

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**MILIMANI PETITION No. E014 OF 2020**

**IN THE MATTER OF ARTICLE 22 (1)**  
**IN THE MATTER OF ALLEGED CONTRAVENTION OF**  
**FUNDAMENTAL RIGHTS AND FREEDOMS UNDER**  
**ARTICLES 27, 40, 47 AND 48 OF THE CONSTITUTION**  
**AND**  
**IN THE MATTER OF RENEWAL OF LEASES IN RESPECT**  
**OF LR. No. 209/3558 and LR. No. 209/3559**

**BETWEEN**

**DESIGNS UNLIMITED LIMITED.....1<sup>st</sup>**

**PETITIONER**

**MECOL LIMITED.....2<sup>nd</sup>**

**PETITIONER**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....RESPONDENT**

**JUDGMENT**

**Background**

1. Vide a Petition dated 22<sup>nd</sup> September, 2020, the Petitioner seeks the following reliefs:

- a. A declaration that the offers dated 24<sup>th</sup> August 2020 to renew their leases made to them contravene special conditions numbers 14 and 15 respectively, requiring that the terms of the renewal be agreed upon and are therefore null and void.*

- b. A declaration that the renewal of a lease of a grantee is an administrative action within the meaning of Article 47 of the Constitution and commences with an offer.**
- c. A declaration that the Respondent has breached special conditions numbers 14 and 15 of the grants.**
- d. A declaration that the process of renewal embodied by the offer is procedurally unfair in that it purports to allow the Respondent to impose its terms on a tenant.**
- e. A declaration that the offers dated 24<sup>th</sup> August 2020 are unlawful, unreasonable and are products of an administrative action which is not procedurally fair within the meaning of Article 47 of the Constitution.**
- f. A declaration that the proposed standard premium in the sum of Kshs. 12,915,000/- and the proposed annual rent of Kshs. 3,228,750/- for LR No 209/3559 are unreasonable within the meaning of Article 47 of the Constitution and Wednesbury's Principles and are null and void.**
- g. A declaration that the proposed Stand Premium of Kshs. 5,160,000/- and annual rent in the sum of Kshs. 1,290,000/- are unreasonable within the meaning of Article**

**47 of the Constitution and Wednesbury's Principles and are null and void.**

- h. A declaration that the offer is illegal for permitting the Respondent to benefit from developments of the Petitioners without paying compensation for them when the lease determines.**
- i. A declaration that the Respondent has contravened the following national values described in Article 10 of the Constitution: -**
  - adherence to rule of law;**
  - respect for equity, equality and human rights and good governance.**
- j. A declaration that the Respondent has contravened the Petitioners' rights under Articles 10, 27, 40, 47, 48 and 232 of the Constitution of Kenya.**
- k. An order of certiorari do issue to bring to this Honourable Court the said offers made on 24<sup>th</sup> August 2020 for the purposes of quashing.**
- l. An order of mandamus do issue to compel the Respondent to undertake the renewal process in accordance with the law.**
- m. An order of mandamus do issue compelling the Respondents to renew the 1<sup>st</sup> Petitioner's lease in respect of LR. No. 209/3559 in accordance with the law.**

- n. As an alternative to (m) above, a mandatory injunction do issue to compel the Respondent to renew the Petitioners' leases in respect of the said LR. No. 209/3559 and LR. No. 209/3558 in accordance with the procedure set out in special conditions and Article 47 of the Constitution.***
- o. A declaration that Section 87 of the Kenya Railways Corporation Act is unconstitutional to the extent of its inconsistency with Article 48 of the Constitution.***
- p. General damages for contravention of the Petitioners' rights under Articles 10, 27, 40, 47, 48 and 232 of the Constitution of Kenya.***
- q. Exemplary damages for contravention of the Petitioners' rights under Articles 10, 27, 40, 47, 48 and 232 of the Constitution of Kenya.***
- r. Costs of this suit.***
- 2.** The Petitioners' case as set out in the Petition and the Affidavit of 22<sup>nd</sup> September, 2020 sworn by Mary Wanjiru Karunditu, the 2<sup>nd</sup> Petitioner's Managing Director, is that since colonial times, the 1<sup>st</sup> Respondent had held the fee simple or long lease in respect of land in the Industrial Area in Nairobi City governed by the repealed Government Lands Act and the Kenya Railways Corporation Act.
- 3.** It is their case that between 1946 and 1983, the lease for L.R. No. 209/3558 was successively and lawfully assigned,

with the consent of the Governor and the Commissioner of Lands to various assignees under the same special conditions.

4. It was deposed that on 30<sup>th</sup> November 1983, the 2<sup>nd</sup> Petitioner became the lessee under the renewed lease. Similarly, A.H.N. Holden (1951) Ltd, the original grantee of L.R. No. 209/3559, assigned that lease through successive transfers until the 2<sup>nd</sup> Petitioner also became its lessee on the same date, and that on 24<sup>th</sup> June 1998, the 2<sup>nd</sup> Petitioner, with the necessary consents, assigned the lease for L.R. No. 209/3559 to the 1<sup>st</sup> Petitioner, a sister company with common shareholders and directors.

5. It is the Petitioners' case that the terms of the grant included special conditions *inter-alia*:

***a. The grantee was to maintain the property to the satisfaction of the general manager of the East African Railways and harbours Rat proof go down warehouses of factory constructed of the best materials and in a substantial and workmanlike manner such buildings shall include a suitable platform at track floor level on the railway side of the plot.***

***b. The grantee was to use the said land only for a godown or factory purposes for which railway access or facility are required;***

***c. The grantee was not to assign sub-let or otherwise part with the possession of the said***

*land or any part thereof without previous consent of the governor in writing;*

*d. The governor may on the written request of the grantee, grant to him a lease of the said land for such further term subject to such rent and conditions as may hereafter be agreed upon provided that in the event of the grantee not so desiring to enter into a further lease as aforesaid, the grantee shall be at liberty to remove any building erected by him on the said land in accordance with Section 79 of the crown lands ordinance.*

6. The aforesaid conditions of the lease in respect of the suit properties were identical save that the renewal clause in L.R No 209/3558 was number 14 while that of L.R 209/3559 was number 15.
7. According to the Petitioners, the process of renewing a lease obliges both the Government and the 1<sup>st</sup> Respondent to engage the tenant in negotiations on the terms of renewal. They contend that the Respondents are prohibited from unilaterally determining or imposing such terms. Consequently, any offer for renewal made without prior negotiation violates special condition numbers 14 and 15 and is therefore null and void.
8. The Petitioners aver that **Articles 10** and **47** of the **Constitution** oblige the Respondents to uphold the rule of law, and respect human rights, including the right to

property and ensure that all administrative actions are efficient, lawful, reasonable, and procedurally fair.

9. They contend that lease renewal by the Government and the 1<sup>st</sup> Respondent is an administrative action that must comply with the lease's special conditions, particularly by involving negotiation with the tenant to ensure that the terms of renewal, such as rent, premium, and treatment of improvements are reasonable and fairly determined.
10. The Petitioners further contend that a lease constitutes property within the meaning of **Article 40** of the **Constitution** and that under **Article 23**, they are entitled to seek redress when the Respondents breach special conditions 14 and 15.
11. According to the Petitioners, through two letters dated 24<sup>th</sup> August 2020, but delivered to them on 7<sup>th</sup> September 2020, they were offered renewals of leases in respect of L.R. Nos. 209/3558 and 209/3559; that the Respondent demanded acceptance within 30 days from the date of the letters, notwithstanding their late receipt effectively giving the Petitioners only 14 days to respond and that this amounted to an imposition of terms in breach of the lease grants.
12. The Petitioners aver that through the letters dated 14<sup>th</sup> September 2020, they informed the Respondent's Managing Director that they accepted the offer to renew the leases for 45 years each and treated the offer as the commencement of the renewal process under clauses 14

and 15 and that they requested a 60-day extension of the 30-day deadline to facilitate negotiation of the renewal terms and payment of premiums.

- 13.** According to the Petitioners, the offers breached conditions 14 and 15 of each grant, which require that terms be agreed upon by the parties; that the offers were made under a misapprehension of the Respondent's constitutional obligations under **Articles 27, 40, and 47** of the **Constitution** regarding rule of law, property rights, and fair administrative action; that the proposed annual rent and standard premium were unreasonably high; and that the termination clauses sought to enrich the Respondent by benefiting from the Petitioners' improvements.
- 14.** The Petitioners aver that they delivered these letters by a messenger, but the Respondent declined to accept them and requested email delivery, which they complied with on 14<sup>th</sup> and 17<sup>th</sup> September 2020 and that the Respondent has not confirmed that the offers marked the commencement of an administrative action or extended the acceptance period.
- 15.** The Petitioners state that the 2<sup>nd</sup> Petitioner operates a furniture manufacturing business producing office and institutional furniture sold across Kenya; that it employs 43 permanent workers, 6 contract staff, and 2 daily casual labourers; that its factory, complete with plant and machinery, has stood on the suit property since the leases were assigned in 1983 and that they fear that unless the

renewal offers are suspended, the Respondent may unlawfully re-enter and compulsorily take possession of their property.

**16.** It is the Petitioners' case that they initiated the lease renewal process for both parcels in 2014; that before then, the directors of the 1<sup>st</sup> Petitioner, who were also directors of the 2<sup>nd</sup> Petitioner, had resolved to transfer the lease back to the 2<sup>nd</sup> Petitioner so that any renewed leases would issue in its name and that vide their formal applications for renewal lodged on 10<sup>th</sup> June 2020, they requested that the renewed lease for L.R. No. 209/3559 revert to the 2<sup>nd</sup> Petitioner.

**17.** The Petitioners further state that since they became lessees of the suit parcels, they have consistently paid rent and rates to the Respondent and the County Government in the following manner:

| Year | L.R No   | Rates to Nairobi City Council | Rent to Kenya Railways  |
|------|----------|-------------------------------|-------------------------|
| 2016 | 209/3558 | 61, 200.00                    | 29, 200.00              |
|      | 209/3559 | 153,000.00                    | 600 50,000.00 2, 250.00 |
| 2017 | 209/3558 | 45,000.00                     | 29,200.00               |
|      | 209/3559 | 112, 500.00                   | 600 50,000.00 2, 250.00 |

|      |         |             |           |        |
|------|---------|-------------|-----------|--------|
| 2018 | 209/355 | 45,000.00   | 29,       | 200.00 |
|      | 8       | 112, 500.00 | 600       |        |
|      | 209/355 |             | 50,000.00 | 2,     |
| 2019 | 9       |             | 250.00    |        |
|      | 209/355 | 45,000.00   | 29,       | 200.00 |
|      | 8       | 112, 500.00 | 600       |        |
| 2020 | 209/355 |             | 50,000.00 | 2,     |
|      | 9       |             | 250.00    |        |
|      | 209/355 | 45,000.00   | 29,       | 200.00 |
|      | 8       | 112,500.00  | 600       |        |
|      | 209/355 |             | 50,000.00 | 2,     |
|      | 9       |             | 250.00    |        |

**18.** The Petitioners protest that under the new renewal offer, the annual rent was abruptly raised from Kshs. 82,050/= to Kshs. 4,518,750/= per annum which translates to an increase of 5,407.31% and that as per the offer letter in respect of L.R 209/3559, the total amount payable to the Respondent was Kshs 17, 075, 983/= whereas the total amount payable in respect of L.R 209/3558 was Kshs 6, 897, 500.00/=.

**19.** They contend that **Article 40** of the **Constitution** guarantees the right to acquire and own property, including leasehold interests, and protects against arbitrary deprivation of such property. In their view, this right encompasses renewal of leases upon expiry on lawful, fair, and negotiated terms.

20. Further, it is their case that **Section 13(1)** of the **Land Act** grants a lessee a right of first refusal upon expiry of a lease, provided they are Kenyan citizens and the land is not required for a public purpose, and that this statutory safeguard secures their entitlement to renewal.
21. Relying on authorities such as **Republic vs Kadhi ex parte Nazreen [1973] EA 153**, **Hinds v R [1976] 3 All ER 353**, and **Maharaj vs Attorney General [1978] 2 All ER 678**, the Petitioners emphasize that constitutional rights are protected against infringement by any arm of the State whether the Judiciary, Executive, or Legislature.
22. The Petitioners, citing **Diana Kethi Kilonzo & Anor vs Independent Electoral and Boundaries Commission & 10 Others, Nairobi Petition 359 of 2013[2013]eKLR** further aver that they have established a proprietary interest in the suit properties deserving of protection under the Bill of Rights, and that the 1<sup>st</sup> Petitioner had a legitimate expectation that the lease in respect of L.R. No. 209/3558 would be renewed.
23. In the circumstances, they contend, the past practices of the Respondent have created an expectation that they will remain bound by those practices in all dealings relating to L.R. Nos. 209/3558 and 209/3559.
24. Similarly, it was argued, **Article 27** of the **Constitution** guarantees every person the right to equal protection and equal benefit of the law and prohibits arbitrary and capricious exercise of public power by the Respondents,

and that **Article 27** is analogous to **Article 14** of the **Indian Constitution**, under which the rule in *Maneka Gandhi vs Union of India & Another (1977) SC 597* holds that arbitrariness and equality are mutually exclusive.

- 25.** The Petitioners aver that the purported limitation of access to court under **Section 87** of the **Kenya Railways Corporation Act** is ultra vires **Articles 22, 23, 27, 40, 47, and 48** of the Constitution and is therefore null and void pursuant to **Article 2(4)**, which declares that any law inconsistent with the Constitution is void to the extent of its inconsistency.
- 26.** In response to the Petition, the Respondent, through its Principal Real Estate Officer, Justine Omoke, filed a Replying Affidavit on 8<sup>th</sup> March 2021. He deponed that the Respondent is the registered proprietor of the parcels of land known as L.R. Nos. 209/3558 and 209/3559, situated in the Industrial Area of Nairobi County.
- 27.** He stated that the Respondent, being a public entity, holds and manages the suit properties in trust for the public and is therefore obligated to secure the best possible commercial returns from them and that the properties had been leased to the Petitioners until the expiry of the tenancy period. Mr. Omoke stated that in May 2014, the 1<sup>st</sup> Petitioner assigned its rights under the leases to the 2<sup>nd</sup> Petitioner, and the Respondent raised no objection and

that thereafter, the Respondent invited the Petitioners to apply for renewal of the leases upon expiry.

- 28.** According to the Respondent, the Petitioners submitted formal applications for renewal by their letter dated 10<sup>th</sup> June 2020 and that these applications were considered by the Respondent's Board of Directors at its meetings held on 6<sup>th</sup> and 10<sup>th</sup> August 2020, where the Board approved the applications and recommended renewal of the leases.
- 29.** Following the Board's approval, the Respondent issued letters of offer dated 24<sup>th</sup> August 2020, setting out the terms of renewal; that on the same date, the Petitioners were informed that the letters were ready for collection and that the offers would remain valid for 30 days and that this communication was acknowledged by the 2<sup>nd</sup> Petitioner's Managing Director.
- 30.** Mr. Omoke deponed that although the Petitioners were notified on 24<sup>th</sup> August 2020, they only collected the letters on 7<sup>th</sup> September 2020, two weeks later; that the Respondent made it clear that the offers were valid for 30 days, up to 23<sup>rd</sup> September 2020 and that it was expressly stated that failure to provide written acceptance and remit the required payments within that period would be deemed a refusal to renew, upon which the offers would automatically lapse.
- 31.** According to the Respondent's Principal Real Estate Officer, Justine Omoke, despite collecting the letters of offer, the Petitioners neither gave a written acceptance nor

submitted a counter-offer and that before the Respondent could respond to their correspondence dated 14<sup>th</sup> September 2020, the Petitioners prematurely filed the present Petition seeking, among other reliefs, suspension of the offers.

- 32.** Mr. Omoke asserted that the Petitioners' claim that the letters of offer required mutual agreement was legally unfounded. He contended that the Petitioners had misconstrued clauses 14 and 15 of the respective leases regarding negotiation of renewal terms, emphasizing that the relationship between the parties was purely contractual and that either party was free to accept or reject the terms offered.
- 33.** He further stated that renewal of the leases was solely within the Respondent's discretion as the trustee of public property, and that it retained the authority to determine renewal terms. Any proposals submitted by the Petitioners, it was deposed, were merely persuasive and did not bind the Respondent. It was deposition that consequently, the Petitioners' claim for renewal lacked legal basis and was unsustainable in law.
- 34.** The Respondent maintained that previous renewals of the leases had been granted on new terms which superseded clauses 14 and 15 of the original grants and that the Petitioners' allegations of constitutional violations arising from denial of an opportunity to negotiate were therefore baseless.

- 35.** In response to the alleged infringement of constitutional rights, Mr. Omoke deponed that, as trustee of public property, the Respondent is obligated to obtain the best commercial value from the suit premises; that the Petitioners' proprietary rights were limited to quiet and uninterrupted possession during the subsistence of the leases, which have since lapsed and that the Petitioners' rights under **Article 40** of the **Constitution** are not absolute and cannot override the public interest in the properties held in trust by the Respondent.
- 36.** Lastly, the Principal Real Estate Officer, Justine Omoke, deponed that despite being aware of the provisions of **Section 87(a)** of the **Kenya Railways Act**, the Petitioners refused to comply with the same and that Petition was, in substance, a judicial review application disguised as a constitutional claim and that the court therefore lacked jurisdiction.
- 37.** It was argued that nullifying the letters of offer and allowing the Petitioners to continue occupying the suit properties at outdated rent rates would occasion grave injustice and prejudice to the public.
- 38.** The Petitioners, through Mary Wanjiru Karunditu, the Managing Director of the 2<sup>nd</sup> Petitioner, swore a Further Affidavit on the 11<sup>th</sup> March 2021. She deponed that Mr. Omoke's allegation that they had not issued a counter-offer was false and clarified that the Petitioners had indeed

made a counter-offer through their letter dated 13<sup>th</sup> November 2020.

- 39.** Specifically, it was deposed, the Petitioners proposed that the annual rent for L.R. No. 209/3558 be raised from Kshs. 45,000/= to Kshs. 116,000/= and that for L.R. No. 209/3559 from Kshs. 82,000/= to Kshs. 200,000/=, both representing a 200% increase, and that they further proposed that the amounts due under these revised rents be payable upon execution of the lease agreement.
- 40.** Additionally, they sought a downward revision of the standard premiums: for L.R. No. 209/3558 from Kshs. 5,160,000 to Kshs. 2,064,000 and for L.R. No. 209/3559 from Kshs. 12,915,000 to Kshs. 5,166,000, reflecting a 60% reduction in each case.
- 41.** It was deposed that the Petitioners also proposed that the total sum of Kshs. 7,230,000 arising from these adjustments be settled over a three-year period. Lastly, that they requested amendments to clauses 10 and 15 of the draft lease to provide that, should the Corporation require the premises, it would be obligated to compensate the lessees in accordance with **Article 40(3)** of the **Constitution**.
- 42.** Ms. Karunditu clarified that the Respondent did not dispatch the letters of offer dated 24<sup>th</sup> August 2020 on the same day as alleged, but rather that she was informed of their existence on the afternoon of Friday, 4<sup>th</sup> September 2020, by one Victoria, an employee of the Respondent.

Since it was a Friday, it was urged, and the following days being a weekend, she collected the letters on Monday, 7<sup>th</sup> September 2020. As such they received them 14 days after preparation and promptly so.

- 43.** She further deponed that, as advised by Counsel, the affidavit sworn by Mr. Omoke is premised on a fundamental misunderstanding of constitutional and administrative law. She maintained that the Respondent, being a public corporation, is subject to the rule of law and bound by constitutional principles, including **Articles 23, 27, 40, and 47** of the **Constitution**, which protect the Petitioners' rights to equality, property, and fair administrative action.
- 44.** According to Ms. Karunditu, the Respondent's conduct demonstrated a refusal to negotiate, contrary to its own covenants and the spirit of the court's ruling delivered on 5<sup>th</sup> November 2020, in which it was acknowledged that the Respondent was amenable to discussions.
- 45.** She highlighted that paragraph 29 of Mr. Omoke's affidavit revealed a rigid "take-it-or-leave-it" stance, as it suggested that the Petitioners were free to secure alternative premises if they found the terms unacceptable. She contended that this showed bad faith and disregard for the lease covenants, which expressly required mutual agreement on renewal terms.
- 46.** She concluded that had the Respondent confirmed its willingness to negotiate upon receipt of the Petitioners'

letters dated 14<sup>th</sup> September 2020 and counter-offer of 13<sup>th</sup> November 2020 (acknowledged via email), and 3<sup>rd</sup> December, 2020, the Petition would not have been necessary. Instead, the Respondent's silence and insistence on unilateral terms compelled the Petitioners to seek judicial intervention.

### **Hearing and Evidence**

47. The matter proceeded by way of viva voce hearing on 22<sup>nd</sup> September, 2020. PW1, Mary Wanjiru Karunditu, the Managing Director of the 2<sup>nd</sup> Petitioner, gave evidence. She adopted her affidavit as her evidence-in-chief and relied on the annexures contained in pages 1-163 of the bundle, which were marked as PEXHB1, as well as the Further Affidavit sworn on 11<sup>th</sup> March, 2021, together with its annexures.
48. PW1 testified that they have adduced into evidence the offer letters for the extension of the leases over the suit parcel. With respect to parcel L.R 209/3558, she stated that clause 7 of the offer sets out the annual charges, while clause 16 specifies the total payment, indicated as Kshs 6,897,500. She stated that she was never consulted on this figure and that there was a separate offer for parcel L.R. 209/3559, with clause 7 specifying exclusive annual rental charges of Kshs 3,228,750 and clause 16 summarizing total payments of Kshs 17,075,938, all payable within 30 days.

- 49.** It was PW1's evidence that the terms in both offer letters were never agreed upon. She disputed the assertion that no counter-offer had been made, explaining that the Petitioners had submitted a counter-offer which was never responded to, and that the Respondent had effectively dictated the terms.
- 50.** PW1 emphasized that the Petitioners had been paying the stand premium as per the last lease. She testified that they were up to date on the payments as evinced by the supplementary bundles of documents dated 31<sup>st</sup> July, 2024, and 2<sup>nd</sup> April, 2025.
- 51.** On cross-examination, PW1 admitted that there were no negotiations when the original leases were entered into on 30<sup>th</sup> November, 1983, and in 1998. She stated that she had no evidence to show that she had been called to collect the offer on 4<sup>th</sup> September, 2020, explaining that the same was communicated through their Advocates.
- 52.** On re-examination, PW1 clarified that the offer letter was dated 24<sup>th</sup> August, 2020. She acknowledged that when she sent the letter dated 13<sup>th</sup> November, 2020, she was aware of the Respondent's lawyers. She also corrected an earlier reference in her statement, confirming that the correct date was 4<sup>th</sup> September, 2020, and not 4<sup>th</sup> August, 2020, as previously recorded.
- 53.** PW2 was Fency Leteo, a registered and practicing valuer with a B.A. in Land Economics from the University of Nairobi (2010), practicing under Kinyua Koech Ltd. He

presented a valuation report dated 25<sup>th</sup> January 2024. He stated that he had been instructed to compute the stand premiums for purposes of the court proceedings, in relation to the ground lease, its extension, and renewal of the lease by the Respondent over the suit properties.

- 54.** It was his evidence that the report lays out the assessed ground rent and stand premium for the suit properties; that the annual rent for L.R. No. 209/3558 was Kshs 240,000 per annum and stand premium Kshs 2,250,000, while for L.R. No. 209/3559, the ground rent and annual premium amounted to Kshs 595, 200 and Kshs 5,580,000 per annum respectively.
- 55.** PW2 stated that in his report, he outlined the methodology for valuing properties; that valuation instructions normally specify the scope and purpose, which may include mortgage valuation, auction valuation, insurance valuation, or valuation for litigation purposes and that for leasehold interests, the term is valued using an appropriate methodology.
- 56.** PW2 testified that he applied the residual valuation method, suitable for development sites, which deducts development costs from the base land value and that ground rent represents the payment made for the use of the land.
- 57.** PW2 explained that stand premium is the lump sum payable to renew a lease, and is related to ground rent; that both are derived from market value, often calculated

as a percentage of that value. According to PW2, in the first offer, the stand premium was shown as Kshs 5,160,000 while his report indicated a ground rent of Kshs 240,000 and a stand premium of Kshs 2,250,000, with an annual rent in the offer of letter pf Kshs 1,290,000, which he proposed to adjust to Kshs 240,000.

- 58.** For the second offer, PW2 recommended a stand premium of Kshs 5,580,000 instead of Kshs 12,915,000, and an annual rent of Kshs 595,200 instead of Kshs 3,228,750. According to PW2, the valuation instructions received by the Respondent's valuer were verbal. He emphasized that verbal instructions, if not properly recorded, can omit critical details and that a proper valuation requires a site visit, inspection of the property and boundaries, photography, market research, computations, data analysis, and due diligence.
- 59.** Further, it was the evidence of PW2 that the Respondent's report did not specify the valuation's purpose or whether a site inspection was conducted. Also, the exercise was conducted quickly because the inspection was done on 20<sup>th</sup> July 2020, and the report completed on 22<sup>nd</sup> July 2020, and that while the Respondent's report indicated current open market value, it inconsistently mentions annual stand premiums.
- 60.** Current market value, he stated, refers to the price a willing buyer would pay a willing seller in an open market, whereas annual rent and stand premium reflect the advice

that should be given to the the Respondent's board and that the Respondent's report lacked comparables to justify the market value. On the other hand, he stated, his figures were derived using appropriate methodology, considering that most properties have long leases, making comparative valuation unsuitable.

- 61.** It was his evidence that his method accounted for gross floor area, site area, ground coverage (80%), plot ratio (gross floor area divided by plot area), and construction costs, using recommended percentages. For Kenya Railways, he stated, concession rates are typically 1.6% of 60% of market value, and that the Respondent's report was prepared unusually quickly.
- 62.** During re-examination, PW2 reiterated that he used the residual method, suitable for redevelopment sites with existing go-downs. He clarified that a redevelopment site could accommodate construction of up to four floors.
- 63.** DW1 was Justin Omoke, Assistant Manager valuations and Real Estate of Kenya Railways. A valuer by profession, he adopted his Replying Affidavit as his evidence in chief and produced the exhibits therein as well as the supplementary list of documents as his exhibits.
- 64.** Briefly, his evidence vide the statement was that the Respondent is the registered proprietor of L.R. Nos. 209/3558 and 209/3559, situated in the Industrial Area of Nairobi, which it holds and manages in trust for the public with a duty to secure optimal commercial returns.

- 65.** DW1 stated that the properties had been leased to the Petitioners until the expiry of the lease, after which the Respondent invited them to apply for renewal and that the Petitioners submitted their applications on 10<sup>th</sup> June 2020, which were approved by the Respondent's Board on 6<sup>th</sup> and 10<sup>th</sup> August 2020, leading to the issuance of letters of offer dated 24<sup>th</sup> August 2020 which was valid for 30 days.
- 66.** Mr. Omoke stated that although notified on 24<sup>th</sup> August 2020, the Petitioners collected the letters on 7<sup>th</sup> September 2020 but failed to provide written acceptance or make the requisite payments before the lapse date of 23<sup>rd</sup> September 2020, and that instead, they filed the present Petition before the Respondent could respond to their correspondence of 14<sup>th</sup> September 2020.
- 67.** DW1 maintained that the letters of offer did not require negotiation; that renewal of the leases was discretionary; that the Respondent, as trustee of public property, retained the authority to determine the renewal terms and that the Petitioners' proposals were merely persuasive and not binding.
- 68.** DW1 further contended that any renewal rights under clauses 14 and 15 of the original leases had been superseded by subsequent renewals granted on fresh terms and that the Petitioners' claims of constitutional violation were therefore unfounded, as their proprietary interests were limited to possession during the lease term, which had since expired. Their rights under **Article 40**, it

was stated, were not absolute and could not override the public interest in property held in trust by the Respondent.

- 69.** He asserted that the lease renewal process was a commercial and contractual transaction, not an administrative action under **Article 47**; that the Respondent had nonetheless respected the Petitioners' rights by allowing continued possession after expiry; that the Petition was, in essence, a judicial review application disguised as a constitutional claim, and that granting the reliefs sought would unjustly prejudice the public interest by denying the Respondent fair economic returns.
- 70.** On cross-examination, he testified that the valuation was undertaken pursuant to verbal instructions and was intended for purposes of lease extension. He confirmed that copies of the leases were not attached to his report and that the previous leases did not contain escalation clauses.
- 71.** According to DW1, the introduction of escalation in the offer represented a new policy. He further stated that the Respondent, being a public body, was not renewing the leases in the manner of a private landowner and therefore did not negotiate the terms contained in the letters of offer. He also noted that no response was made to the letter at page 150, and that he had never seen any counteroffer. He emphasized that inclusion of the buildings was necessary for the valuation.

72. During re-examination, he explained that once a valuation is completed, letters of offer are issued to the client, who may then respond by either accepting or rejecting the offer. Where an offer is rejected, the client may request negotiations on the proposed rates. He added that communication with tenants may be conducted verbally, in writing, or through meetings.
73. DW1 stated that the offer to the Petitioners was valid for 30 days, after which it lapsed. According to him, the Petitioners moved to court prematurely before engaging in negotiations and that the valuation was conducted thereafter using the comparable sales approach for leasing purposes, which is the same method applied by the Ministry of Lands to determine payable rates and rents. He concluded by urging that the Petition be dismissed, noting that the Respondent remains open to negotiations.

### **Submissions**

74. The Petitioners filed submissions on 14<sup>th</sup> August, 2025. Counsel submitted that when undertaking a renewal of a lease, the Respondent is the principal actor who seeks the approval of the National Land Commission, a constitutional commission established by **Article 67** of the **Constitution**.
75. Counsel submitted that the Respondent, as a state corporation, holds and manages public land on behalf of the national government, including leases formerly governed by the repealed Government Lands Act. As such,

it stands as the lawful successor to the President and the Commissioner of Lands in matters relating to those leases.

76. It was submitted that at the time in question, the involvement of the National Land Commission in lease renewal had not yet become applicable, and the responsibility to process renewals lay with the Respondent, which was required to act within constitutional and statutory parameters. Counsel emphasized that **Article 40** of the **Constitution** protects the right to acquire and own property, including leasehold interests, and shields owners from arbitrary deprivation or interference.
77. It was further argued that this constitutional protection encompasses the right to a fair and lawful renewal of an existing lease upon expiry. Relying on **Section 13(1)** of the **Land Act**, Counsel noted that lessees enjoy a right of first refusal when leasehold land reverts to the government.
78. The lease agreements themselves, it was asserted, required that renewal terms be negotiated in good faith, as the relevant clause provided that upon written request and in the absence of breach, renewal could be granted “*on such terms and rent as may thereafter be agreed upon.*”
79. Counsel therefore asserted that the Respondent breached this obligation by unilaterally increasing rent and stand premiums without engaging in genuine negotiations. This breach, it was urged warrants judicial intervention

through the constitutional and public law remedies of injunction, mandamus, and certiorari. Reliance was placed on the case of Citing **Kenya National Examination Council vs Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR.**

- 80.** According to Counsel, the Petitioners established a proprietary interest deserving protection under the Bill of Rights as they had a legitimate expectation of renewal. Relying on **Diana Kethi Kilonzo & Another vs Independent Electoral and Boundaries Commission & 10 Others [2013] eKLR,** they defined legitimate expectation as arising from a promise or consistent practice by a public body, creating an estoppel that prevents withdrawal of such expectation without consultation or due process.
- 81.** Also cited was the Supreme Court decision in **Sehmi & Another vs Tarabana Company Limited & 5 Others (Petition E033 of 2023) [2025] KESC 21,** which held that legitimate expectation regarding lease renewal arises upon a lessee's application for renewal addressed to a competent authority, thereby igniting an expectation that the application will be considered fairly and reasons furnished if declined. The Petitioners contended that their requests for renewal met this threshold and triggered legitimate expectations protected under **Article 47** of the **Constitution.**

- 82.** Counsel submitted that **Article 27** of the **Constitution**, guarantees equality before the law and prohibits arbitrary or capricious exercise of public power. Drawing from the Indian Supreme Court decision in **Maneka Gandhi vs Union of India & Another (1977) SC 597**, they submitted that equality is antithetical to arbitrariness and that all public decisions must comply with principles of fairness and reason.
- 83.** It was urged that the Respondent's unilateral determination of rent and failure to negotiate, the Petitioners argued, was arbitrary and discriminatory and denied them equal protection and benefit of the law.
- 84.** The Respondent filed submissions on 24<sup>th</sup> October, 2025. Counsel submitted that the relationship between the Respondent and the Petitioners is purely commercial and contractual in nature, governed by the terms of the lease agreements. Consequently, any engagement between the parties must be interpreted within the principles of contract law.
- 85.** It was submitted that for a valid contract to exist, there must be offer, acceptance, and consideration. These essential elements were affirmed in **Garvey vs Richards (2011) JMCA 16**, as cited in **Municipal Council of Kilifi vs Overlook Management Kenya Ltd [2020] eKLR**, where the court emphasized that a binding contract requires intention to create legal relations, agreement, consideration, and certainty of subject matter.

- 86.** Reliance in this respect was also placed on the case of *Stancom Sacco Society Limited vs Alliance One Tobacco Limited [2018] eKLR*, and *William Muthee Muthami vs Bank of Baroda [2014] eKLR*.
- 87.** The Respondent submitted that in this case, it made an offer for renewal of the leases over the suit properties through letters dated 24<sup>th</sup> August 2020, which were duly accepted by the Petitioners via their letter dated 14<sup>th</sup> September 2020. It was further submitted that while parties may negotiate terms in anticipation of a contractual relationship, such negotiations are not mandatory in law. A party is at liberty to reject an offer whose terms it deems unfavourable. Accordingly, it was submitted, no party can be compelled to accept or negotiate lease terms.
- 88.** Counsel argued that the appropriate time for negotiations was upon receipt of the letters of offer. However, rather than making a counter-offer, the Petitioners filed the present suit, as noted by Obaga J in the ruling of 5<sup>th</sup> November 2020. It was submitted that the Respondent was under no obligation to accept any counter-proposal that did not reflect the best commercial value for the properties.
- 89.** According to Counsel, despite their reliance on clauses 14 and 15 of the original leases, PW-1 conceded she had no documentary evidence proving negotiations occurred in 1983 or 1989. Moreover, it was urged, those clauses were

superseded by subsequent lease renewals executed under new terms. Hence, the Petitioners' claim of a continuing obligation to negotiate is unsubstantiated.

- 90.** Counsel averred that the increment in annual rent and stand premium was informed by a valuation exercise undertaken by its valuer and that during trial, PW 2 conceded that the rateable values in both reports were consistent, meaning the dispute was only over methodology. Counsel asserted that it would amount to a breach of its fiduciary duty to lease public assets below value. Consequently, the upward revision was lawful, rational, and consistent with its statutory obligation to safeguard public interest.
- 91.** As regards legitimate expectations, Counsel submitted that as expressed by the Apex Court in **Sehmi & Another vs Tarabana Company Limited & 5 Others (Petition E033 of 2023) [2025] KESC 21**, renewal of leases, particularly of public land, is not automatic.
- 92.** It was held that the Apex Court held that renewal arises only upon a lessee's formal application, which may be accepted or declined with reasons, and that in **Communications Commission of Kenya & 5 Others vs Royal Media Services Ltd & 5 Others [2014] KESC 53 (KLR)**, the Apex Court set out four criteria for legitimate expectation: a clear promise, reasonableness, lawful authority, and consistency with statute.

- 93.** Applying these principles, Counsel argued, no express or unequivocal promise was made to the Petitioners guaranteeing renewal, and that it would also be unreasonable to expect renewal at below-market rent, contrary to the Respondent's statutory duty. The Petitioners therefore failed to establish any legitimate expectation in law.
- 94.** Counsel submitted that the Petition raises no genuine constitutional issue but merely dresses a contractual dispute in constitutional garb, contrary to the doctrine of constitutional avoidance, explained in **Communications Commission of Kenya (supra)**.
- 95.** It was submitted that the alleged violations of **Articles 27, 40, and 47**, have not been demonstrated. Reliance was placed on the cases of **Anarita Karimi Njeru vs Republic [1979] KLR** and **John Harun Mwau vs IEBC & Another [2013] eKLR**.
- 96.** Regarding **Article 40**, Counsel submitted that the Petitioners' proprietary interests lapsed upon expiry of the leases; that constitutional protection does not extend to expired interests and that the revised rent terms neither amounted to deprivation, nor was any eviction or cancellation carried out arbitrarily.
- 97.** As to general damages, Counsel asserted that none are merited, as the Petitioners have not proved any constitutional violation. Even if infringement were to be found, it was submitted, only nominal damages would be

appropriate, as the Petitioners continue to occupy the premises and pay below-market rent. Reliance was placed on the case of **Muchelule & 5 Others vs Attorney General: Judicial Service Commission (Interested Party) [2024] KEHC 12116(KLR)**.

98. Regarding exemplary damages, Counsel relied on **Godfrey Ndumba Mbogo & Another vs Nairobi City County [2018] eKLR** and **Rookes vs Barnard [1964] AC 1129**, noting that such damages are punitive and awarded only where conduct is oppressive or arbitrary. No such conduct was shown against the Respondent, which has acted in good faith throughout.

99. Finally, Counsel submitted that costs follow the event as per **Haraf Traders Limited vs Narok County Government [2022] eKLR**. Since the Petitioners have failed to prove any of their claims, the Petition should be dismissed with costs to the Respondent.

#### **Analysis and Determination**

100. Having considered the Petition and the responses, the issues that arise for determination are:

- i. *Whether the Petition is competent?*
- ii. *Whether the Respondent breached Special Conditions Nos. 14 and 15 contained in the grants relating to the suit properties. And if so whether this renders the letters of offer dated 24<sup>th</sup> August, 2020 void?*
- iii. *Whether the Petitioners have demonstrated the alleged constitutional violations?*

iv. *What are the appropriate orders to issue?*

**101.** The Respondent, vide its response to the Petition seeks to impugn the legitimacy of the Petition. Its contention in this regard is two-fold. First, that the Petition is fatal for contravening the mandatory requirements of **Section 87(a)** of the **Kenya Railways Corporations Act**. Second, that the Petition does not raise constitutional questions. Rather, what is before the court, in reality, is a judicial-review challenge that has been framed, or camouflaged as a constitutional Petition. In essence, it is alleged, the doctrine of constitutional avoidance has been breached.

**102.** Beginning with the contention regarding non-compliance with **Section 87(a)** of the **Kenya Railways Corporation Act**, it is evident, and indeed conceded by the Petitioners in their submissions that this issue, together with the challenge to the constitutionality of that provision, was fully canvassed and determined by the court in its Ruling of 6<sup>th</sup> October 2022. These questions are therefore moot.

**103.** It is further noted that the Petitioners' allegation of a violation of the right of access to justice under **Article 48** was anchored on the same provision. Since the court has already resolved the issue, this allegation equally falls away.

**104.** The next issue is whether the Petition raises constitutional questions. Speaking to what constitutes a constitutional question, the court in the case of **C N M vs W M G [2018] KEHC 8434 (KLR)**, expressed itself as follows:

***“A constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute. When determining whether an argument raises a constitutional issue, the Court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider constitutional rights or values.*”**

**105.** Similarly, Mrima J in ***Dennis Gakuu Wahome vs IEBC & 4 others; Ford Kenya & 3 others (Interested Parties) Nairobi Petition No E321 of 2022*** had this to say:

***“...broadly speaking, a constitutional issue is, therefore, one which confronts the various protections laid out in the Constitution. Such protections may be in respect to the Bill of rights or the Constitution itself. In any case, the issue must demonstrate the link between the aggrieved party, the provision of the Constitution alleged to have been contravened or threatened and the manifestation of contravention or infringement.”***

**106.** It is however settled that not every dispute that references the Constitution necessarily raises a constitutional question. The doctrine of constitutional avoidance requires that where a matter can be effectively resolved through statutory mechanisms or private law principles, a court

should refrain from invoking its constitutional jurisdiction. The Supreme Court in **Communications Commission of Kenya (Supra)** underscoring this principle observed:

***“ (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 KetrIDGE 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)).”***

**107.** In the present Petition, the Petitioners contend that in the course of renewing their leases over the suit properties, the Respondent acted in a manner that infringed their constitutional rights and fundamental freedoms under

**Articles 10, 27, 40, 47, and 232 of the Constitution.** They raise issues of fair administrative action, procedural fairness, equality, breach of national and public service principles and protection of property.

**108.** The Petitioners seek both declaratory and prerogative reliefs, including orders of mandamus and certiorari. Contrary to the Respondent's assertions, these are not purely judicial review remedies but are contemplated under **Article 23(3)** of the **Constitution** in proceedings instituted under **Article 22**.

**109.** Considering the Petitioners' claims and nature of the reliefs sought, the court finds that they extend beyond the limited scope of traditional judicial review. The Petition properly sets out constitutional questions and seeks appropriate remedies, and the preliminary contention that constitutional avoidance has been breached is rejected.

**110.** The Petitioners allege that the Respondent violated special conditions Nos. 14 and 15 of the suit properties original grants. They argue that these clauses, which govern the renewal of leases, expressly provide for negotiations between the lessor and lessee prior to renewal. In their view, the Respondent's action of issuing fresh terms, particularly escalated rent and stand premiums without prior engagement amounted to a breach of the said conditions.

**111.** The Respondent, however, disputes this. It maintains that the Petitioners have misconstrued the scope and effect of

clauses 14 and 15, asserting that the relationship between the parties remains purely contractual and that renewal of the leases can only occur upon mutual agreement.

**112.** It contends that the clauses do not guarantee renewal, nor do they impose a mandatory duty to negotiate specific terms. The Respondent further submits that the suit properties have undergone previous renewals on fresh terms which supersede the original conditions, and thus, the Petitioners cannot rely on them to challenge the current offers.

**113.** The impugned clauses are identical and provide as follows:

***“The Governor may on the written request of the grantee made three calendar months before the expiration of the term hereby granted and if there shall not be at the time of such request any existing breach or non-observance of any of the conditions herein contained and implied, at the expense of the grantee, grant to him a lease of the said land for such further term subject to such rent and conditions as may hereafter be agreed upon, provided that in the event the grantee not so desiring to enter into a further lease or the Governor not granting for any reason further lease as aforesaid, the Grantee shall be at liberty to remove any buildings erected by him on the said land in accordance with Section 78 of the Crown Lands Ordinance.”***

**114.** To begin with, it must be stated that special conditions contained in a grant or lease form part of the contractual terms binding the parties. They operate as express covenants and must therefore be construed in the same manner as any other contractual provision.

**115.** Accordingly, in assessing whether the Respondent breached them, the court must be guided by the established principles of contract interpretation. Speaking to this, the Court of Appeal in **Shah & 3 others vs I&M Bank (Civil Appeal 133 of 2019) [2025] KECA 298 (KLR) (21 February 2025) (Judgment)**, noted:

*“The parties to this appeal have underscored the tenets of contract interpretation. The most important and relevant aspect, as can be gleaned from the authorities cited by both sides, is that courts must approach the construction of contracts objectively and that the intention of the parties must be ascertained from a reasonable person’s point of view. This view was expressed in Sun Sand Dunes Ltd vs. Raiya Construction Ltd (supra) thus: “The object of construction of terms of a contract is to ascertain its meaning or in other words, the common intention of the parties thereto. Such construction must be objective, that is, the question is not what one or the other parties meant or understood by the words used.*

***Rather, what a reasonable person in the position of the parties would have understood the words to mean. See Investors Compensation Scheme Ltd. vs. West Bromwich Building Society [1998] 1 W.L.R 896.”***

- 116.**Applying the foregoing to the conditions aforesaid, it is evident that the phrase “as may hereafter be agreed upon” envisages renewal only upon mutual agreement. These conditions form part of the contractual framework between the parties and must therefore be understood within the broader doctrine of freedom of contract.
- 117.**That doctrine recognises the liberty of parties to choose with whom to contract, on what terms, or whether to contract at all. As Lord Diplock stated in **Photo Production Ltd v Securicor Transport Ltd [1980] AC 827, 848**, “a basic principle of the common law is that the parties are free to determine for themselves what primary obligations they will accept.”
- 118.**When read in this light, these conditions facilitate the possibility of renewal but do not impose an automatic right, a mandatory obligation to negotiate, or a duty on the Respondent to accept specific terms. There is, indeed, no evidence to show that negotiations were intended to be compulsory or that the Respondent was bound to conclude them.
- 119.**To construe the clauses as creating mandatory obligations would contradict the doctrine of freedom of contract and

the requirement that mutual assent is foundational to any binding agreement. In any event, PW1 admitted during cross-examination that there were no negotiations when the original leases were entered into on 30<sup>th</sup> November, 1983, and in 1998.

**120.** In the circumstances, the Petitioners have not demonstrated any breach of special conditions 14 and 15. Consequently, there is no legal basis for declaring the letters of offer dated 24<sup>th</sup> August 2020 void. The next issue is whether the Petitioners have demonstrated the alleged constitutional violations.

**121.** It is trite law that a party seeking redress for an alleged violation of constitutional rights must plead such violation with clarity, specificity, and particularity. A Petitioner must identify the constitutional provision said to be infringed, describe the manner of infringement, and establish a link between the impugned action and the alleged violation. The principle is well-captured in the oft-cited case of **Anarita Karimi Njeru vs Republic (1979) KLR 154.**

**122.** Further, and importantly, the court is guided by the principles of the law of evidence. **Sections 107(1) and (2)** of the **Evidence Act** provides that the legal burden of proof lies on the party who asserts the existence of a fact and seeks a judgment based on it. Also, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

**123.** Reinforcing the foregoing, the Supreme Court in *Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others [2014] eKLR* stated as follows:

*“Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance.”*

**124.** The Petitioners allege breaches of their constitutional rights as protected under **Article 27** which guarantees them the right to equal protection before the law, right to property protected under **Article 40**, and fair administrative action as protected under **Article 47**. They also contend that the Respondent’s actions violated the national values and principles set out under **Article 10** and the values and principles of public service enumerated under **Article 232**.

**125.** The factual background is not contested. The Petitioners were tenants of the Respondent under leases that have since expired. They were duly given offers for renewal of the aforesaid leases. They did not outrightly accept the offers but asked for a re-negotiation of the terms. The Respondent did not respond to this request.

**126.** Considering the foregoing, the court must first determine the nature of the relationship between the parties. The central question is whether the Respondent's conduct in the renewal process amounted to the exercise of an administrative function, or whether, as the Respondent maintains, it was purely a commercial transaction governed by ordinary contractual principles.

**127.** As aforesaid, the right to fair administrative action is grounded in **Article 47** of the **Constitution** which provides thus:

***"1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***

***2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.***

***3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—***

***a. provide for the review of administrative action by a Court or, if appropriate, an independent and impartial tribunal; and b. promote efficient administration."***

**128.** The legislation that was contemplated under **Article 47(3)** is the **Fair Administrative Actions Act. Section 4** thereof provides among others that:

***“4. Administrative action to be taken expeditiously, efficiently, lawfully etc. (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.”***

**129.**Section 2 of the Fair Administrative Actions Act defines an ‘administrative action’, an ‘administrator’ and a ‘decision’ as follows:

***“Administrative action’ includes - i. The powers, functions and duties exercised by authorities or quasi-judicial tribunals; or ii. Any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;***

***‘administrator’ means ‘a person who takes an administrative action or who makes an administrative decision’.***

***"decision" means any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be.”***

**130.**The Court of Appeal in **Civil Appeal 52 of 2014 Judicial Service Commission vs Mbalu Mutava & Another (2015) eKLR** addressed itself to **Article 47** of the **Constitution** as follows:

***“..... Article 47(1) marks an important and transformative development of administrative***

*justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative.”*

**131.**The Respondent, Kenya Railways Corporation (KRC), is a statutory corporation established under **Section 3** of the **Kenya Railways Corporation Act**. As a body corporate, it possesses perpetual succession, a common seal, and the capacity to acquire, hold, and dispose of movable and immovable property for purposes of the Corporation.

**132.**Its mandate under Part IV of the Act is primarily commercial and operational, encompassing the management of rail and inland waterways transport services, auxiliary road services, port facilities, and the coordination and maximization of its assets.

**133.**In particular, **Section 14** of the **Kenya Railway Corporation Act** deals with acquisition of land for the purposes of the Corporation. In this regard, **Section 14(4)** provides thus:

*“The Corporation may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without, consideration.”*

**134.** It is clear from the foregoing that in leasing the property, the Respondent was exercising its mandate herein. Whereas, indeed, by virtue of that status as a state corporation, the Respondent is deemed part of the government, the court finds that the renewal of leases over L.R. Nos. 209/3558 and 209/3559 constituted a commercial and contractual transaction rather than an administrative action.

**135.** The issuance of letters of offer for renewal, stipulating rent, stand premium, and lease duration, was exercised pursuant to KRC's statutory powers to manage and let property held in trust for the public. Such actions reflect contractual discretion and do not involve determinations of rights through statutory or quasi-judicial processes.

**136.** In *Japan Export Vehicle Inspection Center Co. Ltd vs Kenya Bureau of Standards [2015] eKLR*, the court held that KEBS' engagement in service contracts pursuant to its statutory mandate was a private contractual arrangement, not an administrative action. The court observed:

***"I note that the contract in question was an arrangement between KEBS and the petitioner to provide services that normally KEBS is mandated by statute to undertake, namely the provision of motor vehicle pre-shipment inspection services. It chose to engage the services of private parties, among them the***

*petitioner, to provide the services. In other words, the respondent entered into a private contractual arrangement with the petitioner, and such, this action of entering into a private contractual relationship does not amount to an administrative action within the realm of public law. It is my view therefore that such an arrangement was governed by private contractual arrangements entered into freely between the parties. The act of the respondent in entering into contracts with the petitioner and the other pre-shipment inspection service providers did not fall within the ambit of administrative action as alleged by the petitioner but was merely a private contractual arrangement which it exercised pursuant to Section 3 of the Standards Act as outlined above.”*

137. Further, in *Kenya Ports Authority v Autoports Freight Terminal Ltd (Civil Appeal 76 of 2018) [2023] KECA 978 (KLR)*, the Court of Appeal emphasized that the mere fact that a statute empowers a public body to enter into contracts does not, without more, convert such contracts into matters of public law.

138. Unless a statute specifically prescribes procedural requirements for the making, renewal, or termination of such contracts, the contractual relationship remains

governed by ordinary principles of private law. It stated *inter-alia*:

***“From that holding, and for the purposes of this appeal, if the relationship between the Appellant and the Respondent originates from and terminates with the Licence Agreement, there would be no difficulty in finding that this is purely a contractual matter whose breach would not invite public law remedies. Similarly, the mere fact that a statute empowers a body to enter into a contract does not necessarily give rise to statutory underpinning if the contract is self-contained in the sense that it contains all the relevant terms including the mode of its termination without reference to another body outside the contractual agreement.”***

**139.** Accordingly, the Respondent’s decision to issue lease renewal offers and to determine their terms fell squarely within its corporate and proprietary capacity, rather than its public administrative function. As such, these actions do not constitute administrative action amenable to constitutional or judicial review remedies.

**140.** This being so, can the claim that the proposed annual rent and stand premium be said to be unreasonable within the meaning of **Article 47**? The court thinks not. In any event, the court has evaluated the valuation reports and notes that both indicate exact rateable values for the suit property. The rateables values for L.R 209/3558 is

indicated as Kshs 132, 380,000 in the Petitioners' report and Kshs 132, 380,000 in the Respondent's report.

**141.** Turning to L.R. No. 209/3559, the position is not different. The Petitioners' valuation places its rateable value at Kshs 330,855,000, while the Respondent's valuation similarly assesses it at Kshs 330,855,000. In other words, the professional valuers engaged by both sides arrived at an identical assessment of the property's market worth.

**142.** What emerges, therefore, is that the only divergence between the two reports lies in the computation of the ground/annual rent and stand premium. Yet, crucially, those computations are themselves derived from the undisputed rateable value. The Petitioners did not demonstrate that the Respondent applied the wrong formula, relied on an impermissible valuation parameter, or acted outside the criteria ordinarily used in public land rent assessments.

**143.** In the absence of any contestation on the foundational valuation figures, or evidence showing that the Respondent's calculations were arbitrary, capricious, or applied for an improper purpose, the court finds no basis upon which it can conclude that the proposed rent and stand premium are "unreasonable."

**144.** Turning to the concept of legitimate expectation, the same was elaborated upon by the Supreme Court in ***Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others (Petition***

**14, 14A, 14B & 14C of 2014 (Consolidated) [2014] KESC 53 (KLR) (the CCK Case)**, where the court held:

***“[265] An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.”***

**145.** The Supreme Court proceeded to formulate guiding principles under which a party may properly invoke the doctrine, stating that:

***“(a) there must be an express, clear and unambiguous promise given by a public authority;***  
***(b) the expectation itself must be reasonable;***  
***(c) the representation must be one which it was competent and lawful for the decision-maker to make; and***  
***(d) there cannot be a legitimate expectation against clear provisions of the law or the Constitution.”***

**146.** The Petitioners have relied on the reasoning of the Supreme Court in **Sehmi & another vs Tarabana Company Limited & 5 others (supra)** to advance their position.

**147.** They contend that, upon making an application for renewal of their leases, a legitimate expectation arose that the Respondent would consider their requests fairly and give reasons for any refusal, consistent with the procedural safeguards envisaged under the doctrine. They argue that their correspondence and engagement with the Respondent triggered this expectation.

**148.** This court, however, finds the reliance on ***Sehmi case(supra)*** misplaced. The facts in that case are materially distinguishable. Unlike ***Sehmi(supra)***, which concerned the renewal of leases over public land administered by the National Land Commission (NLC) under **Section 13** of the **Land Act, 2012**, the present case involves leases over land held by the Respondent, a statutory corporation holding and managing its property for commercial purposes.

**149.** For clarity, **Section 13** of the **Land Act** provides for lessees' pre-emptive rights in relation to land administered by the NLC and requires the Commission to notify lessees of impending expiries, inform them of their pre-emptive rights, and, if renewal is declined, provide written reasons. It states in part:

***“Lessee pre-emptive rights to allocation  
(1) Before the expiry of the leasehold tenure,  
the Commission shall-  
(a) within five years, notify the lessee, by  
registered mail, of the date of expiry of the***

*lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes;and*

*(b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.*

*(1A) Where a lease is not granted after an application under subsection (1), the Commission shall give the lessee the reasons for not granting the lease, in writing.”*

**150.**The above provision is, however, inapplicable to the present dispute. The Respondent is not the National Land Commission, nor was it acting under the statutory framework governing the renewal of leases over public land.

**151.**Rather, it was acting in its proprietary and commercial capacity as owner and lessor of the suit properties. Its decision to issue renewal offers on new terms flowed from its statutory power under the **Kenya Railways Corporation Act** to manage, lease, and dispose of its assets.

**152.**In any event, in the circumstances, the Petitioners were duly issued with offers for renewal. The dispute did not arise from a refusal to renew or a failure to consider their

applications, but rather from their dissatisfaction with the revised terms, specifically the increased stand premium and rent introduced under a new valuation policy.

**153.** The Respondent's conduct, therefore, cannot be faulted on grounds of procedural unfairness or breach of legitimate expectation. The Petitioners were not denied an opportunity for renewal; they were granted one on new terms. Their disagreement lies within the sphere of contract negotiation, not administrative justice.

**154.** The Petitioners further contend that the Respondent has discriminated against them and thereby violated their rights under **Article 27** of the **Constitution**, which guarantees equality and freedom from discrimination. This Article obligates all persons, including public bodies, to accord equal protection and benefit of the law and to refrain from arbitrary or unequal treatment without a lawful or reasonable basis.

**155.** The meaning of discrimination was judicially considered by the Supreme Court in the case **Gichuru vs Package Insurance Brokers Ltd (Petition 36 of 2019) [2021]KESC 12 (KLR) (Civ) (22 October 2021) (Judgment)** where in adopting the decision of the High Court in **Peter K Waweru vs Republic [2006] eKLR** the court held as follows:

***“...Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions by race,***

***tribe, place of origin or residence or other local conviction, political opinions, colour, creed, or sex, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description. Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex .... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.”***

**156.** In this case, the Petitioners alleged that the Respondent’s unilateral determination of rent, and its refusal to engage in negotiations as contemplated under the lease agreements, amounted to arbitrary and discriminatory conduct. They claimed that this action denied them equal protection and benefit of the law.

**157.** However, the evidence tendered does not support the claim that the Respondent treated the Petitioners differently from other tenants similarly situated, or that the decision on rent was founded on any prohibited ground of discrimination as contemplated under **Article 27**. There is equally no evidence that the same was arbitrary or capricious. This plea fails.

**158.** Regarding **Article 40**, the Petitioners' proprietary interest was derived solely from their leases, which have lapsed. Upon expiry, no proprietary right subsists capable of protection under the Constitution. A tenant whose lease has expired cannot invoke **Article 40** to claim deprivation of property. Their right is purely contractual and ceases upon expiry unless renewed.

**159.** Equally, the court finds no evidence of infringement under **Articles 10** and **232** of the **Constitution**. The Petitioners have not established that the Respondent's conduct amounted to a breach of the national values and principles under **Article 10** or of the principles of public service under **Article 232**.

**160.** In the end the court finds the Petition to be unmerited. The same is hereby dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 20<sup>th</sup> day of November, 2025.**

**O. A. Angote**  
**Judge**

**In the presence of;**

Dr. Kamau Karia for Petition

Mr. Dachi for Respondent

Court Assistant - Tracy