

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC PETITION E034 OF 2022**

**FRANCIS MWANGI and NANCY MURAYA**

(Suing on their own behalf and on behalf of the Residents of

United Housing Estate, Akiba, South C) ..... **PETITIONERS**

**= VERSUS =**

**ROBERT MUTISO LELLI ..... 1<sup>ST</sup> RESPONDENT**

**GERALD KARIMI..... 2<sup>ND</sup> RESPONDENT**

**ABDILIZACK NOOR GUHAD..... 3<sup>RD</sup> RESPONDENT**

**ABDIAZIZ AHMED..... 4<sup>TH</sup> RESPONDENT**

**HARETHA AHMED ALI..... 5<sup>TH</sup> RESPONDENT**

**MUKTAR ALI FARAH..... 6<sup>TH</sup> RESPONDENT**

**COPOS LIMITED..... 7<sup>TH</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF NAIROBI..... 8<sup>TH</sup> RESPONDENT**

**THE NAIROBI METROPOLITAN SERVICES..... 9<sup>TH</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR..... 10<sup>TH</sup> RESPONDENT**

**DIRECTOR OF SURVEY OF KENYA..... 11<sup>TH</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION..... 12<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....13<sup>TH</sup> RESPONDENT**

**= AND =**

**UNITED HOUSING ESTATE LIMITED..... INTERESTED PARTY**

**J U D G E M E N T**

1. The Petitioner filed this suit against the 1<sup>st</sup> -13<sup>th</sup> Respondents vide petition dated 18<sup>th</sup> August 2022 supported by an affidavit sworn on the same date by Francis Mwangi, seeking for the following orders:

- a) An order of permanent injunction restraining the Respondents, their servants, agents, and any person(s) acting on their instructions, from entering, fencing, breaking, demolishing, destroying, defacing, flattening or in any way interfering with the smooth operation, running of and the peaceful possession of the Petitioners' properties known as L.R. Nos. 209/8294/386, 387 and 388.
- b) An order of permanent injunction against the Respondents, their servants and agents restraining them from breaching the terms of the Petitioners' subleases entered into as between the Petitioners as Lessees of United Housing Limited and the then City Council of Nairobi, and more particularly from breaching the covenant respecting the permitted user of the open spaces situate on all that piece of land comprised in the certificates of lease in respect of the Petitioners' properties known as L.R. Nos. 209/8294/386, 387 and 388.
- c) A conservatory order restraining any person claiming interest through the Respondents' purported allocation of any portion the Petitioners' properties known as L.R. No. 209/8294/386, 387 and 388, whether by themselves, by agents, servants or by any other description, from entering into or in any manner occupying any of

**the Petitioners' properties known as L.R. Nos. 209/8294/386, 387 and 388.**

- d) An order of prohibition stopping the Respondents, their servants, agents, and any other persons acting on their behalf from interfering with the Petitioners' title and ownership and peaceful possession over L.R. Nos. 209/8294/386, 387 and 388.**
- e) A declaration that the threatened disenfranchisement of the Petitioners, residents of the Petitioners' Estate and their children from L.R. Nos. 209/8294/386, 387 and 388 constitutes a violation of the Petitioners' constitutional rights to the use and occupation of the said Suit Property and is a contravention of the freedom from arbitrary loss of property or of peaceful occupation as enshrined under Article 40 of the Constitution.**
- f) A declaration that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents' actions of permitting, facilitating, aiding and abetting the invasion and transfer of the Petitioners' properties L.R. Nos. 209/8294/386, 387 and 388, violates the rights of the Petitioners under Article 40 of the Constitution and that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents' actions, and threatened actions are unconstitutional, invalid and an abuse of the mandate, power and due process entrusted to the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents' and the Government of Kenya under Article 10 of the Constitution.**

- g) A declaration that the threatened disenfranchisement of the Petitioners from the Suit Property and any allocation or alienation of L.R. Nos. 209/8294/386, 387 and 388 by the Respondents without due process is a violation of the Petitioners' right to a fair administrative process as protected under Article 47 of the Constitution.**
- h) A declaration that the letter of allotment dated 27<sup>th</sup> April 1995, ref. no. 931 03/11/87 and addressed to one Gerald Karimi was and is ultra vires of the Constitution of Kenya (repealed) and Constitution of Kenya, 2010, and also in excess of the powers vested upon the Commissioner of Lands or any other officer or person in allocating land and is therefore null and void.**
- i) An eviction order against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents, their servants, heirs, successors in title, agents and/or assigns to remove them from the Suit Property.**
- j) An order of mandamus directing the Officer Commanding Langata Police Station or an officer of a similar rank at the nearest accessible Police Station to ensure enforcement of this Honourable Court's Orders and/or provide security during the eviction of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.**
- k) General damages for trespass, disturbance, loss of use and quiet enjoyment by the Petitioners of the open spaces situate on all that**

**piece of land comprised in the certificates of lease in respect of property L.R. Nos. 209/8294/386, 387 and 388.**

**l) Costs of the Petition herein.**

**m) Any other or further relief that the court may be pleased to grant**

2. The Petitioners, officials and residents of the United Akiba Housing Estate in South C, filed this petition in their personal capacities and on behalf of other residents. They assert that the various Respondents comprising private individuals, a company (Copos Ltd.), Nairobi City County, State agencies, and the National Land Commission, have unlawfully annexed, allocated, transferred, and changed the use of three parcels of land, L.R. Nos. 209/8294/386, 387 and 388 *referred herein as “the suit properties”*.
3. It is their contention that these parcels were originally designated as open spaces and public utilities within the estate’s master plan and were allegedly surrendered to the Commissioner of Lands to hold in trust for the estate residents.
4. The Petitioners aver that the suit properties were converted and allocated in the 1990s through fraudulent schemes involving the 1<sup>st</sup> –7<sup>th</sup> Respondents. They plead that the Respondents have attempted to fence and develop the land for private residential apartments without notice, public participation, or compliance with the planning laws.
5. Further, the Petitioners emphasize that no resident was consulted and that the Respondents’ actions violate the terms of the original subleases, the permitted user

under the Mother Title, and recommendations by the Ndung'u Commission that the allocation was illegal and should be revoked.

6. The Petitioners argue that their constitutional rights to fair administrative action, fair hearing, right to property, and peaceful enjoyment of their homes have been violated. They highlight the absence of notices, hearings, reasons for administrative decisions, or opportunities to object to the change of user.
7. They further allege that the government agencies, including the Nairobi County government, the Ministry of Lands, the Director of Surveys, and the National Land Commission, exceeded their authority by aiding or condoning illegal allocations, granting approvals, and failing to resolve the longstanding ownership disputes dating back to the early 2000s.
8. The Petitioners state that their property and administrative rights have been violated and that the planned developments contravene the master plan and statutory land use requirements. They add that unless the Court intervenes, they will be unlawfully dispossessed of essential communal property and suffer irreparable loss.
9. Together with the petition, the Petitioners filed supporting and further affidavits sworn by Mr Francis Mwangi. Mr Mwangi deposes inter alia, that with approval from the Commissioner of Lands, the Developer, United Housing Estate, surveyed the land and constructed 385 residential units, leaving designated open spaces for public utilities such as playgrounds and access roads.

10. He continued to state that he owns house number 242, which is adjacent to the parcels under dispute and affirmed that these parcels were originally set aside as mandatory open public spaces for use by the residents' children. Because no individual resident could legally hold title to such open spaces, the Developer was required to surrender the land to the Commissioner of Lands to hold in trust for the estate's residents.
11. The 1<sup>st</sup> Petitioner claimed that certain individuals, led by the 1<sup>st</sup> Respondent, fraudulently converted the designated public land for private benefit by changing its permitted use without authority. That this conduct is not new to the 1<sup>st</sup> Respondent, referencing a past case, *Beth Kalia & Others v Robert Mutiso Lelili* involving the same Respondent undertaking a similar scheme.
12. That the fraudulent conversion is said to have breached both the sublease terms and the regulatory approvals that governed the estate's development, depriving residents of peaceful enjoyment of their homes and the communal spaces they relied upon.
13. The deponent states that residents have repeatedly raised concerns about these breaches, but the Respondents have ignored them. He highlights that one of the disputed parcels, L.R. 209/8294/387, has previously been the subject of litigation (HCCC No. 2088 of 2001), in which Copos Limited claimed an allotment granted in 1995 and later transferred in 1997.

**Replying Affidavits filed:**

14. In support of the Petition, the 8<sup>th</sup> Respondent filed a replying affidavit sworn by Geoffrey Cheruiyot on 12<sup>th</sup> February 2025. He deposed that he is the Deputy Director of GIS at the Nairobi County Government, and states that the suit properties, have historically been designated as public spaces and children's playgrounds since the 1970s. That internal memos, original deed plans from 1995, historical usage records, and previous administrative actions, including a 2003 Town Clerk's letter, all confirm that the land was never available for private allocation.
15. The 8<sup>th</sup> Respondent assert that any purported private ownership or development approvals are irregular and void from the outset. The deponent explained that although the 1<sup>st</sup> to 7<sup>th</sup> Respondents obtained certain building approval numbers, these approvals are invalid as they contradict the land's established public purpose, were granted without proper public participation, and ignored previous cancellations and findings of the Ndung'u Commission on irregular land allocations.
16. Citing constitutional mandates and statutory obligations under the Physical and Land Use Planning Act, the Urban Areas and Cities Act, and the Land Act, the deponent affirms that the County Government is required to safeguard public land and community rights. They maintain that the parcels must remain public spaces in accordance with their original designation, the public interest, and constitutional land use principles.

17. In opposition to the Petition, the 3<sup>rd</sup> Respondent, 4<sup>th</sup> Respondent and 6<sup>th</sup> Respondents filed Replying affidavits all sworn on 7<sup>th</sup> March 2025 by Abdirizack Noor Guhad, Said Abdiaziz Ahmed and Muktar Ali Farah respectively. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents contend that the Petitioners have improperly instituted a representative suit without proving the legal status of their estate association, presenting a certificate of registration, obtaining members' consent, or producing a resolution authorizing the proceedings. They argue that the Petition does not meet the threshold for constitutional litigation, discloses no violation by him, and is incompetent, baseless, and an abuse of the court process.
18. The 3<sup>rd</sup> Respondent affirms lawful ownership of Land Reference No. 209/8294/386, purchased in 2019 after thorough due diligence confirming clear title, proper registration history, absence of encumbrances, and valid transfer from the previous owners. Further, the 4<sup>th</sup> Respondent asserts that he lawfully purchased L.R. No. 209/8294/387 from Copos Limited after conducting comprehensive due diligence, including physical inspection, title verification, official searches, payment of the full purchase price, valuation and payment of stamp duty, and registration of the transfer. They highlight that the properties were lawfully gazetted during land conversion processes, surveyed, geo-referenced, and no objections were filed. They add that they obtained all statutory approvals for construction, and the Petitioners unlawfully blocked their access, thereby violating their constitutional right to property under Article 40.

19. The 4<sup>th</sup> Respondent further states that he was not involved in any earlier referenced cases, denies any knowledge or evidence of fraud from any competent authority, and argues that the Petitioners have failed to produce essential documents such as the alleged mother title, valid subleases, consents, or proof of surrender of the land to the Government. He maintains that reliance on unauthenticated documents renders the Petition defective making it unmerited, frivolous, and vexatious, and should be dismissed with costs.
20. The 6<sup>th</sup> Respondent similarly challenges the Petitioners' capacity to file a representative suit, arguing that they have failed to demonstrate the legal existence of their association or provide a resolution authorizing the litigation. He asserts that the Petition does not satisfy the constitutional threshold, discloses no violation by him, and is incompetent and an abuse of court process. He affirms lawful ownership of L.R. No. 209/8294/388, detailing due diligence undertaken during its acquisition in 2019, including verification of the seller's title, official searches confirming ownership, payment of consideration and stamp duty, and registration of the transfer. He further notes that the property was officially surveyed, gazetted for conversion, and included in the cadastral mapping, with no objections lodged. He confirms having obtained all necessary approvals for construction and accuses the Petitioners of unlawfully blocking access to his property, infringing upon his rights under Article 40.
21. The 6<sup>th</sup> Respondent argues that the Petitioners' allegations are unsupported, as they have failed to produce critical documents such as the mother title, subleases,

consents, or proof that the land was ever designated as open space or surrendered to the Government. He denies involvement in or prior knowledge of the past court cases cited by the Petitioners and disputes the authenticity of documents relied upon, including uncertified pleadings and a questionable letter attributed to the County Government. He emphasizes that no competent authority has ever found any fraud in his acquisition and concludes that the Petition lacks merit, is speculative, and should be dismissed with costs.

22. In response, the Petitioner filed a replying affidavit sworn on 23<sup>rd</sup> June 2025 by Francis Mwangi. The deponent, a resident and Chairperson of United Housing Estate, Akiba, South C, affirms being fully conversant with the facts of the case and has reviewed the replying affidavits of the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents. They state that, according to the mother title of the suit properties, L.R. Nos. 209/8294/386, 387, and 388 were not issued by the Interested Party, and assert that the suit properties were illegally procured by the 1<sup>st</sup> to 7<sup>th</sup> Respondents. This is because the land, held in trust for residents, could be reallocated only with residents' consent; no notice was issued converting it from open space to unalienated land; the Ndungu Commission found the allocation illegal and recommended its revocation; and no inquiry was conducted into competing claims.
23. The 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>-13<sup>th</sup> Respondents did not file any replying affidavit and or grounds of opposition in response to the petition.

**Submissions:**

24. The **Petitioners filed submissions dated 24<sup>th</sup> June 2025** in support of the petition. They submit that the suit properties were never available for alienation to the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> Respondents. They rely on the mother title (I.R. 26593) and the master plan, which show that the developer submitted building plans incorporating five open spaces intended for playgrounds and common use. They argue that the last lawful subdivision by the developer occurred on 3<sup>rd</sup> May 1979, ending at parcel L.R. 209/8294/383, and therefore plots 386, 387, and 388 were not created by the developer and could not lawfully be allocated.
25. The Petitioners rely on the case of **Kepha Maobe & 365 Others v Benson I Mwangi & Another (2015) eKLR**, where the Court of Appeal held that open spaces meant for the benefit of estate residents cannot be alienated without involving them, and that attempts to convert such spaces are “shrouded in mischief.”
26. The Petitioners further rely on the case of Beth **Kalia & Others v Robert Mutiso Leli, Nairobi HCCC 688 of 1996** where Hon. Justice G.P. Mbiti held that the President can only allocate unalienated government land, and that open spaces surrendered by a developer for the benefit of residents are held in trust by the Commissioner of Lands.
27. They therefore cannot be lawfully allocated to private individuals. They highlight that the CR12 of Copos Limited, the 7<sup>th</sup> Respondent, shows Robert Mutiso Leli as a director, who is the same individual involved in the Beth Kalia case. Thus, it reinforces their claim that similar illegality occurred in this matter. They also note

that L.R. No. 209/8294/387 is listed in the Ndung'u Report as an illegally allocated property.

28. Regarding the titles held by the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents, the Petitioners summarized the chain of purported allocations and transfers, all beginning with titles issued in the mid-1990s, long after the developer had exhausted all subdivisions. The Petitioners argue that because the Commissioner of Lands lacked power to alienate the open spaces in the first place, any subsequent titles issued to Copos Limited and eventually to the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents are void and incapable of conferring good title, regardless of whether the purchasers acted in good faith. They stated that the Respondents ought to have been aware from the physical layout that the plots were open spaces.
29. The Petitioners maintain that the Respondents' entry onto the land and procurement of approvals constituted trespass, as the open spaces were reserved for the benefit of estate residents. They rely on **Park Towers Ltd v John Mithamo Njika & 7 Others (2014) eKLR**, where the court held that trespass is actionable per se and does not require proof of actual damage. They urge the court to award general damages of KES 10,000,000, as in **Muthui v National Social Security Fund Board of Trustees (2023) KEELC**, on the basis that the facts are comparable.
30. Further, that costs should follow the event under Section 27 of the Civil Procedure Act, and therefore the 1<sup>st</sup> and 2<sup>nd</sup> Respondents should bear the costs of the Petition.

31. The 3<sup>rd</sup>, 4<sup>th</sup> & 6<sup>th</sup> Respondents filed submissions dated 27<sup>th</sup> August 2025 the following four issues; whether the Petitioners have the requisite locus standi and legal capacity to institute this Petition as a representative action on behalf of the residents of United Housing Estate, Akiba, South C, whether the Petition as drawn meets the threshold of a constitutional petition and discloses any violation of fundamental rights attributable to the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents, whether the Petitioners have established that the Suit Property was designated for public use and whether the Petition is misconceived, incompetent, and an abuse of the court process warranting its dismissal with costs.
32. The Respondents' submissions challenge the admissibility of electronic evidence relied upon by the Petitioners, citing Section 106B of the Evidence Act, which mandates that electronic records must be accompanied by a certificate detailing the manner of production, device particulars, and affirming authenticity. That in the present case, the Petitioners attached photographs marked "FM-13" and "FM-14" without any such certificate, rendering them inadmissible.
33. They submitted that the Court of Appeal has consistently held that failure to produce the requisite certificate is fatal to the evidentiary value of electronic records, as seen in **Speaker, Kisumu County Assembly v The Clerk, Kisumu Assembly Service Board & 6 Others [2015] eKLR**, **John Lokitare Lodinyo v Independent Electoral and Boundaries Commission & 2 Others [2018] eKLR**, and **Republic v Mark Lloyd Steveson [2016] eKLR** thus the Petitioners' photographic evidence should be expunged as legally invalid.

34. The Respondent submitted that the Petitioners' locus standi is also in question. They argue that the Petitioners purport to bring the claim in both personal and representative capacities but fail to produce any valid title, lease, or proprietary interest in the suit properties. In support, the Respondents submitted that Courts, including in **Daykio Plantations Ltd v National Bank of Kenya Ltd & 2 Others [2019] eKLR**, **Grace Mwakiria Mugambi v Philip Kimani [2018] eKLR**, and **Priscilla Jesang Koech v Rebecca Koech & 3 Others [2018] eKLR**, have affirmed that absence of locus standi goes to the root of a case, rendering it unsustainable.
35. Moreover, in representative litigation, the Petitioners have not produced proper authorization or proof of registration of the entity they claim to represent, violating procedural rules and established principles, as held in **Kituo Cha Sheria v John Ndirangu Kariuki & Another [2013] eKLR** and **Sombo & 4 Others v Nyari Investments (1998) Ltd & 5 Others [2023] KECA 438**.
36. The Respondents submitted that the Petitioners' claim also fails to meet the threshold of a constitutional petition. That Constitutional claims require precise identification of rights violated and the specific actions of each Respondent. They stated that the Petition lumps all Respondents together, alleging generalized claims of trespass and intimidation, without establishing a nexus to constitutional violations.
37. They contend that courts have repeatedly emphasized that ordinary private disputes cannot be recast as constitutional issues, as in **John Harun Mwau v Peter Gastrol**

**& 3 Others [2014] eKLR, Kibos Distillers Ltd & 4 Others v Benson Ambuti Adegga & Others [2020] eKLR, and Josephat Ndirangu v Henkel Chemicals (EA) Ltd [2013] eKLR.**

38. They further argue that the Petitioners have not discharged the evidentiary burden under Sections 107 and 109 of the Evidence Act, relying instead on speculation, unauthenticated documents, and extracts of the Ndung'u Commission Report. In contrast, the 3rd, 4th, and 6th Respondents produced extensive evidence of lawful private ownership, including official searches, registered transfers, payment of stamp duty, approvals from relevant authorities, and gazette notices.
39. In support they cited the case of **Africa Centre for Open Governance (AfriCOG) v AG & 4 Others [2022] eKLR** and **Republic v National Land Commission & Another Ex Parte Muktar Saman [2021] eKLR** where the courts underscore that claims of public interest or illegality must be supported by specific, credible evidence, which the Petitioners failed to provide.
40. Further, the Petition is a misuse of court processes, attempting to convert a private law dispute over land ownership, trespass, and contractual covenants into a constitutional petition. In support, they cited the Supreme Court and Court of Appeal which have cautioned against this practice in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2014] eKLR**, **Humphrey Mutegi Burini & 2 Others v Chief Land Registrar & 3 Others [2021] eKLR**, **Mutanga Tea & Coffee Company Ltd v Shikara Ltd & Another [2015] eKLR**,

**eKLR.**

41. The Respondents (3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup>) address the evidentiary insufficiency of claims by the 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, and 13<sup>th</sup> Respondents, noting that internal memos, unproduced deeds, and unverified assertions cannot displace registered titles. They highlight that the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents hold duly registered and gazetted titles, evidenced by official searches, deeds, stamp duty payments, and gazettment notices.
42. They also submit that Courts have consistently held that registered titles are conclusive and cannot be impeached through informal or unverified documents, as reflected in **Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR**, **Republic v Chief Land Registrar & Another Ex parte Wainaina [2016] eKLR**, and **Republic v Kenya Revenue Authority Ex parte Yaya Towers Ltd [2008] eKLR**.
43. The **8<sup>th</sup> Respondent filed submissions dated 13<sup>th</sup> February 2025** stating that the key issues for determination are whether the County Government validly exercised its development control powers over the Suit Properties, whether its longstanding designation as a playground creates enforceable community rights, and whether the building approvals issued to the 1<sup>st</sup>-7<sup>th</sup> Respondents remain valid despite prior cancellations and ongoing investigations.
44. They submitted that the constitutional and statutory framework, particularly **Article 186** and the Fourth Schedule, Article 62(2), and Article 40 vests land-use

planning and protection of public land in county governments, a position affirmed in **County Government of Kiambu v Robert N. Gakuru [2017] eKLR** and **Meru Municipal Council v PS, Ministry of Local Government [2013] eKLR**, which emphasize county authority over development control.

45. The protection of public spaces under the Physical and Land Use Planning Act and Urban Areas and Cities Act is reinforced in the case of **Malindi Law Society v County Government of Kilifi [2016] eKLR**, where the court held that counties must prevent interference with public-utility land.
46. They stated that the Suit Properties have historically been used as a playground since the 1970s and were designated as public open space in the 1995 deed plan, and past attempts at development were halted by the Town Clerk in 2003, facts that align with the principles in **Satrose Ayuma v Kenya Railways Staff RBS [2014] eKLR** and **Patrick Musimba v NLC [2016] eKLR**, which protect legitimate community expectations over long-established public spaces.
47. That development approvals relied on by the Respondents (CPF AV880, 878, 886) were issued without addressing earlier cancellations, ignoring the Ndung'u Commission findings on irregular allocations, contrary to the principles in **Municipal Council of Mombasa v Republic [2011] eKLR** and **Kenya Association of Residents Organisation v Nairobi City County [2017] eKLR**, which affirm counties' authority to revoke irregular approvals in the public interest. They submitted that the process also lacked mandatory public participation, contrary to **Kiambu County Government v Robert N. Gakuru**

[2016] eKLR, making the approvals procedurally defective and substantively invalid.

48. The 12<sup>th</sup> Respondent, **the National Land Commission, filed submissions dated 26<sup>th</sup> September 2025**. They argue that it cannot be held solely responsible for the alleged unlawful allocation of the suit properties because the impugned actions were undertaken by officers in the former Office of the Commissioner of Lands, a department within the Ministry of Lands, before the Commission was established.
49. The Commission asserts that none of the officials involved transitioned to it, and crucially, custody of all relevant land records remained with the Ministry, making it impossible for the Commission to know or account for historical allocations. The Ministry, however, continues to rely on Section 30(b) of the National Land Commission Act, which deems prior Ministry actions to be actions of the Commission, a provision the 12<sup>th</sup> Respondent argues is unconstitutional for violating Article 10 values of accountability and rule of law.
50. In support, the Commission cites **National Land Commission v Attorney General & 5 Others; Kituo Cha Sheria & Another (Advisory Opinion Reference No. 2 of 2014) [2015] KESC 3**, where the Supreme Court held that the Ministry and the Commission must cooperate and operate within constitutional values, and further observed that several land statutes were enacted with imprecision inconsistent with the Constitution, an observation the Commission argues applies to Section 30(b). The Commission submits that imposing retrospective liability on a body that did not exist at the time of the alleged

wrongdoing offends the principle against retroactive application of the law, as recognized in **Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others [2012] eKLR**.

51. Further, the 12<sup>th</sup> Respondent argues that the Petitioners have not demonstrated that they invoked the constitutionally mandated mechanism for challenging historical land allocations, namely Review of Grants and Dispositions under Article 68(c)(v) of the Constitution and Section 14 of the NLC Act (before repeal). That the Petitioners merely wrote a single letter, which cannot amount to commencement of review proceedings, and presented no evidence that they pursued the statutory process that would have allowed the Commission to summon parties, examine records, and make a determination.
52. They submitted that Courts have held that where a specific statutory mechanism exists, parties must exhaust it before approaching the court, as affirmed in **Geoffrey Muthinja & Another v Samuel Henry Kuria & 2 Others [2015] eKLR** and **Speaker of National Assembly v Karume [1992] eKLR**. The 12<sup>th</sup> Respondent therefore contends that the Petitioners have not proved any dereliction of duty on its part, and that the constitutional and statutory framework does not support holding the Commission responsible for actions committed exclusively by the Ministry of Lands before the Commission came into existence.

### **Highlighting Submissions**

53. In highlighting the submissions, the Petitioners reiterated that their petition is premised on the affidavit sworn on 23/7/2022 and a further affidavit sworn on

23/6/2025. Each of the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents filed distinct replying affidavits all sworn on 7/3/2025, the 8<sup>th</sup> Respondent filed a replying affidavit dated 12/2/2025.

54. That the 8<sup>th</sup> Respondent admits the suit properties are public spaces and by way of lease granted in 1973 over L.R 209/8294 measuring 10.4 ha was allocated to the interested party who built 395 housing units and thereafter, the individual subleases were provided. That as per the deed plan, the developer left 5 open spaces to be used as children's playground and no single member of the persons who purchased the houses hold title to the said open spaces. The developer was to surrender title for the open spaces to the commissioner of land to hold in trust.
55. The Petitioner's Counsel stated that on locus standi-FM2, is an instrument of transfer from the developer to Francis Mwangi who owns a house there, with 2<sup>nd</sup> Petitioner owning house NO.313 and their houses neighbouring the suit properties. That the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> Respondent hatched a plan and acquired the titles for the suit properties. On whether the open spaces were available for alienation, they rely on the FMN 14, the mother title which contained special conditions 5 and 6. That the last sub division done by the developers was made in 1979, the mother title does not contain or provide for the 3 suit titles.
56. On whether the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents obtained a clean title, they stated that the developer completed subdivision in 1979 and that as of 13/3/2022 in FM6, the open space is seen to be in the same form as was left and in support referred to the case of **Beth Kalia & Others v Robert Mutiso Leli**. Further, on general damages,

they relied on the case of **Park Towers (supra)**, stating that where there is proof, trespass, damages should follow.

57. In response, Mr. Muganda learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> and 6<sup>th</sup> Respondents highlighted that none of the government agencies have filed a document to question the ownership of his clients' titles. They cited on the provisions of **sections 25 and 26** of the Land Registration Act. He added that a constitutional Petition should not be against individuals noting that the petitioner has not stated the breaches by the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondent, thus the case should have been litigated by way of Plaint.
58. Counsel submits that there are no orders seeking cancellation of his clients' titles and that the developer joined as Interested Party did not file a single document to support or oppose the petition. He also pointed out the document giving authority has 13 names but did not annex titles to the houses owned by the 13 persons. Further, it is also not known whether United Housing Akiba is registered or not thus on the question of locus standi, the list annexed cannot be deemed as an authority to bring a representative suit.
59. On the threshold of Constitutional Petition, Counsel cited the case of **Anarita Karimi** questioning the role of his clients. He stated that the Petitioners have not demonstrated any proprietary rights over the suit properties hence cannot say Article 40 has been breached. In terms of the suit properties being playground, nothing shows it was such taking into consideration the fact that from 1979-2022, the Petitioners did not process the title as a playground.

60. He added that Article 40 is only available to parties claiming proprietary rights noting that the Respondents have demonstrated how they acquired title. That the A.G and Ministry of Lands have advertised the three titles for conversion.
61. On whether the suit properties are public land, they referred to paragraph 50-54 of their submissions stating that the Petitioners have failed to demonstrate that the suit titles are public land. That on the flip side, the 3<sup>rd</sup> Respondents did due diligence and have met the characteristics of a bona fide purchaser and the Petitioner has not challenged the Geo reference by the survey.
62. In addition, they referred to the case of **Kibos Distillers Ltd** (*supra*) while arguing that trespass has not been proved. They questioned the act of the 8<sup>th</sup>-13<sup>th</sup> Respondents who have not filed any Replying Affidavit but submit that the suit properties are public land. Further that it is these parties who gave his clients approvals.
63. On the part of the Attorney General, Ms Kubai stated that the submissions for 10<sup>th</sup>,11<sup>th</sup> and 13<sup>th</sup> Respondents highlight points of law and that they rely on provisions of Government Land Act (Sec 2). It their submission that this is a case of public utility/open space and cited the case of Nordic vs A.G, to aver that land set aside for public utilities was not available for allocation. Hence the Commissioner did not have authority to alienate the same.
64. On whether, alienation process was followed, Counsel urged that under section 9 of GLA, the Commissioner of Lands can only alienate land not set aside for public

purpose/utility. Therefore, if the title of 2<sup>nd</sup> Respondent was under challenge then, they had no good title to pass on.

65. Miss Masinde learned counsel appearing for the 12<sup>th</sup> Respondent submitted that since the allegation was that the land was reserved for public use, NLC should not be held responsible for the actions of the Commissioner of Lands. She contends that Section 30(b) of NLC Act contravenes Article 10 of the Constitution in lieu of breach of Rule of Law and Accountability.
66. She stated that any liability should not be shared as proposed under Paragraph 312 and that Section 30(b) of NLC Act does not have any other law to support it. She highlighted that the Petitioner only did a letter to the Commission but did not follow up before filing a case for NLC to review the grants as provided under Section 14 of NLC Act.

**Analysis and Determination:**

67. From the record, the 1<sup>st</sup> 2<sup>nd</sup> 5<sup>th</sup> and 7<sup>th</sup> Respondents did not file any pleadings to oppose the petition. The 9<sup>th</sup> Respondent ceased to exist in law and any of its roles if any are undertaken by the 8<sup>th</sup> Respondent who supports the petition. The 12<sup>th</sup> Respondent's replying affidavit did not address the merit or otherwise of the petition. The A.G appearing for the 10<sup>th</sup> 11<sup>th</sup> and 13<sup>th</sup> Respondent's submissions urged the court to void the 3<sup>rd</sup> 4<sup>th</sup> and 6<sup>th</sup> Respondents titles. Thus, the petition essentially opposed by the 3<sup>rd</sup> 4<sup>th</sup> and 6<sup>th</sup> Respondents.
68. Consequently, having reviewed the pleadings and the submissions, I frame the following questions for the determination of the dispute:

- a) **Whether the Petitioners have locus standi to bring this suit.**
- b) **Whether or not the Petitioners have proved that the suit properties were reserved for public use hence not available for allocation.**
- c) **Whether or not the allocation and subsequent sale to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents violated the Petitioners' Rights**

### **Question A**

69. The 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents argued that the Petitioners have not demonstrated any interest in the suit properties; therefore, they lack the locus to sustain the claim. They also stated that even the provisions of articles 22 and 258 of the Constitution do not protect them.
70. The burden of proving that the Petitioners lacked locus to sustain this suit rested on the shoulders of these three Respondents as they are the ones who raised the objection. Section 107 and 109 of the Evidence Act Cap 80 provides that whoever wishes the court to make a finding on fact in their favour must prove the existence of these facts.
71. The Petitioners retorted that they have locus and supported this by the deposition that the 1<sup>st</sup> Petitioner owns house no. 242 while the 2nd Petitioner owns house number 313, which houses are adjacent to the suit titles.
72. With regard to authority to bring a representative suit, the Petitioners filed alongside the petition an undated authority signed by 13 persons who described themselves as owners of houses located at United Akiba Estate in South C. The numbers of their houses and national ID numbers are indicated besides their

names. For example, Caroline Nganga house no 276, Asha Abdalla house no 291 and Mohamed Farah house no 289.

73. The 1<sup>st</sup> Petitioner also annexed a copy of his title referenced as I.R NO 26593, L.R. 209/8294/242. In the mother title produced as annexure **FM-14** in the further affidavit, this title number appears as **entry no 328** showing registration in favour of **Francis Mwangi and Margaret Mwangi**.
74. Additionally, on the face of annexure FM-2, the transfer instrument provides a title number that is sufficient for any party in doubt of its existence to conduct a search at the Ministry of Lands and retrieve the registration details. The Petitioners also supplied the numbers of their houses and those of the other residents who gave them authority. Neither of the Respondents deposed that the house numbers provided do not match the numbering of houses in the impugned estate, especially house numbers 242 and 313, which are alleged to be adjacent to the suit property.
75. The Petition was taken out on the personal behalf of the Petitioners and on behalf of the Residents whom they have disclosed their names and who have signed the letter of authority. Their action is permitted under the provisions of article 22 which states thus;
- 1) 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.**
  - 2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by -**

**b. a person acting as a member of, or in the interest of, a group  
or class of persons.”**

76. In light of the documents presented by the Petitioners together with the provisions of article 22 of the Constitution, I hold the Petitioners have locus to bring and prosecute the present suit.

**Question (b) Whether or not the suit properties were reserved for public utilities:**

77. It is the Petitioners' case that the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents' titles were illegally acquired as the parcels of land were not available for allocation. They asserted that the developer/Interested Party had surrendered the plots as a condition for obtaining approvals for the various subdivisions carved out of the title L.R. No 209/8294.

78. The burden falls on the Petitioners to first prove that the three suit plots were indeed surrendered for public use for the benefit of the residents of United Housing Estate, Akiba, South C. Secondly, they must demonstrate that the current registered owners did not acquire good title. Thirdly, they need to establish whether the actions of the Respondents have led to a violation of their (Petitioners') constitutional rights.

79. On the first limb, the Petitioners relied on the following documents inter alia, the copies of the deed plan and mother title for L.R No 209/8294 and several correspondences by the 1<sup>st</sup> Petitioner and some by the County Government. They also count on the facts pleaded by the 8<sup>th</sup> Respondent, who deposed that the suit

plots were reserved for public utilities. The standard of proof required in civil proceedings and constitutional petitions is on a balance of probabilities.

80. I have reviewed these documents particularly entries on the mother title relating to the subdivision. It shows that the process was carried out on different dates between 16th May 1975 and 13th October 1977. For example, entry number 2 on the mother title is a certificate of subdivision approval for subplots 45-108; entry numbers 53 and 54 both dated 23.8.1975 are certificates of approval for the subdivision of sub plots 2-22. Entry number 111 dated 9.3.1976 is a certificate of approval for the subdivision of subplots 130-140. These entries on their face value do not speak to surrender of any plots.
81. However, the Petitioners argue that surrendering plots for public purpose was one of the conditions to be met before approving a subdivision. The 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents asserted that there is no document produced before the court to support the allegation that the suit plots had been surrendered?
82. In order to determine whether what the Petitioners are stating is correct, it is imperative to review what the law provided? The applicable law governing subdivision in 1975-1977 was the Town Planning Act Cap 134 and the Local Government Act Cap 265, Land Planning Act Cap 303 of the Laws of Kenya (all now repealed) together with the Rules and Regulations that were made thereunder.
83. There exists on its face several entries of subplots created pursuant to the subdivisions on the mother title L.R. No 209/8294 confirming subdivisions

undertaken. Second, there is also evidence of approvals that were sought as shown the certificates of approvals registered on the said title on various dates.

84. The special condition 7 of the Grant I.R No. 26593, L.R 209/8294 (mother title) provided thus; **“the Grantee shall not subdivide the land without prior consent in writing of the Commissioner of Lands.”**

85. Regulation 11 of the Development and Use of Land (planning) Regulations of 1961 under the Land Planning Act provided as follows:

**“11. (1). Every person requiring consent for development shall make application to the interim planning authority for the area in which the land concerned is situated or where no such authority exists for the area, to the Central Authority in such form and such manner as may be prescribed and shall include such plans and particulars as are necessary to indicate the intention of the applicant.**

**(2) In particular such application shall show the use and density proposed and the land which the applicant intends to surrender for the purposes of**

**(a) principal and secondary means of access to any subdivisions within the area included in the application and to adjoining land, and**

**(b) public purposes consequent upon the proposed development.**

**(3) For the purpose of this regulation "public purpose" means any non- profit-making purpose which may be declared by the Minister to be a public purpose and includes -**

**(a) educational, medical and religious purposes;**

**(b) public open spaces and car parks;**

**(c) Government and local government purposes."**

(underline mine for emphasis)

86. Pursuant to the above regulation, one can draw an inference that for the Interested party to have been issued with the certificates of approvals registered on the titles, it must have complied with the above condition. This is because the Regulation obligated an Applicant to indicate the land it intended to surrender before approval is granted.

87. Besides the inference I am making, it is evident that the suit plots all trace their origin from the mother title L.R. No 209/8294 whose leasehold period was stated on its face to run from 1.2.1973. This evidence is contained in copies of titles annexed by the suit parcels, inter alia the 3<sup>rd</sup> Respondent's title reads L.R. No 209/8294/386 (**annex ANG-1**), 4<sup>th</sup> Respondent's title read 209/8294/387 (**annex AA-1**) and the 6<sup>th</sup> Respondent's read 209/8294/388 (**annex MAF-1**).

88. Further, some of the letters produced by the Petitioners dates as far back as 2003 raising objections to the title now held by the 4<sup>th</sup> Respondent (subplot 387). For instance, in a letter dated 6<sup>th</sup> October 2003, the Town Clerk of now the 8<sup>th</sup> Respondent wrote to Copos Ltd (the 7<sup>th</sup> Respondent herein) stating inter alia;

***“RE: Cancellation of approved building plan on plot 387, South C***

.....

***The same is now being challenged as the property falls under what is being investigated with a view to being reclaimed for public use under the Presidential Commission of Inquiry into illegal/irregular allocation of public land.”***

89. In the event the suit parcels were not surrendered as argued by the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents, then they ought to have changed names from the Interested Party to a third party by way of transfer just like the other several subdivisions registered on the mother title. Hence, if the change of ownership were through transfer from the original owner, then the grant number would contain the same I.R. number as that of the mother title which is 26593. However, the suit titles bear different I.R. numbers with no-386 reading I.R. No. 86562, 387 bears I.R. No. 68121 and 388 bears I.R. No. 72514.
90. The fact that the impugned titles bear different I.R. numbers indicates they were intended as separate allocations from the existing mother title. Besides the variation in I.R. numbers compared to the mother title (209/8294), the start of the Leasehold period is also different, commencing from 1.5.1995 instead of 1.2.1973. The 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents titles affirm they are new allocations to the persons later selling the land to them.
91. This is supported by the execution page of their titles, where, for instance, in respect of L.R 209/8294/386, the Commissioner of Lands signed the certificate of

lease on behalf of the President on 22 June 2001. Subsequently, the transfer to John P. Wambugu as the initial owner was registered as entry number 2 on 6<sup>th</sup> February 2007. For title 388, the Commissioner signed on 28<sup>th</sup> December, 1995 and the transfer to the 7<sup>th</sup> Respondent registered as entry number 2 on this title on 19.12.1997. L.R. 388, the Commissioner signed on 7.3.1996 and a transfer to Lucas Gakori Maina on 13.3.1997.

92. In light of the observations herein and taking into consideration that the fact that L.R 209/8294 had been alienated to the Interested Party, the only reason part of the same land returned into the hand of the commissioner of lands was by the holder of that title surrendering it or the government cancelling the initial allocation. The later option of cancellation of the allocation did not take place going by the activities/subdivisions undertaken by the Lessee.
93. Consequently, I hold that the proof that the subject suit plots had been surrendered is provided first by the entries of certificates approving the subdivisions in the mother title (as the approvals meant compliance with the Regulations). Second, the proof is also contained in the titles exhibited by the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents showing ownership was conferred by allocation and not be instrument of transfer from the Interested Party.

**Were these plots available for alienation?**

94. The question arising for determination is that having made a finding that the suit properties had been surrendered for public purposes, did the Commissioner of land

have powers to re-allocate them to the persons who later sold to the 3<sup>rd</sup> 4<sup>th</sup> and 6<sup>th</sup> Respondents.

95. These Respondents submitted that the Petitioner did not prove the suit properties were designated for playground because no RIM or survey plan or surrender documents were produced. The Attorney General in their submission cited the law governing alienation of government land. They referred to section 2 of the Government Land Act which defines un-alienated land to mean land which for the time being leased to any person or in respect of which the Commissioner of Lands has not issued any letter of allotment.
96. In this case, the evidence on record showed that the whole land L.R. 209/8294 was allocated to the Interested Party under a 99-year lease from 1.2.1973. Hence, it became private land and for any part thereof to be returned as public land must have been for a reason in tandem with its surrender.
97. The reason for surrender as set out in the Regulations include;
- (i) For educational, medical and religious purposes
  - (ii) Public open spaces and car park
  - (iii) Government and Local Government purposes
98. Each of the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents have deposed that the suit properties are their private land and they are entitled to quite use and enjoyment as envisaged under article 40 of the Constitution and section 24 of the Land Registration Act. In fact, they describe actions of the Petitioners as limiting their right to property and

the same should not be condoned. Thus, they hold these titles for reasons contrary to the purpose they were surrendered.

99. In the case of **Kipsigor Investments Ltd Vs KACC (201) JELR 97386 (CA)** it was held that;

**“there was uncontested material that as early as the suit property was planned as an open space, and held that the subsequent lease to the Respondent was in the face of section 3 of GLA irregular. Quoting from section 3 of the Physical Planning Act, the court concluded that the reservation for a particular purpose renders the property alienated”**

100. Although, in this case, the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents have contested that the suit properties were not reserved for public purpose, I have found that they were. Consequently, the next question arising is whether the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents acquired valid titles that should be protected under the law or if their acquisition was unlawful and constitutes a violation of the Petitioners’ constitutional rights.

101. The rights alleged to have been violated are set out under paragraphs 45-48 of the Petition. On the other hand, the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents have pleaded that they are bonafide purchasers for value without notice. That they undertook due diligence before entering into the transaction. Furthermore, they contended the issues raised in the petition should have addressed been addressed through an ordinary suit not by way of a constitutional petition. That the petition as filed fails the threshold of one as discussed in the case of **Anarita Karimi versus Republic**.

102. The Petition as filed outlines the articles of the Constitution alleged to have been breached, inter alia, articles **10, 40, 47, 50, and 68(v)** of the Constitution. In addition to citing the articles allegedly violated, the Petitioners set forth, with specificity, how the violation is alleged to have occurred. For instance, at paragraphs 46 & 47, they state that there is imminent danger of the proposed construction of high-density apartments, which goes against the original master plan of the Petitioner's estate.
103. Under paragraph 52, the Petitioners assert a breach of **article 10** where they accuse the 8<sup>th</sup> to 12<sup>th</sup> Respondents of failing to show leadership that is anchored in good governance. In addition, they plead that the 8<sup>th</sup> to 12<sup>th</sup> Respondents have failed to protect their right to a quiet and peaceful enjoyment of the property and also failed to demonstrate integrity and accountability.
104. It is my considered opinion and I consequently hold that the petition on the face of it satisfies the threshold of a constitutional petition. What remains is whether proof of the violations has been established. The Petitioners argue that they were not given any formal notice prior to the illegal invasion, annexation, transfer, or change of use over the suit properties.
105. The Petitioners deposed that the Interested Party who was the original allottee of the whole land L.R. No 209/8294 before subdividing it created 385 subdivisions which were built with housing units. These 385 housing units were sold to different persons among them the Petitioners. The existence of the houses are corroborated by the 3<sup>rd</sup> Respondent's deposition at paragraph 14 of his replying

affidavit that the Petitioners and other individuals not before the Court unlawfully interfered with their property rights by forcefully blocking their access to the property 209/8294/386.

**Was there a violation of rights of the Petitioners?**

106. Would re-allocating these plots reserved for public utilities for private use violate their Constitutional rights? The answer lies in finding out why such plots were reserved. They are reserved for the public good and are intended to create functional urban environments with necessary infrastructure (roads, water, sewer, electricity) (see **special condition number 9**) and social amenities (schools, clinics, recreation) for residents, as required by planning laws.
107. For instance, how does a playground/recreational spaces, or putting up a police post/chiefs camp (as public utilities) benefit the Petitioners/public? A few examples that come to mind are, the young people playing on the field get opportunity to exercise, enjoy fresh air and thus sound quality of life -the right to life is enhanced. In addition, putting up a chief's camp or any sort of security post on the surrendered plots would enhance the security of the neighbourhood thus facilitating the Petitioners right to peace and security.
108. The Petitioners argue that if the 3<sup>rd</sup> 4<sup>th</sup> and 6<sup>th</sup> Respondents titles are allowed to put up highrises as they intend to do, the value of their houses would go down. The area comprised in L.R 209/8294 is already developed with 385 housing units. Therefore, the Petitioners have legitimate expectation that in case of charge of use

is to take place, they would be consulted as provided for under article 10 and 47 of the constitution.

109. The change of use in this case is from public purpose to private use. The consultation ought to have been undertaken by the commissioner of Lands now sued as the 12<sup>th</sup> Respondent and the Director of surveys (the 11<sup>th</sup> Respondent) they did not file any evidence on how the process of re-alienation was done. The omission resulted in a violation of the petitioner's right.
110. The deposition by the 12<sup>th</sup> Respondent that they should not take responsibility for the fault of its predecessor is escapist. This petition was filed in the year 2022 when they have been in office for almost 10 years. They did not tell court whether they had held inter-ministerial meetings to resolve the impasse if any and or move parliament to amend the NLC Act.
111. On the arguments by the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents that they are innocent purchasers for value without notice, for the owner of L.R 209/8294/386, the complaints existed from 2003 even before he purchased the land in the year 2019. There is correspondences from the offices of the 8<sup>th</sup> Respondent. Unfortunately, his due diligence did not reveal this to him.
112. Further, the Petitioner referred to the 3 titles being cited in the Ndungu Commission of Inquiry. The Ndungu Commission of Inquiry carried out its mandate in the year .....before any of the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents purchased the suit titles. It was a public inquiry and their report was also published.

113. Additionally, it is now settled through case precedent that the doctrine of bonafide purchase does not protect a person who acquires a title that has no root. Therefore, the suit parcels having been reserved for public purpose was alienated government land that was not available for allocation.
114. The case law annexed to the affidavit in support of the Petitioner also speaks to land once alienated is not available to re-alienation a second time.
115. Thus, the root title of the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Petitioners cannot be protected as they were illegally acquired. The consequence of the illegality is that the titles in possession of the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents are null and void and the suit parcels remain for public purpose to be used for the public benefit which includes the petitioners and the area residents.
116. In light of foregoing analysis, I find the Petition is merited. I enter judgment for the Petitioners in terms of **prayers (a) – (k)**.
117. Each party to meet their costs of the petition.

**Dated, Signed and Delivered at Nairobi this 11<sup>th</sup> December, 2025.**

**A. OMOLLO**

**JUDGE**