



**Ongete v Registrar; Nairobi City County (Interested Party) (Environment and Land  
Petition 5 of 2023) [2025] KEELC 8673 (KLR) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8673 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND PETITION 5 OF 2023  
TW MURIGI, J  
DECEMBER 5, 2025  
IN THE MATTER OF: VIOLATION OF THE RIGHT TO  
LEGITIMATE EXPECTATION  
IN THE MATTER OF: THE RIGHT TO A FAIR  
ADMINISTRATIVE  
ACTION UNDER ARTICLE 47  
OF THE CONSTITUTION**

**BETWEEN**

**ABUODHA JOSEPH ONGETE ..... PETITIONER**

**AND**

**CHIEF LAND REGISTRAR ..... RESPONDENT**

**AND**

**NAIROBI CITY COUNTY ..... INTERESTED PARTY**

**JUDGMENT**

1. The Petitioner herein filed this Petition dated 15<sup>th</sup> March 2023 seeking the following orders: -
  - a. A declaration that the Petitioner's right to property, the right to a fair administrative process, the right of access to justice and the right to legitimate expectation has been breached.
  - b. A declaration that the Respondent has violated the national values of and principles of accountability and transparency.



- c. An order of mandamus compelling the Respondent to immediately register or cause to be registered the subdivisions and issuance of 399 title deeds in respect of L.R No. 1153/14 and 11531/4/3 (hereinafter ‘the suit properties’) in the name of the Petitioner.
  - d. In the event of the failure to comply with the orders of this Court, the Petitioner shall report back to the Court within 90 days for the Court to issue necessary and appropriate orders compelling the Respondent to undertake actions necessary for fulfilling the orders of the Court.
  - e. Damages to be awarded to the Petitioner for breach of his rights and fundamental freedoms.
  - f. Costs of the suit and interest thereon.
2. The petition is supported by the supporting affidavit of Abuodha Joseph Ongete sworn on even date.

### **The Petitioner’s Case**

3. The Petitioner averred that on 2<sup>nd</sup> July 1998, he was allocated the suit properties by Nairobi City Council. He further averred that after he complied with the conditions set out in the letter of allotment, including paying the annual rates, he received approval for development on 30/01/2015. He further averred that the City Council of Nairobi registered the Lease for L.R. No. 11532/14 in his name on 5<sup>th</sup> November 2016.
4. He went on to state that he began the process of amalgamation and subdivision of the property and received approval from the Survey of Kenya and the Ministry of Lands. He further stated that he received a notification of subdivision on 15<sup>th</sup> February 2019 requiring him to surrender the original title, submit a new deed plan, and pay fees, which he did.
5. He averred that he was informed the 399 titles for the subdivided suit properties had been processed and would be released to him by the District Land Registrar through the National Titling Centre. The Petitioner stated that he did not receive the titles and has been following up with the Respondent to no avail.
6. The Petitioner claimed that the Respondent’s actions violated his right to own property, his right to fair administrative action, the national values and principles, and his right of access to justice provided under Articles 40, 47, 10, 19, and 48 of *the Constitution*, Sections 2 and 7 of the Fair Administrative Actions Act, Section 4 of the *Land Act*, and Section 14 of the *Land Registration Act*.
7. The Respondent did not enter an appearance or file any response to the Petition.

### **The Interested Party’s Case**

8. The Interested Party filed a statement of Defence dated 4<sup>th</sup> July 2023 in opposition to the Petition. It is the Interested Party’s case that the Petition does not disclose any reasonable cause of action against it. The Interested Party stated that on 2<sup>nd</sup> July 1998, the City Council offered the Petitioner allotment of Plot L.R No. 11531/4/3 on condition that he would pay a standard premium of Kshs. 45,000/= and an annual rent of Kshs 8,000/= within 90 days from the date the letter of allotment was sent, failure to which the offer would be considered to have lapsed without further reference to the allottee.
9. It was further contended that the Petitioner has not adduced proof of payment of Kshs 53,000/= as per the terms of the letter of allotment.



10. Further, there was no proof of payment of Kshs 600,000/= as evidence of consummation. From the foregoing, it was argued that the Petitioner has not shown how the Interested Party has infringed on his constitutional rights and freedoms.
11. The Petition was canvassed by way of written submissions. THE PETITIONER'S SUBMISSIONS
12. The Petitioner filed his submissions dated 26<sup>th</sup> May 2025. On behalf of the Petitioner, Counsel outlined the following issues for the court's determination:-
  - a. Whether the Petitioner has proved ownership of the suit properties?
  - b. Whether the Respondent has breached the Petitioner's right to property?
  - c. Whether the Respondent has breached the Petitioner's right to legitimate expectation?
  - d. Whether the Respondents have breached the Petitioner's right to fair administrative actions?
  - e. Whether the court can compel the Respondent to release 399 titles?
  - f. Whether the Respondent breached the Petitioner's right to access to justice?
  - g. Whether the Respondent has violated the national values of good governance, transparency, and accountability.
  - h. Whether the court can compel the Respondent to issue the 399 titles?
13. On the first issue, Counsel submitted that the suit properties were procedurally allocated, surveyed, and subdivided. It was further submitted that the Petitioner paid all the requisite rents and subdivision fees. To buttress this claim, Counsel relied on the contents of the supporting affidavit and various documents contained in the Petitioner's list of documents.
14. Regarding the second issue, Counsel submitted that the Respondent's failure to register and release the titles violated the Petitioner's right to own and enjoy his property. Counsel further submitted that the Respondent did not summon the Petitioner to explain if there was any anomaly. Counsel asserted that the Respondent arbitrarily withheld its power by failing to act on the application for subdivision and issuance of titles, which violated the Petitioner's right to own property. Counsel submitted that the Petitioner had begun selling portions of the suit properties to third parties, but the transactions were put on hold because the Respondent failed to issue title deeds for the suit property. Counsel argued that the Respondent's actions violated the Petitioner's right to use and dispose of his property. To buttress this argument, reliance was placed on Article 40 of *the Constitution*, Section 4 of the *Land Act*, Section 14 of the *Land Registration Act*, and the cases of *Hellen Wachuka Njoroge v Attorney General & another* [2016] KEHC 1955 (KLR), *Fort Properties Ltd v Attorney General & 2 others* [2021] KEELC 1292 (KLR), and *Joseph Letuya & 21 others v Attorney General & 5 others* [2014] KEHC 6421 (KLR).
15. Regarding the third issue, Counsel submitted that the Petitioner had a legitimate expectation that the Respondent would release the 399 titles because he had fulfilled all the procedural and financial requirements. Counsel highlighted that the Respondent was authorized to issue the titles and had promised to do so. Counsel further submitted that the unexplained delay in issuing the titles was unlawful and violated the Petitioner's legitimate expectation. Section 7 of the *Fair Administrative Action Act*, Section 30 of the *Land Registration Act*, and the cases of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, *Republic v Kenya Revenue Authority Ex Parte Cooper K-Brands Limited* [2016] KEHC 7748 (KLR), and *Republic v Principal*



Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO [2019] KEHC 10312 (KLR) were relied upon.

16. Regarding the fourth issue, Counsel relied on Article 47 of *the Constitution* and Section 7 of the *Fair Administrative Action Act* to submit that the Respondent's failure and unreasonable delay in releasing the titles for over three years violated the Petitioner's right to fair administrative action.
17. Regarding the fifth issue, Counsel submitted that access to justice includes many aspects. It was further submitted that the Respondent's failure to issue the title deprived the Petitioner of the opportunity to manage the suit properties, thereby violating his right to access justice. To support this claim, reliance was placed on the case of Dry Associates Limited v Capital Markets Authority & another; Crown Berger (K) Ltd (Interested Party) [2012] KEHC 5568 (KLR).
18. Regarding the sixth issue, Counsel submitted that the Respondent's failure to explain the delay in issuing the titles was a neglect of duty that violated the national values and principles outlined in Article 10 of *the Constitution*. Further reliance was placed on Section 4 of the *Land Act*, Section 14 of the *Land Registration Act*, and the case of Jack Mukhongo Munialo & 12 others v Attorney General & 2 others [2017] KEHC 9625 (KLR).
19. On the seventh issue, Counsel relied on the cases of Dande & 3 others v Director of Public Prosecutions & 2 others [2022] KESC 23 (KLR), Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR), and Republic v Attorney General & another Ex parte James Alfred Koroso [2013] KEHC 90 (KLR), to submit that mandamus is the appropriate remedy as the Respondent has refused to perform its legal duty. It was further submitted that, based on the aforementioned case law above, an order of mandamus can be issued in a Constitutional Petition.

### **Analysis And Determination**

20. Having considered the Petition, the Interested Party's defence, and the submissions by the Petitioner, the following issues arise for determination:-
  - a. Whether the Respondent violated the Petitioner's right to property?
  - b. Whether the Doctrine of Legitimate Expectation Applied to the Petitioner?
  - c. Whether the Respondent violated the Petitioner's right to fair administrative action?
  - d. Whether the Respondent violated the Petitioner's right to access justice?
  - e. Whether the Respondent violated the National Values and principles of governance under Article 10 of *the Constitution*?
  - f. Whether an order of Mandamus should be issued?
- g. Whether the Petitioner should be awarded damages for breach of his rights and fundamental freedoms?

### **Whether The Respondent Violated The Petitioner's Right To PROPERTY**

21. The Petitioner alleged that the Respondent violated his right to property. Article 40 of *the Constitution* provides:
  1. Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
    - a. of any description; and



- b. in any part of Kenya.
2. Parliament shall not enact a law that permits the State or any person—
    - a. to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
    - b. to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
  3. The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
    - a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
    - b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
      - i. requires prompt payment in full, of just compensation to the person; and
      - ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.
  4. Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
  5. The State shall support, promote, and protect the intellectual property rights of the people of Kenya.
  6. The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
22. The Petitioner’s claim of ownership of the suit properties is anchored on the letters of allotment and the certificate of lease. He produced the allotment letters dated 2/7/1998 issued in his name. He also produced receipts to prove that he has been paying the rates to Nairobi City County. The Petitioner told this court that he received a draft lease for L.R. No 11531/14, which was registered in his name on 5/11/2016. He stated that he began the process of amalgamating the properties. In this regard, he produced the letter dated 9<sup>th</sup> November 2018, showing that the suit properties were amalgamated and issued Nos. 2-399. By a letter dated 15<sup>th</sup> February 2019, the National Titling Centre forwarded 399 processed, signed, and sealed title deeds to the District Land Registrar. Based on the foregoing, it is clear that the Petitioner complied with all the required conditions. By failing to issue the titles despite the Petitioner having met all the conditions, this court finds and holds that the Respondent violated the Petitioner’s right to property.
23. Based on the foregoing, this court finds and holds that the Respondent violated the Petitioner’s right to property.

### **Whether The Doctrine Of Legitimate Expectation Applied To The Petitioner**

24. The Petitioner maintained that he had a legitimate expectation that the Respondent would issue/ release to him 399 titles as he had fulfilled all the requirements. He asserted that the Respondent was authorized to release the titles to him.



25. In the Supreme Court of Kenya in the case of Communications Commission of Kenya & 5 others v Royal Media Services & 5 others SC Petition Nos 14, 14A, 14B & 14C of 2014 observed that:-

“Legitimate expectation would arise when a body by representation or by past practice has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority or practice by public authority that is expected to fulfil the expectation.’

26. The Court of Appeal stated as follows concerning legitimate expectation in the case of Ngetich & 3 others v County Service Board Bomet & another [2022] KECA 575 (KLR):

The term “legitimate expectation” is a technical term of profound doctrinal basis. It is not the expression of wishful thinking or desire capable of translation into a legal right. Arvind Thapliyal enunciates the doctrine of legitimate expectation in 2006 (8) SCJ p.721, thus:

“What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief, or remedy that may ordinarily flow from a promise or established practice. The term ‘established practice’ refers to a regular, consistent, predictable, and certain conduct, process, or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical, and valid. Any expectation which is based on sporadic, casual, or random acts, or which is unreasonable, illogical, or invalid, cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made or practice established.”... The doctrine is essentially a creature of administrative law, having been evolved by the courts for the purpose of regulating the exercise of power by administrative authorities so as to provide effective safeguards from arbitrariness or abuse of power. It belongs to the domain of constitutional and administrative law.

27. The letters dated 3<sup>rd</sup> December 2018 and 15<sup>th</sup> February 2019 constitute an equivocal representation to the Petitioner that upon complying with the requirements, he would be issued with the titles. It is clear that the Petitioner had a legitimate expectation that once he met the conditions, he would be issued the titles.

28. He is therefore not entitled to a remedy under the doctrine of legitimate expectation.

### **Whether The Respondent Violated The Petitioner’s Right To Fair Administrative Action**

29. Article 47 of *the Constitution* provides:

1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

30. The above provision is echoed in Article 50(1) of *the Constitution* and Section 4(3)(b) of the *Fair Administrative Action Act*. It is clear from the above provisions that the tribunal or authority entrusted with the mandate of making decisions must act in a fair manner.



31. The Petitioner asserts that the Respondent's failure to release the title for a period of three years, without providing any explanation for the delay, constitutes a violation of his right to fair administrative action pursuant to Article 47 of *the Constitution*.

32. In the case of J N N, (a Minor) M N M, suing as next friend v Naisula Holdings Limited t/a N School [2018] KEHC 8304 (KLR) the Court stated as follows:

As I resolve this question, I must point out that administrative, statutory bodies, schools, or academic institutions are created for a variety of reasons to meet a variety of needs, and in some instances, some functions are a necessary element to fulfilling their mandate... Provided that the decision-maker is not acting outside its authority, such functions may stand court scrutiny.

33. One of the functions of the Respondent is to issue titles. The record shows that the Petitioner invested money in the amalgamation and subdivision of the suit properties. Public bodies are obligated to act expeditiously, efficiently, lawfully, and in a procedurally fair manner. The Respondent had a legal duty to ensure the Petitioner's right to administrative action as set out in the law above would be respected. It therefore follows that the Respondent's failure to release the titles despite the Petitioner having complied with all the requirements violated his right to fair administrative action.

#### **Whether The Respondent Violated The Petitioner's Right To Access Justice**

34. Article 48 of *the Constitution* provides:

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

35. In the case of Kenya Bus Service Ltd & another v Minister for Transport & 2 others [2012] KEHC 2402 (KLR), the Court stated as follows:

The right of access to justice protected by *the Constitution* involves the right of ordinary citizens being able to access remedies and relief from the courts. In Dry Associates v Capital Markets Authority and Another Nairobi Petition No. 328 of 2011 (Unreported), the court stated, "[110] Access to justice is a broad concept that defies easy definition. It includes the enshrinement of rights in the law; awareness of and understanding of the law; easy availability of information pertinent to one's rights; equal right to the protection of those rights by the law enforcement agencies; easy access to the justice system particularly the formal adjudicatory processes; availability of physical legal infrastructure; affordability of legal services; provision of a conducive environment within the judicial system; expeditious disposal of cases and enforcement of judicial decisions without delay."

36. The Petitioner argued that his right to access justice was violated because he could not use the suit properties. Article 48 of *the Constitution* guarantees an individual's right to seek redress from judicial or quasi-judicial bodies without unreasonable hindrance. While I agree with the Petitioner that the right to access justice is broad, the inability to utilise or enjoy property does not in itself constitute a violation of that right unless it can be shown that this inability directly prevented the Petitioner from accessing courts or pursuing legal remedies.

#### **Whether The Respondent Violated The National Values And Principles Of Governance**

37. Article 10 of *the Constitution* provides:



1. The national values and principles of governance in this Article bind all State organs, State officers, public officers, and all persons whenever any of them—
    - a. applies or interprets this Constitution;
    - b. enacts, applies or interprets any law; or
    - c. makes or implements public policy decisions.
  2. The national values and principles of governance include—
    - a. patriotism, national unity, sharing and devolution of power, the rule of law, democracy, and participation of the people;
    - b. human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of the marginalised;
    - c. good governance, integrity, transparency, and accountability; and
    - d. sustainable development.
38. The Petitioner alleged that the Respondent’s failure to issue the title documents violated the national values and principles of governance, transparency, and accountability. It therefore follows that the Respondent was obligated to adhere the national values espoused above. By failing to issue the title deeds despite the Petitioner having complied with the requisite conditions, the Respondent acted in a manner inconsistent with the national values and principles of governance set out in Article 10 of *the Constitution*.

#### **Whether An Order Of Mandamus Should Be Issued**

39. The Petitioner argued that an order of mandamus is the only suitable remedy to compel the Respondent to issue the 399 titles.
40. Article 23 of *the Constitution* provides as follows: -
- ‘In any proceedings brought under Article 22, a court may grant appropriate relief including-
- a. a declaration of rights;
  - b. an injunction;
  - c. a conservatory order;
  - d. a declaration of invalidity of any law that denies, violates or threatens a right or a fundamental freedom in the bill of rights and is not justified under Article 24;
  - e. an order of compensation; and
  - f. an order of judicial review.
41. In the case of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR), the Court stated as follows concerning an order of mandamus:

The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which



appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.

42. The Petitioner produced a demand letter addressed to the Chief Land Registrar demanding the release of his titles. The Petitioner has shown that he made demands for the release of the tiles, which the Respondent has failed to respond to. There is therefore an implied refusal by the Respondent to release the titles to the Petitioner, which is not justified. Based on the foregoing, the only effective remedy available to the Petitioner is an order of mandamus.

#### **Whether The Petitioner Should Be Awarded Damages For Breach Of His Rights And Fundamental Freedoms**

43. The Petitioner seeks damages for breach of his rights and fundamental freedoms. In the case of Dendy vs University of Witwatersrand & others (2007) SCA 30 (RSA), the Constitutional Court of South Africa held that:-

“The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements.”

The primary purpose of a constitutional remedy is to uphold guaranteed rights and prevent future infringement. In the matter at hand, this court finds that vindication of the Petitioner’s rights will suffice.

44. In the end, I find that the Petitioner has demonstrated merit in his Petition. The upshot of the foregoing is that I enter judgment for the Petitioner in the following terms: \_
- a. A declaration is hereby issued that the Petitioner’s right to a fair administrative process and right to a legitimate expectation has been breached.
  - b. A declaration is hereby issued that the Respondent violated the national values and principles of accountability and transparency.
  - c. An order of Mandamus is hereby issued compelling the Respondent to immediately register or cause to be registered the subdivisions and issuance of 399 title deeds in respect of L.R No. 1153/14 and 1153/4/3 in the name of the Petitioner.
  - d. In the event of failure to comply with the orders of this court, the Petitioner is to report back to court within 90 days for the court to issue necessary and appropriate orders compelling the Respondent to undertake the necessary actions for fulfilling the orders of this court.
  - e. There shall be no orders as to costs.

**RULING DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS 5<sup>TH</sup> DAY OF DECEMBER 2025**

**IN THE PRESENCE OF:**

.....

**T. MURIGI JUDGE**

Dr. Miyawa for the Petitioner Ahmed- Court assistant



