

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

CONSTITUTIONAL PETITION NO. E008 OF 2025

**IN THE MATTER OF ARTICLES 10, 20, 22, 40 AND 47 OF THE
CONSTITUTION OF KENYA 2010**

-BETWEEN-

HARRIS MWALAGHO

ZENA SHABAN

MARY NGUGI

DAMIAN MWAVULA & 240 OTHERS
PETITIONERS

-AND-

THE COUNTY GOVERNMENT OF TAITA TAVETA
RESPONDENT

JUDGMENT

The Petitioners' case

1. The petitioners have been carrying out their business at Voi township upper market for many years. They commenced

this petition vide their petition dated 28th July 2025 seeking for the following reliefs before this court:

- a) An order to bar the Respondent from demolishing the petitioners building.**
 - b) An order to compel the Respondent to compensate the petitioners for their building before demolition.**
 - c) Costs of the petition.**
 - d) Any other relief this court may deem fit to grant**
2. The petition was supported by the affidavit sworn by Harris Mwalagho, Zena Shaban, Mary Ngugu and Damian Mwavula on 28th July 2025 and a further affidavit sworn on 27th October 2025.
 3. It was the petitioners' case that they are owners of stalls at upper market Voi township. They were allocated empty spaces by the then defunct Voi Municipal Council. They constructed permanent stalls from 2002 having been authorized to do so by the then Voi Municipal Council. Some rented out their stalls while others used the same for their own business.

4. It was also their case that they enjoyed the occupation of their stalls since 2022 and have been paying the ground rent and rates since 2002.
5. They accused the respondent of threatening to evict them from April 2025 without following due procedure and without issuing them with any notice
6. It was averred that the procedure used by the respondent is unprocedural, illegal and hence the whole process is flawed.
7. On the issue of public participation, it was argued that the same ought to have been done earlier. In the instant case it was done after 25th April 2025, which was purely cosmetic exercise to legalize an illegality.
8. It was also averred that failure to issue a notice and plan to proceed with demolition is unprocedural and offends the provision of section 40 (4) of the physical planning and land use act and makes it practically impossible to the protester to appeal to the County Physical and Land use Planning Liaison Committee.

The Petitioners submissions

9. The petitioners filed written submissions dated 27th October 2025. The petitioners submitted on the following issues;

1. Whether the petitioners were allocated empty spaces at the upper market to build stalls there.

2. Whether the petitioners are the ones who constructed the stalls or the respondent.

3. Whether the respondent has done enough public participation sanctioned and or supervised the construction of the stalls.

4. Whether the petitioners' rights have been infringed, threatened or violated

5. What kind of reliefs this court can grant at the circumstances

10. It was submitted that the entry of the petitioners to the Voi upper market in 2002 was sanctioned by the then Voi Municipal Council and hence they have been in occupation of the stalls lawfully and not as trespasses.

11. It was also submitted that the petitioners used their own resources to construct the stalls after they were allocated empty stalls. It was contended that their construction was

approved by the then Voi Municipal council and at no time were they stopped from construction of the said stalls.

12. On whether the respondent has done enough public participation, it was submitted that there are three groups who are affected by the petitioners) and members of the public.
13. It was submitted that the respondent did not call the stall owners to air their views and any public participation done in their absence was cosmetic.
14. It was further submitted that the alleged public participation started on 8th May 2025 after tendering had been done and the stall owners were not invited to any of the meetings that were conducted and hence there was no public participation.
15. On whether the petitioners' rights might have been infringed, it was submitted that the petitioners are owners of all the stalls in the upper market Voi township, they were allocated empty spaces by the then defunct Voi Municipal Council in 2002. Using their own resources, they constructed stalls which they acquired lawfully. The respondent has

violated Article 40 of the constitution or has threatened to infringe the rights of the petitioners.

16. It was further submitted that the petitioners acquired interest in the said land by allocation and construction and hence to allow the project to go on, the petitioners' stalls must be demolished and further the issue of compensation has not been advised.
17. In view of the foregoing, the court was urged to grant the reliefs sought.

The Respondent's case and submissions

18. The respondent opposed the petition vide grounds of opposition dated 27th August 2025, Response to the petition dated 4th September 2025 and a further affidavit sworn on 11th December 2025 together with written submissions dated 19th September 2025.
19. It was the respondent's case that is premature, misconceived and bad in law since no enforcement notices have been issued by the respondent against the petitioners in respect to the suit property.

20. It was also the respondent's case that meetings were held on 8th and 14th May 2025, 23rd and 25th June 2025, and 24th July 2025 and the intended process, the petitioners have not shown how they will suffer any irreparable harm.
21. It was contended that the balance of convenience lies in favor of the county government to complete the ongoing process including public participation, planning and development control which are in the public interest.
22. It was further contended that the petition purports to limit the respondent from exercising its statutory and constitutional obligations and if the orders sought are granted, the same will amount to a clog or fetter on the respondent's mandate.
23. In emphasizing further on public participation, it was argued that the court in **Japheth Ododa Origa V Vice Chancellor University of Nairobi & 2 others (2018) KEHC 4861 (KLR)**, the court at paragraph 15 stated the following; precision in pleading is vital in constitutional petitions because it enables the opposite party to fully understand the case they face and be in a position to adequately respond to

it. It also enables the court to decipher the issues brought before it for adjudication. It helps in avoiding surprises and ambiguities in the litigation but more importantly it shows the link between the aggrieved party, the constitutional provisions at play and the possible infringement, this was well stated by the supreme court in the case of **Communication Commission of Kenya & 5 others v Royal Media Services Limited and 5 others (2014) eKLR** thus:-

“(349) Although Article 22 (1) of the constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied or violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges directly from the high court decision in Annarita Karimi Njeru v Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the constitution alleged to have been contravened, and

the manifestation of contravention of infringement. Such a participle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process dispute settlement ...”

24. In placing reliance to the case of **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR** it was submitted that the Court reaffirmed the principle of precision in constitutional petitions observing that the petition before the high court referred to articles of the constitution in the title but provided little or no particulars as to the allegations and the manner of the alleged infringements without enumerating any particulars.
25. The Respondent submitted that the petitioners have failed to clearly demonstrate; -
- a. The specific provisions of the constitution alleged to have been violated.
 - b. The particular acts or omissions of the respondent that constitute the alleged violation and

c. The nexus between the alleged constitutional provisions and the facts pleaded.

26. It was stated that the respondent is committed to fair administrative action under article 47 of the constitution and will issue lawful notices before taking any enforcement acts.
27. It was further stated that the suit property is public land that was set apart for putting up a market and traders were allowed to put up temporary structure on condition that they would vacate upon being notified. No application for the construction of permanent structures was presented to the defunct council or the respondent herein.
28. In its further affidavit sworn by Gertrude Shuwe, on 11th December 2025, It was deposed that the petition is meant to discourage development in the area, the petitioners are not land owners but only stall owners, they were only allowed to put up temporary structures, the public participation was conducted within all the affected stakeholders and notices would be issued once relocation sites have been fully constructed.

29. It was further deposed that the suit property is a public utility, unavailable for allocation, the loss to be suffered by the petitioners which is denied cannot be compared to the harm and damages that will be occasioned to the general public should the orders sought in the petition be granted.
30. The respondent also deposed that the project is expected to kick off in January 2026 and any delay will defeat the respondents constitutional mandate as expressed under Article 176 of the constitution of Kenya 2010
31. In its written submissions dated 19th September 2025, the following issues were listed for consideration by this court; -
- 1. Whether the petitioners' rights have been infringed, threatened or violated.***
 - 2. Whether the petitioners are entitled to the reliefs sought.***
32. It was submitted that a party seeking reliefs through a constitutional petition based on violation of the constitution, constitutional rights must plead with a higher degree of precision, show constitutional or fundamental freedoms violated, the manner of violation, the constitutional rights in

question or violated and the incidental basis for the litigation as was aptly stated in the case of **Anarita Karirmi Njeru - vs- Attorney General (No. 1) (1979) KLR IJ4**

33. Citing the cases of **Meme -vs- Republic (2004) e KLR, Jaoheth Ododa -vs- Vice Chancellor Nairobi University & 2 Others (2018) e KLR and Mumo Mathimu -vs- Trusted Society of Human Rights Alliance & 5 others (2013) e KLR,** it was submitted that the petitioners have failed to demonstrate the specific provisions of the constitution alleged to have been violated, the particular acts or omissions of the respondent that constitute the alleged violation and the nexus between the alleged constitutional powers and the facts pleaded.
34. It was argued that the petition is conducted on broad and generalized terms merely alleging violation of rights without precision. No ownership documents have been provided demonstrating that the petitioners are owners of the stalls in question and no notice has been presented to this court demonstrating any alleged eviction of the petitioners.

35. The respondent also faulted the petitioners for demanding compensation despite them admitting that the land in question is public land.
36. The court was urged to find that the petitioners' contention that their rights have been violated does not hold and thus the petition ought to be dismissed with costs.
37. In respect to the reliefs sought, it was argued that the prayers sought cannot be issued because the petition is premature and is only constituted of speculative facts which are yet to be determined.
38. In respect to prayer (a) which has been sought in the petition, it was submitted that the same cannot be issued because public participation has been ongoing and the respondent has not issued any notices on eviction yet.
39. In respect to prayer (b) It was submitted that the same cannot be granted because the suit property is a public utility and thus compensation cannot be claimed by the petitioners. If the petitioners felt aggrieved by the respondent actions, they ought to have appealed before the

County Physical Planning and Land use Planning Liaison committee before approaching the court.

40. The respondent thus urged the court to dismiss the petition with costs.

Analysis and Determination

41. Upon considering the petitioners affidavit filed and written submission on record, the issues for determination herein are as follows; -

- i. Whether the petitioners were allocated and constructed any stalls at the Voi Upper Market.***
- ii. Whether there was adequate public participation and the threshold met.***
- iii. Whether the petitioners' rights have been infringed, threatened and or violated.***
- iv. Whether the petitioners are entitled to the reliefs sought.***

Issue 1

Whether the petitioners were allocated and constructed any stalls at the Voi Upper Market.

42. The petitioners' case is that they were allocated empty spaces at the Voi Upper Market and they proceeded to construct permanent stalls upon which some of them rented out for use. Minutes of the meeting of the Voi Market Re: Planning Committee Meeting held on 16th May 2002 which was produced by the petitioners as annex - HM1 on Minute number, Min 05/VMP/2002 - A.O.B, Ownership of structures showed that letters of ownership of the structures had not been issued and the same was to be addressed in the next meeting.
43. No further evidence was provided to demonstrate that indeed they had been allocated spaces at the market place and as such the court cant make any assumptions on the same.
44. It therefore follows that the petition had not demonstrated to the satisfaction of the court their ownership of any space and or stalls of the Voi upper market.

45. As to whether the petitioners had provided any evidence of ownership of any of the stalls at the market, it was their case that they constructed the stalls under the supervision of the then Municipal Council and no stoppage order was ever issued against the construction of the same.
46. The respondent in addressing this issue argued and submitted that the defunct Council allowed them to put up temporary structures to conduct their businesses on condition that they would vacate upon being notified. No application for the construction of permanent structures was presented to the defunct Council and no approvals were granted for construction of permanent structures.
47. From the analysis of the evidence produced herein and which the court has considered, it is evident that the petitioners only constructed temporary structures but there was no evidence and or approval granted to them to construct permanent structures on the premises.

Issue No. 2

Whether there was adequate public participation and the threshold met.

48. It was the petitioners' case that the respondent avoided calling the stall owners to air their views, the tender was placed on or before March 2025 and closed on 25th April 2025 and that the alleged public participation started on 8th May 2025 after tendering had been done and as such there was no public participation and that the alleged public participation is only meant to legitimize an already flawed procedure
49. **Article 10 (2) a of the Constitution** outlines participation of the public as one of the national values and principles of governance which bind all state organs and public officers.
50. The principle of public participation is not new. It did not come with the promulgation of the Constitution. It was always recognized as an element of the common law doctrine of natural justice. The parties cited a number of authorities before in support of their rival positions on the issue.

51. In the South African case of Doctors for Life International v Speaker of the National Assembly and Others (CCT12/05) [2006] ZACC11;2006 (12) BCLR 1399(CC); 2006(6) SA 416(CC) that was cited by the 1st petitioner, the court stated that:

“According to their plain and ordinary meaning, the words public involvement or public participation refers to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore means taking steps to ensure that the public participate in the legislative process.”

52. In the other South African case of Minister of Health and Another v New Clicks South Africa(Pty) Ltd. and Others [2006](2)SA 311(CC) that was also cited by the 1st petitioner, the court stated that:

“The forms of facilitating an appropriate degree of participation in the law making process are indeed capable of infinite variation. What matters is that at the end of the day reasonable

opportunity is offered to members of the public and all interested parties to know about the issue and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.”

53. In the case of **Nairobi Metropolitan PSV Saccos Union Limited & 25 others v County of Nairobi Government & 3 others [2013] eKLR**, the court stated that:

“The Preamble of the Constitution sets the achievable goal of the establishment of a society that is based on democratic values, social justice, equality, fundamental rights and rule of law and has strengthened this commitment at Article 10(1) of the Constitution by making it clear that the national values and principles of governance bind all state organs, state officers, public officers and all persons whenever any of them enacts, applies or interprets any law or makes or implements policy decisions. Article 10(2) of the

Constitution establishes the founding values of the State and includes as part of those values, transparency, accountability and participation of the people. It is thus clear to me that the Constitution contemplates a participatory democracy that is accountable and transparent and makes provisions for public involvement. Consistent with this, Article 174 (c) of the Constitution provides for the principles of devolved government and has given powers to the people to enhance self-governance and enhance their participation in decisions that affect them. Clearly, the making of county laws by members of County Assembly is, in my view, an essential part of public participation.”

54. **In the Matter of the Mui Coal Basin Local Community (2017) eKLR, the court that:**

“.....the petitioners only response was that public participation and due diligence undertaken were not adequate. As the cases before us have noted,

it is not possible to come up with arithmetic formula or litmus test for categorically determining when a court can conclude there was adequate public participation. However, as we have alluded above, the courts look at the bona fides of the public actor, the nature of the subject matter, the length and quality of engagement and the number of mechanisms used to reach as many people as possible.”

55. On this issue, the respondent argued that public participation could only commence after the gazette ment was done to confer the municipality status. Where therefore public participation started way back in April 2025 and the public participation conducted can't be termed as correct.
56. It was conferred by the respondent that it conducted several meetings on 14th May 2025, 23rd June 2025, 25th June 2025 and 24th July 2025 engaging all the stakeholders and members of the public.

57. In considering this issue, the court has considered the evidence tendered from the minutes of various meetings held on 8th May 2025, 14th May 2025, 23rd June 2025, 25th June 2025, and 24th July 2025 together with the attendance sheet that was produced in evidence. From the perusal of the minutes that were produced the issue of the construction of the market was extensively discussed and further perusal of the attendance sheet produced confirms that some of the members who attended were from Voi Upper Market.

58. In the circumstances it is the finding of this court that the public participation conducted here was adequate and met the threshold. Equally the petitioners have not demonstrated whether or not they were denied an opportunity to air their views and or participate in the said meeting.

Issue No. 3

Whether the Petitioners rights have been infringed, threatened and or violated.

59. It was the petitioners' case that it was submitted that the petitioners are owners of all the stalls in the upper

market Voi township, they were allocated empty spaces by the then defunct Voi Municipal Council in 2002. Using their own resources, they constructed stalls which they acquired lawfully. The respondent has violated Article 40 of the constitution or has threatened to infringe the rights of the petitioners among other rights provided for in the Constitution.

60. It was further submitted that the petitioners acquired interest in the said land by allocation and construction and hence to allow the project to go on, the petitioners' stalls must be demolished and further the issue of compensation has not been advised.

61. In arguing this issue, it was the respondent's case that no Constitutional rights have been violated, threatened and or infringed. The respondent argued that that a party seeking reliefs through a constitutional petition based on violation of the constitution, constitutional rights must plead with a higher degree of precision, show constitutional or fundamental freedoms violated, the manner of violation, the

constitutional rights in question or violated and the incidental basis for the litigation.

62. Article 22 of the Constitution allows a party to approach the court if there is a violation or threat to violate his rights provided that the Court has jurisdiction. A party approaching the court on that account, must place his claim within the ambit of article 23(1) so that the court can weigh his claim and respond where appropriate.
63. In this petition, the petitioner was required to point out the constitutional or legal provisions violated and demonstrate actual or threatened violation to the satisfaction of the court. **(See Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR; [2014] KESC 53 (KLR).**
64. In other words, a party claiming violation of rights and fundamental freedoms should not only plead with precision, the rights violated and the provisions infringed but also demonstrate the link between the alleged violation, the rights infringed and the constitutional provisions invoked in

order to put the respondent on notice over the petitioners' claim so as to respond appropriately.

65. To amount to a violation or threatened violation of either the Constitution, the law or rights and fundamental freedoms, the impugned action must be a legal wrong or a legal injury caused to a person or to a determinate class of persons by reason of violation of constitutional or legal right in contravention of any constitutional or legal provision. Where there is threat to cause a legal wrong or injury, the Court has powers to grant an appropriate relief to prevent the wrong or legal injury. The essence of the appropriate relief is not only to enforce the Constitution, but also to ensure that rights and fundamental freedoms enshrined in the Bill of Rights are protected and enforced (**Fose v Minister of safety and Security (CCT 14/1996) [1997] ZACC 6.**)
66. In the instant case, the petitioners did not show any evidence that indeed the respondent allocated them spaces at the market. The petitioners did not further adduce any evidence demonstrating any approval of the structures that were put in the premises.

67. In the context of the petition and the evidence adduced, the court is not satisfied that the petitioner has demonstrated any violation of their rights by the respondent. The respondent is obligated under the law to provide the services and by extension the construction of the improved market.

Issue No. 4

Whether the Petitioners are entitled to the reliefs sought

68. The petitioners sought for several reliefs as demonstrated in the petition and having found that the petitioners have failed to prove any violation of their rights, the court is unable to grant the reliefs sought.

69. Consequently, and for the reasons afore stated, this court is not persuaded on the merit of this petition to grant the reliefs sought.

70. On the issue of costs, in the instant petition, the petition was brought in the public interest and in the circumstances, I will direct that each party bears their own costs of the petition.

Conclusion

71. It is the finding of this court that the Petition has not been proved to the required standard. The Petitioners have not proven their case to sustain this petition and it is my holding that no fundamental rights and or other constitution rights of the Petitioners have been violated and or infringed as alleged.

72. Consequently, the Petition dated 28th July 2025 is hereby dismissed. Each party to bear own costs of the Petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH
Day of JANUARY 2026.**

**E.K. WABWOTO
JUDGE**

In the presence of:

Mr. Muthami for the Petitioners.

Mr. Kilumo for the Respondent.

Court Assistant; Mary Ngoira.

ORIGINAL