

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC PETITION NO. E030 OF 2022

**IN THE MATTER OF ARTICLE 162(2)(b) & ARTICLE
258(1), 268 (a) AND (c) OF THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF THE CONTRAVENTION OF ARTICLE
1, 2(2), 3, 6(2), 10(2) (b) and (c), 27(1); 28; 40, 42; 43 (1)
(f), 67, 73(1); 74; 75; 132, 135, 153(1), (4); 237(3)(c),
244(a) & 258 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE NATIONAL LAND COMMISSION
ACT, ACT NO. 4 OF 2012 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF SECTION 9(2) (c), 12(2) & 14 OF THE
LAND ACT, 2012**

AND

**IN THE MATTER OF SECTION 60(a) OF THE
UNIVERSITIES ACT, ACT NO. 42 OF 2012**

&

**THE CONTINUED & THREATENED UNLAWFUL EXCISION,
ERECTION OF UNAUTHORIZED AND ILLEGAL
STRUCTURES UPON & DISPOSAL OF KENYATTA
UNIVERSITY'S LR NO. 11026/2 (GRANT 33404)**

AND

**IN THE MATTER OF A PETITION BY
JOSEPH ENOCK AURA
PETITIONER**

VERSUS

**THE CABINET SECRETARY, MINISTRY OF EDUCATION,
SCIENCE AND TECHNOLOGY 1ST
RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF
LANDS & PHYSICAL PLANNING 2ND
RESPONDENT**

**JOSEPH K KINYUA, THE HEAD
OF PUBLIC SERVICE 3RD
RESPONDENT**

**PRINCIPAL SECRETARY, UNIVERSITY EDUCATION &
RESEARCH, MINISTRY OF EDUCATION 4TH
RESPONDENT**

**PRINCIPAL SECRETARY, LANDS,
MINISTRY OF LANDS & PHYSICAL PLANNING,
PHYSICAL PLANNING 5TH
RESPONDENT**

**PRINCIPAL SECRETARY,
PHYSICAL PLANNING, MINISTRY OF LANDS &
PHYSICAL PLANNING 6TH
RESPONDENT**

**NATIONAL LAND COMMISSION 7TH
RESPONDENT**

**THE PRESIDENT OF THE
REPUBLIC OF KENYA SUED THROUGH
THE HON ATTORNEY GENERAL 8TH
RESPONDENT
THE HON. ATTORNEY GENERAL 9TH
RESPONDENT
KENYATTA UNIVERSITY 10TH
RESPONDENT**

AND

**PROFESSOR PAUL WAINAINA 1ST INTERESTED
PARTY
LAW SOCIETY OF KENYA 2ND INTERESTED
PARTY**

JUDGMENT

1. Vide a Petition dated 14th July 2022, the Petitioner approached this Court seeking judgment against the Respondents jointly and severally for orders that:

- a) A declaration do issue that pursuant to Article 10 (2)(a) and (b) of the Constitution of Kenya, the Respondents are bound by the principles of patriotism, rule of law, public participation, transparency, fairness, human rights and good governance in the execution of the terms of their respective State Office portfolios and duties appurtenant to or in regard to the***

Kenyatta University's LR No.s 11026/2, (Grant 33404), as spelt out in the applicable statutory regimes, and any recommendations by any person or entity to the 7th Respondent National Land Commission on the ceding of any portion of LR No. 11026/2 (Grant 33404), at any time conducted without strict adherence to the applicable Constitutional and legal provisions, is null and void.

b) A declaration do issue that the summoning of the National Land Commission to "Harambee House" by the 3rd Respondent Secretary to the Cabinet vide his letter to that effect dated 7th July 2022 (Ref: OP/CAB.01/16A) with the intention of forcing the unlawful allocation of part of LR No. 11026/2 (Grant 33404) registered in the name of Kenyatta University to third parties, constitutes a violation of Article 249(2) of the Constitution of Kenya, in whittling the Constitutional independence of the National Land Commission.

c) A permanent injunction be forthwith issued restraining the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Respondents from taking possession of, occupying, constructing upon, continuing with any form of occupation of any part of LR No.

11026/2 (Grant 33404) registered in the name of Kenyatta University.

- d) A declaration do issue that the purported Cabinet decision ostensibly made on 12th May 2022 purporting to alienate, re-parcel and re-plan all that land known as LR No. 11026/ 2 (Grant 33404) and/or part thereof registered in the name of KENYATTA UNIVERSITY not having been put into writing is a violation of Article 153(1) of the Constitution of Kenya to which extent the said act is null and void and of no effect.**
- e) An order of Prohibition by way of Judicial Review do issue, prohibiting the 7th Respondent (National Land Commission) from taking any, or any further action adverse to the objects, best interests, proprietary possessory rights and welfare of Kenyatta University's proprietorship of LR No. 11026/2 (Grant 33404) or any part thereof, and prohibiting the 1st to the 9th Respondents from interfering in any manner with the 10th Respondent's (Kenyatta University's) quiet and peaceful of LR No. 11026/2 in furtherance of the objects specified in the Grant 33404.**

f) An order of Certiorari by way of Judicial Review do issue , to bring to this Honourable Court for purposes of quashing and to be quashed, the 3rd Respondent's purported decision communicated to the Kenyatta University's hitherto Vice Chancellor, (the 1st Interested Party, Professor Paul Wainaina) dated 4th July 2022 (Ref: OP/CAB.01/16A) being 2 distinct letters, and 7th July 2022 (Ref: OP/CAB.01/16A) purporting to declare and execute a "Cabinet of Kenya's decision ostensibly of 12th May 2022 to hive off an aggregate of 410 acres out of Kenyatta University's LR No. 11026/2 (Grant 33404) for being in contravention of Article 153(1) of the Constitution of Kenya, lack of public participation and for being ultra vires Article 62(4) of the Constitution of Kenya and in any event being in breach of Section 14 of the Land Act, Act No.6 of 2012.

g) An injunction do issue, restraining the 1st to 9th Respondents, their servants, agents, or any person acting under their direction and behest from demanding , directing or ordering the excision of 410 acres (or any portion) out of the 10th Respondent's (Kenyatta University's) L.R. No. 11026/ 2.

- h) That an order of eviction forthwith issues against such of the trespassers from LR No. 11026/2 invited by, or present thereon at the behest of the 1st to the 9th Respondents.***
- i) The costs of this Petition be awarded to the Petitioner.***

2. The facts giving rise to this Petition, as set out in the Petition and in the Supporting Affidavit sworn by the 1st Petitioner, Joseph Enock Aura, are that by virtue of Grant No. I.R. 33404 in respect of Land Reference No. 11026/2, issued on 1st October 1977 for a term of 99 years, the 10th Respondent, Kenyatta University, became the registered proprietor of the said parcel of land and that the Grant contained specific conditions limiting the user of the land to educational, administrative, and residential purposes.
3. It was averred that the parcel of land was originally part of the Kahawa Barracks, formerly known as Templar Barracks, which was handed over by the British Government to the Government of Kenya in 1965 and that by dint of an Act of Parliament of 1970, Kenyatta College became a constituent college of the University of Nairobi and was thereafter renamed Kenyatta University College occupying the said land.
4. On 23rd August 1985, it was deposed, Kenyatta University College was elevated to full university status, and on 17th

December 1985, it was inaugurated as Kenyatta University, which has since remained in occupation of the said land for educational purposes.

5. The Petitioner contend that by the impugned letters dated 4th July 2022 and 7th July 2022, the 3rd and 8th Respondents purported to usurp the constitutional and statutory mandate of the National Land Commission under **Article 62** of the **Constitution** and **Section 5(1)(a)** of the **National Land Commission Act**, by purporting to allocate and appropriate approximately 410 acres of the suit property for private use.
6. It was averred that by the letter dated 7th July 2022 addressed to the 1st Interested party, the 3rd Respondent claimed that the Cabinet of Kenya had resolved to hive off 190 acres of the suit property for allocation to “Kamae Squatters”, an act which, according to the Petitioner, is ultra vires as the Cabinet has no constitutional authority to alienate public land.
7. Reliance was placed on the decision in ***Kenyatta University & 1699 others vs Kimani Mbugua & 78 others [2021] eKLR***, wherein Komingoi J. held that Kenyatta University had already donated 30.82 acres for settlement of 670 squatters identified in 1984.
8. The Petitioner therefore assert that the purported actions of the Cabinet and the 3rd Respondent to vary or disregard a judicial pronouncement constitute a direct affront to **Article**

159(1) of the **Constitution**, which vests judicial authority in the courts and tribunals established thereunder.

- 9.** It was further alleged that by the same impugned letters, the 3rd Respondent, Head of Public Service Joseph Kinyua, unlawfully directed that 30 acres of the suit property be ceded to the World Health Organization (WHO) and 10 acres to the Africa Centre for Disease Control and Prevention (Africa CDC), both entities operating outside the public education mandate of the grantee, thereby violating **Article 62** of the **Constitution**.
- 10.** According to the Petitioner, the proposed use of the land by the World Health Organization for a “Medical Emergency Hub” is inconsistent with the restricted user in the Grant, which limits occupation to educational and residential purposes. They contend that the Government’s commitment of approximately USD 5 million (about Kshs. 600 million) towards such a project constitutes an illegal investment in contravention of the Constitution.
- 11.** The Petitioner also cite a public statement made on 7th July, 2022 by the 9th Respondent, the President of the Republic of Kenya, in which he declared that action would be taken against the 1st Interested Party for declining to cede the land, which, they argue, evidences undue executive interference with the governance and management of the University.

- 12.** The Petitioner further averred that the actions of the 3rd and 8th Respondents, undertaken with extraordinary haste between 4th and 7th July 2022, amounted to an unlawful and irregular appropriation of public land entrusted to Kenyatta University. He contended that these actions disregarded the procedural safeguards established under **Section 14** of the **Land Act**, which safeguards the public interest and ensure transparency in dealings involving public land.
- 13.** It was the Petitioner’s case that **Section 14** of the **Land Act**, which operationalizes **Article 67** of the **Constitution**, provides in mandatory terms that public land shall not be disposed of or otherwise dealt with except in accordance with an Act of Parliament specifying the nature and terms of such disposal.
- 14.** The Petitioner maintained that by virtue of **Section 14(1)** of the **Land Act**, the public must be informed through a notice issued at least one month prior to any intended allocation of public land. Further, under **Section 14(3)** and **(6)** of the said Act, such notice must be gazetted and published in a newspaper of nationwide circulation to invite public participation and objections.
- 15.** The Petitioner deponed that no Gazette Notice or public notice had been issued by the Cabinet Secretary for Lands or any other competent authority concerning the purported alienation of 410 acres of Kenyatta University’s land. He

asserted that even if such a notice existed, it failed to meet the statutory threshold of three consecutive publications within twenty-one days as required under the Act.

- 16.** The Petitioner contended that the letter dated 7th July 2022 from the 3rd Respondent to the 1st Interested Party further indicated that 180 acres of the suit property would be allocated to Kenyatta University Teaching, Research and Referral Hospital (KUTRRH), which already occupies approximately 100 acres allegedly donated by the University in 2012 under equally questionable circumstances.
- 17.** The Petitioner asserted that the Respondents' failure to adhere to the mandatory provisions of the **Land Act**, and their unilateral actions to excise and reallocate the University's land, constitute an unmitigated breach of the principles of rule of law, good governance, and accountability enshrined in **Articles 10** and **232** of the **Constitution**.
- 18.** The Petitioner further contended that all persons, including state officers and public bodies, are bound by the Constitution and must exercise authority in accordance with the values and principles of governance enumerated in **Article 10**. The actions complained of, they stated, exemplify executive overreach and a culture of impunity.
- 19.** The Petitioner relied on **Section 4(2)(h)** and **(l)** of the **Land Act**, which require that public land management be guided by the principles of public participation, accountability, and

democratic decision-making. He contended that no form of public participation, stakeholder consultation, or community engagement was undertaken prior to the impugned decision to excise the suit property.

- 20.** The Petitioner invoked **Section 12(2)(d)** of the **Land Act**, which prohibits the allocation of public land reserved for education, research, security, or other strategic public purposes. He averred that the suit property, having been expressly reserved for educational use, is not idle land but part of the public domain protected from alienation. Its classification as institutional land, he argued, renders it unsuitable for conversion or allocation to private entities or to public uses inconsistent with its designated purpose.
- 21.** He further averred that the three conditions expressly stipulated in the Grant governing the suit property cannot be arbitrarily expanded to include medical or research purposes unrelated to the University's mandate as they are in breach of the Grant terms.
- 22.** It was also contended that the intended conversion of use of public land of the suit property is expressly prohibited by **Section 14(8)(ii)** of the **Land Act**, which empowers the National Land Commission to nullify any allocation made without proper compliance with the notification and procedural requirements stipulated by law.

23. The Petitioner denied the 8th Respondent's claim that Kenyatta University has excess or idle land. On the contrary, he asserted that the University is currently constrained by land scarcity, as evidenced by its eleven land-starved fully operational campuses across the country, including Parklands, Ruiru, Mombasa, Nyeri, Kitui, Machakos, and the Technical University of Kenya campuses.
24. The Petitioner maintained that **Section 12(2)(d)** of the **Land Act** prohibits the alienation of the suit property and that neither the Cabinet nor the National Land Commission is authorized to dispose of or allocate the same, contrary to the assertions made by the 3rd Respondent.
25. It was their further contention that **Section 48** of the **Universities Act** binds the University's land to its core functions, which are teaching, research, and residential use, and that **Section 20** of the **Land Act** compels a grantee to adhere strictly to the conditions contained in the Grant. Accordingly, he argued, the 3rd and 8th Respondents' actions were not only unconstitutional, but also inconsistent with the statutory purpose of the Grant.
26. The Petitioner further invoked **Section 60(a)** of the **Universities Act**, which confers upon the University Council powers limited to the management and administration of university property. He contended that such powers do not

extend to the alienation or disposal of university land, which power vests exclusively in the National Land Commission.

27. Consequently, the Petitioner argued that it would be ultra vires for the Kenyatta University Council to purport to cede any portion of the suit property, whether voluntarily or under duress, and that the Respondents' attempts to coerce the University Council into surrendering land through threats and executive pressure amount to unconstitutional interference with the autonomy of public institutions.
28. The Petitioner further highlighted that whereas the 3rd Respondent claimed that a Cabinet decision made on 12th May 2022 authorized the alienation of 410 acres of the suit land, the Petitioner's review of official government communications and the 8th Respondent's own website revealed no record of such a decision and that under **Article 153(1) of the Constitution**, any Cabinet decision must be in writing, and no such documentation has been produced to this Court.
29. It was also contended that the procedures stipulated under **Section 9(2)(c) of the Land Act** governing the conversion of private land to public land, namely by compulsory acquisition, reversion of leasehold, or transfer and surrender, were not invoked or followed. The Petitioner maintained that absent compliance with these statutory mechanisms, the

Respondents' claim over the suit property is without legal foundation.

- 30.** The Petitioner further argued that even assuming that Kenyatta University holds public land capable of alienation, **Section 107(1)** of the **Land Act** provides that when either the National or a County Government seeks to compulsorily acquire such land, it must submit a formal request to the National Land Commission to undertake the acquisition on its behalf.
- 31.** The Petitioner contended that their review of official government records, including those of the National Land Commission, revealed no evidence of such a request or decision concerning the suit property and that even on the assumption that a Cabinet decision of 12th May 2022 existed, which he firmly denied, the suit property would still not be available for alienation, as it remains public land reserved for institutional and educational use.
- 32.** The Petitioner further argued that even if such alienation were to proceed, the law does not permit the transfer or vesting of public land in private or international entities such as the World Health Organization (WHO) or the African Centres for Disease Control and Prevention (Africa CDC) and that under **Article 62(3)** of the **Constitution**, public land shall vest in and be held by the National Government in trust

for the people of Kenya and shall be administered on their behalf by the National Land Commission.

- 33.** The Petitioner maintained that absent the execution of this constitutional and statutory mandate by the National Land Commission under **Article 62** of the **Constitution** and the **Land Act**, any purported alienation of the suit property by the Cabinet or any other body is void ab initio.
- 34.** In his view, **Article 259(11)** of the **Constitution** expressly prohibits the assumption of constitutional functions by entities not empowered to exercise them and that the Cabinet cannot usurp the functions of the National Land Commission by purporting to allocate or reallocate public land.
- 35.** He further cited **Section 35(1)(a)** of the **Universities Act**, which defines the statutory functions of University Councils, including the management and administration of university property, and contended that this provision does not extend to the disposal or alienation of university land, thereby divesting the Kenyatta University Council of any authority to cede the suit property.
- 36.** The Petitioner also referred to **Section 15** of the **Land Act**, which provides that, subject to **Article 66(1)** of the **Constitution**, the National Land Commission, in consultation with the National and County Governments, may reserve public land for public-interest purposes. It was

therefore his view that if the 3rd and 8th Respondents genuinely intended to establish a medical facility under the auspices of the World Health Organization, they should have sought the Commission's intervention to identify and reserve an appropriate alternative parcel.

37. It was contended that if the 3rd and 8th Respondents were honestly seeking to erect a medical facility on the suit land under the auspices of the World Health Organization, such an endeavour would have fallen within the ambit of the Ministry of Health of Kenya. The Petitioner argued that this underscores the procedural irregularity of the impugned decision, as the relevant Ministry was never involved, consulted, or copied in the correspondence directing the alienation of the University's land.

38. Reference was made to **Section 23(2)** of the **Land Act**, which provides that a grant of public land shall be made in the name of the National Land Commission on behalf of the National or County Government. The Petitioner averred that if indeed the proposed medical facility were legitimate, the Ministry of Health could have lawfully obtained the necessary land through this procedure.

39. The Petitioner further argued that the Cabinet's purported allocation of 190 acres of the suit land to "Kamae squatters" directly contravenes the judgment in **Kenyatta University & 1699 Others vs Kimani Mbugua & 78 Others [2021]**

eKLR, where Komingoi J. had conclusively determined that 30.82 acres of the University's land had already been set aside for settlement of the said squatters as per the 1984 list. The Petitioner maintained that the Respondents' actions amount to an attempt to unlawfully overturn a judicial decision, contrary to **Article 159(1)** of the Constitution.

- 40.** The Honourable Attorney General, on behalf of the 1st to 9th Respondents, filed Grounds of Opposition dated 19th July 2025, contending that it is not disputed that Kenyatta University is a public institution, the registered proprietor of the suit property, which constitutes alienated public land originally granted by the Government of Kenya free of charge for educational purposes.
- 41.** It was submitted that under **Article 40(3)** of the **Constitution**, the Government retains the power to compulsorily acquire any land, whether private or public, for purposes deemed to be in the public interest.
- 42.** The Attorney General argued that the Government may acquire land through various mechanisms, including compulsory acquisition as set out under Part VIII of the **Land Act**, by private treaty, or through administrative action, and that administrative reallocation of public land among public institutions cannot be construed as unconstitutional, given that government entities function as one organic unit.

- 43.** On that premise, it was contended that the letters dated 4th and 7th July 2022 cannot be impugned as arbitrary or unconstitutional, as they were the culmination of a consultative process involving key ministries and stakeholders concerning the reallocation of the land for strategic public use.
- 44.** The Attorney General further stated that the impugned correspondence did not seek to usurp the National Land Commission's mandate but was intended to facilitate the reallocation of land already under government ownership for urgent public purposes, with the Commission's input having been sought during the process.
- 45.** It was explained that the reallocation of portions of the land was intended to serve several public purposes, namely: thirty (30) acres to the World Health Organization (WHO), ten (10) acres to the Africa Centre for Disease Control (Africa CDC), one hundred and eighty (180) acres to the Kenyatta University Teaching, Referral and Research Hospital (KUTRRH), and one hundred and ninety (190) acres to the Ministry of Lands and Physical Planning.
- 46.** The Attorney General deponed that the Cabinet, through a memorandum sponsored by the Cabinet Secretaries for Health, Lands, Education, the National Treasury, and the Attorney General, approved the allocation of portions of the land to these institutions. It was contended that this was the

normal procedure for land reallocation among state agencies, given that the land in question is public land held by a public institution.

47. The Respondents argued that as the highest executive body under **Article 153** of the **Constitution**, the Cabinet acted within its lawful authority in granting such approval, and therefore, its decision could not be faulted.
48. It was further asserted that the Kenyatta University Teaching, Referral and Research Hospital, although initially established by Kenyatta University, was subsequently delinked and constituted as a State Corporation under the Ministry of Health by Legal Notice No. 4 of 2019. The Hospital, it was argued, required its own title and additional land to enable future expansion.
49. The Attorney General maintained that the allocations to the World Health Organization and Africa CDC were for auxiliary medical and research facilities intended to complement the functions of both the hospital and the university, and would therefore serve the public interest in health and education.
50. It was further contended that the reallocation of land to the Ministry of Lands and Physical Planning was intended to facilitate regularization of long-standing occupation by squatters who had previously litigated unsuccessfully against the University, in keeping with emerging jurisprudence from the Supreme Court on the humane resettlement of squatters.

- 51.** The Attorney General emphasized that the decision requiring the University to surrender part of its land was neither arbitrary nor hasty, but the result of a deliberate, consultative, and policy-driven process consistent with national planning and public interest.
- 52.** Allegations of intimidation or coercion of University Council members were described as farfetched, unfounded and untrue. It was also argued that the Petitioner lacked *locus standi* to file the suit as he had no mandate towards management nor disposition of the suit property in question.
- 53.** The Attorney General maintained that the reallocation served a purely public purpose, and that the University, being a public entity, is bound by Government policy directives. Should the University require more land in future, it was submitted that the Government would provide alternative parcels in line with resource optimization and equitable development.
- 54.** It was further contended by the Respondents that in determining the optimal use and redistribution of resources, including land, the Government is mandated to plan and re-plan as necessary to achieve maximum public benefit. Accordingly, the Respondents urged that the re-planning and reallocation of the University's land cannot be faulted.
- 55.** The Respondents further averred that during a meeting held by the Kenyatta University Council on 15th July 2022, the

Council deliberated on the Cabinet's communication of 12th May 2022 and resolved to surrender the suit property to the Ministry of Lands and Physical Planning to facilitate re-planning and allocation to the designated public institutions.

- 56.** It was thus asserted that the process of re-planning and reallocation has since commenced, and that the same is both lawful and justified in the public interest.
- 57.** On the issue of public participation, the Attorney General submitted that such engagement would be undertaken at the appropriate stage under the Physical and Land Use Planning Act (PLUPA), once the land is surrendered and becomes unalienated public land subject to the planning process.
- 58.** It was further argued that the PLUPA provides for elaborate mechanisms of public engagement before any physical development plan is approved, and therefore the Petitioner's complaint of lack of participation was premature.
- 59.** It was, however, conceded that under **Sections 15(1) and 20(1) of the Universities Act**, the University is empowered to own land in its own name. The Respondents maintained that, being public land, the principles of compulsory acquisition applicable to private land do not apply, and that no compensation is payable where land held by a public institution is reallocated for another public purpose.

- 60.** The Attorney General further contended that **Articles 62(2) (b) and 62(3) of the Constitution** bar the National Government or the National Land Commission from dealing with land held, used, or occupied by a national State organ, which includes the suit property. The Respondents therefore argued that the Petition is misconceived, an abuse of the court process, and devoid of merit, and urged that it be dismissed with costs.
- 61.** The 10th Respondent, Kenyatta University, through a Replying Affidavit sworn on 8th August 2022 by Professor Paul Okemo, the Deputy Vice-Chancellor Administration, confirmed that it is the registered proprietor of the suit land.
- 62.** Professor Okemo deponed that the Head of Public Service, by a letter dated 4th July 2022, informed the Chancellor of Kenyatta University of a Cabinet decision made on 12th May 2022 to allocate portions of the University's land to the Ministry of Health and its affiliated institutions, and that the letter also requested the University to surrender its title to the Ministry of Lands and Physical Planning to facilitate excision of the required portions.
- 63.** It was deposed by the Deputy Vice-Chancellor Administration of Kenyatta University that on 5th July 2022, the University sought clarification from the Head of Public Service regarding the scope of the Vice-Chancellor's and the Council's authority in relation to alienation of university land.

- 64.** By a letter dated 7th July 2022, the Head of Public Service clarified that the proposed allocations were consistent with national policy objectives and were intended to promote academic and research synergies beneficial to the University.
- 65.** Professor Okemo further stated that during a meeting held on 15th July 2022, the University Council resolved that the re-planning of the land would facilitate the establishment of auxiliary research and teaching facilities and therefore approved the surrender of the land to the Ministry of Lands and Physical Planning for re-planning and allocation.
- 66.** The 10th Respondent deponed that as a public institution, Kenyatta University is obligated to comply with lawful Government policy directives in the execution of its functions. In doing so, it was deposed, the University cannot be said to have acted unlawfully or contrary to its statutory mandate.
- 67.** The Petition was thereafter canvassed through written submissions.

Submissions

- 68.** Learned Counsel for the Petitioner submitted that **Article 73** of the **Constitution** outlines the guiding principles of leadership and integrity applicable to all public officers, including officials of Kenyatta University. It was argued that the purported excision of approximately 410 acres from L.R. No. 11026/2 (Grant No. 33404), as referenced in the affidavit

of Prof. Paul Okemo, failed to meet the constitutional threshold of accountability and transparency.

- 69.** Counsel noted that the alleged Cabinet decision relied upon by the 10th Respondent was neither annexed nor supported by any documentary proof of its existence.
- 70.** It was submitted that **Section 48** of the **Universities Act** restricts the use of university land to educational, administrative, and residential purposes, and that any purported alienation of such land for unrelated functions contravenes both statute and the constitutional principle of the rule of law under **Article 10(2)(b)**.
- 71.** Counsel further contended that under **Article 159(1)** of the **Constitution**, judicial authority is vested exclusively in the courts, and therefore neither the Cabinet, acting under the direction of the President, nor the Head of Public Service, may arrogate to themselves the power to review or overturn judicial decisions, or to exercise authority reserved for the judiciary.
- 72.** Relying on **Section 20** of the **Land Act**, Counsel submitted that a grantee is bound by the express conditions of a grant. Accordingly, by virtue of **Section 60(a)** of the **Universities Act**, the Kenyatta University Council is mandated only to manage and administer university land and lacks the legal capacity to cede or alienate any portion thereof, such power being reserved exclusively to the National Land Commission.

73. It was therefore submitted that any attempt by the University Council to surrender or cede the suit property, whether voluntarily or under duress, intimidation, or political coercion, would be ultra vires its statutory and constitutional mandate.
74. The Petitioner further argued that there was no evidence of public participation preceding the alleged decision to excise and reallocate the suit property and that **Article 10(2)(b)** of the **Constitution** enshrines public participation as a foundational national value binding all State organs, including the Cabinet.
75. It was submitted that while no single statute defines the exhaustive scope of public participation, the obligation is operationalized through various frameworks, including **Sections 11 and 12** of the **Public Service (Values and Principles) Act, No. 1A of 2015**, which require transparency, accountability, and inclusion in all public decision-making processes.
76. In support of this proposition, reliance was placed on **Doctors for Life International vs Speaker of the National Assembly and Others (CCT12/05) [2006] ZACC 11; Kenya Small Scale Farmers Forum & 6 Others vs Republic of Kenya & 2 Others [2013] eKLR; Commission for the Implementation of the Constitution vs Parliament of Kenya & Another [2013] eKLR**; and

Robert N. Gakuru & Others vs Governor, Kiambu County & 3 Others [2014] eKLR.

77. Counsel emphasized that **Section 60(a)** of the **Universities Act** does not empower the Kenyatta University Council to dispose of any portion of its land, and that **Section 9(2)(c)** of the Land Act is inapplicable, as it only governs conversion of private land to public land through compulsory acquisition, reversion, or surrender.
78. It was further argued that even if Kenyatta University held land available for alienation, **Section 107(1)** of the **Land Act** mandates that any acquisition by the National or County Government must be initiated through a formal request to the National Land Commission, which then undertakes the acquisition on behalf of the State. Counsel submitted that no such request was made or approved in the present matter.
79. Counsel contended that even assuming, that the alleged Cabinet decision of 12th May 2022 existed, the suit property would still not be available for alienation, and that even if such alienation were attempted, public land cannot vest in international or private entities such as the World Health Organization, the Nairobi Metropolitan Services, or Northlands City, but only in the National Land Commission, as the custodian of public land under **Article 62** of the **Constitution**.

- 80.** Counsel submitted that the impugned acts amounted to a continuing breach of **Article 62(3)** of the **Constitution**, which vests certain classifications of public land in the National Government, to be held in trust for the people and administered by the National Land Commission.
- 81.** In support of these arguments, reliance was placed on **Communications Commission of Kenya & 5 Others vs Royal Media Services Ltd & 5 Others [2014] eKLR** and **Nelson Kazungu Chai & 9 Others v Pwani University College [2017] eKLR**. Counsel maintained that there was no lawful justification for the Respondents' intended occupation or excision of the University's land. It was argued that had the 3rd and 8th Respondents been genuinely pursuing the establishment of a medical facility under the World Health Organization, such an endeavour would properly fall within the ambit of the Ministry of Health, yet no documentation or consultation to that effect was tendered before the Court.
- 82.** Learned Counsel for the 10th Respondent submitted that save for the general declaratory relief sought against all the Respondents under prayer (a) of the Petition, the Petitioner has not sought any specific or substantive relief against the 10th Respondent in respect of the alleged breaches. Counsel therefore urged this Court to find that no cause of action lies

against the 10th Respondent and consequently to dismiss the Petition as against it with costs.

- 83.** It was the 10th Respondent's submission that the suit property has, at all material times, been available for alienation, re-parceling, re-planning and/or allocation by the Government of Kenya and the 10th Respondent, through its Council, in accordance with the Cabinet's decision of 12th May 2022.
- 84.** Counsel submitted that the suit property was granted to, and registered in the name of, the 10th Respondent by the Government of Kenya, a fact admitted by the Petitioner and recognized in the judgment of this Court in **Kenyatta University & 1699 others vs Kimani Mbugua & 78 others**.
- 85.** It was further submitted that the Government, being the grantor and lessor, is entitled to make decisions concerning the suit property, including its alienation, re-planning, re-parceling and/or allocation, as reflected in the Cabinet's decision of 12th May 2022, and subsequently communicated through the 3rd Respondent's letters dated 4th and 7th July 2022, and that the 10th Respondent, as grantee, lessee, and registered proprietor, is required to comply with such decisions of the Government of Kenya, provided the same is exercised within the ambit of the applicable legal framework, notably **Sections 48 and 60(a)** of the **Universities Act**,

2012 and Sections 17(8)(a) and (c) of the University Charter (Legal Notice No. 231 of 2013).

- 86.** It was contended that the public purpose for which the suit property was granted was to facilitate the establishment and functioning of the University, consistent with the stated conditions of the Grant. Counsel submitted that no allegation has been made that the 10th Respondent breached any of those conditions.
- 87.** Counsel argued that the allocation of land to State organs for public purposes has received judicial recognition. Reliance was placed on the decision in ***Kenya Industrial Estates Limited v Anne Chepsiror & 5 others [2015] eKLR***.
- 88.** It was submitted that the suit property comprises both utilized and unutilized portions, the utilized portion having been applied towards the establishment of the University, and that the unutilized portion was the subject of the Cabinet's deliberations of 12th May 2022, as communicated in the 3rd Respondent's letters of 4th and 7th July 2022.
- 89.** According to Counsel, the unutilized portion could be made available for alienation, re-parcelling, re-planning and/or allocation pursuant to the Cabinet's decision only in two instances: where such alienation remains within the scope of the public purpose for which the Grant was made. In this instance, the Cabinet's decision of 12th May 2022 was to

allocate the unutilized portion for strategic public purposes aligned to the University's objectives.

- 90.** Reference was made to the 3rd Respondent's letter of 7th July 2022, which indicated that the allocations were planned interventions with an academic and research nexus to the University, intended to foster a synergetic relationship beneficial to the institution.
- 91.** These interventions, it was submitted, included the World Health Organization (WHO), the Africa Centre for Disease Control and Prevention (ACDC), the Kenyatta University Teaching, Referral and Research Hospital (KUTRRH), and the Ministry of Lands and Physical Planning for the Kamae Settlement Scheme.
- 92.** Counsel further submitted that the allocation of the unutilized portions to the Ministry of Health for use by WHO, ACDC, KUTRRH, and to the Ministry of Lands and Physical Planning for the Kamae Settlement Scheme satisfied the purposes of the Grant as acknowledged by the 10th Respondent's Council. The Petitioner, it was argued, neither alleged nor demonstrated that these allocations fell outside the conditions of the Grant.
- 93.** Without prejudice, Counsel argued that even if it were assumed that the allocations went beyond the conditions of the Grant, which was denied, the allocations nonetheless serve a public purpose and interest, as recognized in the 3rd

Respondent's letter of 7th July 2022 and the 10th Respondent's Council minutes. It was pointed out that this was not the first allocation of land for the Kamae Settlement Scheme, reference being made to **ELC Case No. 1460 of 2002**, where a similar allocation was upheld. Counsel contended that the allocations for WHO, ACDC, KUTRRH, and Kamae Settlement were therefore in furtherance of public interest and consistent with lawful exercise of executive authority.

- 94.** Reliance was also placed on the Supreme Court decision in **Town Council of Awendo vs Nelson O. Onyango & 13 others; Attorney General (14th Respondent); Abdul Malik Mohamed & 178 others [2019] KESC 38 (KLR).**
- 95.** It was submitted that in **ELC Petition No. E029 of 2022**, this Court determined that the Cabinet decision was inconsequential to the dispute. The 10th Respondent, it was submitted, merely acted upon the directives contained in the letters of 4th and 7th July 2022 in compliance with **Sections 48 and 60(a)** of the **Universities Act** and **Sections 17(8) (a) and (c)** of the **University Charter**.
- 96.** Counsel submitted that the 7th Respondent, the National Land Commission, had no constitutional mandate regarding the alienation, re-parcelling, re-planning, or allocation of the unutilized portions of the suit property, and therefore no question of usurpation arises.

- 97.** Reference was made to this Court's ruling in **ELC Petition No. E029 of 2022**, wherein the Court held that land held, used, or occupied by a State organ constitutes a distinct category of public land not vested in either level of government and not administered by the National Land Commission on their behalf.
- 98.** Counsel maintained that the 10th Respondent, acting under its statutory and charter-based mandate, approved the alienation and allocation of the unutilized portion of the suit property pursuant to the directives of the Government of Kenya, without any necessity for the involvement of the 9th Respondent.
- 99.** It was further asserted that the Petitioner has not challenged the Council's Resolution of 15th July 2022 approving the allocations. That resolution, it was submitted, remains valid and binding, and that the Petitioner has not demonstrated that it contravenes the Constitution.
- 100.** As regards **ELC Case No. 1460 of 2002**, Counsel submitted that the decision complements, rather than contradicts the 10th Respondent's position and that the Court therein recognized the 10th Respondent's donation of 30.82 acres of the suit property for the settlement of 670 squatters under the Kamae Settlement Scheme, affirming its authority to allocate unutilized land for such public purposes.

101. Counsel denied that the recent excision of 190 acres for the Kamae Settlement Scheme contravenes this Court's judgment of 23rd September 2021, maintaining that the 10th Respondent retains the power, guided by the Government, to make further allocations of the suit property pursuant to the Cabinet's directives.

102. On the question of public participation, Counsel contended that **Sections 12 and 14** of the **Land Act** were inapplicable and that neither the Universities Act nor the University Charter require public participation as a precondition for the exercise of the power of excision or allocation.

Analysis and Determination

103. This Petition concerns the legality of the decision to alienate, re-parcel and re-plan all that land known as LR No. 11026/ 2 (Grant 33404) (the suit property) registered in the name of Kenyatta University. The issues for this court's determination are:

- a) Whether the Petitioner has locus to institute this Petition.*
- b) Whether the Cabinet decision of 12th May 2022, the subsequent communications by the 3rd Respondent dated 4th and 7th July 2022, and the decision to alienate a portion of the suit land were lawful.*
- c) Whether the Petitioner is entitled to the reliefs sought in the Petition.*

104. The undisputed facts emerging from the pleadings and the material placed before this Court are that the suit property, L.R. No. 11026/2, is registered in the name of Kenyatta University, which holds a valid and subsisting Grant being I.R. 33404. The Grant expressly provides that the land shall be utilized for educational, administrative, and residential purposes.

105. It is not in contention that by a letter dated 4th July 2022, the 3rd Respondent, Joseph Kinyua, then serving as Head of Public Service, invited the 10th Respondent's Vice Chancellor to a meeting whose agenda was to deliberate on the proposed excision of portions of the University land for purposes of settling the Kamae squatters, as well as for the establishment of facilities for the Kenyatta University Teaching, Referral and Research Hospital and other strategic institutions under the Ministry of Health.

106. This invitation followed a Cabinet meeting held on 12th May 2022, during which the Cabinet is said to have approved the allocation of portions of the said land to the Ministry of Health and to the Kenyatta University Teaching, Referral and Research Hospital.

107. Subsequently, by a further letter dated 7th July 2022, the 3rd Respondent communicated to Prof. Paul Wainaina, the then Vice Chancellor of Kenyatta University, reiterating that pursuant to the Cabinet decision of 12th May 2022, the

University Council was required to avail a portion of parcel of land comprised in Title L.R. No. 11026/2 for the purpose of planning and excision in accordance with **Section 69** of the **Physical and Land Use Planning Act**.

- 108.** The letter specified that the excised portions would comprise 30 acres for the World Health Organization (WHO), 10 acres for the Africa Centre for Disease Control and Prevention (Africa CDC), 180 acres for the Kenyatta University Teaching, Referral and Research Hospital, and 190 acres for the Kamae Settlement Scheme.
- 109.** The Petitioner has alleged that the Cabinet decision of 12th May 2022, was unconstitutional, unlawful, and made in contravention of the principles of public participation, transparency, and accountability under **Article 10** of the Constitution.
- 110.** It is the Petitioner's case that the purported Cabinet decision was not supported by any written instrument or formal communication as required under **Article 153(1)** of the **Constitution** and therefore lacked legal foundation. Further, the Petitioner asserts that the Cabinet and the Respondents acted *ultra vires* the Constitution and the governing statutes by purporting to excise public university land without due process and without consultation with the 10th Respondent's Council.

111.The Petitioner contends that under **Section 48** of the **Universities Act, 2012**, the 10th Respondent holds the suit property for purposes strictly limited to education, research, administration, and residential use. He has argued that the purported allocation of portions of the land to third parties, including the World Health Organization (WHO), the Africa Centre for Disease Control and Prevention (ACDC), and the Ministry of Lands and Physical Planning for the Kamae Settlement Scheme, violated the statutory and charter-based restrictions and that the decision undermined the institutional autonomy of the 10th Respondent and breached the rule of law as enshrined in **Article 10(2)(b)** of the Constitution.

112.The Petitioner maintained that the impugned decision, having been made without public participation or adherence to the procedures prescribed under the **Land Act**, amounted to an abuse of executive power and violated **Articles 40, 47, and 73** of the **Constitution**.

113.According to the Petitioner, this Court should declare that the alienation and allocation of the suit property was illegal, null, and void; issue orders restraining the Respondents from effecting or implementing the purported decision; and affirm that the suit property remains vested in the 10th Respondent for the exclusive purposes contemplated under its Charter and the **Universities Act**.

- 114.** In his Replying Affidavit, the 9th Respondent, on behalf of the Government of Kenya, maintained that the Cabinet decision of 12th May 2022 was a lawful exercise of executive authority. The Attorney-General averred that the decision to re-plan and re-allocate the unutilized portion of the suit property was reached within this constitutional framework and was intended to advance the public interest by facilitating national health and settlement programmes.
- 115.** It was the Attorney-General's further position that the alienation of the unutilized portion of L.R. No. 11026/2 did not amount to an unlawful deprivation of property within the meaning of **Article 40** of the **Constitution**, and that the 10th Respondent, being a public university held land vested in the Government of Kenya for public purposes.
- 116.** The Attorney-General further averred that the National Land Commission had no constitutional mandate over land held, used, or occupied by a State organ, and therefore its non-involvement could not invalidate the process. The 9th Respondent thus urged the Court to find that the Petition was devoid of merit and to dismiss it with costs.
- 117.** The 10th Respondent, Kenyatta University, maintained that it is the lawful grantee and registered proprietor of the suit property, holding the same from the Government of Kenya for public purposes of education, research, administration and residence.

118. It was its case that the Government, as grantor and lessor, retains residual authority to make policy decisions relating to the planning and utilization of public land vested in it, including the unutilized portions of the University's land, and that the Cabinet's decision of 12th May 2022, subsequently communicated through the 3rd Respondent's letters of 4th and 7th July 2022, was a lawful exercise of that authority.

119. The 10th Respondent averred that its Council duly considered and adopted the Cabinet's position in its meeting of 15th July 2022 and that the allocations of the land to the World Health Organization, the Africa CDC, the Kenyatta University Teaching, Referral and Research Hospital and the Ministry of Lands for the Kamae Settlement Scheme was consistent with the conditions of the Grant and served public and academic purposes beneficial to the University.

120. It was further contended that no breach of the **Universities Act**, the University Charter or the Constitution had been demonstrated, and that the Petition was misconceived, speculative, and an abuse of the court process.

Whether the Petitioner has locus standi

121. The Attorney General, on behalf of the 1st to 9th Respondents, contended that the Petitioner lacked the requisite *locus standi* to institute the present proceedings, arguing that the Petitioner had no legal mandate in the management, control,

or disposition of the suit property and therefore could not challenge its alleged alienation.

122. Locus standi, as defined in **Black’s Law Dictionary, 9th Edition**, refers to “the right to bring an action or to be heard in a given forum.” It denotes the capacity of a party to appear before a court and seek a remedy in relation to a particular grievance.

123. It is trite law that the question of locus standi goes to the very root of a suit, for without the requisite legal capacity, no person can competently invoke the jurisdiction of the court. The principle was succinctly expressed in **Priscilla Jesang Koech vs Rebecca Koech & 3 others [2018] eKLR**, where the court stated as follows:

“Locus standi is the cornerstone of any case. Before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued. In the case of BV Law society of Kenya v Commissioner of Lands & others, Nakuru High Court, Civil Case No 464 of 2000. It was held that: If a party has no locus standi, then the said party cannot bring a suit to court. The issue of locus standi goes to the root of any suit and the said issue of locus standi is

a point of law which is capable of disposing of a matter preliminarily.”

- 124.** With the promulgation of the Constitution of Kenya, 2010, the concept of locus standi was greatly expanded to ensure unhindered access to justice. **Article 22(1)** provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or is threatened.
- 125.** **Article 22(2)(c)** further provides that, in addition to acting in their own interest, a person may act in the interest of the public, thereby entrenching public interest litigation within the constitutional framework.
- 126.** Similarly, **Article 258(1)** stipulates that every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention. **Article 258 (2)(c)** further authorizes any person acting in the public interest to institute such proceedings.
- 127.** These provisions collectively broaden the category of persons entitled to move the court in matters involving the protection and enforcement of the Constitution. This position was aptly affirmed by the Supreme Court in **Matemu vs Trusted Society of Human Rights Alliance & 5 others (Civil Application 29 of 2014) [2014] KESC 6 (KLR)** as follows:

“It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general. In John Wekesa Bhaoya v. Attorney General, Petition No. 60 of 2012; [2013] eKLR the High Court thus expressed the principle (paragraph 4):

“...the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution in Articles 22 and 258 of the Constitution which ensures unhindered access to justice...”

128. In the present case, the Petitioner averred that he instituted this Petition in the public interest, challenging the decision to alienate portions of the suit property on the grounds, inter alia, that the said decision violated **Article 249(2)** of the Constitution on the independence of constitutional institutions, and **Article 153(1)** which requires that decisions of the Cabinet be recorded in writing.

129. The Petitioner further contended that the decision to excise 410 acres from the suit property was made without public participation and was therefore ultra vires **Article 62(4)** of

the **Constitution**, which governs the alienation of public land.

130. This Court notes that the issues raised in the Petition involve constitutional and statutory questions of public significance, concerning the alienation of public land vested in a public university. Public interest, as defined in Black's Law Dictionary, 9th Edition, denotes "the general welfare of the public that warrants recognition and protection" or "something in which the public as a whole has a stake, especially an interest that justifies governmental regulation."

131. Although the Petitioner may not have had a direct managerial role in the suit property, the substance of the Petition implicates matters affecting the public at large. In the premises, and guided by the constitutional enlargement of standing under Articles 22 and 258, this Court finds and holds that the Petitioner had the requisite *locus standi* to institute and prosecute this Petition on his behalf, and on behalf of the public.

Whether the Cabinet decision of 12th May 2022, the subsequent communications by the 3rd Respondent dated 4th and 7th July 2022, and the decision to alienate a portion of the suit land were lawful.

132. The Petitioner challenged the legality and constitutionality of the Cabinet decision of 12th May 2022 and the subsequent directives contained in the letters of 4th July 2022 and 7th July

2022 issued by the 3rd Respondent, contending that the said acts contravened the constitutional and statutory framework governing the management and disposition of public land.

- 133.** In particular, reference was made to **Article 62** of the Constitution which defines and categorises public land, as well as **Sections 12** and **14** of the **Land Act, 2012**, which prescribe the processes for allocation of public land by the National Land Commission.
- 134.** The mandate of the National Land Commission is broadly prescribed under **Article 67(2)** of the **Constitution** to include management of public land on behalf of national and county governments. **Article 62 (1) (b)** of the **Constitution** defines public land to include land lawfully held, used or occupied by any State organ.
- 135.** However, **Article 62 (2) (a)** and **(b)** of the **Constitution** precludes the National Land Commission from administering and managing land held, used or occupied by a national State organ, Kenyatta University being the such organ.
- 136.** The suit property is held by a grant to Kenyatta University, a public university established by an Act of Parliament, thereby falling within the exception of public land that should be administered by the National Land Commission as prescribed under **Article 62(2) (a)** and **(b)** of the **Constitution**. Consequently, contrary to the Petitioner's arguments, the

National Land Commission has no constitutional basis in dealing with the suit land.

137. This Court delved in considerable detail in its ruling in **Law Society of Kenya vs Kinyua, The Head of Public Service & 5 others; Migot-Adholla & another (Interested Parties) [2022] KEELC 3962 (KLR)**, where, in a dispute over the same subject matter, examined the mandate of the National Land Commission in respect of public land held, used or occupied by a national State organ as follows:

“The exclusion of the National Government, the County Government and the NLC from dealing with land held, used or occupied by a national State organ by the Constitution was not accidental. It was a deliberate constitutional imperative to enable State organs to deal with such land pursuant to the laws governing them, and to avoid the past incidences where the Executive [National Government] would deal with land reserved for State organs in any manner it deemed fit.

Section 12 and 14 of the Land Act which provides the manner in which the NLC allocates public land, upon being moved by the National or County Governments, was [is] inapplicable in the instant suit.”

138. In similar measure, to the extent that Kenyatta University is the registered proprietor of the suit land, and has a title, this Court finds that **Article 62** of the **Constitution**, in so far as the administration of land by the National Land Commission is concerned, and **Sections 12** and **14** of the **Land Act** on the processes of allocating public land, are inapplicable.

139. The legal framework governing the management and alienation of the suit property is set out in the **Universities Act, No. 42 of 2012**, and the **Charter of Kenyatta University**, issued under **Legal Notice No. 231 of 2013**.

140. Under the said legal frameworks, Kenyatta University is established as a body corporate with perpetual succession and a common seal, capable of suing and being sued. Under **Clause 3(2)** of its **Charter**, the University is expressly empowered to “take, purchase or otherwise acquire, hold, charge and dispose of movable and immovable property.”

141. Further, **Section 48** of the **Universities Act** provides that:

“All immovable property, shares, funds and securities as may from time to time become the property of the public university shall be in the name of the university and shall be dealt with in such manner as the institution may from time to time determine, subject to the conditions upon which any grants are made from public funds for capital or recurrent purposes and the conditions

upon which any endowment, bequest or donation is made for any purposes connected with the institution.”

142. The Petitioner, however, argued that **Section 60(a)** of the **Act** limits the powers of a University Council to management of the institution’s assets, and not disposal thereof. The section provides that:

*“A University Council shall have the necessary powers for the proper performance of its functions under this Act and in particular, without prejudice to the generality of the foregoing, a university shall have powers to—
(a) manage, supervise and administer the assets of the university in such a manner as best promotes the purpose for which the university is established;*

143. However, **Clause 17(8)** of **The Charter of Kenyatta University** clarifies that position as follows:

“Subject to this Charter, the Council shall be the governing body of the University:-

a) shall administer the property and funds of the University in a manner and for the purposes which shall promote the interest of the University; but the Council shall not charge or dispose of immovable property of

the University except in accordance with the procedures laid down by the Government of Kenya.” (emphasis added)

144. It therefore follows that the Council of Kenyatta University is the body lawfully vested with the authority to manage, administer and, where necessary, dispose of the University’s property, provided such disposition promotes the interests of the University and complies with the procedures established by the Government of Kenya.

145. The question that thus arises is whether the Council of Kenyatta University lawfully exercised its mandate in relation to the suit property.

146. As earlier observed, following the Cabinet Resolution of 12th May 2022, the 3rd Respondent issued two letters dated 4th July and 7th July 2022 to the Vice-Chancellor of Kenyatta University, requesting the surrender of Grant I.R 33404 to facilitate the excision of 410 acres, comprising 30 acres for the World Health Organization (WHO), 10 acres for the Africa Centre for Disease Control and Prevention (Africa CDC), 180 acres for the Kenyatta University Teaching, Referral and Research Hospital (KUTRRH), and 190 acres for the Kamae Settlement Scheme.

147. The Attorney-General, representing the 1st to 9th Respondents, averred that these communications were duly considered by the University Council, which, at its meeting

held on 15th July 2022, approved the surrender of the land to the Ministry of Lands and Physical Planning for re-planning and allocation.

- 148.** The Council found that the proposed re-planning would facilitate the establishment of auxiliary research and teaching facilities. This position was confirmed by Prof. Paul Okemo, the Deputy Vice Chancellor of Kenyatta University in his Replying Affidavit.
- 149.** Although the minutes of the Council meeting held on 15th June 2022 were not produced in this matter, they were availed in **ELC E029 of 2022**, and relevant portions were reproduced in the decision of the court in **Law Society of Kenya vs Kinyua, Head of Public Service & 5 Others; Migot-Adholla & Another (Interested Parties) [2022] KEELC 3962 (KLR)**.
- 150.** The Petitioner also contended that the surrender contravened the conditions in the Grant, which limit the land's use to educational, administrative and residential purposes. This Court has, however, considered **Section 3(a)** of the **Universities Act**, which identifies the objectives of university education as the advancement of knowledge through teaching, scholarly research and scientific investigation.
- 151.** In the 3rd Respondent's letter of 7th July 2022, it is evident that the allocations to WHO, Africa CDC, and KUTRRH were

planned interventions with an academic and research nexus to the University, intended to foster synergistic collaboration beneficial to the institution and the public.

- 152.** It is noteworthy that the Kenyatta University Teaching, Referral and Research Hospital (KUTRRH) was formally established as a state corporation vide the Kenyatta University Teaching, Referral and Research Hospital Order Legal Notice No. 4 of 2019.
- 153.** Both the World Health Organization (WHO) and the Africa Center for Disease Control (ACDC) are global and regional public-health institutions, the former operating internationally and the latter under the African Union framework. Their primary objectives, which are to strengthen public health systems, disease surveillance, and research, align closely with the University's mission of education, training, and research.
- 154.** Accordingly, the establishment of these entities on the excised portions of land is consistent with the University's educational and research objectives and will ultimately benefit both the institution's students and the public at large.
- 155.** With respect to the 190 acres allocated to the Kamae squatters, the Petitioner contended that the directive was inconsistent with the judgment in ***Kenyatta University & 1699 Others vs Kimani Mbugua & 78 Others [2021] eKLR***. In that case, Kenyatta University had instituted

proceedings to recover possession of portions of its land from individuals who claimed ownership based on alleged allotment letters. The court noted that:

“It is on record, that the plaintiff (KU) has already donated 30.82 acres for the settlement of the 670 squatters as per the list of 1984. This is the only portion the plaintiff is ready to donate to accommodate the original squatters.”

- 156.** In the decision, the Court merely observed that Kenyatta University had previously donated 30.82 acres to settle squatters identified in 1984. The Court did not issue any directive restraining future allocations of land to the squatters.
- 157.** The present Cabinet-led revision, which increased the settlement area to 190 acres, arose from the national government’s directive pursuant to the Cabinet Resolution of 12th May 2022 and the 3rd Respondent’s communications of 4th and 7th July 2022.
- 158.** It bears emphasizing that the Constitution imposes a positive obligation on the State, including national State organs, to address the plight of squatters and informal settlers. The Supreme Court in ***Mitu-Bell Welfare Society vs Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] KESC 34 (KLR)*** held that:

“151.While we are in agreement with the submission to the effect that, an illegal occupation of private land, cannot create prescriptive rights over that land in favour of the occupants, we don’t think the same can be said of an “illegal occupation” of public land. To the contrary, we are of the considered opinion, that where the landless occupy public land and establish homes thereon, they acquire not title to the land, but a protectable right to housing over the same. Why, one may wonder, should the illegal occupation of public land give rise to the right to shelter, or to any right at all? The retired Constitution did not create a specific category of land known as “public land”. Instead, the Constitution recognized what is referred to as “un-alienated government land”. The radical title to this land was vested in the president, who through the Commissioner of Lands, could alienate it, almost at will. The consequences of this legal regime have been adequately recorded for posterity elsewhere. The 2010 Constitution has radically transformed land tenure in this country by declaring that all land in Kenya belongs the people of Kenya collectively as a nation, communities and individuals. It also now

creates a specific category of land known as public land. Therefore, every individual as part of the collectivity of the Kenyan nation has an interest, however indescribable, however unrecognizable, or however transient, in public land.”

152. The right to housing over public land crystallizes by virtue of a long period of occupation by people who have established homes and raised families on the land. This right derives from the principle of equitable access to land under article 60(1)(a) of the Constitution. Faced with an eviction on grounds of public interest, such potential evictees have a right to petition the court for protection. The protection, need not necessarily be in the form of an order restraining the State agency from evicting the occupants, given the fact that, the eviction may be entirely justifiable in the public interest. But, under article 23(3) of the Constitution, the court may craft orders aimed at protecting that right, such as compensation, the requirement of adequate notice before eviction, the observance of humane conditions during eviction (UN Guidelines), the provision of alternative land for settlement, etc.

153. The right to housing in its base form (shelter) need not be predicated upon “title to land”. Indeed, it is the inability of many citizens to acquire private title to land, that condemns them to the indignity of “informal settlement”. Where the government fails to provide accessible and adequate housing to all the people, the very least it must do, is to protect the rights and dignity of those in the informal settlements. The courts are there to ensure that such protection is realized, otherwise these citizens, must forever, wander the corners of their country, in the grim reality of “the wretched of the earth.”

159. In view of the foregoing, this Court is satisfied that the Council of Kenyatta University lawfully exercised its mandate in approving the excision of portions of the suit property for use by the World Health Organization, the Africa Centre for Disease Control, the Kenyatta University Teaching, Referral and Research Hospital, and for the regularization of the Kamae Settlement Scheme.

160. The Petitioner further argued that the proposed alienation and re-planning of 410 acres of the University’s land should have involved public participation and transparency, given its public character.

- 161.** However, Kenyatta University, although a public institution funded by the State, is a body corporate with independent legal personality, governed by its Council, which exercises control over its property, finances and administration in accordance with the Charter.
- 162.** The University's decisions relating to its land, so long as they are made through its lawful organs and adhere to Government procedures, cannot be equated to direct acts of the Executive requiring national-level public participation under **Articles 10** or **118** of the Constitution.
- 163.** Rather, the University Council, acting as the duly constituted governing body, bears the primary obligation of ensuring accountability and stakeholder consultation within the institutional framework. Accordingly, while transparency remains a constitutional imperative for all public entities, the nature of Kenyatta University as an autonomous statutory corporation permits it to make internal property and planning decisions through its Council, provided that such actions promote the University's objectives and comply with the applicable legal procedures.
- 164.** The Petitioner also impugned the Cabinet directive of 12th May 2022, contending that it was invalid for want of formality, since it was not produced in writing as required by **Article 153(1)** of the **Constitution**, which provides that a decision of the Cabinet shall be in writing.

- 165.** The Petitioner produced a copy of the Cabinet Dispatch for the meeting held on 12th May 2022, which did not contain any reference to the land held by Kenyatta University.
- 166.** However, the Court must weigh this allegation against the correspondence of 4th and 7th July 2022, issued by the 3rd Respondent, which expressly referred to a Cabinet meeting of that date and communicated the alleged resolution.
- 167.** Those official communications constitute prima facie evidence of an executive decision, and in the absence of direct rebuttal evidence from within the Cabinet Secretariat or a formal confirmation from the Secretary to the Cabinet, the Petitioner's burden remained only partially discharged.
- 168.** Accordingly, this Court would find that the Petitioner raised a credible question regarding the authenticity of the alleged Cabinet resolution, but did not fully discharge the evidentiary burden necessary to establish that no written decision existed within the meaning of **Article 153(1)** of the **Constitution**.
- 169.** The upshot of the foregoing is that the Petitioner failed to establish that the Cabinet decision of 12th May 2022 and the subsequent communications by the 3rd Respondent dated 4th and 7th July 2022 were unlawful. The Petitioner also failed to establish that the decision by the Council of Kenyatta University to alienate, re-parcel and re-plan a portion of the

suit property was made unlawfully and in breach of the relevant Constitutional and statutory provisions.

170. In the result, and for the reasons stated above, this Court finds that the Petition is devoid of merit. The acts and decisions impugned were taken within the framework of the law, and no violation of the Constitution or any statute has been demonstrated. Accordingly, the Petition is hereby dismissed.

171. Given the public interest nature of the issues raised in the Petition, there shall be no order as to costs.

Dated, signed and delivered virtually in Nairobi this 6th day of November, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Kinyanjui for Petitioner

Mr. Allan Kamau for 1st – 6th Respondent and 8th and 9th
Respondent

Mr. Wakhisi for Wetangula for 10th Respondent

Court Assistant: Tracy