

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC PET. NO 4 OF 2020

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 40(1) (a) AND
(b) OF THE CONSTITUTION**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE
CONSTITUTION**

AND

**IN THE MATTER OF VIOLATION OF THE RIGHT TO
PROPERTY**

AND

**IN THE MATTER OF CONTRAVENTION OF SECTIONS 24
AND 25 OF THE LAND REGISTRATION ACT, 2012**

BETWEEN

BEL-BUR

(PLC)

.....PETITIONER

VERSUS

PAUL SANG & 25 OTHERS.....

.....RESPONDENTS

AND

ALICE CHEPKURUI CHEPKULUL

CHERUIYOT KIPRONO FRANCIS (LEGAL

ADMINISTRATORS AND REPRESENTATIVES

OF THE ESTATE OF MAGERER ARAP

CHEPKULUL (DECEASED).....INTERESTED

PARTIES

JUDGMENT

Introduction

The Petitioner filed a petition dated 6th March, 2020 seeking the following orders: -

- a) A declaration that the Petitioner's protected right to property has been violated by the Respondents acts of illegal sub-division of parcel of land Njoro/Njoro**

Block 4/91 (BerBur) and allocation of the resultant sub-divisions together with plots 250 and 268.

b) An order of cancellation of the titles to land parcels no Njoro/Njoro Block 4/250, 268, 302, 305, 307-321, 323, 326-327, and 330, 332-336.

c) An order for immediate restitution to the Petitioner of land comprised in titles Njoro/Njoro Block 4/250, 268, 302, 305, 307-321, 323, 326-827 and 330, 332-336.

d) A permanent order of injunction restraining the Respondents, their agents, servants, or any persons acting under their directions from interfering with the Petitioners ownership, possession, and use of all that land parcels nos Njoro/Njoro Block 4/250, 268, \$02, 305, 307-321, 323, 326-327 and 330, 332-336.

e) An order for compensation for the violation of the Petitioner's property right over land parcels no Njoro/Njoro Block 4/250, 268, 302, 305, 307-321, 323, 326-327 and 330, 332-336 against the Respondents

f) Any other relief the court may deem fit grant in redress to the clear violation of the Petitioner's right to property.

g) An order for payment of costs of this petitioner by the Respondents.

The Respondents in response filed various Replying affidavits, Further and Supplementary Affidavits in opposition of the Petitioner's claim. They contend that the subdivision of Njoro/Njoro Block 4/91 was lawfully subdivided. The 24th to 36th Respondent posited that the Petition did not meet the threshold for a constitutional Petition. They contend that the Petitioners had failed to prove the right which had been violated and how it was violated.

The interested party was not in opposition of the Petition save that their contention was that plot numbers 91,250,268 and 269 did not belong to Petitioners but Magerer Chepkulul (deceased). Their claim was solely on Plot 60.

Petitioner's case

Richard Kipkemboi Langat a director of the Petitioner testified as PW1. He testified that he became a director of the company

in 2016. He produced his Affidavit dated 6th March, 2020 together with its annexures which was adopted as his evidence in chief. He also produced his supplementary affidavit filed on 3rd December, 2021. Upon cross examination by Machage for the 1st to 22nd Respondent, PW1. He confirmed that he was not a member but a director of the Plaintiff company. He stated that the directors of the company are as follows:

1. Philips Togown (Chairman)
2. Magerer Chepkurui (Director)
3. Michael Too- Secretary
4. Lasur Cherorei
5. Kipsoi Rono
6. Elijah Murbi

He further stated that they left in 1982 and that Elijah Murbi had passed on in 2006. He stated that Paul Sang was not a Director but a village Elder assistant while Isaiah Ngetich was the Director's assistant in allocation of land. He added that Alfred Kipruto Arap Kerich (deceased) also assisted in giving land. He stated that Elizabeth Chepkirui was not given land. He went on to state that Alfred Kipruto Arap Karich, Elijah Murbi, Chumo and Cheruiyot Sitenei died before he filed the case. He

stated that they filed the case since they were on the land and that they wanted the court to give land to the Petitioner. He confirmed that Plot number 91 was public utility and that it was sold but the company was not paid. He stated that the Respondents had titles which were obtained between 1996-1998. He stated that they took long to act since they were not aware. He denied any intention of grabbing land from the Plaintiff. He stated that they were 9 Directors in total

1. Paul Laboso since 2016
2. Josan Musonik- since 1964
3. William Kitur Talen since 2005
4. David Kimoi Rono Since 2005
5. Richard K Langat since 2016
6. John Kimatian 2005
7. William Kipkoech since 2016
8. Kemori Fever since 2016
9. William Kipngetich - 2016

He stated that Magerer Chepkulul forcefully took occupation. Upon cross examination by Waiganjo for the 18th and 19th Respondent, he stated that the case revolved around land No. 91 (Njoro). He further stated that the issue was that the

Respondent had not paid the Plaintiff. He stated that Elijah Koech Bulbi was the chairman and admitted that he did not have the CR12 for 1996. He added that the name Belbur Co Ltd was changed to Belbur PC in 2019. He admitted that he did not have the resolutions. PW1 went on to state that the 18th and 19th Respondents owned Njoro/Njoro/4/250. He denied that Plot 250 arose from 91. He further stated that members got their titles in 1982. He stated that his father was a member. He admitted that he did not have a share certificate.

He was shown the list of members at page 125 where he confirmed that William Kitini arap Tolle, David Kipkirui Rop, Ronald Kiprono Langat, David Kiplimo Kimeto, Erick Terer, William Kipyator and Paul Kipkorir Laboso were not members. He stated that as children of the members, they took over the directorship. He admitted that he did not know that plot number 268 belonged to the Plaintiff as currently it was in the name of KVVU-TIT Farmers Co-operative Society Ltd. He admitted that he had not sued them. He added that Elizabeth and Eunice were in plot 269 but have not been sued. He stated that his father took the title for Njoro/Njoro/Block 4/17 from lands in 2007 from lands.

On cross examination by Karbolo for the 24th to 26th Respondents, he confirmed that plot 334 was unoccupied. He admitted that he did not have a title. He denied that Mr. Chepkulul owned the land. He stated that he had sued the government for giving out the Plaintiff's land

Paul Kipkorir Laboso testified as PW2 where he adopted his witness statement dated 20th April, 2022. He testified that he was the Plaintiff's chairman since January, 2016. He further testified that the company was incorporated in 2005/1963. He testified that they discovered in 2017 that people had purchased the 4.8 acres of land. He further testified that no one was in occupation of the land. He added that Paul Sang and Ngetich served the company but not as directors. He testified that there were no beacons other than for the 4.8 acres.

Upon cross examination by Machage, he confirmed that Paul Sang was a member of the Plaintiff's company by virtue of inheritance. He added that his father was a full member between 1963 and 1968. He stated that Paul Sang had been allocated the land by his father. PW2 confirmed that there was a suit being 743 of 1992 where the Plaintiff never defended but Paul Sang for his own interest. He stated that Paul Murbi was

one of the directors and that Plot number 91 has been before court since 1992.

He admitted that he was a member of the Plaintiff company through inheritance of his father's share in 2016. He stated that Mr Chepkulul had occupied the land with their authority. He admitted that Plot 91 was not surveyed.

On cross examination by Waiganjo, he stated that Parcel number 91,250, 268 belonged to the Plaintiff company. He however admitted that he had no document which showed that parcel number 250 belonged to the Plaintiff. He stated that Plot 250 was a sub-division of 91. He also admitted that he had no document which showed that number 91 belonged to the Plaintiff.

PW2 was shown the RIM where he confirmed that it was for Njoro Njoro Block 4/Belbur. He further confirmed that 250 was not part of 91. He stated that their land measure 4.8 acres and that Plot 250 had been transferred to Veronica on 21st September, 1993. He admitted that he had no records. He further stated that Belbur Company Limited was different from Belbur PLC. He stated that the company was in the names of:

1. Towett
2. Kenedong
3. Koskei
4. Mubi Elija

He stated that Julius Koskei took his father's land. He added that Belbur Co. Ltd had property.

Upon re-examination, he stated that the decision to have the name changed was made on 20th December, 2018 by the Directors and approved by the members.

That marked the close of the Petitioner's case

Respondent's Case

Paul Kiplangat Arap Sang testified as DW1. He relied on his replying affidavit and further affidavit sworn on 26th October, 2021 and 24th March, 2022 respectively. He testified that he had the 1st to 29th Respondent's authority. It was his testimony that the Plaintiff Company sought for land for its shareholders and got 5 parcels, LR 6980, LR 1108, LR 5283, LR 7029 and LR 9712/2. He testified that Njoro/Njoro/Block4/1991 measured 0.9975Ha and that the plot initially was public utility. He further testified that it had been subdivided from plot number 60. He

added that the land belonged to Magerer Chepkulul who had complained of having had his land reduced in acres. He testified that after survey, it was established that 12.8 acres of the land was curved leaving a remainder of 0.9975 Ha. He went on to testify that the Directors decided to subdivide the 4.6 acres into 36 plots. It was his testimony that the subdivided land was No.91.

He testified that the 36 plots were to be beacons and sold to willing buyer to members of Belbur. He further testified that 9 directors being:

1. Alfred Kerich (deceased)
2. Elijah Mumbi (deceased)
3. Kipsigei Kol (deceased)
4. Mr Mathayo Arap Chuno (deceased)
5. Isaya Ngetich (deceased)
6. Paul Sang (secretary) myself as the secretary
7. Edwin Yegon - Not certain whether alive or deceased.
8. Chuno Arap Langat (Not sure)
9. Arap, Chesilim (Not sure)

attended the subdivision process and that the resolution was passed on 7th December,1997. He also testified that parcel

number 99 was subdivided into 36 plots and that the members had their titles. It was his testimony that the land did not belong to the Plaintiff. He testified that Plot 250 belonged to Veronica a member of the Plaintiff while 268 belonged to Moses Sitenei also a member. He testified that 269 belonged to Sitienei and Mogoin both members. He further testified that he was a member of Belbur Co Ltd as the secretary between 1978-2002. He testified that he was a member from 1972 to date and a director from 1978 to 2002. He added that he was a member listed as number 212. He testified that he had been allocated parcels of land by Belbur and that in Nakuru HCCC 743 of 1992, he had been sued by Chepkulul. He testified that he was defending parcel number 91. He added that Paul Laboso was a son in law to Magera Chepkulul. He prayed that the petition be dismissed with costs.

Upon cross examination by Waiganjo, he confirmed that he was the secretary from 1978 to 2002 and after 2002, he became a committee member where he has been acting throughout. He stated that he had been issued with a title for block 4/250 Belbur in 1993 while Veronica was issued with the title in 1993. He added that the other titles were issued to Sitenei. He stated

that Belbur had no issues with Block 4/250 as it belonged to Veronica. DW1 admitted that they never did a handing over to the Plaintiff. He stated that they never agreed to file the suit. He added that the last director Charles Richard Towett died in 2019.

Upon cross examination by Karbolo, DW1 stated that chief's office had been allocated land by the company and that there were parcels of land retained by the government.

On cross examination by Langat, he confirmed that the company was initially called Belbur Co. Ltd and that most of the directors were deceased. He further stated that in 2019 Paul Laboso as the chairman and other people came to see him on 20th October, 2019. He stated that the company had changed from private to public. He stated that he became a member in 1972. He added that his father Chebolget Arap Chengech Abraham was a senior chief and a director of the company. He stated that in 1977, he became the secretary and in 1978, he became a director until 2002. He admitted that he did not have any document to confirm that he was a director. He also admitted that he did not have the minutes that elected him as a director. I do not have the documents. He stated that Margarer

Chepkulul's land was found to be oversized since it was supposed to be 12.8 acres. He added that the rest of the property became parcels number 91.

He confirmed that the parcel of land vide the company's resolution became a public utility in 1997. He admitted that he did not have a resolution of the company. He stated that the land was subdivided on 14th November, 1993. DW1 stated that he relied on the minutes of 7th December, 1977. He also admitted that the minutes had not been signed. He stated that prior to 2020, the Respondent never occupied the property. He confirmed that they sold the property to a willing buyer and the members were informed of the sale. He admitted that there was no sale agreement between the company and the Respondents.

On re-examination, DW1 stated that he had been sued as an individual and not a director. He stated that the current chairman was Paul Laboso. He further stated that the people he sold plot 91 took possession in 1987. He went on to state that parcels 302, 312,313,314,315 were reserved for public utility and that Plot No.91 came from 505. He also stated that parcel number 91 was mutated from 501,505,506. He confirmed that

the documents were made by the director and that he was the secretary.

Collins Liyai Alieia, the Land Registrar, Nakuru testified as DW2. He adopted that replying affidavit sworn by R.G Kubai as his evidence in chief. He testified that he had a certified copy of the register for Njoro Njoro Block 4/9 which was opened on 14th September, 1993. He testified that the property was registered to the Government of Kenya and on 25th June, 1996, the title was closed on subdivision.

Upon cross examination by Waiganjo, he confirmed that the 1st owner of the property was the government of Kenya while the second owner was Veronica Chepkurui Mosoin and Cheruiyot Sitenei. He stated that parcel number 91 was owned by Government of Kenya and was subdivided. He further stated that 250 did not originate from No.91.

Upon cross examination by Langat, he stated that when a title is subdivided, the entry number one should be the proprietor. He further stated that the land was not a lease. He added that when a title deed is issued first after subdivision, it should bear the name of proprietor. He confirmed that Parcel number 91

was government land and was allotted to Belbur Co. Ltd. He further stated that its registration status could be traced at central register. He confirmed that there was no record that the property was transferred to Belbur Co Ltd.

DW2 confirmed that one could not apply for subdivision of a property if he/she was not the owner. He confirmed that one could not subdivide land that was not registered. He added that there had to be a search and survey done. He also stated that in order to register a subdivision, there must be a consent for subdivision a mutation, amended R. I M, certificate of compliance, surrender of title. He explained that upon receipt of the said documents, they kept it in their records. DW2 confirmed that they did not have the records for entry number 2. He added that it was not possible to close the title without the documents as it would be illegal if the documents were not availed to the Land Registrar.

He stated that in respect of parcel 250, it was paid. He further stated that there had to be an executed transfer document, stamp duty. He confirmed that in parcel 250, entry number 1 was the government of Kenya while entry number 2 was the individual's name. He confirmed that there was a government

of Kenya transfer. He admitted that he did not have the records of transfer. He further stated that on parcel number 91, entry number one was the Respondent and that subdivision was supposed to be the Government of Kenya and not Belbur Company Ltd. He added that the 1st entry was to be the Government of Kenya. DW2 confirmed that at registration stage, he does not visit the ground. He also confirmed that there ought to be actual beacons on the ground. He stated that a title could be challenged if not done properly.

Upon re-examination, he stated that one could not subdivide land that was not registered in their name. He further stated that there ought to have been entry number 2 in the name of Belbur. He stated that the officer must have followed the due process.

Charles Cheruiyot Kipkoech testified as DW3. He testified that he had been given a power of attorney by Veronica Cheptarui Musoin. He adopted the affidavit sworn on 15th March, 2021 by Veronica as his evidence in chief. He also relied on the documents in the affidavit as defence exhibits.

It was his testimony that Njoro/Njoro/block 4/250 Belbur was not a subdivision of plot number 91. He further testified that Plot number 250 was not a subdivision of plot number 91. He testified that there was an error in the affidavit of Veronica Chepkirui Mosoin. He added that the map confirmed the position and that parcel 250 was separate from 91.

Upon cross examination by Machage, he stated that members of Belbur have had a register that showed the portions and members. He further stated that the titles were obtained from the company and that the register of members were kept at lands registry.

On cross examination by Langat, DW3 confirmed that Veronica Cheptarus held plot 250 jointly with his father Sitienei. He stated that she was his neighbor. He stated that his evidence was based on what he was told by Veronica. He added that he had no personal knowledge of the facts. He confirmed that Veronica was not in occupation and that in 1992 Margerer Chepkirui was in possession. He stated that there was a break in 1997 and 1998. He confirmed that he was not a member of Belbur but that his father was a member.

He admitted that he did not have a copy of minutes or rather the shareholders meetings to sell plot 91. He stated that Belbur Company allocated plot number 250 to Veronica and Cheriuyot Sitienei. He confirmed that there was no LCB consent. He further stated that Plot 250 came from the mother title but that he could not recall the number. He further confirmed that Veronica bought 31, and 34. He admitted that he could not confirm the total number of shares his father had. He stated that one share went for 3.2 acres and that Veronica had 27 acres while Clement had 45 acres.

Upon re-examination, he confirmed that Plot number 250 was allocated in 1991 while the title came out in 1993. He stated that allocation of 31 came first while the others were done about the same time. He stated that no one told him that Plot 250 was public land. He added that Magerer Chepkul had once occupied the land. He also stated that he had used it before in 1997 and 1998. He stated that his father ploughed the land and used the proceeds to pay his school fees. He also stated that the land buying company were given members certificates based on shares. That marked the close of the Respondents case.

PW2 was recalled for cross-examination where he stated that Francis Kiprono Cheruiyot was Magerer's son. He denied that Plot No. 91 belonged to Magerer Chepkulul. He confirmed that he had Plot No. 60 measuring 12.8 acres which originated from LR 11108. He stated that he had another property measuring 22.4 acres on LR 5283. He denied that plot No. 60 came from merged plots. He stated that Plot 60 was initially 587 in the sketch map and that the entire 505, 506, 507 and 587 formed 17.6 acres. He further stated that Chepkulul was entitled to 12.8 acres and that 4.8 acres belonged to Belbur. He stated that Plot No. 91 existed from 1982 and was being used as a saw mill. He added that Chepkulul was a director of the company.

On cross examination by Machage, PW2 confirmed that Plot No. 91 was originally a saw mill and that it was given in 1982 by the surveyor. He stated that the directors were Mumbi Alfred Kipkoec, Mathayo Chewo, Edwin Chewo Langat and Paul Sawe. He went on to state that at the time of plot No. 91, there was a RIM and that it had a beacon. He stated that in 1993 Chepkulul realized that the land was available. He admitted that he did not know when the government came in. He added that plot number 91 was public utility since 1978 and that it was and still

has a saw mill owned by Belbur Company. He denied that the government took their plot. He also stated that Njoro Njoro Block 4/60 belonged to Chepkulul and that Block 4/91 belonged to Belbur Company Ltd. He stated that Plot No. 91 was different from No. 60 and that all the numbers were there in 1982. He further stated that Magerer never interfered with parcel number 91 but that he had matters to clear from No. 91. He also stated that the property was illegally subdivided since Belbur PLC occupied the land. He added that they were 321 members and that the land had no beacons.

Upon cross examination by Waiganjo, PW2 confirmed that Plot No. 60 belonged to Magerer while Plot No. 91 belonged to the company. He went on to state that Plot No. 91 was never surrendered to the government of Kenya. He further stated that Belbur allocated 12 acres to a public school which had a title. He admitted that Plot No. 91 had no title. He stated that he was not aware that the property became the government's property. He also stated that plot No. 280 belonged to Francis Ngeno. He stated that he never knew the person that occupied 268. He added that 268, 250, 269 were not part of 91. PW2

stated that 230 was in the name of Veronica but he did not know how and when they got the title. He stated that the new directors gave out 280 and retained the number 91. He added that Magerer filed a suit, court suit No. 743 of 1992 Nakuru High Court where he challenged the subdivision. He stated that Belbur was defunct.

On cross examination by Odundo, he confirmed that Plot No. 60 was 12.8 acres. He further stated that Plot No. 587 gave rise to plot No. 60. 505, 506, 507, 587 whose total is 17.6 acres. He stated that Chepkulul had 4 shares in LR No. 11108 and 7 shares in LR 5283. He also stated that 5283 was not in constitution. He stated that the plot in contention was 11108. He explained that members did not ballot, instead, every member would pick numbers of parcel where 4 shares was equivalent to 12.8 acres. He further stated that the sketch plan showed new parcels with no equal acreage. He stated that each plot was 3 acres while 505, 506, 507 and 587 was 12.8 acres of which some was 17.6 acres. He stated that Magerer had 12.8 acres. He further stated that the company had plot 91 which was 4.6 acres. He added that he did not know the acreage for the 505, 506, 507 and 587 individually but that the total was

17.6. He went on to state that the plots did lie on 505, 506, 507 and 587 were excised to create the new parcels of land. He also stated that parcel No. 280, 268 and 269 and 91 lie on 505, 506, 507 while the saw mill did lie on 505, 506, 507. He stated that parcel No. 91 was 4.8 acres. He went on to state that parcel No. 91 was 0.9975 is not equal to 4.8 acres. He stated that it was less than 4.8 acres and added that according to green card did not add up. He stated that the green card for 91 showed approximately 1.9 acres.

PW2 was shown Annexure 6:

268 - is 0.0975 hectares.

269 - is 0.0465 hectares

250 - is 0.4047 hectares

91 - is 0.9975 hectares

He stated that plots Nos 505,506,507, 508 were amalgamated into one. He further stated that Plot no 60 was allocated to Mageru in 1982. He stated that plot no 91 was allocated as a public utility in 1982. He added that it was a compulsory property as a public utility in 1982.

PW2 was shown the supplementary affidavit dated 8th February, 2024 where he confirmed that Plot number 91 was not in the

map. He stated that the saw mill existed as a company property. He stated that Magerer was allocated plot no 60.

Upon re-examination, he confirmed that they used one register for LR 11108, LR 5283 LR729, LR 6980, LR 9712/2. He further confirmed that plot number 250 was in LR No.6980 in Rongai. He added that the last subdivision in plot 11108 was no 91. He also confirmed that Plot number 280 was not in 11108. He went on to state that Chepkurui was entitled to 12.8 acres while in LR 11108 he was entitled to 12.8 acres. He also stated that on LR 5284, he was entitled to 22.4 acres.

PW2 stated that Magerer was given parcel number 60 while the balance of 4.8 acres became company property. He further stated that the company leased the land to An traders being part of 506 and 507 in LR.11108. He confirmed that survey had not been done after 1982. He also confirmed that the agreement was done in 1978. PW2 stated that the land belonged to all members.

DW1 was also recalled where relied on the affidavit dated 27th February, 2024 which was adopted as the Respondent evidence in chief.

Upon cross examination by Langat, he confirmed that Plot No 91 was about 4.5 acres registered in 1997. He stated that he got a consent to subdivide and that Plot No 91 and 60 are different. He added that no person had taken possession of the suit parcel.

On cross examination by Waiganjo, DW1 confirmed that the suit was dismissed on 30th March, 2017. He added that he knew Magerer Chepkurui as a pioneer Director of the company. He stated that all the directors were deceased and that it was the last team of directors. He went on to state that parcel number for Magerer Chepkurui was 11108, 505,506,507 which was supposed to be 3.2 acres each. He added that his ID No.24221260/65 was on plot 60 on 11108. He also stated that Mr Magerer occupied 12.8 acres on the ground. DW1 stated that he sued the company asking for more land but did not succeed. He went on to state that upper Belbur was LR 11108 where each individual was given 6.4 acres. DW1 stated that Njoro/Njoro/250 was owned by Veronica and Cheriuyot who have since taken possession of the land.

He stated that Plot number 60 was comprised of 505,506,507 587 and that Plot number 91 did not exist on the maps. He

added that Plot 91 was 505,506,507, 587 and which could not be curved because it had no number. He also stated that Plot number 91 belonged to Magerer. DW1 stated that Magerer was looking for 5.8 acres but that the extra parcel was 4.5 acres or thereabout. He added that Plot number 91 was 2.5 acres subject to measurement. He confirmed that the said plot number 91 was made a public utility in 1987 but prior to 1987, it belonged to the company. He further confirmed that in 1982 there were parcels unallocated which the extra acres were given temporary allocation numbers. He stated that parcel number 91 was not company property since it reverted back to the government. He confirmed that parcel No. 91 belonged to the Government of Kenya. He was referred to the annexures where he confirmed that the company was the registered owner of the company. He added that he had the minutes which showed that plot 91 was subdivided.

Upon re-examination, he confirmed that the extra portion was identified. He further confirmed that Plot 91 was created by the company and they took the documents to the Land

Registration. He stated that he did not have mutation report by Belbur office.

DW3 was also recalled where he relied on his supplementary affidavit on 12th February, 2024 which was adopted as his evidence in chief. He testified that Njoro/Njoro/4/250 did not belong to Magerer Chepkulul as it belonged to Veronica Chepkurui Mosonik and Daniel Cheruiyot Seteniei who are jointly registered as the owners. He further testified that he had a copy of the title which was issued on 21st September, 1993. He denied that plot number 250 was a subdivision of plot number 91. He added that the RIM did not show that 250 arose from plot No.911. He testified that plot number 250 was not a public utility.

On cross examination by Langat, he stated that his testimony was based on knowledge and interpretation. He confirmed that Paul Sang was a secretary of Bel Bur but admitted that he did not know how he got the said position. He also stated that Veronica had separate land from 250 being 28-29 acres. He added that the subdivision was done between 1982-1993 and the title issued in 1993. He confirmed that no one had occupied plot 250. He admitted that he had not filed any order of the

court. He went on to state that Veronica occupied 28 acres while Sitienei had about 14 shares. He stated that David Sitienei owned plot numbers 31, 78 and 79 within upper Belbur.

On cross examination by Odundo, he confirmed that allocation was done in 1982 in accordance with shares. He admitted that he did not have the mutation for land lower than 3.2 acres. He was shown CKF 12, letter dated 15th February, 1983. He confirmed that the letter showed that all the land had been allocated. He also stated that Mr Maneger filed a suit in 1992 where he lost and that Sitienei got title in 1993. He was also shown Veronica's affidavit dated 16th March, 2021 where he denied that plot 250, 268,269 was hived from plot No 60. He stated that Plot number 250 had been occupied by the family of Magerer and Sitienei. He also stated that the case had been filed in 2020 and that between 2017 and 2020, they were putting their documents together. He stated that his father died in 2017 and admitted that they had not filed the succession cause.

On re-examination, he stated that it was their intention to take out letters of administration for their father. He stated that Plot 250 was their father's estate. He added that the family of

Magerer filed a case in 1992 where the said plot was the subject matter but they did not succeed. He added that sections of the land was occupied by Daniel Sitienei and sometimes Magerer Chepkirui. He stated that Mgerer Chepkulul's family was illegally on the land.

Interested Party's case

Cheruiyot Kiprono Francis relied on his statement and replying affidavit dated 27th November, 2023 and supplementary affidavit dated 4th March, 2024.

Upon cross examination by Langat, he stated that he was Magerer Chepkulul's son. He admitted that he had not filed a cross -petition. He also confirmed that he did not oppose the petition. He stated that he agreed with the petition save that plot numbers 91,250,268 and 269 did not belong to Petitioners but Magerer Chepkulul. He further stated that Plot number 91, 250, 268 and 269 were in plot number 60. He stated that before 91 and 60, there was 505,506,507,587 which later became number 60. He admitted that they were not registered at the Land Registry. He also stated that there was no proper cancellation of title of 91,250,268 and 267. He stated that his

father had 11 shares and that 4 shares were in LR 11108 with each share having 3.2 acres. He added that his father had 12.8 acres and that he had bought 1 acre from a member in LR 11108. He went on to state that 4 Shares translated to 12.8 acres. He stated that they were not claiming anything. He also stated that their father had not distributed the land. He added that the amalgamated lands started on the road and that plot 60 included the saw mill which existed before he was born. He was shown PL4 where he stated that it was an agreement to lease the saw mill by his father the director. He stated that the land was 3.5 acres in 1978 and that subdivision began in 1981 to 1982.

He went on to state that surveyor did the survey on 21st October, 1981. He further stated that in 1991 the property belonged to the company and that the saw mill was 4 acres. He added that the saw mill was established in 1981 and that his father filed a case in 1992 which was dismissed for want of prosecution on 30th March, 2017. He confirmed that they never revived the case. He further confirmed that they were in possession of Njoro/Njoro/block 4/91, 250,268,269 which parcels of land were in number 60. He stated that the Respondents

never ploughed the land. He also stated that plot number 60 had no single plot.

Upon cross examination by Machage, he confirmed that parcel number 60 had 10 beacons and that all the plots were in parcel number 60. He stated that plot 60 measuring 12.8 acres belonged to their father. Parcel number 60 is 12.8 acres. He further stated that they had no claim apart from the 12.8 acres. He confirmed that if the said 12.8 acres was to be measured, they would agree to it. He stated that all his father's children had been given parcel number 60 while the 5 wives of the deceased each had been given 5 acres. He added that Seline was given 2.5 acres and that any extra land should go back to the company.

On cross examination by Waiganjo, he confirmed that they had not been sued by the Plaintiff but only enjoined in the case. He stated that Veronica and Cheruiyot Sitienei had the title for 250 and Njoro/Njoro/Block4/280 which was issued on 21st September, 1993. He admitted that he had never seen the title for 250 in the name of Magerer Chepkurui. He also admitted that they did not have title for plot number 60. He confirmed that they had not requested for cancellation of plot number 250

or taken out title for 250. He stated that they were only seeking plot number 60. He denied having trespassed on plot number 280. He stated that his father never consolidated the land but that it was done by the Directors of Belbur. He admitted that he never knew how a company conducted its business affairs of its business. He also admitted that the director kept the minutes book. He confirmed that he had not seen it and that it was the security of Belbur who were to avail it in court.

On cross examination by Wanjeri, he admitted that there was no evidence that parcel number 250,268,269 originated from parcel number 91.

On re-examination, he admitted that he never made any application to cancel the title. He stated that he agreed with prayer number 2 of the petition. He also admitted that he did not have the documents but confirmed that they had filed a succession cause. He stated that his father was the chairman of Belbur. He also admitted that his name was not in the agreement. We entered the land before the Anand traders left.

He stated that they have been in possession of the land since 1982. He further stated that in 1981 they were given the land.

He added that plot number 60 was 12.8 acres which was in respect of 250,269,268 and 91, 250-1 acre, 269- ½ acre, 268- ½ acre and 91- 2.4 acres. He admitted that Plot no 60 had not been registered.

That marked the close of the interested party's case.

Submissions

Counsel for the Petitioner filed his submissions dated 14th October, 2025 where he identified four issues for determination. The first issue was whether Njoro/Njoro Block Parcels No. 91, 250 and 268 was legally subdivided and with the Petitioner's authority. He submits that the doctrine of corporate governance requires that company affairs must be conducted by persons with lawful authority. He submits that the 1st Respondent acknowledged that the CR12 showed that he has never been a director of the Petitioner. He submits that the Petitioner showed the legal directors of the Petitioner. He argued that the RIM produced showed how Njoro/Njoro Block parcels 4 was subdivided and given to its members in 1982.

It was counsel's submission that the Petitioner demonstrated that the 1st Respondent had no authority to conduct the affairs of the company. He adds that the registrar also acknowledged that the procedure had not been followed hence the Respondent's acts of subdivision of the suit parcel was illegal. He relied on the case of **Kipsiwo Community Self Help Group V Attorney General and 6 Others [2013] eKLR**. He further submits that the Respondents did not produce any evidence of minutes or resolutions of the company to confirm that the 5 acres had been reserved as public utility. He also submits that the minutes produced by the 1st Respondent were neither signed nor stamped. He submits that the Respondents never produced any agreements, proof of payment, consents or transfer documents as proof of sale of the sub-divided plots. He adds that no survey had been conducted or beacons placed after the subdivision. He cited **Section 22(2) of the Land Registration Act** and the Court of Appeal case in **Munyu Maina V Hiram Gathiha Maina Civil Appeal No. 239 of 2009**. He submits that the Respondents and holders of titles to land parcels Njoro/Njoro Block 4/250, 268, 302, 305 and 307-336 failed to show how they acquired them. It was counsel's

submission that with regard to Nakuru ELC 152 of 2012, the same was never heard on merit.

The second issue was whether the suit property is part of the estate of the late Magerer Chepkulul. He submits in the negative and argues that Chepkulul (deceased) was a shareholder of the Petitioner with a total of 11 shares. He further submits that the deceased owned a total of 35.2 acres of land. It was his submission that plot 60 measuring 12.8 acres was allocated to the deceased while plot 91 was reserved for public utility. He also submits that with regard to collection of the annual rent from Anand Traders, the deceased was only appointed to collect it as his property was adjacent to the suit property.

The third issue was whether the Petitioner's right to property was infringed. He submits that the Respondent's actions were illegal and meant to deprive and restrict the Petitioner and their families from the beneficial use and enjoyment of the suit property. He argues that the Respondent acquired the land unprocedurally yet there was a laid down procedure for subdivision but the same was not followed. He cited **Article 40** of the Constitution and the case of **Wilfred Juma Wasike & 11**

Others V Ministry of Interior and Co-ordination & another [2022] eKLR. He urged the court to find that the Petitioner's rights and in particular Article 40 of the Constitution was infringed and violated by the Respondents.

On the final issue of costs, he submits that costs follow the events.

Counsel for the 24th to 26th Respondents filed his submissions dated 30th August, 2023 where he identified three issues for determination. The first issue was who is the legitimate owner of NJORO/NJORO BLOCK 4/91 (herein referred to as 'Parcel 91'). He submits that the said parcel was occupied by Mr, Chepkurui arap Magerer, a former director with the Plaintiff company. He adds that there existed a dispute between him and the company where they both claimed ownership. He submits that the 1st Respondent passed a resolution to subdivide Parcel 91 into plots 302 to 336. He argues that the said subdivision was proper and that the title was closed as testified by DW1. He further submits that plots 312 to 315 and plot 334 were set aside for public utility. He also submits that there was evidence of the green cards which showed that Parcel 91 was subdivided, its title closed and new plot numbers demarcated. It was his

submission that the Petitioner thus had no claim to the said parcel since it was non-existent. He went on to submit that the Petitioner did not contest the subdivision process of Parcel 91 but the authority by the then directors of the Petitioner to subdivide the land. He relied on the case of **Munyu Maina V Hiram Gathiha Maina [2013] eKLR**. Counsel submits that the present case was a dispute of the leadership in the Petitioner's company disguised as a constitutional petition.

The second issue was whether the Petitioner has demonstrated with precision that the Respondents' actions amount to a violation of fundamental rights and freedoms. He cited the case in **Anarita Karimi and Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR** and the Supreme Court case in **Communications Commission of Kenya & 5 Others V Royal Media Services Limited & 5 Others [2014] eKLR**. It was his submission that the Petitioner failed to demonstrate how the Respondents' actions were in breach of its constitutional provision to its right to own and enjoy property. He relied on **Sections 109 and 112 of the Evidence Act**. He further submits that the Petitioner failed to speak instances of the infringement of its rights but focused on

the leadership dispute of the Petitioner as opposed to how the Respondents violated its right to own and enjoy property. Counsel relied on the **Constitutional Petition No. 128 of 2006 Lt. Col. Peter Ngari Kagume & Others V Attorney General** and submits that the Petitioner did not prove any violation of its rights and that the Respondents cannot be held liable.

The final issue was whether the Petitioner is entitled to the orders sought. While submitting in the negative, counsel argues that the Petition was misconceived as the Respondents were beneficiaries of proper subdivision and consequently good titles. He added that the Petitioner also failed to demonstrate how the alleged rights were violated. He urged the court to dismiss the Petition with costs.

The 1st, 3rd, 6th, 11th -14th and 20th to 23rd Respondent's counsel filed his submissions dated 17th November, 2025 where he gave a background of the case and submits that the creation of Plot 91 from Plot 60 as well as surrender of the portion back to the Commissioner of Lands was done by the Petitioner. He relied on the case of **Daniel Otieno Migore V South Nyanza Sugar Co. Ltd (2018) eKLR** and submits that parties are bound by

their pleadings. He further submits that the Petitioner was indolent since subdivision had been done in 1982 and titles issued between 1988 to 1992 but the Petitioner took so many years to question the subdivision. He adds that the process was conducted by the company through its directors. He urged the court to dismiss the Petition with costs.

Counsel for the interested party filed his submissions dated 31st October, 2025 where he identified four issues for determination. The first issue was whether Magerer Arap Chepkulul was a bona fide allottee and the legal/beneficial owner of the suit properties. While submitting in the affirmative, he argues that PW2 in his evidence admitted that Plots 505, 506, 507, and 587 were amalgamated. He submits that the witness also confirmed that Plot No. 91 did cut across 505, 506, 507, and 587 which were allocated to Magerer. He submits that PW1 and PW2's conceded that the late Magerer's name appeared as the allottee of the said parcels. He also submits that the Petitioner's witnesses conceded under oath that no company resolution, minute, or any record for that matter, supported the allegation that Plot 91 or its derivatives were ever reserved for public utility. **Republic V Land Registrar, Nandi & Another ex**

parte Cheruiyot Kogo [2020] eKLR. It was his submission that the interested party's evidence confirmed that the deceased's holdings Plots 505, 506, 507, and 587 formed a consolidated parcel known as Plot No. 60, measuring approximately 12.8 acres which was consistent with the deceased's documented four shares under L.R. 11108. He further submits that from his evidence, he situated the disputed Plot No. 91 within this amalgamated area, thus proving that the Petitioner's subsequent claim was superimposed upon pre-existing proprietary allocation. He submits that the witness confirmed that the deceased's family lived and tilled on the property since 1982 without any cases being brought against them. He relied on **Section 26 of the Land Registration Act** and the Court of Appeal case of **Public Trustee V Wanduru Ndegwa [1984] KLR 314.** He further submits that the interested party confirmed that Plots No. 250, 268, 269 and 91 and all its derivative numbers formed part of the late Magerer Arap Chepkulul's estate and were never lawfully alienated. He relied on the case of **Wreck Motor Enterprises v Commissioner of Lands & Others [1997] eKLR.**

The second issue was whether the subdivision of Plot 91 and resultant titles was illegal and whether it extinguished the estate's rights. Counsel submits that Land Registrar's own testimony acknowledged that subdivisions occurred and were reflected in the cadastral maps. He also submits that PW2 admitted that the disputed parcel lied squarely on land originally allocated to the late Magerer Arap Chepkulul. Counsel relied on the case of **Republic v Land Registrar, Kajiado & Another ex parte Ezekiel Mburu [2018] eKLR** and submits that the unsupported assertions in the Petitioner's case remained an afterthought unsupported by either corporate act or any statutory authority. He submits that the estate's root of title traced to the original shareholding and allocation of the late Magerer Arap Chepkulul, which was never impeached. It was his submission that the Land Registrar confirmed unequivocally that one could not subdivide land that was not registered in their name. He further submits that the Land registrar confirmed that in respect of Plot No. 91, there ought to have been an entry No. 2 on the green card in the name of Belbur before any subdivision to any other person. He relied on **Section 22(2) of the Land Registration Act, 2012** and

argues that the Land Registrar confirmed that none of the mandatory steps were ever undertaken in respect of Plot 91. Counsel cited the case of **Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another [2013] eKLR** and **Kuria Greens Limited v Registrar of Titles & Another [2011] eKLR**. He submits that where subdivision is carried out by a non-proprietor, the resultant titles are void ab initio. It was his submission that no green card entry was in the Petitioner's name as proprietor prior to subdivision, that there was no letter of consent from the Land Control Board, and no authenticated mutation or survey map. He submits that the Petitioner acted ultra vires and without any proprietary authority. He submits that Plot No. 91, 250, 268, and 269, were unlawfully subdivided from property belonging to the estate of the late Magerer Arap Chepkulul, without authority, registration, or consent. He urged that court to find that the purported subdivisions and resultant titles were nullities in law and that the estate's proprietary rights subsist undisturbed.

The third issue was whether the Petitioner has demonstrated any violation of its constitutional rights. While submitting in the negative, counsel relied on **Article 40 of the Constitution**

and argues that the Petitioner failed to demonstrate, with any specificity, how its alleged right to property had been violated. It was counsel's submission that the claim was speculative and unbacked by evidence of ownership, registration, or actual possession. He submits that the Petitioner, though a private company, cannot invoke corporate veil to sanitize illegality that infringes constitutionally protected property rights. He further submits that **Article 40 (6) of the Constitution** applied where illegality attaches to acquisition, but not to later interference by strangers. He argues that the Interested Parties' title traced back to the company's original allocation, followed by peaceful possession from 1982 to date, while the Petitioner's claim arises from unregistered, unauthorized subdivisions undertaken. He relied on the case of **Isaac Gathungu Wanjohi v Kenya National Highway Authority [2019] eKLR**. Counsel submits that the Interested Parties' constitutional right to property is unimpeachable as it arose from lawful company allocation, buttressed by four decades of possession, confirmed by testimony from all sides, and protected by the Constitution. He argues that the Petitioner, lacking any demonstrable registration, authority, or resolution, cannot rely on **Article 40**

to shield an illegality. It was his submission that the Petition was a thinly veiled attempt to relitigate internal corporate disputes through the constitutional jurisdiction of this Honourable Court. He relied on the case of **Kiambu County Tenants Welfare Association v Attorney General & Another [2017] eKLR**.

The fourth issue was whether the estate of the late Magerer Arap Chepkulul is entitled to protection and restitution. He relied on **Articles 23(3) and 40(6) of the Constitution, Sections 80(1), 25(1), 26(1) of the Land Registration Act, 2012** and the case of **Gitobu Imanyara & 2 Others v Attorney-General [2016] eKLR**. He argues that the Petitioner never held registered title to Plots Numbers 250,268, 269, that plot 91 was not sanctioned by any corporate resolution; and that the Land Registrar confirmed that one could not subdivide land that was not registered in their name. He submits that consequently, the resultant titles if any were legally void. He cited the case of **Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another [2013] eKLR** and **Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR**. He further submits that the Petitioner's purported subdivision of unregistered land, followed by

allocation to non-members, constitutes an act of corporate fraud within the meaning of **Section 26(1) (b) of the Land Registration Act**. He urged the court to grant the interested party an order of restitution in respect of all land parcels unlawfully carved out of Plots Nos. 505, 506, 507, and 587 collectively known as Plot No. 60 and unlawfully re-numbered as Plot 91 250, 268, and 269. He relied on **Section 80(1) of the Land Registration Act** and the case of **Republic v Land Registrar, Mombasa & 2 Others ex parte A. K. Abdulgani [2019] eKLR** and **Samuel Kamere v Land Registrar, Kajiado [2015] eKLR**.

On the final issue of costs, counsel submits that the Interested Parties have successfully defended their lawful property against an unjustified corporate assault, the Petitioner's lack of title, the procedural nullity of its subdivisions, and the constitutional protection of their estate's rights. He urged the court to find that the Petitioner should bear the costs of the Petition. He relied on the case of **Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others [2014] eKLR**.

Analysis and Determination

I have carefully analysed and considered the Petition, the Replying Affidavits thereof and the written submissions filed by the parties and the issues for determination is whether the Petition is merited and whether the Petitioner is entitled to the reliefs sought.

The Petitioner averred that the 1st Respondent did not have the authority to conduct the affairs of the Petitioner company. It was their contention that there was also no evidence that the suit parcel had been set aside for public utility. It was their claim that from the evidence adduced including the CR12, did not confirm that the 1st Respondent was a director hence the subdivision was illegally done. From the evidence and testimonies by the Petitioner and Respondent, it was not in dispute that the suit parcel was in respect of Plots No. 250,268,269 and 91 and its resultant parcels.

The bill of rights under **Article 22(1) of the Constitution** clearly provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is

threatened. The ingredients of a constitutional petition was clearly formulated in the case of **Anarita Karimi Njeru V Republic (1979) eKLR** where the court held that: -

“We would, however, again stress that 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 infringed.”

Similarly, in the case of **Mumo Matemo V Trusted Society of Human Rights Alliance & 5 others [2013] eKLR** the court held that: -

“However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by

the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent

either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

The petition before the High Court referred to articles 1, 2, 3, 4, 10, 19, 20 and 73 of the Constitution in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the Constitution, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of

the Constitution and the rule of law, without any particulars.

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 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.”

This court has gone through the Petition dated 6th March, 2020 and in particular under paragraph 34 which lists the particulars of violations by the Respondents. The particulars of constitutional violations are listed as follows:-

- (i) ***Depriving the petitioner and its members their constitutional right to own property contrary to Article 40(2) (a) of the constitution of Kenya 2010.*** On this allegation I do find that the petitioner has not clearly brought out the circumstances under which the respondents unconstitutionally deprived her and her members land and yet she was the one distributing the same. There are no allegations against the Cabinet Secretary Ministry of Interior and Cordination of National Government. Furthermore it is not clear what the land registrar did other than registering the members of the petitioner as owners of the suit lands. The claim that the officials of the petitioner illegally allocated land to individuals who were not members of the petitioner or who were members of the petitioner but did not deserve the allocation does not raise any constitutional issue but is simply a civil claim by the petitioner against those who were allocated.
- (ii) ***The allegation by the petitioner that the respondents limited or restricted the petitioner to occupy, possess and or utilize the property***

contravened their rights under Article 40(3) of the Constitution of Kenya 2010. is mainly against the 1st to 23rd respondents and that there is no element of the state interfering with the petitioners right to property.

- (iii) **The claim that the respondents compulsorily acquired the petitioners land without following due process contrary to the Provisions of Article 40(3) of the Constitution of Kenya 2010** is far-fetched as the petitioner has not provided any evidence that the property was acquired by the state compulsorily without following the procedure. The available evidence is that the property was distributed amongst members of the company. This case can be distinguished from the case of **Wilfred Juma Wasike & 11 others v Ministry of Interior and Cordination & Another(2022) Eklr** because in the latter, the government had constructed a police station on private land without compensating the owner of the land whereas in this case the dispute is hinged on the sharing of company property.

The Petitioner has not laid out the actions by the Respondents which violated her rights under Article 40 of the Constitution of Kenya 2010. It was the Petitioner's argument that the Respondents did not follow the laid down procedure of subdivision of the land parcel thus depriving the Petitioner's member's their rights to the suit parcel. It came out clear from the testimonies that main contention revolved around the issue of directorship of the Petitioner and the general affairs appertaining to management of the company's affairs and its properties. The Petitioner sought to be recognized and registered as the owners of the suit property by virtue of the directors of the company. Notably, it is not in dispute that there was no evidence of title for the suit parcel together with its subdivisions in the Petitioner's name. It is this court's view that a dispute of such nature cannot be filed as a constitutional petition, it must be pursued through the proper legal channels, specifically a Plaint. Conversely, constitutional petitions address violations of fundamental rights and freedoms as outlined in the Constitution.

It is this court's view that when a statute provides a procedure for conducting business and resolving grievances, strict

adherence to this process is mandatory, and must be thoroughly followed before considering constitutional redress. In the case of **K K B V S C M and 5 others (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR)** Mativo, J. (as he then was), explained the doctrine of constitutional avoidance:

“In summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant’s cause...”

Further in the case of **Communications Commission of Kenya & 5 others V Royal Media Services Limited & 5 others [2014] KESC 53 (KLR)**, the court held that:

“The principle of avoidance advises courts to avoid deciding on constitutional issues when they can be resolved on other grounds.”

In the case of **Bernard Murage V Fine Serve Africa Ltd & others (2015) eKLR** the court held that:-

“Not each and every violation of the Law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first”.

It is trite law that the Constitution should not be applied in isolation but interpreted and enforced alongside relevant laws and legal remedies. In addition, it is this court’s view that when alternative remedies are available, it is better to pursue those options before turning to the constitution. This instead prevents unnecessary escalations of disputes to constitutional levels, but appreciates that all legislative and common-law remedies form important parts of the legal system. It is this court’s view that based on the above discourse, the Petitioner has approached this court through an improper channel.

It is my finding that the Petitioner has not met the threshold of a constitutional petition and thus the Petitioner is not entitled to the reliefs as sought. The Petition dated 6th March, 2020 is thereby dismissed with costs to the Respondents. Orders accordingly.

**JUDGMENT SIGNED DATED AND DELIVERED
ELECTRONICALLY AT NAKURU THIS 28TH DAY OF
NOVEMBER 2025.**

A.O.OMBWAYO

JUDGE