

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
CONSTITUTIONAL PETITION NO E006 OF 2024

**IN THE MATTER OF ARTICLES 22, 23, 40, 47 AND 50 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED VIOLATION OF THE RIGHT TO
PROPERTY, FAIR ADMINISTRATIVE ACTION, AND FAIR HEARING**

BETWEEN

**KARANJA HUKO & 28 OTHERS.....
PETITIONERS**

VERSUS

**THE MINISTRY OF LANDS AND SETTLEMENT.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT**

JUDGMENT

1. The Petitioners filed a Petition dated 2nd July, 2024, seeking the following orders:
 - a) *A declaration that the Petitioners’ constitutional rights to property, fair administrative action, and fair hearing have been violated.*
 - b) *An order directing the government to restore the Petitioners to their parcels of land in Chapakundi Settlement Scheme, Olenguruone, Nakuru County.*
 - c) *An order for the cancellation of all title deeds issued after 1992 following the placement of the government caveat.*

- d) An order directing the government to compensate the Petitioners for the losses suffered, including damages for loss of use of land, loss of crops, and emotional distress.*
- e) An order guaranteeing the Petitioners' security upon return to their land.*
- f) Costs of this petition and any other relief the court deems just and fit to grant.*

PETITIONERS' SUBMISSIONS

2. Mr. Gakinya, counsel for the Petitioners filed submissions dated 29th July, 2025, and identified the following issues for determination:
 - a) Whether the Petitioners' constitutional rights under Articles 27, 28, 40, 47 and 48 have been violated?*
 - b) Whether the Respondents have a constitutional obligation to retribute, protect or compensate the Petitioners for the loss of their land and failure to safeguard their rights?*
 - c) Whether the continued occupation and illegal transfers of the Petitioners' land during the existence of a caveat was unlawful and unconstitutional?*

3. Counsel submitted that the Petitioners, all being of Kikuyu ethnicity were selectively targeted during the 1992 clashes, and the government's failure to protect them while allowing members of another community to occupy their land constitutes ethnic discrimination and neglect contrary to Article 27 (4) of the Constitution. Counsel further submitted that the forced eviction without protection or due process and subsequent

abandonment undermined the dignity of the Petitioners contrary to Article 28 of the Constitution of Kenya.

4. It was counsel's submission that the Petitioners were registered owners of land with valid titles and were arbitrarily deprived of property contrary to Article 40 of the Constitution. Mr. Gakinya also submitted that the removal of the caveat without notifying or consulting the Petitioners and the illegal transfer of land during its pendency were conducted without adherence to due process or transparency, which violates the Petitioners' right to fair administrative action under Article 47 of the Constitution of Kenya.

5. Mr. Gakinya further submitted that the State's silence and inaction have denied them access to justice thus contravening Article 48 of the Constitution of Kenya. Counsel relied on Article 21 of the Constitution of Kenya, which provides that, the state is obligated to protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. It was counsel's submission that under International human rights instruments such as the African Charter on Human and Peoples' Rights to which Kenya is a party, the State has a duty to ensure the right to property and effective remedies for victims of human rights violations and urged the court to grant the orders sought in the Petition.

ANALYSIS AND DETERMINATION

6. The issues for determination are:

- a) *Whether the petition meets the threshold set out in the Anarita Karimi Njeru case?*
- b) *Whether the petitioners have demonstrated a violation of their constitutional rights?*

7. In the Petition dated 2nd July, 2025, the Petitioners allege violation of their constitutional rights under Articles 22, 23, 40, 47 and 50 of the Constitution of Kenya. In the case of **Anarita Karimi Njeru v Republic 1979 eKLR**, the court held that:

“We would however, again stress that if a person in seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed. That based on this holding for petition to meet the constitutional threshold to be entertained by the Constitutional Court it must meet with a reasonable degree of precision the three tier test, that is stating that which one complains of, the provision said to be infringed, the manner in which they are alleged to be infringed. That although the petitioner has enumerated Articles 28, 31 and 40 of the Constitution as the articles that have been infringed, no particulars are pleaded with reasonable clarity on how they have been violated and the extent of the violation. That the petitioner has not

demonstrated how the respondent who is not the State has failed to support or infringed such right under Article 40(5) of the Constitution of Kenya when the said right is the responsibility of the State.”

8. The Petition, as filed, resembles a Complaint with no specifics on the alleged articles that have been violated. A petition must enumerate the Articles of the Constitution that are alleged to have been infringed upon with particulars which must be pleaded with reasonable clarity on how they have been violated and the extent of the violation. This is to enable the Respondent file a response in respect to each of the alleged violations. If such is done vaguely and ambiguously, the Respondent may not be in a position to answer to the allegations.
9. This Petition is flawed in many aspects. Firstly, it does not show the action or inaction of the Respondents in the violation of the Petitioners' rights. There are no specifics, particulars or details of the violations, the articles infringed upon by the Respondents.
10. Secondly, as earlier noted in the application dated 2nd July 2024, for conservatory orders against the Respondents, the person who swore the affidavit in support of the Petition, one Francis Gakero Karanja, is not a party in this Petition. He described himself as a beneficiary of the estate of Karanja Huko (deceased), his father who owned Plot No. 279, in Olenguruone Scheme, but did not show whether he has the capacity to sue on behalf of the estate of his deceased father.

11. Thirdly, the Deponent's deceased father, Karanja Huko has been listed as the first Petitioner. How can a dead person/deceased sue? These are the red flags, which make this Petition a nonstarter. Similarly, the deceased is listed with 28 others as Petitioners, who are faceless as there is no evidence even in the flawed supporting affidavit that they have given the deponent authority to swear the affidavit on their behalf. Authority to sue on other people's behalf is necessary; otherwise, anybody can sue using your name without your consent, which can lead to grave consequences.

12. In the case of **Humprey Mutegi Burini & 9 Others v Chief of the Kenya Defence Forces & another [2017] eKLR** the court observed as follows:

“In my view, the above are generalized allegations. There are ten petitioners in this petition. It would have been prudent for the petition to contain particulars of the alleged violations subjected upon each petitioner, the loss or damage if any suffered and specify the injuries suffered whether physical or physiological. The petition ought to contain details of the alleged place of arrest for each petitioner, detention, conditions at the place of detention and a chronology of the torture inflicted and if possible the culprits. That way, the Respondents would have been confronted with a specific claim to respond to. To, me, this petition lacks clarity and with tremendous respect discloses extremely poor pleadings and does not conform to the rule 10 (2) cited above. It is difficult for

the court to determine the nature and extent of torture meted on each petitioner and arrive at a fair and reasonable compensation in absence of such clarity and specificity.”

13. As per the above case, this Petition has 29 Petitioners, who have not given their authority to sue, and there are no details of the alleged violations attached to each Petitioner. Further they have not specified with clarity the articles that have been infringed. The Petition is very sketchy with no annexures of the alleged transfers and registration to other individuals. The Petitioners could have done better by incorporating the details as per the **Anarita Karimi case (supra)**.

14. In the case of **Mumo Matemu -vs- Trusted Society (2013) eKLR** the principle in the **Anarita Karimi case** was reaffirmed by the Court of Appeal at paragraph 44 of the judgment when the learned Judges stated as follows:

(44) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st Respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of

the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior Court below to lament that the petition before it was not the “epitome of precise, comprehensive or elegant drafting , without remedy by the 1st respondent”

15. Further, at paragraph 87(3) in the same judgment, the Court in its findings stated as follows:

“It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of the constitution of Kenya and the Ethics and Anti-corruption Commission Act, 2011, accordingly the petition did not meet the standard enunciated in the Anarita Karimi Njeru case.

16. I have considered the petition, the submission by counsel, and find that the Petition does not meet the threshold for Petitions. Having found that the Petition does not meet the required threshold for petitions, I will

therefore not deal with the second issue as to whether the petitioners have demonstrated that the Respondents have violated their constitutional rights.

17. Consequently, the Petition is hereby dismissed with no orders as to costs as it was undefended.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF NOVEMBER 2025.

**M. A. ODENY
JUDGE**