the Petition lacked clarity and did not demonstrate a clear link between the Respondents' conduct and any constitutional violation. He also referenced *McKnight v Limika* (Petition 6 of 2023) [2024] to emphasize that a Petition should not embarrass the Respondent or leave the Court guessing about the controversy.
13. Counsel further argued that the Petition was filled with misrepresentations, notably that the 6th Petitioner had already executed the decree in ELC Case No. 286 of 2016, contrary to what was claimed. They referenced Petition No. 5 of 2022, which confirmed that the execution had taken place. Counsel stated that this omission, along with the overall nature of the claims in the Petition, showed bad faith and undermined the credibility of the Petitioners.



14. On the entitlement to reliefs, counsel submitted that the Petitioners had not demonstrated compliance with statutory eviction procedures, including the United Nations Guidelines on Evictions and Section 152E of the Land (Amendment) Act, 2016, as emphasized in *Gacheri v M'ikinyua; Kagwiria (Intended Interested Party) (ELC 201 of 2012) [2024]*. It was also argued that some Petitioners, including government and corporate entities, had failed to present board resolutions or authorizing instruments, rendering their participation legally defective under the *Companies Act, 2015*.
15. In conclusion, counsel submitted that the Petition was legally and procedurally deficient, failed to meet the required constitutional threshold, was premature for want of exhaustion, and should therefore be dismissed with costs for being an abuse of court process and an affront to established judicial precedents.

Analysis And Determination

16. Having reviewed the petition, supporting affidavits, Grounds of Opposition, and opposing submissions, I outline the following issues for determination:
 - i. Whether the Petition meets the constitutional threshold for a constitutional petition;
 - ii. Whether the Petitioners exhausted alternative remedies before approaching this Court; and
 - iii. Whether the Petitioners are entitled to the reliefs sought.
17. Pertinent to note, the question of jurisdiction was determined by this Court in a ruling delivered on December 16, 2024, which dismissed a Preliminary Objection by the Respondents. This Court found it is properly seized of the matter.
18. Having said that, I will address the issues separately.

Whether the Petition meets the constitutional threshold for a constitutional petition.

This issue goes to the core of whether the Petition is properly before the Court as a constitutional matter. The Court's role is to evaluate the form and substance of the pleadings against established legal principles for constitutional petitions in Kenya. The standard for constitutional petitions is outlined in the landmark case of *Anarita Karimi Njeru v Republic [1979] KLR 154*, presented to me by the parties here. This principle, reaffirmed in many subsequent cases, requires that a Petitioner must specify the constitutional rights allegedly violated and how the Respondents' conduct led to that violation.

19. Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the "Mutunga Rules") provides that:

"Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules."

20. Rule 10 of the Mutunga Rules enunciates the form that a constitutional petition should take. Rule 10(2) of the same Rules specifically states as follows:

"(2)The petition shall disclose the following—(a)the petitioner's name and address;(b)the facts relied upon;(c)the constitutional provision violated;(d)the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted



the suit; or in a public interest case to the public, class of persons or community;(e)details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;(f)the petition shall be signed by the petitioner or the advocate of the petitioner; and(g)the relief sought by the petitioner.”

21. In light of the above requirements and after reviewing the instant petition before this Court, I believe that the petition as presented has complied with Rule 10 of the Mutunga Rules and the threshold established in the Anarita Karimi Case [supra]. It is therefore proper before this Court.

Whether the Petitioners exhausted alternative remedies before approaching this Court.

22. The Respondents argued that the Petitioners acted prematurely in invoking the Court's constitutional jurisdiction. They specifically refer to Section 34(1) of the *Civil Procedure Act*, which states that:

“ All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

23. The Respondents argue that the Petitioners should have sought assistance or remedies within the original execution proceedings in the courts that issued the decrees, instead of filing a new constitutional petition.

24. A five-judge bench comprehensively addressed the doctrine of exhaustion in *William Odhiambo Ramogi & 3 others v Attorney General and 4 others; Muslims for Human Rights and 2 others (Interested Parties)* [2020] eKLR. The Court held that:

“ 52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in *R v Independent Electoral and Boundaries Commission (IEBC) ex parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the Court opined thus:

42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words:

Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

43. While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of



Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that:

It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The ex parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

25. The court further addressed the exceptions to the doctrine of exhaustion. It stated as follows:

“ 59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R vs Independent Electoral and Boundaries Commission (I E B C) & Others ex parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others v Aelous (K) Ltd and 9 Others.*)

60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This



was extensively elaborated by Mativo J in *Night Rose Cosmetics [1972] Ltd v Nairobi County Government & 2 others* [2018] eKLR.

62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”

26. The above case highlights that while the doctrine of exhaustion encourages orderly dispute resolution and respect for statutory procedures, it is not absolute. Courts may consider matters directly, especially when constitutional rights are at risk or when statutory mechanisms are insufficient or ineffective. In this case, the Petitioners alleged obstruction of court-ordered evictions through administrative directives, raising their constitutional rights under Articles 40 and 47 and the Rule of Law. In my view, this involves more than just simple execution issues. The Petition raises a broader constitutional question that cannot be fully addressed through ordinary execution procedures. Therefore, I am convinced that this Petition satisfies the criteria for an exception to the exhaustion doctrine, and it is properly before this court.

Whether the Petitioners are entitled to the reliefs sought.

27. As previously established in the case of *Anarita Karimi Njeru v Republic* [supra], it is not enough for a Petitioner in a constitutional case to simply claim a violation of rights. The Petitioner must demonstrate, with reasonable precision, the specific constitutional right that is alleged to have been violated, how the alleged violation occurred, and the exact relief being requested. This requirement ensures that the Respondent understands the case they need to address and that the court is not left to speculate about the claim’s substance. In this context, the usual rules of evidence apply, and the burden of proof lies with the Petitioner to demonstrate the alleged violations. Sections 107–109 of the *Evidence Act* specify the following:

107. Burden of proof.

- (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.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

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.”

28. In the present case, the Petitioners argued that, although they obtained decrees and warrants of eviction from various courts, the Respondents have failed or refused to provide police assistance necessary to



enforce those orders. They claim that this inaction results from an internal directive whose implications violate their constitutional rights.

29. Specifically, the Petitioners argued that Articles 10 and 232 require any state officer to follow the law when making or implementing public policy decisions aimed at promoting the Rule of Law and good governance, and to be accountable for their administrative actions. For the Petitioners, the directive issued on January 5, 2022, by the 2nd Respondent, which prevents the enforcement of court orders without explanation, does not support good governance or the Rule of Law. It constitutes an abuse of office and violates the Petitioners' right to a fair administrative process, as guaranteed under Article 47 of *the Constitution* of Kenya.
30. The Petitioners averred that the directive bars and obstructs the execution of valid court orders and was intended to violate the rights of the Petitioners and the public enshrined under Article 40 of *the Constitution*. They added that the Respondents' failure to provide security, as is their duty, violated Article 21(1), which provides that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfill the rights and fundamental freedoms in the Bill of Rights.
31. A review of the directive dated January 5, 2022, shows that it does not prohibit engaging police officers to provide security during the execution of court-issued warrants. Instead, the directive seems intended to ensure that such enforcement actions are conducted lawfully, in an orderly and coordinated manner, rather than restricting the police's lawful role in maintaining peace and security during execution. This aligns with Section 152E of the *Land Act*, which requires law enforcement involvement to ensure compliance with eviction orders. Furthermore, the Petitioners did not demonstrate that they adhered to the procedural requirements outlined under that Section, or that the Respondents refused to enforce the orders contained in the decrees. At the very least, the directive does not prevent the execution of valid court orders.
32. In light of the above, the Court finds that the Petitioners did not discharge the burden of proof placed upon them. They failed to demonstrate, with the required degree of precision, any specific constitutional violation attributable to the Respondents. They did not adduce evidence to show that the directive dated January 5, 2022, barred the enforcement of valid court orders, or that the Respondents refused to execute the decrees in question. Instead, what is shown is the red tape and bureaucracy created by the directives in the enforcement process.
33. This issue of bureaucracy caused by the directives can be addressed through the established Court Users Committees (CUCs) created under the *Judicial Service Act*, which, under Sections 34 and 35, establishes the National Council on the Administration of Justice (NCAJ) and its mandate, replicated in the CUCs.
34. That is why the NCAJ, in recognition of well-coordinated stakeholder and inter-agency collaboration, has developed Standard Operating Procedures (SOPs) to address the challenges in coordination and corroboration among various actors involved in Court-mandated evictions, including the role of police. These Standard Operating Procedures (SOPs) are developed pursuant to resolutions of the 31st National Council on the Administration of Justice (NCAJ).
35. The legal basis for evictions mainly rests on Article 40 of *the Constitution* of Kenya, which guarantees property rights, and Article 43, which ensures the right to accessible and adequate housing. Article 28 also emphasizes the inherent dignity of every person and the right to have that dignity respected and protected. Therefore, any eviction must be carried out in a way that respects these constitutional rights. The Standard Operating Procedures (SOPs) are further guided by various statutory provisions, including, but not limited to, the *Land Act*, 2012 (especially Sections 152A to 152G), which detail procedures for evicting unlawful occupants; and the *Civil Procedure Act* and Rules, which govern



the enforcement of court decrees and orders; the Prevention, Protection, and Assistance to Internally Displaced Persons and Affected Communities Act, 2012, which provides safeguards for individuals displaced by evictions; the [National Police Service Act](#), which defines the police's role in maintaining law and Order and protect life and property.

36. These SOPs specify the measures and steps to be followed by all agencies involved in court-ordered evictions, ensuring that these actions are performed in strict accordance with [the Constitution](#), applicable national laws, and relevant international human rights instruments.
37. Furthermore, these SOPs consider binding judicial decisions that emphasize prior notice, meaningful engagement, non-violence, access to legal remedies, and the protection of vulnerable groups.
38. Specifically, regarding police involvement, the SOPs state that they should confirm and authenticate court orders, provide security during eviction, prevent breaches of peace or criminal acts, ensure eviction is carried out according to legal guidelines while observing human rights standards, and protect vulnerable groups.
39. Looking at it futuristically, the NCAJ-drawn and proposed SOPs will guide how all involved agencies carry out their mandates according to the law on matters of evictions. The impugned directives will then become otiose. I do not need to provide further guidelines through this Petition.
40. Arising from the foregoing, the current Petition is accordingly dismissed. There shall be no order as to costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 31ST DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Chepkwony for the Petitioners

Mr. Ojwang, for the Respondents

Abdi: Court Assistant

