



REPUBLIC OF KENYA



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**Electrical Marketing (Wholesale) Limited & another v Nairobi City
County & 5 others (Environment and Land Petition 21 of 2017)
[2026] KEELC 144 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 144 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND PETITION 21 OF 2017

CG MBOGO, J

JANUARY 26, 2026

**IN THE MATTER CONCERNING CIVIL SUIT NO. 3 OF 2011 NAIROBI CITY
COUNTY (FORMERLY CITY COUNCIL OF NAIROBI) VS ELECTRICAL
MARKETING (WHOLESALE) LTD**

AND

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLE 14 OF THE
INTERNATIONAL CONVENTION OF CIVIL AND POLITICAL RIGHTS**

AND

**IN THE MATTER OF ARTICLE 17 OF THE UNIVERSAL DECLARATION OF
HUMAN RIGHTS**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 5 AND 7 OF THE
AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

AND

IN THE MATTER OF THE ENVIRONMENT AND LAND COURT ACT

AND

**IN THE MATTER CONCERNING THE ALLEGED BREACH OF INTER ALIA,
SECTIONS 15,17,18,19 AND 26 OF THE RATING ACT, CAP 267**

AND

**IN THE MATTER CONCERNING THE ALLEGED BREACH OF THE CIVIL
PROCEDURE ACT AND ORDER 3 RULE 2, ORDER 5 RULE 3, ORDER 22
RULES,6,9, 48,57,58 AND 70 OF THE CIVIL PROCEDURE RULES**



AND
IN THE MATTER CONCERNING THE ALLEGED BREACH OF THE AUCTIONEERS
ACT AND INTER ALIA RULE 15 AND 18 OF THE AUCTIONEER RULES
AND
IN THE MATTER CONCERNING THE ALLEGED CRIMINAL OFFENCES UNDER
SECTIONS 108,288,132,320, 335 AND 348 OF THE PENAL CODE
AND
IN THE MATTER OF AN APPLICATION FOR VESTING ORDER IN HIGH COURT
MISCELLANEOUS APPLICATION NO. 2 OF 2013
AND
IN THE MATTER OF ALLEGED FRAUDULENT SALE OF L.R. NO. 209/8323

BETWEEN

ELECTRICAL MARKETING (WHOLESALE) LIMITED 1ST PETITIONER
SUNIL K. PATEL 2ND PETITIONER

AND

THE NAIROBI CITY COUNTY 1ST RESPONDENT
THE SUBORDINATE COURT OF THE 1ST CLASS MAGISTRATES COURT AT
CITY HALL NAIROBI 2ND RESPONDENT
E LUMWANJI T/A DOMICILE AUCTIONEERS 3RD RESPONDENT
GOPAL HARISH ALIAS GOPA HARISH VEKARIA ALIAS GOPAL HARISH
VEKARIA ALIAS HARISH GOPAL VEKARIA 4TH RESPONDENT
VEKARIA LALJI GOPAL 5TH RESPONDENT
HESBON OMONDI 6TH RESPONDENT

JUDGMENT

1. The petitioners filed the petition dated 13th June, 2017 seeking the following orders:-
 1. A declaration that the respondents' actions jointly and severally violated the petitioner's rights as set above.
 2. A declaration that the respondents actions were in violation of the *Constitution*.
 3. An order of certiorari to remove into the honourable court and to quash the entire proceedings and judgment/decree in Chief Magistrates' Court in City Court Civil Suit No. 3 of 2011 Nairobi City County versus Electrical Marketing (wholesale) Ltd.



4. An order of certiorari to remove into the honourable court to quash the vesting order, ruling and proceedings in High Court Miscellaneous Application No. 2 of 2013 Gopa Harish Vekaria & Vekaria Lalji Gopa v Electrical Marketing (Wholesale) Ltd.
 5. An order of certiorari to quash the subsequent registration of the 4th and 5th respondents as proprietors of the suit property L.R. No. 209/8323.
 6. An order for damages and or compensation to the petitioners for the above violations.
 7. An order for punitive damages.
 8. An order recommending to the Chief Justice to undertake an audit of the proceedings in the rating court with a view to delinking the said court from the city county offices.
 9. Costs of this petition.
 10. Such other orders as the honourable court may deem fit in the circumstances.
2. The facts as stated in the petition is that the 1st petitioner was at all times the owner of the property known as LR. No. 209/8323 situate along Dunga Road which they used for purposes of trading and storage of electrical ware, stock, and equipment whose value was over Kshs.5,000,000/-. Further, that the petitioners had invested in the development of the property which was estimated at Kshs.600,000,000/- prior to the filing of this petition.
 3. The petitioners stated that it came to their knowledge that the suit property had been sold via court proceedings in CMCC No. 3 of 2011 between the 1st respondent and themselves and in High Court Miscellaneous Application No. 2 of 2013 between the 4th and 5th respondents and themselves. They stated that the proceedings before both courts were instituted irregularly and conducted haphazardly denying them the right to be heard. Further, that the conduct of the suit before the 2nd respondent was a travesty of justice and violated the known rules and procedures, as the court lacked jurisdiction to entertain the matter in view of Article 162 (2) (b) of the [Constitution](#) and the [Environment and Land Court Act](#).
 4. The petitioners further stated that the 2nd respondent lacked the pecuniary jurisdiction to entertain the suit against the 1st petitioner owing to the value of the suit property, and that in the course of the proceedings, the 1st respondent presented forged documents to procure the sale of the suit property. They stated that the 1st respondent was fully aware that the suit property was charged to Middle East Bank Limited for a sum of Kshs.20,000,000/- thus committing fraud to deny them their property.
 5. The petitioners contended that the 3rd respondent acted unprofessionally by conducting a paper auction which conferred the suit property to the 4th and 5th respondents and further failed to adhere to the rules provided under the [Auctioneers Act](#). Further, that the 4th and 5th respondents purchased the suit property at a throw away price and took over the premises together with the 6th respondent rendering it nonexistent. They stated that the respondents failed to serve them with the application for vesting order before the High Court and misled the court in order to obtain favour. They stated that the 6th respondent has been claiming ownership having taken over the moveable assets, stock and furniture and leasing part of the premises. The petitioners stated that they are doubtful whether any sale was conducted and they are of the view that the whole court process was to sanitize the theft of the property judicially and fraudulently, which is a gross violation of their rights. The petitioners contended that the respondents violated the [Constitution](#) specifically Articles 10, 40, 31, and 159.



6. The petition was supported by the affidavit of the 2nd petitioner sworn on even date. The 2nd petitioner deposed that he became aware of the City Court Civil Suit No. 3 of 2011 in July 2015, after being informed by his counsel which was after he had informed his advocates to take over the premises after the settlement of a suit in HCCC No. 653 of 2004 vide the consent which culminated into the orders of the court issued on 8th June, 2015.
7. The 2nd petitioner deposed that they conducted a search and discovered that the suit property had been sold pursuant to City Court Civil Suit No. 3 of 2011 and High Court Miscellaneous No. 2 of 2013. That upon perusal of the court record at the city court, they discovered that the 1st respondent had instituted a suit for recovery of rates under the Rating Act without conducting proper service hence an ex-parte judgment was entered on 23rd August, 2011. Further, that the suit property was sold to the 4th and 5th respondents at a mere Kshs.5,000,000/-, and upon further investigations, the effect of service of the pleadings were evident that the premises were deserted, and nothing had changed subsequently. He deposed that the period between 2011 and 2016 he has been in and out of hospital, and with the demise of his father, the 1st respondent took advantage of the proceedings before the city court.
8. The 2nd petitioner deposed that the 1st petitioner having been put under receivership, the appointed receiver managers should have been served, and thus the suit and proceedings were irregular and should be set aside. He contended that the proceedings were irregular pursuant to Order 3 Rule 2 and Order 22 Rule 6 of the Civil Procedure Rules, and Section 17 and 26 of the Rating Act, and the provisions of the Auctioneers Act.
9. In opposition thereto, the 4th and 5th respondents filed their preliminary objection dated 19th September, 2017 challenging the petition on the following grounds:-
 1. The matter conversed in the petition are res judicata there having been a determination of these matters in the Chief Magistrate Court Case No. 3 of 2011 Nairobi City County v Electrical Marketing (Wholesale) Ltd.
 2. Orders sought are judicial review orders which are time barred by statute.
10. The 6th respondent filed his grounds of opposition dated 21st November, 2017 opposing the petition on the following grounds:-
 1. That the honourable court lacks the jurisdiction to hear and determine the matters raised in the application and petition herein.
 2. That the application and petition are grossly incompetent, defective and an abuse of the court process.
 3. That the petitioners are merely attempting to lodge an appeal through a backdoor having failed to exercise that right.
 4. That this honourable court cannot purport to sit as an appellate court over a court of competent jurisdiction.
 5. That the issues raised in the present application and petition are res judicata.
 6. That this honourable court does not have jurisdiction to hear and determine questions of criminal law and neither can it purport to sit as a high court in the criminal division.
 7. That both the application and petition are bad in law.



11. The 6th respondent filed his replying affidavit sworn on 27th October, 2017. He deposed that the petitioners have wrongly invoked the jurisdiction of this court, and that it is apparent that they are challenging the process and outcome of judicial proceedings without pursuing the procedure provided in law. He deposed that this matter was heard in CMCC No. 3 of 2001 between The City Council of Nairobi and the 1st petitioner and in High Court Miscellaneous Case No. 2 of 2013 between Gopa Harish Vekaria & Vekaria Lalji Gopa and the 1st petitioner, and for this reason, this court cannot sit as an appellate court over the same issues. Further, that he has never acted with malice and he is a bona fide purchaser for value and the petitioners cannot purport to lay claim on the property.
12. The 6th respondent deposed that the petitioners have not made out a case to warrant the grant of the orders and in any event the actions of the petitioners are an infringement to his constitutional rights to human dignity and equal protection of the law.
13. The 1st respondent filed its grounds of opposition dated 16th February, 2021 challenging the petition on the following grounds:-
 1. That the application is fatally incompetent, vexatious, hopeless and only fit for dismissal.
 2. That this honourable court lacks the jurisdiction to hear and determine the matters raised in the petition herein.
 3. That the petition herein is against the established doctrine of res judicata as such, the same should be left to rest.
 4. That the petitioners herein are trying to use this honourable court as an appellate forum when in reality it should not be the case.
 5. That the matter contained in the petition herein has already been heard and determined by a court of competent jurisdiction. Giving audience to the petitioners would amount to this honourable court acting as an appellate court, which should not be the case.
 6. That the petition seeks orders for matter that are criminal in nature from the wrong forum as this honourable court does not have jurisdiction to hear and determine criminal cases.
 7. That it is important for this court to uphold and protect the rights of not only the petitioners, but as well as 1st respondent.
 8. That the said application does not meet the necessary grounds for grant of the orders sought.
 9. That the petitioners herein have not appreciated the fact that the court orders or judgment or rulings do not meet and cannot at any time be said to be in contravention of human rights and fundamental freedoms.
 10. That in the interest of justice and fairness the instant petition be dismissed with costs to the 1st respondent.
14. The petition was canvassed through written submissions. The petitioners filed their written submissions dated 2nd April, 2025 and they raised two issues for determination as listed below:-
 - a. Whether the petition is res judicata.
 - b. Whether the petition has merit.
15. On the first issue, and while relying on the cases of Kenya Commercial Bank Limited & another v Muiri Coffee Estate Limited & 3 others [2016] KESC 6 (KLR), and John Florence Maritime Services



Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR), the petitioners submitted that the doctrine of res judicata does not apply to the instant petition. That while the matter in CMCC No. 3 of 2011 focused on the sale of the property for non-payment of rates, the instant petition raises new issues such as fraud, procedural irregularities and constitutional violations which were not addressed in the former proceedings.

16. On the second issue, the petitioners submitted that prayers 3, 4 and 5 of the petition have been rendered moot by the ruling of this court delivered in Milimani ELC Civil Appeal No. 22 of 2017 where the sale of the suit property was set aside. The petitioners reiterated that the 2nd to 6th respondents violated Articles 10, 28, 27, 31, and 50 of the Constitution which resulted to a breach of their right to own property enshrined under Article 40 thereof. To buttress on this issue, they relied on the cases of Anarita Karimi Njeru v Republic [1976-1980] KLR and Virenda Ramji Gudka & 3 others v Attorney General [2014] eKLR.
17. The 1st respondent filed its written submissions dated 24th June, 2025 where it raised three issues for determination as listed below: -
 1. Whether the petition is res judicata.
 2. Whether the 1st respondent acted fraudulently.
 3. Whether the 1st respondent should pay costs of the petition.
18. On the first issue, it was submitted that the issues in this suit was heard and decided in City Court No. 3 of 2011 and High Court Miscellaneous No. 2 of 2013. Reliance was placed in the case of James Gichuru v Philip Komu Kombe and another ELC No. 701 of 2012, and in the cases of The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others [2017] eKLR. While further relying on the case of Tony Gachoka v Attorney General [2013] KEHC 6920 (KLR), the 1st respondent submitted that court orders cannot be said to violate human rights and an aggrieved party has the right to appeal and review, which options the petitioners did not take.
19. On the second and third issues, the 1st respondent submitted that he who alleges fraud must prove with utmost strictness and particularity. Further, that the allegations of fraud raised are a tactical attempt to mislead the court which is prejudicial and unfair. They relied on the case of Vijay Morarjia v Nansingh Madhusingh Darbar & Another [2000] eKLR. In conclusion, the 1st respondent urged the court to dismiss the petition with costs.
20. The 6th respondents filed his written submissions dated 27th October, 2017. While reiterating the contents of his replying affidavit and grounds of opposition, the 6th respondent submitted that this court lacks jurisdiction to determine issues that have been heard by a court of competent jurisdiction. He relied on the cases of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited [1989] KLR 1 and Alvin Kamande Njenga v Gacheru, High Court Misc Application No. 86 of 2016. Based on the foregoing, he urged the court to dismiss the petition with costs.
21. The 6th respondent filed supplementary submissions dated 29th April, 2025. These submissions buttressed on the issue of jurisdiction which the 6th respondent maintained that the court lacks powers to determine the instant petition.
22. I have carefully analyzed and considered the petition, the the replies thereof including the preliminary objection, replying affidavit and the grounds of opposition. The court has also considered the written submissions filed by the parties. The issue for determination is whether the petitioners are entitled to the orders sought.



23. To begin with, the petitioners submitted that prayers 3, 4 and 5 of the petition were rendered moot as a result of the judgment delivered in ELC Appeal No. 22 of 2017 delivered on 15th July, 2019. The court is now left to deal with the declaratory prayers sought and the prayers seeking damages.
24. I have read the judgment delivered by the court on 15th July, 2019 and I note that much of what was discussed in the said appeal has been replicated in this petition. See *Electrical Marketing (Wholesale) Ltd v Nairobi City County & 2 others* [2019] KEELC 1982 (KLR). It appears that the petitioners filed this petition simultaneously with the appeal as it is dated 16th June, 2017. Indeed, from the said judgment, the court went into detail to address the facts of the case leading to the illegal sale of the suit property. In the end, the court granted the following orders:-
- “ 35. The court allows the appeal and sets aside the orders made for the sale of L.R. No. 209/8323 by way of public auction on 30/8/2011 and all subsequent orders relating to the Suit Property.
36. The judgement of Hon. M. W. Njagi, First Class Magistrate at Nairobi City Court delivered on 29/5/2017 in Civil Suit Number 3 of 2011 and all consequential orders are hereby set aside.
37. The Appellant is awarded the costs of the appeal to be borne by the 1st Respondent.”
25. While the petitioners contend that the instant petition is not res judicata for the reasons that fraud, procedural irregularities and constitutional violations were not heard and determined in the former proceedings being CMCC No. 3 of 2011 and in High Court Miscellaneous Case No. 2 of 2013, it is my finding that the facts in this case are similar to the facts and issues raised in appeal no. 22 of 2017 which was heard and determined. In my view, and for the court to determine whether declaratory orders or any other order should issue, there would be need to assess the pleadings and the documents filed. Ultimately, this would lead to an exercise which this court has previously engaged in.
26. The petitioners’ dissatisfaction with the manner in which the suit property was dealt with has been sufficiently addressed in the said judgment, and there would be no need to rewrite similar findings as that would be a waste of the court’s precious time. Precisely, I am of the view, that the instant petition is res judicata by virtue of the judgment delivered by the court in ELC Appeal No. 22 of 2017 on 15th July, 2019. As such, the petition dated 13th June, 2017 is without merit, and it is hereby dismissed. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 26TH DAY OF JANUARY, 2026.

HON. MBOGO C.G.

JUDGE

26/01/2026.

In the presence of:

Ms. Vena Aron - Court assistant

Mr. Ogola for the 6th Respondent

Ms. Indosia holding brief for Mr. Kithi for the 1st Respondent



Ms. Mokuma holding brief for Mr. Mulecho for the Petitioner

