

REBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA  
ELCLPET NO. E011 OF 2025

PETRO OIL KENYA LIMITED .....  
PETITIONER

VERSUS

CHIEF LAND REGISTRAR & 6 OTHERS .....  
RESPONDENTS

**RULING**

*[PRELIMINARY OBJECTION DATED 27<sup>TH</sup> JUNE 2025 BY 1<sup>ST</sup> TO 5<sup>TH</sup>  
RESPONDENTS]*

1. The 1<sup>st</sup> to 5<sup>th</sup> respondents filed the preliminary objection dated 27<sup>th</sup> May 2025 raising three grounds summarized as follows:

*a. That the petitioner's petition over its proprietary rights to the suit property is a judicial review application disguised as a constitutional petition, and the petitioner has not exhausted the available remedies in law.*

*b. That the petitioner's claim against 1<sup>st</sup> to 5<sup>th</sup> respondents on violations of Articles 40, 47, 60, 67 and 160 is not sufficiently pleaded and contravenes the principle in the case of Anarita Karimi Njeru versus Republic [1979] eKLR.*

*c. That the petition is otherwise frivolous, vexatious, vexatious and an abuse of court process.*

2. The learned counsel for the 1<sup>st</sup> to 5<sup>th</sup>, 7<sup>th</sup>, and petitioner filed their submissions dated the 1<sup>st</sup> July 2025, 11<sup>th</sup> September 2025 and 18<sup>th</sup> September 2025 respectively, which the court has considered.

3. The preliminary objection raises the following issues for the court's determinations:

*a. Whether the petitioner's claim has met the constitutional threshold of a petition.*

*b. Whether the petition contravenes the doctrine of exhaustion, or is prematurely, filed.*

*c. Who pays the costs?*

4. The court has carefully considered the grounds on the preliminary objection, pleadings filed, submissions by the three learned counsel, superior court decisions cited thereon and come to the following findings:

a. On the threshold in constitutional petitions, the court in the case of Mukhobi versus Mukhobi & Another [2025] KEELC 5276 (KLR) held as follows:

*“The threshold for constitutional petitions was set in the case of Anarita Karimi Njeru -vs The Republic (1979) eKLR where it was held that constitutional petitions should set out with a reasonable degree of precision the petitioner’s complaint, the provisions of [the constitution](#) alleged to have been infringed and the manner in which those provisions of [the constitution](#) have been infringed.”*

In the above case, the court also cited with approval the case of Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR in which the Court of Appeal stated that:

*“It is our finding that the petition before the High court was not pleaded with precision as required in Constitutional petitions. Having reviewed the petition and Supporting Affidavit we have concluded that they did not provide adequate particulars of the claims relating to the alleged violation of [the Constitution](#) of Kenya and the Ethics and Anti- Corruption Commission Act, 2011,*

*accordingly the Petition did not meet the standard enunciated in the Anarita Karimi Njeru Case”*

b. In their preliminary objection and submissions in support, the 1<sup>st</sup> to 5<sup>th</sup> respondents have posited and urged that the petitioner has not sufficiently demonstrated his claim. The court has perused the petition, and noted the petitioner’s claim/dispute has been clearly set out at paragraphs 18 to 34, to include infringement of its right to own property, security of its land rights, and failure to accord it fair hearing hence contravening its rights to fair administrative action, among others. The provisions of the Constitution alleged to have been contravened and upon which the petition is hinged have been set out or particularized at paragraphs 35 to 44 of the petition. The reliefs sought are at includes declaratory and prohibition orders; permanent and mandatory injunctions and costs. The dispute on the proprietary rights over the suit property could well have been raised through civil suit. However, that could only have been the preferable route, had the dispute been between the petitioner and the 7<sup>th</sup>

respondent. The particularized involvement of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> respondents in the dispute during the period preceding the filing of the matter in court makes a petition a reasonable avenue through which to deal with the issues in dispute more effectively and with finality.

c. The dispute before the court is not merely one of petitioner questioning the process preceding the decision on the cancellation or intention to cancel the title to the suit property. had that been the case, the court would not have had any difficulty in upholding the 1<sup>st</sup> to 5<sup>th</sup> respondents' ground that the dispute should have been pursued through a judicial review proceedings. The petition is raising among others contestations on the infringement of the petitioner's right to own property, and fair administrative action. That in view of the provision in *Article 23(3)* of the Constitution that in proceedings on enforcement of Bill of Rights under *Article 22* of the Constitution, a court may grant appropriate reliefs including judicial review remedies, means the inclusion of such prayers in a

petition does not on its own mean the petition has been presented prematurely. I therefore, find the objection on the ground of failure to exhaust other available remedies first to be without merit.

d. There is nothing presented before the court to so that the petition as presented is frivolous, vexatious, vexatious, and an abuse of court process, and that ground fails.

e. Though the 1<sup>st</sup> to the 5<sup>th</sup> respondents have failed in their preliminary objection, I am of the view that justice will be better served by ordering that costs abide the outcome of the petition.

5. Flowing from the foregoing conclusions on the 1<sup>st</sup> to 5<sup>th</sup> respondents' preliminary objection dated 14<sup>th</sup> June 2025, the court finds and orders as follows:

*a. That the preliminary objection is without merit and is rejected.*

*b. The costs in the preliminary objection to abide the outcome of the petition.*

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 17TH DAY OF DECEMBER 2025.

S. M.

Kibunja, J.

ELC

MOMBASA.

IN THE PRESENCE OF:

PETITIONER : Mr. Kilonzo for Oluga

RESPONDENTS : Mr Kemei for 1<sup>st</sup> to 5<sup>th</sup> Respondents

Mr. Kago for 7<sup>th</sup> Respondent.

KALEKYE-COURT ASSISTANT.

S. M.

Kibunja, J.

ELC

MOMBASA.