

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E123 OF 2023

BETWEEN
EZEKIEL KAMAU KARIUKI.....
PETITIONER

VERSUS
ETHICS & ANTI-CORRUPTION COMMISSION.....
..... RESPONDENT

J U D G M E N T

Introduction

1. The Petition dated 12th April 2023 is supported by the Petitioner’s affidavit in support of similar date and a further supplementary affidavit dated 15th September 2023.
2. This litigation revolves around the allegation that the Respondent has violated the Petitioner’s rights under Article 40 and 47 of the Constitution owing to its failure to release the original ownership documents for the property known as *L.R. No. Kwale/Shimoni Town/17667* following its investigations. Considering this, the Petitioner asserts that the Respondent in carrying out its mandate did not do so judiciously and in breach of his fundamental freedoms. Consequently, the Petitioner seeks the following relief against the Respondents:

- a) ***A declaration that the Petitioner's rights as enshrined under Articles 40(1, 2, 3) and 47(1) of the Constitution in respect of No. KWALE/SHIMONI TOWN/ 17667 have been violated and infringed by the Respondent.***
- b) ***An order of mandamus compelling the Respondent, to forthwith surrender to the Petitioner the following documents:***
- c) ***Original Title deed for LR. No. KWALE/SHIMONI TOWN/17667(Grant No. 25111.***
- d) ***Original Allotment letter dated 21st January, 1991.***
- e) ***Original payment receipt dated 24th December, 1991 for Kshs. 15,330.***
- f) ***The Court be pleased to award the Petitioner general damages against the Respondent for losses and inconveniences suffered by the Petitioner.***
- g) ***The Court be pleased to award the Petitioner exemplary damages for breach of the Petitioner's fundamental rights.***
- h) ***Costs of the Petition be borne by the Respondent***
- i) ***Any other relief that this Court may deem just to grant.***

Petitioner's Case

3. The Petitioner depones that he is the registered owner of the property known as L.R. No. Kwale/Shimoni Town/17667 measuring 0.1606 Ha, situated at Kwale. He acquired this

property pursuant to an allotment letter dated 21st January 1991 after making the necessary payments as evidenced by the payment receipt dated 24th December 1991. He was then duly issued with a Title Deed. The Petitioner states that he has been in occupation of the property since then and has built a hotel in it.

4. He informs that prior to this, he had made an application for allotment and the property allotted to him following the necessary approvals wherein no objection was raised as detailed by the District Commissioner, Kwale District in the letter dated 8th October 1980.
5. For context, he states that upon realizing that Shimoni Town where he worked for the Fisheries Department had no restaurant facilities, he applied to the Commissioner of Lands for allotment of a plot to enable him set up such a facility. While awaiting for approval, the establishment of a canteen was approved vide a letter dated 24th September 1979 from the Assistant Director of Fisheries, one Mr. J. S. Mumba. Later on, on 9th February 1981, he was issued with an approval of Trade license.
6. Following a long drawn out process that lasted over 10 years as detailed in the supplementary affidavit, he finally applied for a plot to establish a full tourist hotel, wherein he received his allotment letter on 21st January 1991. He then paid all the requisite fees and issued with the Title Deed. In light of this,

he maintains that the process of acquiring this property followed the due process.

7. He depones that sometime in 2020, the Respondent carried out investigations on the authenticity of his ownership in relation to the property. In view of the investigation, he was directed to surrender copies of the ownership documents, which he did. Soon thereafter on 21st December 2020, he was summoned for an interview at the Respondent's offices at Integrity Centre and further directed to carry the original documents for the purposes of verifying the copies availed earlier.
8. The Petitioner contends that at the end of the interview, the Respondent directed that he hand over the original copies for further investigations. An inventory of the issued documents was then made by the Respondent's officer one, Anderson Weru. Particularly, the documents were the *original title deed, allotment letter and payment receipt*.
9. Following the investigation, the Petitioner was notified verbally that his ownership of the suit property was authentic. As such, the Petitioner requested for release of his original ownership documents vide letter dated 9th June 2021 and follow up letters dated 14th September 2021, 29th October 2021 and 12th April 2022. He as well visited the Respondent's offices severally.

10. He asserts that despite these efforts, the Respondent has continued to retain these documents an act he terms as malicious and a violation of his right to enjoy his property. Considering this, the Petitioner asserts that the Respondent is in breach of his rights under Article 40 and 47 of the Constitution. Moreover, he states that he has suffered mental anguish and undue anxiety as the Respondent continues to retain his documents.
11. He states that while he acknowledges the Respondent's mandate, he contends that the same ought to be conducted justly without violating his rights. He postulates that the investigations only begun when some influential people sought to have an access road through his property to the Indian Ocean without his consent. He avers that soon after complaining about the matter, he suddenly heard about the alleged investigations yet he had been occupying the property peacefully since 1970. He adds that it is peculiar that his property is said to be a fishery zone yet on the development plan, it is clear that it does not lie on the *first front line beach plots* where fisheries are located.
12. He is as well aggrieved that while the Respondent claims that investigations are still on going, investigations cannot continue forever. As such, he urges that the Court issue a timeline within which his original ownership documents can be returned as they already have copies of the same.

Respondent's Case

13. The Respondent made a Reply to the Petition vide a Replying Affidavit sworn on 19th June 2023 by its Investigation officer, Onesmus Kai.
14. He depones that on 16th January 2020, the Respondent received a request from the Ministry of Agriculture, Livestock and Fisheries: State Department for Fisheries, Aquaculture and Blue Economy to undertake investigation with respect to illegal acquisition of fish landing sites along the coastline and lakes.
15. He depones that the investigations revealed that one of the fish landing sites identified in the reports was Shimoni Fish Landing Site which constitutes the property referred to herein. He states that the land was reserved for the Ministry of Agriculture, Livestock and Fisheries: State Department for Fisheries, Aquaculture and Blue Economy.
16. He avers that the Petitioner was an employee of the Government at the Fisheries Department, staff number EST/8863 having been appointed to service on 1st November 1973 and as a Fisheries Officer in 1979. He states that vide a letter dated 6th December 1980 authored by the Director of Fisheries, he proposed that the Petitioner be transferred from Shimoni to Lamu. The Petitioner was officially

transferred to Lamu where he reported on 2nd February 1981.

17. He depones that according to the Shimoni Development Plan (Revised) Reference Number 141.C.T.2.82 dated 10th November 1982, the land measuring 6.00 Ha, was earmarked for fisheries development. As such, the land hived for the Petitioner was not available for allocation *ab initio*.
18. He states that in 1985, the Development Plan Reference Number CT/141/85/1 was prepared and amended part of the Shimoni Approved Plan Number 90, Reference Number 141. C.T.2.82 to include: *existing historical tunnels 1.34 Ha, an existing canteen 0.16 Ha and an existing dispensary 0.49 ha*. Additionally, the plan amended the site by creating parcel 89 and 488 for residential purposes.
19. He avers that the Parcel of land No.17667 was allocated to the Petitioner in 1991 for a 99 - year lease. The parcel of land was surveyed and a deed plan forwarded to the Commissioner of Lands vide a letter dated 8th February 1993, while the remainder of the fisheries land was surveyed 27 years later in 2017.
20. He asserts that the Petitioner's parcel of land set aside for the Fisheries Department was allocated without following the due process. Furthermore, he states that the Petitioner

having been a government officer in the Fisheries Department abused his office by authoring letters bearing official folio numbers for personal gain of government property. He states that the Petitioner received official communication in his personal capacity as the officer in charge and did not disclose his private interested in the subject property.

21. He asserts that *Prayer G* in the Petition in as far as seeks release of the Title documents is not merited as the Respondent has inter alia a constitutional mandate to investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes. He informs that the investigations are not yet concluded and denies the allegation that the Petitioner's ownership of the property is authentic.
22. He notes that their investigations were slowed down owing to the COVID 19 pandemic and the complex nature of fraudulent acquisition and disposal of public property investigations. He notes that this investigation is one among thousands of similar nature. He nonetheless states that the instant investigations are at an advanced stage. He as well notes that the Respondent intends to forward its recommendations to the Office of the Director of Public

Prosecutions if the evidence so discloses while instituting recovery proceedings on conclusion of its investigations.

23. It is further noted that the Constitution does not prescribe a time limit within which the Respondent must conclude its investigations neither does the law dictate the pace of an investigation. As such, the mandamus order sought herein is said to be misconceived.
24. Subsequently, the Respondent filed a Notice of Preliminary Objection dated 21st May 2024 on the premise that:

- i. Pursuant to Article 162(2) of the Constitution and the Environment and Land Court Act No. 19 of 2011, the Environment and Land Court, a Court of equal status to the High Court, has jurisdiction to determine the Petition as its substratum and/or foundation relates to the rights to the use and occupation of, and title to land.***
- ii. The Petition ought, therefore, to be heard by the Environment and Land Court.***

Petitioner's Submissions

25. J.M. Njenga and Company Advocates for the Petitioner filed submissions dated 29th November 2023 and supplementary submissions dated 28th January 2025. The issues identified for determination were: *whether this Court has jurisdiction to determine this Petition, whether the Respondent's actions contravened the Constitution and violated the Petitioner's rights under Articles 2(1), 3(1), 10, 19, 20, 21, 22,23,25, 27,*

28, 29, 31, 50, 73, 157(11), 159, 165(3), 232, 258, 259 and 260 as well as the provisions of Chapter Six of the Constitution, whether the Petitioner's rights provided under Article 40 and 47 of the Constitution were violated, whether the Respondent exercised its powers judiciously and whether the Petitioner is entitled to an award of damages.

26. On the first issue, Counsel relied in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (1989) eKLR** where it was held that:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

27. Like dependence was placed in **Justus Kariuki Mate & Jim G. Kauma v Martin Nyaga Wambora & County Government of Embu (Civil Appeal 24 of 2014) [2014] KECA 376 (KLR)**.

28. Counsel submitted that this Court has jurisdiction to entertain this matter and determine the issues pleaded herein due to the power bestowed upon it under of Article 165 (3) (d) (ii) of The Constitution.

29. Counsel on the next issue contended that the Respondent's actions of holding the Petitioner's documents is not in line with the provisions of the law. Counsel contended that the Respondent's replying affidavit demonstrates that none of the investigations conducted were about an alleged abuse of office as purported therein and neither had such evidence been adduced in support of the claim. On the other hand, Counsel submitted that the Petitioner had been able to prove how the said property was acquired procedurally and lawfully. Counsel further argued that the Respondent's investigations were below board and in violation of the Petitioner's constitutional rights.

30. Reliance was placed in **Ethics & Anti-Corruption Commission (EACC) v Beatrice Kagwiria Mugambi [2018] eKLR** where it was noted that:

"Nonetheless, investigations are part of fair trial and must be attended to by fairness and expedition."

31. Counsel on the next issue, relying in the Petitioner's affidavit submitted that it was evident that Respondent's continued retention of the Petitioner's original documents is unlawful. This is since the Petitioner had been informed that there was no misconduct on his part yet have continued to retain his documentation. For this reason, Counsel submitted that the Respondent violated Article 40 and 47 of the Constitution.

32.To buttress this information reliance was placed in **Ethics & Anti-Corruption Commission (EACC)** (supra) where it was held that:

“Prolonged investigations may cause life drowsiness, create a feeling of gauntness and dreariness in the Respondent, but, worse, become an infringement of right. Whereas I take judicial notice of the fact that in the recent past, the country has witnessed sustained and persistent efforts to fight graft/corruption, this court is also alive to the fact that freezing orders cannot be issued in perpetuity. Too much time has passed by and there has been no proceedings, criminal or otherwise has been filed against the Respondent. But, for one reason only, that EACC may require little time, I extend the orders issued on 2nd December 2017, only for a further period of 1 month. IF no proceeding is commenced against the Respondent in relation to the matter herein by the EACC - criminal or civil - the freezing orders will lapse without the necessity to apply in that respect. It is so ordered.”

33. Similar dependence was placed in **Ethics & Anti-Corruption Commission v Peter Maina Njehia [2022] KEHC 13067 [KLR], Kenya Ant-Corruption Commission vs John Joel Ria and 17 others [2012] eKLR and Ethics & Anti-Corruption Commission vs M/S Nyandoro and Company Advocate & M/S Co-operative Bank of Kenya Limited Misc. Application No.38 of 2017.**

34. Tying to this in the fourth issue, Counsel submitted that the Respondent had not exercised its powers judiciously in the circumstances of this case. In view of the foregoing, Counsel

submitted in the final issue that the Petitioner's rights have been unduly impacted by the protracted nature the Respondent's investigations and that it is also clear that the Respondent no longer requires additional time to retain the Petitioner's original documents. Counsel urged thus that the Petitioner is entitled to the relief sought.

Respondent's Submissions

35. The Respondent's advocate Cynthia Gichuki filed submissions dated 11th September 2024 in support of its Preliminary Objection and opposition to the Petition. Counsel submitted that the issues for determination are: *whether this Court has jurisdiction to determine this Petition, whether the Respondent should release the documents handed over to the Respondent in the course of investigations, whether the rights under Article 40 and 47 of the Constitution has been violated and whether the Petitioner is entitled to an award of damages.*

36. To commence with, Counsel stated that the Respondent's investigations revealed that the Petitioner was a government officer working at the Fisheries Department when he purportedly was allocated the subject suit property. As such, the Respondent asserted in the affidavit that the Petitioner used the information gained in the course of his employment to unlawfully acquire public property.

37. Counsel stated that these investigations were conducted under the Respondent's legal mandate, to investigate corruption and economic crimes which is derived from Articles 79 and 252(1) of the Constitution as read with the Ethics and Anti-Corruption Commission Act and the Leadership and Integrity Act.
38. Counsel on the first issue submitted that the issues raised in the Petition challenge this Court's jurisdiction on the premise that the substratum of the Petition is on ownership of the subject land which is subject to the jurisdiction of the Environment and Land Court (ELC). As such, Counsel submitted that this Court lacks jurisdiction to entertain this matter and thus the instant Petition is an abuse of the Court process. Equal reliance was placed in **Owners of the Motor Vessel "Lillian S"** (supra).
39. On the right to property under Article 40 of the Constitution, Counsel submitted that this right does not extend to any property that has been found to be unlawfully acquired. Nonetheless, Counsel stressed that the order of mandamus can only be issued by a competent Court with jurisdiction, which this Court lacks. That said, Counsel submitted that while the ownership documents were taken, the Respondent has not interfered with the actual possession of the land and any income generating activities. Equally, Counsel submitted

that the Petitioner's bank accounts were not frozen neither was any money therein appropriated by the Respondent, thus the income accruing to the Petitioner was not interfered with.

40. Reliance was placed in **Ojienda t/a Tom Ojienda & Associates Advocates v Ethics and Anti-Corruption Commission & 5 others; Law Society of Kenya (Amicus Curiae) [2016] KEHC 7343 (KLR)** where it was held:

"I have alluded to the matter elsewhere above and my answer is that I do not think so. I say so because as correctly submitted by the Respondents, I did not hear the Petitioner to claim that his bank account had been frozen or that he was not able to access the same or that money had been appropriated from it. How then can it be said that the right has been violated also noting that the intrusion into it was lawful? Having said so, it is therefore obvious that I do not find a violation of his right to property as alleged."

41. Comparable reliance was placed in **Francis Mbugua v Commissioner of Police & 2 others [2013] eKLR.**

42. On the right to a fair administrative action under Article 47 of the Constitution, Counsel submitted that it is not applicable to the Respondent's investigative mandate as the same falls under enforcement as opposed to an administrative action. Counsel however acknowledged that its investigations are supposed to be undertaken within the confines of the law, which was done. Counsel added that the

criminal justice system does not allow Court to interrogate investigations before the outcome of the said investigations is presented before it as evidence in a trial.

43. Reliance was placed in **Ethics and Anti-Corruption Commission & another v Tom Ojienda & Associates Advocates t/a and 2 others [2022] KESC 59 (KLR)**

where it was held that:

“Does the 1st appellant's investigative powers fall within the corners of this definition? Part IV of the ACECA specifically provides for the 1st appellant's investigative powers. The powers granted therein include powers, privileges and immunities of a Police Officer under section 23(3), to search premises under section 29, to apply for surrender of travel documents under section 31, to arrest persons under section 32 amongst others. Strictly speaking, these powers when exercised cannot be described as "administrative action" within the meaning of article 47. For example, how can "conducting a house search" or "effecting an arrest" be considered as exercising administrative action? On the contrary, these are special powers conferred by a specific legal regime, to be exercised for a special purpose.”

44. On the second issue, Counsel submitted that the Constitution and the law does not prescribe a time limit within which the Respondent must conclude investigations, neither does it dictate the pace of an investigation. Counsel reasoned that this is due to the complexity of the investigations. Considering this, Counsel stated that given the covert nature of the offences of corruption and economic

crimes, investigations in relation to such offences are often intricate, time consuming, costly and multifaceted, thus it would be impractical and unreasonable to limit the Respondent to undertake investigations within specific timelines as alluded to by the Petitioner.

45. To buttress this point reliance was placed in **Michael Sistu Mwaura Kamau v Ethics & Anti-Corruption Commission & 4 others (2017) eKLR** where it was held that:

“Subject to the foregoing, however, the appellant has a genuine grievance that the President not only directed the EACC to present its report to the DPP, but also set specific deadline within which that was to be done. Well-meaning as the directive may have been it gave the impression, and we believe any reasonable person would have perceived it as such, that the President was directing the EACC on how and within what period to discharge its mandate. The setting of the deadlines, by the President rather than by the EACC itself, within which to conclude investigations and submit report to the DPP can reasonably be perceived as undue interference with the EACC in the discharge of its mandate, much as it is not the only institution which is concerned with the fight against corruption. Such deadlines also have implications for the quality of investigations, the focus being shifted more to the deadline itself rather than careful consideration of all the evidence for or against the person being investigated.”

46. Comparable reliance was placed in **Mohamed Okashi Mohamed v Ethics and Anti-Corruption Commission & 2 others (2022) eKLR.**
47. In light of the foregoing submissions, Counsel submitted that the Petitioner is not entitled to the relief sought as there was no basis that was presented before this Court in support of the claim for damages. Dependence was placed in **Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177** where it was held that:

"The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded."

48. Similar reliance was placed in **Mikidadi -vs- Khaiqan and Another (2004) eKLR 496.**

Analysis and Determination

49. It is my considered take that the issues that arise for determination in this matter are as follows:

- i. Whether this Court has jurisdiction to entertain this matter.**
- ii. Whether the Petitioner's constitutional rights under Article 40 and 47 of the Constitution have been impeded by the Respondents prolonged delay in finalizing investigations.**
- iii. Whether the Petitioner is entitled to the relief sought.**

Whether this Court has jurisdiction to entertain this matter.

50. The Supreme Court **In the Matter of the Interim Independent Electoral Commission (Applicant) [2011] KESC 1 (KLR)** made a clear statement on jurisdiction as follows:

“Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

51. The Court of Appeal in **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR)** guided as follows on this issue:

***“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.*”**

52. The Respondent submitted that the issues raised in the Petition do not fall within the ambit of this Court’s jurisdiction since the substratum of the Petition is on ownership of land subject of this Petition hence is within the jurisdiction of the Environment and Land Court (ELC). As such, Counsel submitted that this Court lacks jurisdiction to entertain this matter and thus the instant Petition is an abuse of the Court process.
53. On behalf of the Petitioner, Counsel contended that the issue before the Court was the Respondents prolonged withholding of the land ownership documents of the Petitioner as a result of delay in completing investigation hence the matter falls under Article 165 (d) (ii) of the Constitution.
54. I will not belabour the point on this issue because after a careful perusal of this Petition, the running theme in this Petition is fairly simple and straightforward.

55. The Respondent in my view is convoluting a straightforward issue by mischaracterizing it as land issue just because reference to land is collaterally mentioned in the pleadings. This Petition primarily challenges the alleged administrative sluggishness of the Respondent to complete investigations within a reasonable time resulting in withholding of Petitioner's land ownership documents for a prolonged time in a manner the Petitioner states amounts to impediment to the enjoyment of his right to the said property.
56. I thus find that, contrary to the position taken by the Respondent, the overriding constitutional question that this Petition raises, is whether the Respondent's acts or omissions are inconsistent with, or in contravention of the Constitution, hence the matter falls within the jurisdiction of this Court **under Article 165 (3) (d) (ii) of the Constitution** as this Court is being called upon to interpret, and has jurisdiction to determine, the constitutionality of any act, purportedly done under the authority of the Constitution or under any law.

Whether there has been inordinate delay in finalizing investigations by the Respondent

57. The phrase '***inordinate delay***' is often used interchangeably with '*unreasonable or undue delay*'. It

refers to a period that is excessive, unjustifiable and disproportionate in the context of a particular case in a manner that undermines fairness. Each case however must be looked at in its own peculiar circumstances.

58. The Court of Appeal in **Cecilia Wanja Waweru (supra)** explained the meaning of ‘inordinate delay’ as follows:

***“7....There is no set rule as to what constitutes inordinate delay. Whether or not a party is guilty of inordinate delay depends on the circumstances of the case. We are of the considered view that the learned Judge in considering the application should have looked at the appellant's conduct from the time the appeal was filed up to the date the application for reinstatement was filed.*”**

59. In the instant case, the petitioner alleges that the Respondent has inordinately delayed the conclusion of an investigation regarding a piece of land which the Petitioner owns, being Kwale/Shimoni/17667 measuring 0.1606 Ha. The Petitioner stated that he lawfully acquired the land upon being issued with an allotment letter on 21/1/94 and built a hotel on it.
60. He stated that sometime in the year 2020, the Respondent commenced investigations into the authenticity of the ownership of the land and asked him to surrender copies of the ownership documents. On 21st December 2020, the Respondent summoned him for an interview at its offices at

Integrity Centre and directed him to go with the original documents for the purposes of verifying the copies he had availed earlier. At the end of the interview, the Respondent directed him to hand over the original copies for further investigations and in exchange, he was given an inventory of those documents prepared by Anderson Weru. The document included *original title deed, allotment letter* and the *payment receipt*.

61. The Petitioner claims after sometime, he was notified verbally that his ownership of the suit property was authentic. He thus sought the release of the original ownership documents through a letter dated 9th June 2021 and follow up letters dated 14th September 2021, 29th October 2021 and 12th April 2022 and even made visits to the Respondent's offices severally. However, these efforts have not yielded any fruits and the Respondent has continued to retain these documents. According to the Petitioner, this is malicious and a violation of his right to enjoy his property under Article 40 and the conduct of the Respondent is against Article 47 of the Constitution.
62. The Respondent submitted that neither the Constitution nor the Statute prescribes a time limit within which the Respondent must conclude investigations. The Respondent submitted that, given the covert nature of the offences of corruption and economic crimes, investigations in relation to

such offences are often intricate, time consuming, costly and multifaceted, hence it would be impractical and unreasonable to limit the Respondent by requiring such investigations be conducted within specific timelines as is being alluded by the Petitioner.

63. The Respondent further argued that fair administrative action under Article 47 of the Constitution does not apply to the Respondent's investigative mandate as the same falls under enforcement, not an administrative action. Counsel however acknowledged that its investigations are supposed to be undertaken within the confines of the law, which was done. Counsel added that the criminal justice system does not allow Court to interrogate investigations before the outcome of the said investigations is presented before it as evidence in a trial.

64. The Respondent further explained that this investigation was triggered following a request from the Ministry of Agriculture, Livestock and Fisheries: State Department for Fisheries, Aquaculture and Blue Economy about illegal acquisition of fish landing sites along the coastline and lakes. According to the Respondent, the land in question is part of Shimoni Fish Landing Site that had been reserved for the Ministry of Agriculture, Livestock and Fisheries: State Department for Fisheries, Aquaculture and Blue Economy.

65. Further, the investigation has revealed that the Petitioner was an employee of the Government at the Fisheries Department, staff number EST/8863 having been appointed to service on 1st November 1973 and as a Fisheries Officer in 1979. That according to the Shimoni Development Plan (Revised) Reference Number 141.C.T.2.82 dated 10th November 1982, the land measuring 6.00 Ha, was earmarked for fisheries development hence the land hived for the Petitioner was not available for allocation *ab initio*. According to the Respondent, in 1985, the Development Plan Reference Number CT/141/85/1 was prepared and amended part of the Shimoni Approved Plan Number 90, Reference Number 141. C.T.2.82 to include: *existing historical tunnels 1.34 Ha, an existing canteen 0.16 Ha and an existing dispensary 0.49 ha*. Additionally, the plan amended the site by creating parcel 89 and 488 for residential purposes. As a result, Parcel- land No.17667 was allocated to the Petitioner in 1991 for a 99-year lease. The parcel of land was surveyed and a deed plan forwarded to the Commissioner of Lands vide a letter dated 8th February 1993, while the remainder of the fisheries land was surveyed 27 years later in 2017. The Respondent is thus categorical that Petitioner's parcel of land is part of what was set aside for the Fisheries Department and was allocated without following the due process to the Petitioner who had been a government officer in the Fisheries Department through abuse office that

included authoring letters bearing official folio numbers for personal gain of government property and in conflict of interest.

66. I must first commence by acknowledging that indeed, neither Constitution nor the Statute prescribes the period within which an investigation has to be completed but this in itself does not constitute blank cheque that the Respondent can use to curtail the rights guaranteed under the Bill of Rights by seizing property or ownership documents and holding them indefinitely purportedly to conduct investigations. While the Respondent can lawfully seize documents for legitimate investigation processes, withholding such property or documents disproportionately without reasonable or justifiable basis may reek arbitrariness and constitute violation of Article 40 of the Constitution as this may unnecessarily impede the right to enjoyment of property by the owner, for instance, the owner may not transfer or mortgage the property.
67. The investigative power to confiscate property or documents for purposes of investigation must thus be exercised in a reasonable and justifiable manner and must be counterbalanced with Article 22 (1) of the Constitution which gives every person the right to institute court proceedings claiming a right or fundamental freedom in the Bill of Right has been denied, violated or infringed or is threatened as

read with Article 40 which gives protection against arbitrary deprivation of property of any description or any interest in, or right over any property of any description.

68. The existence of justifiable reasons will depend on the circumstances of each case. For instance in **Chepkoi v Ethics and Anti-Corruption Commission & another (Petition E084 of 2022) [2024] KEHC 10389 (KLR) (Constitutional and Human Rights) (26 August 2024)**, this Court found that although the Petitioner had complained that a delay of six years to complete investigations was inordinate, the complex nature of evidence gathering and a set of unforeseen set backs had had made it impossible for the Respondent to conclude the same investigation within a shorter period. This Court stated:

“... The 1st Respondent in explaining the reasons for the delay referred to various setbacks it has faced since commencing this investigation. One was a legal challenge on its constitutionality arising from its vacancy in the composition of the Commission that caused all the work it had done in connection with the instant and other investigations to be declared a nullity and had to start afresh. Secondly, it stated that this particular investigation has an international dimension since alleged criminality involved external contacts beyond Kenya and thus required mutual legal assistance. Further, time was taken in establishing if the organization against which the offence was perpetrated was a public entity. The 1st Respondent stated that all

these factors took time and were beyond its control...”

69. In the instant case, the Respondent, informed this Court that this is a of investigation involving fraudulent acquisition of public land that took place almost 30 years ago. Evidence gathering has been painstaking and protracted given that the Respondent has had to look for dig in many years back to retrieve the information and also conduct thorough verification processes. From the details of facts unearthed, the Respondent stated that the investigation is nearing completion.
70. The delay in concluding the process in my view has been sufficiently explained and is not arbitrary, it has been occasioned by the nature of the investigation itself.
71. Further, in the light of the substantial progress made in the investigation, as evidenced by the facts already disclosed, release of these documents to the Petitioner at this time would most likely meddle with that process and compromise its integrity as well as hurt effective law enforcement in a manner that prejudices the public interest.
72. The upshot is that this Petition is dismissed.
73. I make no orders as to costs.

Dated, signed and delivered virtually at Nairobi this 5th day of February, 2026.

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L N MUGAMBI

JUDGE