



**Ikunda v County Government of Meru & 2 others; David & 2 others (Interested Parties)
(Petition E002 of 2024) [2025] KEELC 7616 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION E002 OF 2024
JO MBOYA, J
NOVEMBER 6, 2025**

BETWEEN

PATRICK IKUNDA PETITIONER

AND

THE COUNTY GOVERNMENT OF MERU 1ST RESPONDENT

**THE MERU COUNTY CHIEF EXECUTIVE COMMITTEE MEMBER,
DEPARTMENT OF LANDS, PHYSICAL PLANNING, HOUSING, URBAN
DEVELOPMENT & PUBLIC WORKS 2ND RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

MARTHA KINENE DAVID INTERESTED PARTY

TABITHA KINYA MUKIIRA INTERESTED PARTY

JULIA MUKIRI MUTHOMI INTERESTED PARTY

RULING

1. The Petitioner approached the court vide Petition dated 6th March 2024; and wherein the Petitioner has sought various reliefs. The reliefs sought at the foot of the Petition are as hereunder;
 - a. The decision of the Respondents through its officers, employees and or agents to unilaterally revert the ownership of the suit land to the 1st interested party be quashed and ownership of the same be restored to the name of the Petitioner.
 - b. The Decision of the Respondents through its offices, employees and or agents to unilaterally cancel and expunge the petitioners' application to transfer the suit land be quashed.



- c. The 1st & 2nd Respondents do complete the petitioners' application to transfer the suit land to the 2nd interested party forthwith.
 - d. The 1st & 2nd Respondents do pay the petitioner aggravated and exemplary damages.
 - e. Costs of the Petition.
2. The 1st and 2nd Respondents duly entered an appearance and filed a replying affidavit. Furthermore, the named respondents also filed a Notice of Preliminary Objection dated 28th October 2025; and wherein same raised the following grounds:
- i. This Honourable court lacks competent jurisdiction over the petition because:
 - a. Complaints, claims and or appeals regarding decisions of the county executive committee member lie with the county physical and land use planning liaison committee as prescribed under section 78 of the *Physical and Land Use Planning Act* and Regulation 35 of the Physical and Land Use Planning (Liaison Committees Regulations).
 - b. Redress of any particular grievance prescribed by *the constitution* or an act of parliament should be strictly followed [Speaker of the National Assembly v Karume (1992) KECA 42 (KLR)].
 - c. The petitioner has not exhausted the prescribed statutory remedies and procedures under section 79 of the *Physical and Land Use Planning Act* and regulation 35 of the Physical and Land Use Planning [Liaison Committees] regulations.
 - d. The petition offends section 9 of the *Fair Administrative Action Act*.
 - e. The petition does not the basic threshold set out in Anarita Karimi Njeru v Republic (1979) KEHC 30 (KLR), on the requirement of reasonable precision in pleading alleged violations of the constitutional rights.
 - f. The petition contravenes the doctrines of constitutional avoidance and ripeness as it raises no legitimate constitutional question. It (i.e the petition) was filed before exhausting available statutory remedies and
 - g. In any event, given the matters raised in sub paragraphs 1 (e) and (f) above, the petition offends Section 19 and 26 of the *Environment and land court act* and Sections 3 and 11 of the *Civil Procedure Act* to the extent that it seeks relief over land whose express consideration is Kshs.1,700,000.00 as per the Petitioners agreement dated 23/03/2023 a value that falls below the pecuniary jurisdiction of this Honourable court.
 - ii. The petition does not meet the evidentiary threshold set out in Aluochier v Senate & 2 others (2025) KESC 59 (KLR) regarding a petitioner's burden to present evidence showing on the balance of probabilities that his allegations are true and factual.
 - iii. Given the preceding, the petition is:
 - a. Incurably defective for want of jurisdictional
 - b. Premature and speculative and
 - c. Amounts to an abuse of the process of this Honourable court. It should be dismissed with costs to the respondents.



3. The preliminary objection came up for hearing on 29th October 2025; whereupon the advocates for the parties covenanted to canvass and dispose of the preliminary objection by way of oral submissions. To this end, the court proceeded to and gave directions. In addition, the parties proceeded to and rendered their respective submissions.
4. Learned counsel for the 1st and 2nd respondents [hereinafter referred to as the named Respondents] submitted that the dispute at the foot of the petition touches on and concerns the exercise of statutory duty bestowed upon the 2nd respondent herein by statute. To this end, learned counsel cited and referenced the provisions of section 78 (a) of the *Physical and Land Use Planning Act*, 2019, which it is contended, bestowed the 2nd respondent with the authority to deal with and or address applications/ claims pertaining to land use and planning.
5. Additionally, it was submitted that any decision emanating from the 2nd respondent as pertains to matters of land use and planning are appealable to the county physical and land use planning liaison committee. In this regard, counsel contended that the decision complained of ought to have been appealed to the liaison committee and not otherwise.
6. Furthermore, learned counsel submitted that the procedure governing the dispute like the one beforehand is prescribed by the provisions of regulations 30 and 35 of the county physical planning and land use regulations and hence the petition beforehand is premature. In particular, learned counsel for the named respondents cited and referenced the doctrine of exhaustion, which it was contended, ousts the jurisdiction of the court.
7. Secondly, learned counsel for the named respondents has also submitted that in so far as the impugned decision was an administrative decision, same is governed/regulated by the provisions of section 9 of the Fair Administrative Actions Act, 2015. In particular, it was contended that the petitioner herein was enjoined to invoke the provisions of the said act and to appropriate the statutory remedies stipulated thereunder.
8. It was the further submissions of learned counsel for the named respondents that the statutory remedies provided for are enumerated in the *Physical and Land Use Planning Act* 2019. In this regard, counsel invited the court to find and hold that the petition is not ripe and hence same is prohibited by the doctrine of ripeness.
9. Thirdly, learned counsel for the named petitioners has submitted that the petition beforehand also failed to meet/satisfy the threshold highlighted in the case of Anarita Karimi Njeru v Republic (1979) eKLR. In particular, it was contended that the petition has neither highlighted the articles of *the constitution* that have been breached and the manner in which same are contended to have been breached.
10. Moreover, learned counsel submitted that the petitioner has also failed to demonstrate that same has the requisite locus standi to mount the petition. In this regard, it was submitted that the petitioner has neither established nor proven title to or ownership of the suit property. Simply put, learned counsel contended that the petitioner is devoid of locus standi.
11. The next issue that was canvassed on behalf of the named respondents is the doctrine of constitutional avoidance. To this end, learned counsel submitted that the issue at the foot of the petition touches on and concerns ownership of the suit property. Moreover, it was contended that the issue beforehand ought to have been canvassed in the normal/ordinary suit in an endeavor to determine the question of ownership.



12. In a nutshell, learned counsel has submitted that the petition beforehand does not espouse pure constitutional questions. In the absence of pure constitutional questions, it was posited that the petition beforehand does not lie. In this regard, counsel invited the court to invoke and deploy the doctrine of constitutional avoidance.
13. Learned counsel for the petitioner raised and highlighted five [5] key issues. Firstly, counsel submitted that the provisions of the *Physical and Land Use Planning Act* 2019, which have been invoked and relied upon by the 1st & 2nd respondents, do not apply to the dispute beforehand. In particular, it has been contended that the dispute before the court touches on and concerns an application to transfer; and ownership of land, and not an application for development and planning. In this regard, it was submitted that the provisions of section 78 (a) of the *Physical and Land Use Planning Act* are not applicable.
14. Secondly, learned counsel for the petitioner has submitted that the preliminary objection which has been filed and canvassed on behalf of the 1st and 2nd respondents is argumentative and calls for evidence. In so far as the preliminary objection calls for evidence, it was contended that what is before the court is therefore not a pure preliminary objection.
15. On the contrary, it was submitted that the court would be called upon to take evidence and thereafter determine/establish ownership of the suit property.
16. Thirdly, it was submitted that the issue of ownership of the suit property has been admitted by the 1st & 2nd respondents in their responses to the petition. Moreover, it was contended that the suit property does not have a certificate of title. In addition, it was submitted that the suit property is a market plot and ownership rights are recorded in the market register.
17. Fourthly, learned counsel has submitted that the decision that is sought to be challenged was not a decision of the 2nd respondent under the provisions of the *Physical and Land Use Planning Act*. On the contrary, it has been submitted that the decision in question arises from the land committee, which dealt with the application for transfer of the land.
18. Fifthly, learned counsel for the petitioner has submitted that the doctrine of exhaustion does not apply to the matter beforehand. In particular, it has been submitted that the dispute falls within the jurisdiction of this court and thus same is ripe and justiciable. Moreover, it was contended that the right to own property is constitutionally vindicated and in this regard, counsel invoked the provisions of Article 40 of *the Constitution* 2010.
19. Flowing from the foregoing, learned counsel for the petitioner has implored the court to find and hold that the petition beforehand is ripe and falls for determination by the court. Furthermore, learned counsel has posited that the doctrine of exhaustion, ripeness and constitutional avoidance are inapplicable in the matter beforehand. To this end, the court was invited to dismiss the preliminary objection.
20. Learned counsel for the 1st & 3rd interested parties supported the preliminary objection. Same contended that the dispute before the court touches on and concerns ownership of the suit property between the petitioner on one hand and the 1st interested party on the other hand. In this regard, it was submitted that the dispute is a civil matter and thus same ought to have been filed in the ordinary manner for determination by the court.
21. Additionally, learned counsel has submitted that the question of ownership of the suit property ought to be subjected to the normal proceedings and not a constitutional petition. In this regard, learned



counsel for the 1st & 3rd interested parties reiterated the position that the constitutional petition is prohibited by the doctrine of exhaustion and constitutional avoidance.

22. Learned counsel for the 3rd respondent [the Hon. Attorney General] contended that the dispute concerned the affairs of the county and thus the Hon. Attorney General had been mis-joined. Nevertheless, counsel indicated that same shall neither be supporting nor opposing the preliminary objection. Simply put, learned counsel left the matter for the determination by the court.
23. I have reviewed the preliminary objection and the submissions made by/on behalf of the parties. Having reviewed same, I come to the conclusion that the determination of the preliminary objection turns on two [2] key issues, namely; whether the petitioner is seized of the requisite locus standi to commence and mount the subject petition or otherwise; and whether the petition is prohibited by the doctrine of constitutional avoidance or otherwise.
24. Regarding the first issue, it is imperative to recall and reiterate that the suit property is contended to have been registered in the name of the 1st interested party. Moreover, it is conceded that the 1st interested party is the mother of the petitioner and the 3rd interested party. In addition, it has been contended that the 1st interested party transferred the suit property to and in favour of the petitioner [sic] as a gift. To this end, the petitioner has annexed a copy of the transfer and a copy of the letter of consent.
25. Even though the petitioner has contended that the suit property was transferred to and registered in his name as a gift, it is common ground that the petitioner has not availed evidence of ownership or title. For good measure, no ownership document has been attached to the petition.
26. Furthermore, it is not lost on me that the petitioner himself concedes that the ownership of the suit property has since reverted to the 1st interested party. In any event, it is the reversion of the ownership of the suit property to the 1st interested party that has aggrieved the petitioner. To this end, it is common ground that the suit property does not belong to the petitioner. On the contrary, it is conceded that the suit property has since reverted to and belongs to the 1st interested party.
27. The question that does arise is whether the petitioner herein, who admittedly does not own the suit property has the requisite locus standi to mount and maintain the subject petition. To start with, there is no gainsaying that a party can only approach a court of law if same can demonstrate and establish some color of right or interest in respect of the subject dispute. For good measure, it is the color of right and interest which underpins the capacity or right to invoke the due process of the court. Absent right or interests over the subject dispute, a party is divested of the legal standing.
28. I hasten to state that locus standi is crucial and paramount in legal proceedings, whether same be ordinary civil proceedings or a constitutional petition. The bottom line is that a party must demonstrate some semblance of right and interests to be able to sustain a petition.
29. The significance of locus standi was highlighted by the Court of Appeal in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR), where the court stated thus;
 - (28) It still remains to reiterate that the landscape of locus standi has been fundamentally transformed by the enactment of *the Constitution* in 2010 by the people themselves. In our view, the hitherto stringent locus standi requirements of consent of the Attorney General or demonstration of some special interest by a private citizen seeking to enforce a public right have been buried in the annals of history. Today, by dint of Articles 22 and 258 of *the Constitution*, any person can institute proceedings under the Bill of Rights, on behalf of another person who



cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in the public interest. Pursuant to Article 22 (3) aforesaid, the Chief Justice has made rules contained in Legal Notice No. 117 of 28th June 2013 – *The Constitution* of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013—which, in view of its long title, we take the liberty to baptize, the “Mutunga Rules”, to inter alia, facilitate the application of the right of standing. Like Article 48, the overriding objective of those rules is to facilitate access to justice for all persons. The rules also reiterate that any person other than a person whose right or fundamental freedom under *the Constitution* is allegedly denied, violated or infringed or threatened has a right of standing and can institute proceedings as envisaged under Articles 22 (2) and 258 of *the Constitution*.

- (29) It may therefore now be taken as well established that where a legal wrong or injury is caused or threatened to a person or to a determinate class of persons by reason of violation of any constitutional or legal right, or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law, and such person or determinate class of persons is, by reason of poverty, helplessness, disability or socio-economic disadvantage, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Articles 22 and 258 of *the Constitution*.
30. The question of locus standi was also underscored by the court in the case *Rajesh Pranjivan Chudasama v Sailesh Prajivan Chudasama* (2014) eKLR, where the Court of Appeal stated as hereunder; In *Alfred Njau & Others v City Council of Nairobi* [supra] this Court had occasion to discuss the two. They stated:
- “Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...”
- The court proceeded to state:
- “To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.” [Emphasis supplied].
31. In so far as the petitioner has conceded that the ownership of the suit property reverted to the 1st respondent, there is no gainsaying that the petitioner is not seized of any ownership right of the suit property. Absent ownership right to or title over the suit property, I am afraid that the petitioner is divested of the locus standi to mount, sustain and or prosecute the petition beforehand.
32. Turning to the second question, namely; whether the petition is prohibited by the doctrine of constitutional avoidance or otherwise. To start with, it is common ground that *the constitution* ought and should be invoked only where fundamental freedoms and human rights have been violated, breached, infringed upon or otherwise threatened. On the contrary, *the constitution* ought not to be invoked and deployed in matters where there are clear Statutory provisions dealing with same; and which can be dealt with in the ordinary manner, by filing a civil suit between the disputants.
33. In the case of *Gabriel Mutava & 2 Others -v- Managing Director Kenya Ports Authority & Another* [2016] eKLR, the Court of Appeal highlighted the obtaining Legal principle and stated as hereunder;
- “In saying all these, we are not oblivious to the fact that a party is entitled to sue under *the Constitution* even if there is an alternative remedy, and or other mechanism for the resolution



of the dispute. However, it has since emerged on the authorities that constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional Litigation is not a panacea for all manner of litigation, we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.” [Emphasis added].

34. The need to invoke *the constitution* in appropriate circumstances where the human rights and fundamental freedoms have been breached, violated and or infringed upon; and not in every other situation was equally expounded in the case of Bernard Murage v Fineserve Africa Limited & 3 others [2015] KEHC 7330 (KLR).

35. For coherence the court stated as hereunder;

“I am bound to follow that principle of law since it flows from the other important principle that not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first. In that regard the words of the Court in *Harrkinson v Attorney General of Trinidad and Tobago* [1980] AC 265, hold true today as they did then;

“The notion that whenever there is a failure by an organ of Government or a Public authority or public office to comply with the law this necessarily entails the contravention of some human rights or fundamental freedoms guaranteed to individuals by Chapter 1 of *the Constitution* is fallacious. The right to apply to the High Court under Section 6 of *the Constitution* for redress when any human right or fundamental freedoms is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.”

The Court concluded thus;

“The mere allegation that a human right has been or is likely to be contravened is not itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the section if it is apparent that the allegation is frivolous, vexatious or abuse of the process of court, as being made solely for the purpose of avoiding the necessity of applying the normal way for appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.”

36. Back to the subject matter. There is no gainsaying that the dispute beforehand touches on and concerns the transfer and ownership of the suit property. Moreover, the ownership dispute pits the petitioner on one hand and the 1st & 3rd interested parties on the other hand. Suffice it to state that the petitioner contends that the suit property had been transferred to himself by the 1st interested party on the basis of [sic] gift. On the contrary, there appears to be a dispute canvassed by the 1st & 3rd interested parties as concerns the impugned transfer.

37. It is also evident that the question pertaining to the transfer of the suit property was escalated to the 1st and 2nd respondents. To this end, the 1st & 2nd respondents appear to have reverted the ownership to the 1st interested party, who admittedly was the owner of the suit property.

38. To my mind, what is clothed as a constitutional petition is a pure civil dispute touching on and concerning ownership rights pertaining to the suit property. Quite clearly, the petitioner herein ought



- to have filed a civil suit [if at all,] as against the 1st and 3rd interested parties and thereafter proved his entitlement to ownership of the suit property. For good measure, the filing of the subject petition constitutes an endeavor by the petitioner to circumvent the established procedures.
39. In the case of *Kennedy Odoyo Okello v District Land Registrar, Migori & 2 others* [2015] eKLR - Civil Appeal 58 of 2014, the Court of Appeal dealt with a similar situation.
40. For coherence, the court stated as hereunder:
- “In such circumstances, it amounts to crying wolf for the appellant to allege that his constitutional right to property and those of his family members have been breached.
- In our view, the petition did not raise any constitutional issues and whatever complaint the appellant had squarely lay in the domain of private law.”
41. Looking at the facts of the dispute, I come to the conclusion that the matter beforehand does not raise pure constitutional issues to warrant the invocation of *the constitution*.
42. On the contrary, the dispute beforehand concerns private rights to and in respect of the suit property and the determination of such rights [if at all] lies within the province of private law. Suffice to state that the dispute can be addressed by way of a suit filed in line with the provision[s] of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; as read together with Section 26 of the Environment and *Land Act*, 2011.
43. To this extent, I agree with learned counsel for the 1st and 2nd Respondents that *the constitution* ought not to have been invoked. Moreover, I agree with learned counsel that the petition beforehand is prohibited by the doctrine of constitutional avoidance.
44. Notably, the doctrine of constitutional avoidance was expounded in the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment), where the Supreme Court [the apex Court] stated as hereunder;
- (256) The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”
- (257) Similarly, the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936)).
- (258) From the foundation of principle well developed in the comparative practice, we hold that the 1st, 2nd and 3rd respondents’ claim in the High Court, regarding infringement of intellectual property rights, was a plain copyright-infringement claim and it was not properly laid before that Court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court.
45. In my humble, albeit considered view, the ratio of the apex court captured in terms of preceding paragraphs applies aptly to the matter beforehand. Simply put, the petition is prohibited by the doctrine of constitutional avoidance.



Final Disposition.

46. Flowing from the analysis highlighted in the body of the ruling, it must have become crystal clear that the petition beforehand is not only premature and misconceived for lack of locus standi, but same is also prohibited by the doctrine of constitutional avoidance.
47. In the upshot, and for the reasons alluded to; the final orders that commend themselves to the court are as hereunder;
- I. The Preliminary Objection be and is hereby allowed.
 - II. The Petition dated 6th March 2024 be and is hereby struck out.
 - III. Costs of the Preliminary objection and the Petition be and are hereby awarded to the 1st and 2nd Respondents only.
 - IV. The Costs in terms of clause [iii] shall be agreed upon; and in default be taxed in the conventional manner.
48. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 6TH DAY OF NOVEMBER 2025
OGUTTU MBOYA, FCIArb; CPM [MTI-EA].**

JUDGE.

In the presence of:

Hussein -Court Assistant

Mr. Maheli for the Petitioner

Mr. Wanyenji Njoroge holding brief for Dr. Thiankolu Muthomi for the 1st & 2nd Respondents.

Miss Miranda [Senior Litigation Counsel] for the 3rd Respondents

Mr. Muthomi for the 1st & 3rd Interested parties.

No appearance for the 2nd interested party.

