



Pelican Manufacturers Limited & another v Machakos County Government (Environment and Land Petition 1 of 2021) [2025] KEELC 7539 (KLR) (4 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7539 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND PETITION 1 OF 2021
AY KOROSS, J
NOVEMBER 4, 2025**

BETWEEN

PELICAN MANUFACTURERS LIMITED 1ST PETITIONER

RSA KENYA LIMITED 2ND PETITIONER

AND

MACHAKOS COUNTY GOVERNMENT RESPONDENT

JUDGMENT

Petitioners' case

1. Through a Petition initially filed on August 11th, 2023, and later amended on December 19th, 2023, the petitioners request this honourable court to consider granting them the following orders:
 - a. A declaration that the revocation by the respondent of the authority given to the first petitioner on 31st October 2019 and extended on 17th March 2021 to fence and excavate and dump cotton soil on the suit property being LR No. 337/5170 was unlawful and unconstitutional as it violates the first petitioner's right to fair administrative action as enshrined under Article 47 of *the Constitution* and the first petitioner's right to property as enshrined under Article 40 of *the Constitution*.
 - b. A declaration that the first petitioner is the registered owner of LR No. 337/5170 and that it is not public land.
 - c. A permanent injunction restraining the respondent, whether by itself, its employees, servants, and/or agents, from harassing, intimidating, or interfering with the first petitioner's quiet possession, use, occupation, and ownership of its property being L.R. No. 337/5170. Alternatively, an order for judicial review by way of prohibition to stop the respondent, whether by itself, its employees, servants, and/or agents, from harassing, intimidating, or



interfering with the first petitioner's quiet possession, use, occupation, and ownership of its property, being L.R. No. 337/5170.

- d. An order for compensation in the sum of Kshs. 675,100 to Kshs. 9,109,900 as at the date of filing this petition, being the security charges incurred by the petitioners in procuring security for the suit property and the equipment thereon.
 - e. A declaration that the petitioners are entitled to reimbursement of the security charges accruing up to the withdrawal or cancellation of the unlawful revocation.
 - f. Damages or compensation for the violation of the petitioners' rights under Articles 40 and 47 of *the Constitution* of Kenya, 2010.
 - g. Costs of the petition.
2. The petitioners' case was outlined in the amended petition and in the supporting affidavit of Manmohan Singh Bhamra, who is the managing director of the first petitioner. It was sworn on 12/08/2021. In summary, it was affirmed that the first petitioner is the registered owner of land parcel no. LR. 337/5170 (hereinafter the "suit property"), and that on 31st October 2019, the first petitioner also applied for and received permission to fence, excavate, and dump black cotton soil from the suit property. Subsequently, as requested by the respondent on 23rd April 2021, the petitioners forwarded their documents relating to the suit property.
 3. However, on 27th April 2021, while the contractor was excavating the suit property, the respondent's representatives arrived at the site. They detained a security guard, two machine operators, and the site foreman, forcing them to hire police officers to secure the property. Undeterred, on 13th May 2021, the 1st petitioner received an undated letter from the Mavoko sub-county Municipal Planner revoking permission under Section 57(5) and (6) of the *Physical and Land Use Planning Act*.
 4. The petitioners challenged the revocation of the authority granted by the respondent on the grounds that the respondent's acts were illegal, unreasonable, and violated the petitioners' rights to fair administrative action and property, contravening Articles 40 and 47(1) of *the Constitution* of Kenya. A further affidavit was also deposited by the managing director on 22/07/2024.

Respondent's case

5. In a response dated 17th November 2021, the respondent denied the allegations made against it and argued that they were false and involved significant nondisclosure. It claimed that its actions aimed to protect public land and that it acted in accordance with the provisions of Article 42 of *the Constitution* and Section 57(5) and (6) of the *Physical and Land Use Planning Act*. It further contended that the petitioners were not entitled to any damages and urged the court to dismiss the petition.

Parties' written submissions

6. As directed by the court, the petition was considered through written submissions- the petitioner's law firm on record, M/s. Hamilton Harrison & Mathews Advocates submitted their written submissions dated 4th June 2025. They referenced several legal provisions and judicial precedents, including Jackson Kariuki Kahungura & another v John Karanja Kihagi & 5 others [2018] KEELC 3659 (KLR), Rutongot Farm Ltd v Kenya Forest Service & 3 others [2018] KESC 27 (KLR), and CMM (Suing as the next of friend of and on behalf of CWM) & 6 Others v Standard Group & 4 Others [2023] KESC 68 (KLR).



7. Upon service, the respondent’s law firm on record, M/s. Katunga Mbuvi & Co. Advocates filed their written submissions dated 13th June 2025, in which they identified two issues for determination: whether the revocation of the development approval was lawful, justified, and procedurally compliant with due process, and whether the petitioners were entitled to the reliefs sought, including declaratory orders, damages, and costs. Like the petitioner’s counsel, they referenced several legal provisions and judicial precedents, including *Bamaftah v County Government of Kilifi* (Environment & Land Case 26 of 2021) [2023] KEELC 15865 (KLR) (1 March 2023) (Judgment) and *Dry Associates Limited v Capital Markets Authority & Another* [2012] eKLR.
8. Accordingly, when identifying and considering the issues for determination, this court will thoughtfully review the parties’ arguments as presented in their well-argued submissions. It will also take into account relevant laws and judicial precedents that support and inform these arguments.

Legal basis of the petition

9. The petition asserts it has been filed under several provisions; however, it specifies that the particular provisions of *the Constitution* violated by the respondent are Articles 40 and 47 (1). These provisions state as follows:

Article 40 (1)

“Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.”

Article 47 (1)

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

Issues for determination, analysis, and determination

10. Turning to the matter at hand, this court has carefully considered the pleadings, arguments from both sides, relevant laws, and the cited precedents. Consequently, the issues that need to be determined and will be addressed together are as follows: -
 - a. Whether the petitioner proved its rights to property protected under Articles 40 and 47 (1) of *the Constitution* had been violated by the respondent.
 - b. What orders should be made concerning the petition, including an order on costs?
11. Article 22(1) of our Constitution grants every person the right to bring a court case claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed, or is threatened. Additionally, Article 258 allows every person to bring a court case claiming that *the Constitution* has been breached or is at risk of being breached. The Court, under Article 20(3), is mandated by *the Constitution* to interpret the rights in the Bill of Rights in a way that develops the law where necessary and favours the enforcement of a right or fundamental freedom. Furthermore, Article 20(2) states that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the fullest extent possible, considering the nature of the right or fundamental freedom.



12. Furthermore, the provisions of Article 22(3) and 22(4) of *the Constitution*, as read with Article 47 and Sections 5(2)(b) and (c) and 7(1)(a) and (2) of the *Fair Administrative Action Act*, show that violations of fundamental rights and freedoms can be entertained by this court, which has jurisdiction over environment and land matters.
13. When a public body, such as the respondent, is required by statute to perform a duty, and either disregards key provisions or commits a grave mistake or clear illegality in carrying out that duty, this court may be asked to review the proceedings and set them aside or correct them. To establish grounds for review, it must be shown that the respondent failed to consider the relevant issues in line with the statute's requirements and the principles of natural justice.
14. Moreover, as stated in the decision of Dry Associates Limited (Supra), buttressed by the respondent, the court noted that in judicial review proceedings, the primary consideration by the court is whether the procedure used is fair. Moreover, in the decision of David Mugo t/a Mayatta Auctioneers –vs- The Court Brokers Licensing Board – Nbi H.C. Misc. Application No. 818 of 1998, which was cited with approval in Moses Kamau Kaara & 24 Others V Kamulu Housing Co-operative Society Limited & 2 Others [2012] Kech 1966 (klr), the court summarised the following considerations: -

“...this is an application for a judicial review; and as it is fairly well known, judicial review is undertaken where a judicial or quasi judicial decision making authority, whether it consists of one person or a plurality of persons:- (i) exceeds its powers, or (ii) commits an error of law, or (iii) commits a breach of natural justice, or (iv) reaches a decision which no reasonable tribunal could have reached, or (v) abuses its powers or (vi) does a combination of any of these things.”
15. When considering Section 12 of the *Fair Administrative Action Act*, the Court of Appeal, Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others [2016] KECA 729 (KLR), stated thus:-

“Pursuant to Section 12 of the *Fair Administrative Action Act*, the general principles of common law and rules of natural justice continue to apply in the review of administrative actions. The Section provides that the Act is in addition to and not in derogation from the general principles of common law and the rules of natural justice. This means that the common law principles on judicial review of administrative action under the heads of illegality, irrationality, procedural impropriety and proportionality are relevant and applicable in Kenya. (See the common law principles as expounded by Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374). See also the principle of reasonableness as stated in the case of Associated Provincial Picture Houses Ltd v Wednesbury Corp. [1948] 1 KB 223.)”
16. On the first limb of judicial review, the petitioners presented several charges against the respondent, namely, revoking the authority to fence, excavate, and dump cotton soil by improperly invoking Section 57(5) and (6) of the *Physical and Land Use Planning Act*, issuing such revocation through an undated letter which made it difficult to determine when it was issued, failing to give notice of the intended revocation, not allowing the first petitioner to make representations regarding why the permission should not be revoked, failing to provide the first petitioner with adequate reasons for the revocation or to specify who is responsible for determining those issues and where the determination or investigations, if any, had reached, and finally, the actions of the respondent's Municipal Planner in issuing the letter were ultra vires his powers and therefore illegal.



17. Accordingly, since it is now settled law that the burden of proof lies on the person who makes the allegation, the petitioners had to produce credible evidence before this court to substantiate these claims to the court's satisfaction.
18. In this regard, it is essential to consider Section 57(5) and (6) of the *Physical and Land Use Planning Act* to determine whether the petitioner's rights under Article 47 have been infringed. This section allows a county executive committee member ("CEC") to revoke a development permission if the applicant has breached any provision of the Act or the conditions attached to the permission, for a justifiable reason. Further, the CEC may modify the conditions if circumstances dictate, when there is a justifiable reason.
19. In this instance, the Municipal Planner issued a revocation notice, and there is no flaw in his capacity, as he acted in a role delegated to him by the CEC. Furthermore, the mere undating of the notice does not render it invalid, as the petitioners have acknowledged that they were summoned to collect it, which they duly did. In this notice, the respondent withdrew the permission until "issues of ownership of the land are determined". A close reading of Section 57(5) and (6) of the *Physical and Land Use Planning Act* shows that such a ground is not envisaged therein, contrary to the respondent's arguments. Additionally, there was never any evidence that the petitioners breached any provision of the Act or the conditions attached to the permission. Thus, this court agrees with the petitioners and finds that the respondent acted ultra vires.
20. Moreover, a review of the timeline of events leading to such notice shows that, on 31/10/2019, the respondent issued a development permission to the 1st petitioner, which was extended on 17/03/2021. Subsequently, the respondent sent a letter to the 1st petitioner dated 23/04/2021 requesting several documents, including its title deed, and the 1st petitioner was required to submit them within 7 days. Nonetheless, there is no evidence that the 1st petitioner ever responded to this request, and it appears that this neglect led to the revocation notice in question.
21. Notwithstanding non-response by the 1st petitioner to the request for documents and being guided by the Supreme Court of Kenya decision in *Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] KESC 6 (KLR), the respondent was still required to serve the petitioners a notice of revocation as such notice if duly served upon the 1st respondent, would provide an opportunity for a response. In this case, such a proper notice was never issued. It follows that the respondent arrived at its decision to revoke the development permission arbitrarily, capriciously, misconceived the nature of the discretion conferred upon it, and acted unreasonably. On this first limb of the petition, this court finds that the first petitioner proved its case against the respondent.
22. As to the 2nd limb, the 1st petitioner has also availed a copy of the title document of the suit property that is registered in its name, which is prima facie evidence that the suit property belongs to it. It complained that the respondent alleged the suit property was public land. Still, having reviewed correspondence from the respondent, particularly the undated letter and the one dated 23/04/2021, it is clear that neither of them alludes to the suit property being public land. Furthermore, the charge sheets do not reveal the details of the public utility allegedly being illegally excavated. Furthermore, the petitioners did not allege that they were deprived of the suit property, and this court finds that they failed to prove that their right to the property was infringed.
23. Concerning the last issue, the petitioners sought various remedies against the respondent, including compensation for security charges. To justify this relief, the petitioners presented several receipts and bank statements. Nonetheless, the court finds that the relief is not justified, as the payer was the second petitioner, yet the petitioners failed to present tangible evidence, such as a lease agreement, to establish



the connection between the second petitioner and the suit property. Besides, there is no evidence that the respondent attempted to deprive the 1st petitioner of the suit property to warrant such security.

24. About the other reliefs, the petitioners relied on the decision of *Maitha v Cabinet Secretary Industry Trade and Enterprise Development & 2 others* [2023] KEELC 80 (KLR), which stated that Section 16 of the *Government Proceedings Act* permits the court to issue declaratory orders instead of the injunction prayed for. Therefore, this court is inclined to grant declaratory reliefs in this case.
25. The petitioners also sought damages for violation of their rights under Articles 40 and 47 of *the Constitution* and submitted that a sum of kshs. 2,500,000/= should suffice, relying on a plethora of case law, including *Multiple Hauliers East Africa Limited V Attorney General & 10 others* [2013] KEHC 6012 (KLR) and *Isabel Waithira Njoroge v Permanent Secretary Ministry of State for Provincial Administration & Internal Security & 4 others* [2014] KEELC 433 (KLR). In the circumstances of this case, where the 1st petitioner's petition was partly successful, this court awards kshs. 2,000,000 for the violation of the 1st petitioner's right to fair administrative action.
26. As for the second petitioner, this court dismisses its case as it has not presented any iota of evidence to substantiate its claim against the respondent. It is well-established law that costs follow the event, and since the 2nd petitioner's case has been dismissed, it is in the interests of justice that each party bears their respective costs of the petition. In the end, this court hereby issues the following final disposal orders: -
- a. A declaration is hereby issued that the first petitioner is entitled to the LR No. 337/5170 as the registered owner thereof.
 - b. It is hereby declared that the first petitioner's rights under Article 47 of *the Constitution* of Kenya, 2010, have been violated by the respondent.
 - c. Damages of kshs. 2,000,000/- is awarded to the first petitioner, payable by the respondent.
 - d. Each party shall bear its respective costs of this petition.

Judgment accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 4TH DAY OF NOVEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

04.11.2025

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

N/A for parties.

