



Shina Holdings Limited v Chege & 6 others (Environment and Land Petition E016 of 2024) [2025] KEELC 8082 (KLR) (20 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8082 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E016 OF 2024
MN KULLOW, J
NOVEMBER 20, 2025**

BETWEEN

SHINA HOLDINGS LIMITED PETITIONER

AND

HON. WAITHERA CHEGE 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT 3RD RESPONDENT

DIRECTOR OF SURVEY 4TH RESPONDENT

**DIRECTOR-GENERAL OF PHYSICAL AND LAND USE
PLANNING 5TH RESPONDENT**

OFFICE OF THE ATTORNEY GENERAL 6TH RESPONDENT

NATIONAL LAND COMMISSION 7TH RESPONDENT

JUDGMENT

1. The Petitioner, Shina Holdings Limited, filed a Petition dated 19th March 2024 seeking the following orders:
 - a. A declaration does hereby issue that the Respondents by proceeding to issue threats to forcefully evict the Petitioner and its tenants from land L.R No. NAIROBI BLOCK 69102 have violated and or threatened the Petitioners and the Petitioners right to dignity, freedom of security of the person, access to information, property, fair administrative action and access to affordable housing.



- b. A declaration that the Respondents purported eviction of the Petitioner and its tenants from land parcel NAIROBI Block 69102 without absent the statutory notices outlined in the *Land Registration Act* and all other statutes is illegal, unlawful and unconstitutional.
 - c. A permanent injunction do hereby issue restraining the respondents herein whether by themselves and or their employees and or their servants and or their agents or any one acting on their behalf and or under their mandate and or instructions from attempting to evict or evicting the Petitioner or its tenants and or taking possession and or demolishing and or otherwise in any manner interfering with the Petitioners peaceful occupation of Quality Centre, the building which sits on NAIROBI BLOCK 69102 or harassing and or threatening and or intimidating and or coercing and or attempting to coerce them to leave the premises.
 - d. The respondents do jointly and severally pay general and aggravated damages to the Petitioner and the Petitioners tenant for violating and or threatening to violate their rights and fundamental freedoms enshrined in the Bill of Rights.
 - e. Costs of the Petition shall be borne by the Respondents.
2. The genesis of this Petition arises from events that occurred on 18th March 2024. The Petitioner avers that he is the lawful registered proprietor of NAIROBI BLOCK 69102 (formerly L.R No. 2098188) a parcel of land located in Nairobi South Ward, Nairobi County. The Petitioner avers that the 1st Respondent in the company of 10 county officers adorned in county askari uniform of the 2nd Respondent and rowdy mob of young men numbering in the excess of 100 people visited the property under the guise of re-establishing property beacons on the neighboring public parcel L.R No. 20912621, which had been earmarked for a modern market.
 3. The Petitioner further asserts that the Respondents acted on a misapprehension that the Petitioner had encroached onto L.R No. 20912621. It is the Petitioner's position that its land is lawfully registered and clearly demarcated, and that any claim of encroachment is either exaggerated or entirely false. The Petitioner avers that this mistaken assumption should have been clarified prior to any action by the Respondents, and that failure to seek such clarification constitutes a breach of the principles of natural justice and fair administrative action. In particular, the Petitioner contends that it was denied the opportunity to be heard and to present evidence, in contravention of statutory and constitutional safeguards.
 4. In support of the Petition, the Petitioner relies on a sworn affidavit by Imran Dhanji, which recounts the events of 18th March 2024 in detail and exhibits documents including the Petitioner's title deed for Nairobi Block 69102 (formerly L.R No. 2098188), site plans and maps demonstrating the boundaries of the Petitioner's property relative to L.R No. 20912621, and correspondence with the Respondents regarding the proposed survey and boundary identification. The Petitioner contends that despite the evidence of lawful ownership, the Respondents proceeded with the exercise in a manner that was coercive, intimidating, and in violation of statutory and constitutional protections.
 5. As a result of the Respondents' conduct, the Petitioner claims that its constitutional rights were violated and that it has suffered loss, inconvenience, and reputational harm. The Petitioner seeks an order declaring that the actions of the Respondents amounted to an unlawful interference with its property rights and a breach of its rights to fair administrative action and access to justice. The Petitioner also seeks protective orders restraining the Respondents from any further interference with its property, and claims general, special, and exemplary damages arising from the unlawful actions of the Respondents. The Petition underscores the need for the intervention of this Honourable Court to prevent further violations and to uphold the constitutional rights of the Petitioner.



The Response

6. The 1st Respondent, Hon. Waithera Chege, filed a replying affidavit dated 9th October 2024 opposing the Petition the Respondent denies any unlawful interference with the Petitioner's rights and assert that the Petition is misconceived and based on a misrepresentation of facts.
7. The Respondent avers that the land registered as L.R No. 20912621, neighboring the Petitioner's land at NAIROBI BLOCK 69102 (formerly L.R No. 2098188) had been earmarked for the construction of a modern market. The Respondents contend that the site visit conducted on 18th March 2024 was intended solely to identify and re-establish property beacons to clarify boundaries for lawful planning and development. The Respondents assert that the officers involved were clearly identifiable in uniform and that no intimidation or unlawful force was employed.
8. The Respondent further averred that During the exercise, Surveyors observed that the Petitioner had encroached upon L.R No. 20912621 by an area measuring approximately 0.0112 hectares and had erected a permanent structure on that area. As a result, the re-establishment of all boundary beacons was obstructed. The Respondent maintains this encroachment justified their survey exercise and that no interference with the Petitioner's rights occurred, as their actions were within the law and aimed at clarifying boundaries.
9. The Respondent further refutes allegations that they threatened, harassed, or used any form of coercion against the Petitioner or members of the public. They emphasized that they had no proprietary interest in the Petitioner's land and that the Petition reflected a misunderstanding regarding which land was being reclaimed and surveyed.

Submissions

10. The Petitioner filed its submissions dated 13th June 2025, identifying the primary issue for determination as whether the 1st and 2nd Respondents were justified in their threatened demolition of the Petitioner's building, Quality Centre, located on NairobiBlock 69102. The Petitioner submitted that the Suit Property constitutes private land, acquired in 1985 from Kurdeep Singh Nayer and Gurdeep Singh Nayer, with its ownership validated by the Land Registry and through conversion under the *Land Registration Act*. The Petitioner argued that the 1st and 2nd Respondents threatened demolition without any statutory notice or due process, in breach of Article 40 of *the Constitution*.
11. The Petitioner further submitted that the Respondents' actions visiting the Suit Property with county officers and placing boundary beacons constituted harassment and a threat to its right of ownership. It contended that the Respondents did not advance any justification for their actions and that the Petitioner was neither notified of any conversion of its land to public land nor of any intended eviction.
12. The Petitioner relied on the case of *Mtana Lewa -Vs- Kahindi Ngala Mwangandi* [2015] KECA 532, arguing that Article 40 rights can only be limited under Article 24 and that any deprivation of property must meet the constitutional criteria. The Petitioner also cited *Kenya National Highways Authority -Vs- Misty Premji Gangi (Investments) Ltd* [2024] KECA 500, *Anthony Njoroge & 2 Others -Vs- County Government of Nairobi* [2020] KEELC 1649, and *Simeon Nyachae & Another -Vs- County Government of Mombasa* [2020] KEELC 264 to demonstrate that government authorities cannot lawfully demolish private property without following statutory procedures and providing compensation.
13. The Petitioner contended that the threatened demolition violated its rights not only under Article 40 but also related rights under Articles 28, 29, 31, 35, and 47, as the Respondents' conduct undermined



its dignity, security, and peaceful enjoyment of property. It submitted that Kshs. 1,500,000 would be adequate compensation, relying on the award in *Simeon Nyachae & Another -Vs- County Government of Mombasa* [2020] KEELC 264.

14. In response, the 1st and 2nd Respondents filed submissions dated 30th June 2025, summarizing the main issue as whether the Petitioner had demonstrated that its constitutional rights were violated by the Respondents' actions. The Respondents submitted that their presence on 18th March 2024 was limited to placing beacons on the adjoining public land, L.R No. 20912621, earmarked for a modern market. They denied any threat of demolition or harassment and clarified that the crowd observed by the Petitioner were merely onlookers.
15. The Respondents submitted that the Petitioner's allegations regarding a rowdy mob and threats were unsubstantiated and intended to mislead the Court. They emphasized that the boundary dispute between the Suit Property and L.R No. 20912621 remained unresolved and that their actions fell within their mandate under Article 62(2) of *the Constitution*, which vests public land in the custody of County Governments to hold in trust for residents.
16. The Respondents also challenged the admissibility of the Petitioner's photographic evidence and social media posts, arguing that the evidence did not meet the requirements of Sections 106B, 107, and 109 of the *Evidence Act*. They cited *Samwel Kazungu Kambi -Vs- Nelly Ilongo* [2017] eKLR and *Peter Ngari Kagume & 7 Others -Vs- Attorney General* [2009] eKLR, submitting that the Petitioner failed to discharge the burden of proof regarding the alleged violations.
17. In conclusion, the 1st and 2nd Respondents submitted that the Petitioner had not proven any infringement of its constitutional rights and was therefore not entitled to the reliefs sought, urging the Court to dismiss the Petition with costs.

Analysis and Determination

18. Upon considering the petition, replying affidavit and the submissions, it is this court's view that the principal issues for determination are:
 - a. whether this petition meets the threshold of a constitutional petition,
 - b. whether the petitioner has established a violation of his constitutional rights and
 - c. whether he is entitled to the reliefs sought.
19. Regarding the first issue, it is important to note that the court must guard against ventilation of normal disputes or ordinary issues of litigation under the guise of Constitutional Petitions for violation of rights. This court appreciates that the existence of an alternative remedy or procedure may not oust the jurisdiction of the court, but the court, in deciding whether to entertain a suit must take into account the existence of such a remedy and its application to the issues at hand.
20. On whether this petition meets the constitutional threshold of a constitutional petition, the court in the case of *Anarita Karimi Njeru -Vs- Republic* (1979) eKLR stated as follows:

“If a person is seeking redress from the High Court on a matter which involves a reference to *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 ingraind.”



21. The Court of Appeal in the case of Mumo Matemu -Vs- Trusted Society of Human Rights Alliance & 5 others [2013] eKLR reaffirmed the principle enunciated in the case of Anarita Karimi Njeru (supra) where at paragraph 44 of its judgment it stated as follows: -

“We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made a reference to in view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the 'epitome of precise, comprehensive, or elegant drafting', without requiring remedy by the 1st respondent.”

22. Has the Petition before this court met the aforementioned threshold? In considering whether the Petition before this Court meets the constitutional threshold, the Court observes that the Petitioner has adequately identified the constitutional provisions alleged to have been violated, including Articles 28, 29, 31, 35, 40, and 47 of *the Constitution*. The Petition also sets out with reasonable precision the circumstances giving rise to the alleged violations, specifically the threatened demolition of the Petitioner's building, the placement of boundary beacons on the Suit Property, and the harassment by Respondents' officers.
23. Further, of particular concern to this Court are the uncontested averments and annexures showing that the Respondents and/or their officials made public statements and social media posts indicating that the Petitioner's property was earmarked for reclamation or demolition. Such publications, made on official and semi-official social media platforms, portrayed the Petitioner as an illegal occupier and implied that forcible removal was eminent. The Court finds that such public pronouncements, especially when made by public officers or their affiliates, had the potential to incite public hostility, disrupt lawful business, and create genuine fear of imminent eviction.
24. The Court therefore accepts that, at the time of filing this Petition, the Petitioner faced a real and immediate threat to its property and its tenants' occupation. In those circumstances, the Petitioner was justified in invoking the constitutional jurisdiction of this Court to seek urgent protection of its rights.
25. The Court notes that while some aspects of the Petition could have been articulated with greater clarity, the defects do not rise to the level of depriving this Court of jurisdiction. The Petition raises issues of constitutional rights, particularly the right to acquire, own, and enjoy property, as well as related protections under Articles 28 and 29. These matters are not ordinary civil disputes but go to the core of constitutional protection of property rights and dignity.
26. The Court further observes that while alternative remedies such as reference to the Land Registrar under Sections 18 and 19 of the *Land Registration Act* exist for boundary disputes, those procedures would not have been adequate to avert an imminent violation of constitutional rights. The urgency created by the Respondents' actions, coupled with the public dissemination of eviction threats, rendered the ordinary statutory mechanisms ineffective in providing timely redress.
27. In view of the foregoing, the Court finds that the Petition meets the threshold of a constitutional petition and is properly before this Court. The Court will proceed to consider the substantive allegations of constitutional violations and the reliefs sought.



28. On the second issue, The Petitioner contends that the Respondents, through their actions and omissions, violated and/or threatened to violate its constitutional rights under Articles 28, 29, 31, 35, 40, and 47 of *the Constitution*. Specifically, it is alleged that the Respondents unlawfully interfered with the Petitioner's quiet possession of L.R. No. NAIROBIBLOCK 69102, issued threats of eviction, caused beacons to be placed within the property, and made public statements insinuating that the Petitioner's development stood on public land or had encroached onto a road reserve.
29. The Petitioner avers that these actions caused immense anxiety and uncertainty to its tenants and investors and constituted an infringement of its right to property as guaranteed under Article 40 of *the Constitution*. It further argues that the arbitrary and public nature of the threats, made without notice, hearing, or lawful justification, also violated its right to human dignity under Article 28 and freedom and security of the person under Article 29.
30. The 1st and 2nd Respondents, on their part, deny violating the Petitioner's rights and maintain that any actions taken were part of lawful enforcement and boundary verification procedures. They contend that no eviction or demolition took place and that the Petitioner's fears were unfounded. The 2nd Respondent in particular relies on a survey report indicating that beacons were placed within the correct boundary alignment between L.R. No. Nairobi block 69102 and L.R. No. 20912621, and that the Petitioner was duly notified.
31. Upon evaluation of the material before this Court, it is evident that the Petitioner's fears were not speculative. The annexed social media posts, attributed to the Respondents and/or their officers, publicly declared that the Petitioner's development was "encroaching on a public road" and would be "reclaimed in accordance with government directives." These posts were widely circulated and not expressly retracted. The Court takes judicial notice of the fact that in the present era, official communication through digital and social media platforms is capable of conveying government policy positions and may trigger real consequences, including public interference with private property.
32. The publication of such statements, absent of a lawful determination that the Petitioner's title was invalid or that the land was public, was premature and irresponsible. It subjected the Petitioner to public ridicule, business disruption, and a genuine apprehension of forceful eviction. The Court finds that such conduct constituted a violation of the Petitioner's right to dignity and freedom from arbitrary interference with property.
33. Further, the Court notes that no evidence has been presented by the Respondents showing that due process was followed prior to any boundary adjustment or entry onto the Petitioner's land. There is no record of any formal notice, hearing, or decision communicated to the Petitioner as required under Article 47 of *the Constitution* and the *Fair Administrative Action Act, 2015*. The failure to afford the Petitioner an opportunity to be heard before undertaking actions that directly affected its proprietary interests rendered the Respondents' conduct procedurally unfair and constitutionally infirm.
34. In the circumstances, the Court finds that the Petitioner has demonstrated, on a balance of probabilities, that the Respondents' actions - particularly the public dissemination of threats of eviction and boundary interference - constituted a violation and/or threat of violation of its constitutional rights under Articles 28, 29, 40, and 47 of *the Constitution*.
35. On the third issue, the Court has already outlined at paragraph 1 of this Judgment the reliefs sought in the Petition dated 19th March 2024. In summary, the Petitioner seeks declaratory and injunctive orders restraining the Respondents from interfering with its peaceful occupation of L.R. No. Nairobi block 69102, together with other ancillary reliefs.



36. Having considered the pleadings, affidavits, and submissions, and having found that the Petitioner has demonstrated a violation and threat of violation of its constitutional rights, the Court is persuaded that declaratory and injunctive reliefs are the most appropriate remedies in the circumstances of this case.
37. The Court notes that the purpose of constitutional relief is to vindicate rights and uphold the supremacy of *the Constitution*, not to punish or enrich either party. In this case, the Court is satisfied that the Respondents' actions particularly the public issuance of threats of eviction and dissemination of misleading information were unconstitutional and unlawful. However, since no actual demolition or eviction took place, and the Petitioner remains in occupation, the grant of declaratory and prohibitory orders will sufficiently serve the ends of justice.
38. On the prayer for damages, the Court reiterates that constitutional remedies are discretionary and must be proportionate to the proven violation. The Petitioner has not placed before the Court adequate evidence to quantify any specific loss directly arising from the Respondents' conduct. In the absence of such proof, the Court declines to award damages but emphasizes that the declarations issued herein provide adequate redress.

Disposition Orders

Accordingly, and in line with the reasons set out in the body of this Judgment, the Court makes the following final orders:

1. A Declaration is hereby issued that the actions of the 1st and 2nd Respondents, by proceeding to issue threats and/or attempting to evict the Petitioner and its tenants from the land parcel L.R No. Nairobi block 69102, and/or by interfering with the Petitioner's peaceful occupation thereof, without following the due process of law, amounted to a violation and/or threat of violation of the Petitioner's constitutional rights under Articles 27, 28, 29, 40 and 47 of *the Constitution of Kenya*.
2. A declaration is hereby issued that any attempt by the Respondents to evict the Petitioner, its tenants, or to interfere with the Petitioner's quiet possession of L.R. No. Nairobi block 69102 without adherence to due process as provided under the *Land Registration Act*, the *Physical and Land Use Planning Act*, 2019, and the *Fair Administrative Action Act*, 2015, would be unlawful, null, and void.
3. A Permanent Injunction is hereby issued restraining the Respondents, their agents, servants, or any persons acting under their authority from unlawfully interfering with, threatening, or evicting the Petitioner and its tenants from L.R. No. Nairobi block 69102 pending full compliance with the due process of law.
4. For avoidance of doubt, nothing in this judgment shall preclude the Land Registrar, acting pursuant to Sections 18 and 19 of the *Land Registration Act*, from undertaking the lawful process of establishing or determining the boundary between L.R No. Nairobi block 69102 and L.R No. 20912621, provided that such process shall be conducted in full compliance with the law, with due notice to all affected parties, and in strict observance of the rules of natural justice.
5. Each party shall bear its own costs.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 20TH DAY OF NOVEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE



Judgment delivered in the presence of: -

Mr. Chidi for the Petitioner

Muthama for Maina for the 1st & 2nd Respondent

No appearance for the 3rd, 4th, 5th, 6th, and 7th

Philomena W. Court Assistant

