



**General Japanese Auto Parts Limited v Nairobi City County
Government & 2 others (Environment and Land Constitutional Petition
E051 of 2024) [2026] KEELC 779 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 779 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E051 OF 2024**

TW MURIGI, J

FEBRUARY 13, 2026

**IN THE MATTER OF: ARTICLES 2(1), 3(1), 10(1), 19, 20, 21(1), 22(1), 40,
47, 50(1), 258 AND 259(1) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 2, 10,20,21,22,23,24,27,
40,47, 50(1), 258 AND 259(1) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

GENERAL JAPANESE AUTO PARTS LIMITED PETITIONER

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT

**THE ATTORNEY GENERAL (SUED ON BEHALF OF THE
CABINET SECRETARY, MINISTRY OF INTERIOR AND NATIONAL
ADMINISTRATION) 2ND RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. By a Notice of Motion dated 2nd July 2025, brought under Order 51 Rule 1 and Sections 3, 3A and 63(e) of the [Civil Procedure Act](#), the 1st Respondent seeks the following orders:
 - a. That this Honourable Court be pleased to review and/or set aside its direction requiring the Respondent to convert its replying affidavit dated 10th February 2025 into a witness statement.
 - b. That the affidavit evidence already on record and written submissions to be filed be deemed sufficient for purposes of the hearing and determination of the Petition.



- c. That the costs of this application be in the cause.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Boniface Waweru, sworn on even date.

The Applicant's Case

3. The deponent contends that the Petition can be decided on the basis of affidavit evidence. He asserts that no material factual disputes have been raised that would warrant oral testimony. He maintained that the Respondent's replying affidavit comprehensively addressed all factual and legal issues raised in the Petition and has complied with the applicable procedural framework.
4. The deponent contends that converting affidavits into witness statements would unnecessarily burden the proceedings, increase costs, create unnecessary duplication, and cause delay, contrary to the overriding objective set forth in Sections 1A and 1B of the Civil Procedure Act.
5. He argued that no prejudice would be occasioned to the Petitioner if the matter proceeds by way of affidavit evidence.
6. He averred that the Petition was filed on 4th June 2024, alleging violations of property rights under Article 40 of the Constitution. In response, the Respondent filed a Replying Affidavit dated 10th February 2025, which adequately addressed the issues raised. He further averred that on 18th February 2025, the Court directed the parties to convert their affidavits into witness statements for the hearing, a direction to which the Respondent objects.
7. He argued that a constitutional or public interest petition is typically decided on affidavit evidence and that there is no substantial factual dispute requiring oral testimony. He also emphasized that the Petitioner would not be prejudiced if the application were granted.

The Petitioner/respondent's Case

8. The Petitioner filed Grounds of Opposition dated 23rd September 2025 opposing the application. The Petitioner contends that the application offends the provisions of Order 45 Rule 1 of the Civil Procedure Rules as it fails to meet the requisite threshold for the review or variation of the Court's orders issued on 18th February 2025.
9. The Petitioner further contended that the application violates the Petitioner's right to a fair hearing under Article 50(1) of the Constitution, which includes the right to a public hearing, the right to present viva voce evidence, and the right to challenge the Respondent's evidence through cross-examination.
10. It was further contended that the orders issued on 18th February 2025 were properly grounded on Rule 20(1)(c) and (3) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which empower the Court to direct that a constitutional Petition proceed by oral evidence where appropriate.
11. The Petitioner asserts that the application is brought in bad faith and is intended to shield the 1st Defendant's witness from cross-examination on contested factual matters set out in the replying affidavit sworn on 10th February 2025. In particular, it was contended that the deponent had made serious allegations against the Petitioner, particularly that it had encroached on riparian land, which ought to be tested by cross-examination.
12. The Petitioner contended that the application seeks to dictate how the Petitioner should prosecute the suit, despite its right to choose the best way to present their case. It was argued that no prejudice would



arise if the matter proceeded by way of viva voce evidence, which remains the conventional safeguard for a fair hearing in civil proceedings.

13. The Petitioner contended that the application is a delaying tactic intended to frustrate and postpone the hearing of the Petition, which is scheduled for 1st October 2025.
14. The application was canvassed by way of written submissions.

The 1st Respondent's Submissions

15. The 1st Respondent filed its submissions dated 9th October 2025.
16. On behalf of the 1st Respondent, Counsel submitted that the issue for determination is whether the Applicant has met the threshold for review or variation of the Court's directions issued on 20th March 2025. Counsel further submitted that the Court has inherent jurisdiction to review or set aside its own directions, where necessary, to meet the ends of justice. Counsel emphasized that Sections 1A and 1B of the [Civil Procedure Act](#) obligate the Court to facilitate the just, expeditious, and proportionate resolution of disputes. Reliance was placed on the Court of Appeal case of *Stephen Boro Gititha v. Family Finance Building Society & 3 others* [2009] KECA 44 (KLR).
17. Regarding whether the Petition ought to be canvassed by way of written submissions, Counsel submitted that constitutional Petitions are usually determined on affidavit evidence and written submissions, unless there are compelling reasons to take oral evidence. Counsel argued that the discretion to permit cross-examination of deponents is not exercisable as of right. Counsel further argued that a party seeking such relief must demonstrate material factual disputes that cannot be resolved through affidavit evidence alone. Counsel maintained that no such circumstances had been demonstrated in the present matter. Counsel asserted that mere dissatisfaction with the contents of an affidavit does not justify cross-examination. To support this argument, Counsel relied on the case of *Ogada & 3 others v Mulwa & 3 others* [2024] KEHC 10170 (KLR).
18. Counsel further submitted that the Petitioner seeks declaratory orders arising from alleged violations of Articles 40, 47, and 10 of [the Constitution](#), which can be sufficiently and effectively determined on the basis of the affidavits on record, and written submissions without the necessity of viva voce evidence. Counsel rejected the allegation that the application is made in bad faith or intended to shield a witness from cross-examination, submitting that even allegations of falsehood or inconsistency in affidavit evidence can be adequately addressed through submissions unless exceptional circumstances are demonstrated. To support this argument, Counsel relied on *Trusted Society of Human Rights Alliance –vs- Cabinet Secretary, Devolution and Planning & 3 Others* [2017] eKLR, *Mobile Pay Limited v Governor, Central Bank of Kenya & another* [2025] KEHC 4713 (KLR), *Coalition for Reform and Democracy (CORD) & Another –vs- Republic of Kenya & Another* [2015] eKLR and *Invesco Assurance Co. Ltd v Commissioner of Insurance & others* [2016] eKLR.
19. Regarding costs, Counsel invoked Section 27 of the [Civil Procedure Act](#) to urge the court to allow the application with costs. Further reliance was placed on the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR.

The Petitioner's Submissions

20. The Petitioner filed its submissions dated 5th November 2025.
21. On behalf of the Petitioner, Counsel submitted that the 1st Respondent's application does not meet the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules. Counsel further submitted that the 1st Respondent has neither demonstrated discovery of any new or important matter, nor



- identified an error apparent on the face of the record, nor shown that any evidence could not, with due diligence, have been presented to the Court when the directions of 20th March 2025 were issued. According to Counsel, the grounds relied upon by the 1st Respondent were within its knowledge at the time the impugned directions were made and do not warrant review.
22. Counsel further submitted that the application was filed after an inordinate delay, having been lodged four months after the Court issued the directions sought to be reviewed, without any explanation for the delay. To support this point, Counsel relied on *William Sapuro Kimana vs. National Bank Limited & Another* [2006] KEHC 3450 KLR.
 23. Counsel asserted that the directions issued on 20th March 2025 are well-founded under Rule 20(1)(c) and (3) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which explicitly authorize the Court to order that a constitutional Petition be examined by oral evidence. It was contended that the 1st Respondent lacks the authority to dictate how the Petitioner conducts its case, particularly because the directives align with the relevant procedural statutes and the Petitioner's entitlement to a fair hearing under Article 50(1) of *the Constitution*.
 24. Counsel emphasized that the Petition raises serious, contested factual issues central to the dispute that cannot be adequately resolved on affidavit evidence alone, thereby necessitating viva voce evidence and cross-examination to test the credibility and veracity of the allegations. To support this argument, Counsel relied on *Crescent Distribution Services Limited vs. Egnite Technologies Limited & Another* (2013) eKLR; *Law Society of Kenya & 2 others v. Attorney General & 2 others* [2016] KEHC 3709 (KLR); and *Triloknath Bhandari & Another vs. S.R. Gautama* [1964] E.A 606.
 25. Counsel further submitted that the threatened demolition violates the Petitioner's rights under Articles 40 and 47 of *the Constitution* and the *Fair Administrative Action Act*. Counsel argued that denying the Petitioner an opportunity to cross-examine the deponent of the Replying Affidavit would cause grave prejudice and undermine the right to a fair hearing. Counsel rejected the contention that the application for oral evidence was made in bad faith, arguing instead that the 1st Respondent's application is intended to shield its witness from scrutiny on contentious factual issues.
 26. Counsel argued that the application is an abuse of the court process and urged the Court to dismiss it with costs.

Analysis And Determination

27. Having considered the application, the respective affidavits, and the rival submissions, the issue for determination is whether the directions issued on 20th March 2025 should be reviewed, varied, or set aside.
28. The law governing review is set out in Section 80 of the *Civil Procedure Act* and in Order 45 Rule 1 of the Civil Procedure Rules.
29. Section 80 of the *Civil Procedure Act* provides that;
 - “ Any person who considers himself aggrieved;
 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

30. Order 45 Rule 1 of the Civil Procedure Rules provides that:

- “(1) Any person considering himself aggrieved;
1. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 2. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellants, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

31. The provisions of Order 45 were restated by the Court of Appeal in *Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited* [2014] eKLR, where the Court held that:

“In the High Court, both the *Civil Procedure Act* in Section 80 and the Civil Procedure Rules in Order 45 Rule 1 confer on the court power to review. Rule 1 of order 45 shows the circumstances in which such review would be considered, ranging from discovery of new and important matter or mistake or error apparent on the face of the record or any other sufficient reason, but section 80 gives the High Court greater amplitude for review.”

32. Similarly, in *Republic v Public Procurement Administrative Review Board & 2 Others* [2018] eKLR, the court held that: -

“Section 80 gives the power of review, and Order 45 sets out the rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review.”

33. Regarding the first and second requirements, the Applicant must demonstrate the discovery of new matter and an error apparent on the face of the record. The 1st Respondent has neither claimed the discovery of new and significant matter nor identified an error apparent on the face of the record.



34. The Court is also required to consider whether there are sufficient grounds to review the Court’s ruling. In discussing what constitutes sufficient cause for review, the Court of Appeal in *The Official Receiver and Liquidator vs Freight Forwarders Kenya Limited* [2000] eKLR held that:
- “Indeed, these words only mean that the reason must be one that is sufficient to the court to which the application for review is made and they cannot without at times running counter to the interests of justice “be limited to the discovery of new and important matters or evidence, or the occurring of a mistake or error apparent on the face of the record.”
35. The 1st Respondent contends that a constitutional Petition is typically decided on affidavit evidence and written submissions. It was further contended that there is no significant factual dispute requiring oral evidence, and that converting affidavits into witness statements would cause delay, expense, and duplication.
36. The Petitioner maintains that the directions were properly issued under Rule 20(1)(c) and (3) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. The Petitioner contends that there are contested factual issues, including the allegation that the Petitioner’s building lies on a riparian reserve, which should be tested through cross-examination. The Petitioner also invoked Article 50(1) of *the Constitution* and contended that the application was brought in bad faith to shield the deponent from cross-examination.
37. Rule 20 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules provides that the hearing of a Petition shall, unless the Court otherwise directs, be by way of affidavits, written submissions, or oral evidence. Subrule 3 further provides that the Court may, upon application or on its own motion, direct that the petition or any part thereof be heard by oral evidence.
38. In *GGR v HPS* [2012] eKLR, the court held that cross-examination of a deponent may be ordered in special circumstances, including where allegations of fraud, mala fides, authenticity of facts, bad motive, or conflicts in affidavit evidence arise, and that the discretion must be exercised judiciously.
39. The Petitioner challenges the alleged issuance of demolition orders and the demolition of its property on the grounds that the property is located within riparian land. The Petitioner contends that the actions were unlawful and violated its rights under Articles 40 and 47 of *the Constitution*.
40. In its replying affidavit dated 10th February 2025, the 1st Respondent acknowledged the existence of a Cabinet directive concerning evacuation within a 30-meter perimeter along the Nairobi rivers. The 1st Respondent contends that the Petitioner has not established a connection between the demolition and the 1st Respondent or its officers. Furthermore, it asserts that the Petitioner occupied riparian land and questions the Petitioner’s ownership of the suit property.
41. The evidence presented by the parties discloses material factual controversies that go to liability and the propriety of the impugned administrative action. These include whether the Petitioner’s developments are on a riparian reserve, whether the asserted measurements and the basis for the enforcement action are factually sound, whether the demolition complained of is attributable to the 1st Respondent, and the evidential basis for the ownership challenge. These factual assertions cannot be resolved satisfactorily on affidavit evidence alone without risking unfairness to either party.
42. Accordingly, the Court is not persuaded that the 1st Respondent has demonstrated sufficient cause to warrant a review of this Court’s directions.



- 43. Finally, the Applicants must show that the application was made without unreasonable delay. The impugned directions were issued on 20th March 2025, and the present application was filed on 2nd July 2025, about three and a half months later. Although no explanation was offered, I find that the delay is not unreasonable.
- 44. In the end, I find that the application dated 2nd July 2025 is without merit and is hereby dismissed with costs to the Petitioner.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF FEBRUARY, 2026

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HON. T. MURIGI

JUDGE

In The Presence Of

Thuo for the Petitioner

Ms Nafuna holding brief for Dida for the 1st Respondent.

Ahmed – Court assistant

