



**Kenya Human Rights Commission & another v East Africa Portland
Cement Company & another (Environment and Land Petition
E004 of 2023) [2025] KEELC 8111 (KLR) (18 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND PETITION E004 OF 2023
AY KOROSS, J
NOVEMBER 18, 2025**

BETWEEN

KENYA HUMAN RIGHTS COMMISSION 1ST PETITIONER

MAZINGIRA INSTITUTE 2ND PETITIONER

AND

EAST AFRICA PORTLAND CEMENT COMPANY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. By a petition dated 18 10 2023, the petitioners plead with this honourable court to grant them the following orders: -
 - a. A declaration that the brutal demolition of the homes of the homeowners of the suit premises and leaving them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights and inherent dignity, accessible and adequate housing, reasonable standards of sanitation, healthcare services, freedom from hunger and the right to clean and safe water in sufficient quantities.
 - b. A declaration that the brutal demolition of the homes of the homeowners without warning, any reasonable notice in writing of providing them with information regarding the evictions, is a violation of their fundamental right to access to information.
 - c. A declaration that the brutal demolition of the homes of the homeowners and damage to their household goods in the process, without giving them an opportunity to salvage any of their belongings, is a violation of their fundamental right to protection of property.



- d. A declaration that the brutal demolition of the homes of the homeowners, without any reasonable notice in writing or providing them with information and reasons regarding the demolitions and evictions, is a violation of their fundamental right to fair administrative action.
- e. A permanent injunction restraining the respondent, its servants, officials, representatives, and or agents from intimidating, harassing, threatening, and bullying the homeowners of the suit premises.
- f. A declaration that the 1st respondent is liable to the homeowners of demolished homes for the loss of personal, real or other properties or goods.
- g. Order that the 1st respondent pays compensation to the owners of the demolished buildings for the loss of personal, real or other properties or goods.

In the alternative and without prejudice to the foregoing: -

- a. Compensation for the loss of personal properties or goods.
 - b. Compensation for general, aggravated, exemplary and punitive damages against the respondents as may be assessed by the court.
 - c. Any other further relief that this court shall deem fit to grant.
2. The petitioners' case is outlined in the petition and in the supporting affidavit of Davis Malombe, sworn on 18 10 2023. In summary, it is stated that in the decision rendered on 9 10 2023 by this court in ELC Case No. 74 of 2014, consolidated with Petition No. of 2018 ("previous cases"), this court struck out those cases and declared the 1st respondent as the legitimate owner of land parcel no. L.R. No. 10424 ("suit property"). Shortly on 14 10 2023, and without notice, a court order or identification, the 1st respondent carried out forced evictions that violated human rights standards and caused extensive damage to homes.
 3. It is argued that these actions contravened various provisions of our Constitution, particularly Article 28 on the right to human dignity, Article 35 on the right to access information, Article 40 on the right to property, and Article 47 on the right to fair administrative action.

Respondents' case

4. The replying affidavit, sworn on 8 03 2024 by Florence Mitey, strongly opposed the petition; she is the 1st respondent's Company Secretary. She states that the 1st respondent is the registered owner of the suit property measuring around 4,298 hectares. She argues that the petitioners have not provided credible evidence for their claims and that the 1st respondent has not harassed or threatened them.
5. She asserts that the occupants, whom the petitioners advocate for, do not have legal title to the property. She maintains that, contrary to the petitioners' allegations, the 1st respondent issued several notices to occupants of the suit property, which she details as follows: on 19 12 2019, it issued a notice to occupants which is a notice of 3 ½ years and on 3 07 2020, it placed a caveat emptor warning the general public from purchasing the suit property from persons purporting to be its owner. To her, the trespassers had caused damage to the suit property, wasted it, and remained on it without right despite notices. She urged this court to dismiss the petition with costs. The 2nd respondent did not participate in these proceedings.



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. Chimei & Malenya & Company Advocates submitted their written submissions dated 9 07 2024. They referenced several legal provisions and judicial precedents, including Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others [2016] eKLR, and Moi Education Centre Co. Ltd v William Musembi & 16 others [2017] eKLR.
7. Upon service, the 1st respondent's law firm on record, M s. SMS Advocates, LLP Advocates filed their written submissions dated 22 11 2024, in which they relied on several judicial precedents, including Sanganyi Tea Factory v James Ayiera Magari [2016] eKLR and Kavirondo Community Based Organization v Attorney General & 2 others (Constitutional Petition E021 of 2021) [2022] KEELC 15063 (KLR). 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

8. The petition asserts it has been filed under several provisions; however, it specifies that the particular provisions of *akn ke act 2010 constitution the Constitution* violated by the respondents are Articles 28, 35, 40 and 47 (1). These provisions state as follows:

Article 28

“Every person has inherent dignity and the right to have that dignity respected and protected.”

Article 35

- “(1) Every citizen has the right of access to—
- (a) information held by the State; and
 - (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.
- (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
- (3) The State shall publish and publicise any important information affecting the nation.”

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

9. Turning to the matter before the court, this court has carefully examined the pleadings, arguments from both sides, relevant laws, and the cited precedents. Accordingly, the issues that need to be determined and will be addressed separately are as follows: -
- a. Whether the petition meets the legal threshold.
 - b. Whether the petitioners proved that their rights protected under Articles 28, 35, 40 (1) and 47 (1) of *akn ke act 2010 constitution the Constitution* were violated by the respondents.

Whether the petition meets the legal threshold

10. Both counsels argued this issue extensively in their submissions, with the petitioners maintaining that they had met the legal threshold, while the 1st respondent held a contrary view. On matters of law, Rule 10 of *akn ke act 2010 constitution the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules stipulates the contents of a constitutional petition in the following manner: -

“The petition shall disclose the following: -

- (a) the petitioner’s name and address;
 - (b) the facts relied upon;
 - (c) the constitutional provision violated;
 - (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
 - (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
 - (f) the petition shall be signed by the petitioner or the advocate of the petitioner;
and
 - (g) the relief sought by the petitioner.”
11. Regarding prevailing jurisprudence, both counsels relied on the decision of Anarita Karimi Njeru Vs. Republic [1979] eKLR, which has long established the legal threshold of a constitutional petition as follows: -

“If a person is seeking redress from the High Court on a matter which involves a reference to *akn ke act 2010 constitution the constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed ...”



12. Nevertheless, in the more recent decision of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, the Court of Appeal stated that a constitution petition must be drawn with precision but its method of presentation does not have to be formalistic and what is key is that from reading the pleadings, the court can define issues. It stated as follows: -

“However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude *ex ante* is to miss the point.”

13. Having carefully considered the petition before this court and being guided by the law, this court finds no basis whatsoever for the 1st respondent to argue that the legal threshold had not been met. In the preceding paragraphs of this judgment, this court provided a summary of the petitioners’ case, the legal grounds of the petition, and clearly identified the issues for determination, which were derived from the pleadings.
14. Moreover, this court agrees with the petitioner that the petition clearly states it is filed on behalf of, and in the interest of, the occupants of the suit property, whose properties were allegedly demolished. The suit constitutes a public interest litigation, the petitioners have outlined specific provisions of *akn ke act 2010 constitution the constitution* that have been violated, and the petitioners have described how these violations occurred. Therefore, this court finds that the petition meets the legal threshold of a constitutional petition and also finds the petition is properly before the court.

Whether the petitioners proved that their rights protected under Articles 28, 35, 40 (1) and 47 (1) of *akn ke act 2010 constitution the Constitution* were violated by the respondents.

15. 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 *akn ke act 2010 constitution the Constitution* has been breached or is at risk of being breached. The Court, under Article 20(3), is mandated by *akn ke act 2010 constitution 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.
16. Nonetheless, even if these provisions allow the petitioners to institute these proceedings, the burden was on them to substantiate their assertions as evidenced by the *akn ke act 1963 46 Evidence Act*. The relevant provisions of this Act provide as follows: -

Section 107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.



Section 108

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

Section 109

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

Section 110

“The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.”

Section 112

“In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

17. To this court’s mind and in concurrence with the 1st respondent, having made serious allegations that impugn the conduct of the respondents, particularly the 1st respondent, it was anticipated that the petitioners, who initiated legal proceedings against the respondents, would present evidence to support their allegations. However, what was given to this court? Nothing.
18. Not a single piece of evidence was presented to verify their claims about how many houses and structures were demolished, who contracted those responsible for the demolition, who the residents were, or the value of the structures. No photographic evidence was submitted to this court to demonstrate that such a demolition took place, or if these homes or structures were on the suit property.
19. Furthermore, the 1st respondent has countered these allegations and provided evidence showing that the relevant notices were issued in accordance with the law. When faced with similar situations where a petitioner failed to support his case, a position that this court adopts, the court in *Peter Ngari Kagume & 6 others v Attorney General* [2016] KECA 442 (KLR) (which decision was upheld by the Court of Appeal in *Peter Ngari Kagume & 6 others v Attorney General* [2016] KECA 442 (KLR)) stated: -

“Turning to the alleged violation as aforementioned, it is incumbent upon the petitioners to avail tangible evidence of violation of their rights and freedoms. I have gone through the petitioners’ affidavits which have horrifying allegations. The Respondent has denied all those allegations. The allegations of violations could be true but the court is enjoined by law to go by the evidence on record. The petitioners’ allegations ought to have been supported by further tangible evidence such as medical records, witnesses or rather oral evidence capable of being subjected to cross examination to test its veracity. The Petitioners did not provide such evidence except the averments of what transpired to them. It is most probable that in the prevailing circumstances then, the petitioners were subjected to physical beating, torture, detention without trial among other violations but the court is deaf to speculation and imaginations and must be guided by evidence of probative value. When the court is faced by a scenario where one side alleges and the rival side disputes and denies, the



one alleging assumes the burden to prove the allegation. I have gone through the entire court record and there is absolutely nothing to support the allegations made by the petitioners.”

20. Accordingly, and in agreement with the 1st petitioner, in the absence of tangible evidence, this court and the respondents are left with allegations in the petitioners’ affidavit, which have been denied by the affidavit of the 1st respondent. Therefore, this court must find and conclude that the petitioners have not met the burden of proof to the required standard. Additionally, it finds that the petitioners failed to provide evidence of probative value sufficient to enable this court to decide the petition in their favour and grant the reliefs sought.
21. In the circumstances, this court concludes that the petition fails. Since this is a public interest litigation petition, each party shall bear their respective costs. In the end, this court hereby issues the following final disposal orders: -
 - a. The petition is hereby dismissed.
 - b. Each party shall bear their respective costs.

JUDGMENT ACCORDINGLY.

DELIVERED AND DATED AT MACHAKOS THIS 18TH DAY OF NOVEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

11.2025

Judgement delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

Miss. Tusiime for 1st Respondent.

Miss. Kuria holding brief for Miss. Kachimei for Petitioners.

