

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI NAIROBI**

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**PETITION NO. E071 OF 2021**

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 165, 27, 28, 29, 31, 40, 47,**

**AND 159(2) OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**ISAIAH WAWERU NGUMI..... PETITIONER**

**VERSUS**

**ALICE WAMUYU WAIGWA..... 1<sup>ST</sup> RESPONDENT**

**HENRY KAMAU WAIGWA .....2<sup>ND</sup> RESPONDENT**

**OCS KIKUYU POLICE STATION .....3<sup>RD</sup> RESPONDENT**

**THE D.C.I.O. KIKUYU POLICE DIVISION .....4<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**ALEX KIBUNJA & ASSOCIATES ADVOCATES .....6<sup>TH</sup> RESPONDENT**

**ALEX NGURE KIBUNJA .....7<sup>TH</sup> RESPONDENT**

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**RULING**

**(On the 1<sup>st</sup> & 2<sup>nd</sup> Respondents Preliminary Objection dated 12<sup>th</sup> May 2025)**

## Background

1. The Petitioner commenced these proceedings by way of a Constitutional Petition dated 9<sup>th</sup> March 2021 arising from a dispute concerning land parcel LR No. Sigona/1811. Subsequently, and with the leave of this Court granted on 24<sup>th</sup> February 2025, the Petition was amended.
2. Upon the filing of the Amended Petition dated 24<sup>th</sup> February 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents raised a Notice of Preliminary Objection dated 12<sup>th</sup> May 2025, seeking, in limine, the striking out of the said Amended Petition. The objection is premised on two principal grounds: first, that this Honourable Court lacks jurisdiction to entertain the Amended Petition as framed, on account of its failure to plead, with reasonable precision, the specific constitutional provisions alleged to have been violated and the manner of their infringement, contrary to the well-established principles enunciated in *Anarita Karimi Njeru v Republic (No. 1) [1979] KLR 154* and secondly, that the Amended Petition is fatally defective, misconceived, and constitutes an abuse of the process of the Court.
3. The 5<sup>th</sup> Respondent filed Grounds of Opposition dated 21<sup>st</sup> October 2025, opposing the Petition on several fronts. It contends that the Petition discloses no cause of action against the State, that a parallel and competent remedy exists in **Kikuyu Environment and Land Court Case No. 3 of 2021** concerning the same subject matter, and that, accordingly, the present proceedings offend the doctrines of exhaustion of alternative remedies and constitutional avoidance.

4. The Preliminary Objection was canvassed by way of written submissions. The matter now falls for determination by this Court.

### **The 1<sup>st</sup> & 2<sup>nd</sup> Respondents/Applicants Case**

5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in their written submissions dated 25<sup>th</sup> May 2025, maintain that the Preliminary Objection dated 12<sup>th</sup> May 2025 is competently taken and anchored on pure points of law which, if sustained, would dispose of the Petition in limine. They distil two issues for determination: first, whether the Preliminary Objection satisfies the threshold enunciated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*; and secondly, whether the Amended Petition discloses any cognisable breach or violation of constitutional rights.
6. On the first issue, the Respondents submit that their objection falls squarely within the parameters articulated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*. They rely on the dictum of Law J.A., who defined a preliminary objection as a pure point of law which, if argued as a preliminary point, may dispose of the suit, and on the exposition by Sir Charles Newbold P., who characterised it as analogous to a demurrer, raising a pure point of law on the assumption that the facts pleaded by the opposing party are correct. It is their submission that the question whether a petition meets the constitutional pleading threshold and, by extension, whether this Court is properly seized of jurisdiction is a pure question of law, not dependent on the ascertainment of contested facts, and is therefore amenable to determination by way of preliminary objection.

7. On the second issue, the Respondents submit that the Amended Petition is incurably defective for want of the requisite precision, in contravention of the principle enunciated in **Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272**. They contend that the Petitioner has failed to identify, with reasonable specificity, the particular constitutional provisions alleged to have been infringed and the manner of such alleged infringement.
8. In reinforcement of that position, the Respondents rely on the decision of the Court of Appeal in **Mumo Matemu supra** wherein the Court reaffirmed the holding in *Anarita Karimi Njeru* and underscored that a petition which merely cites constitutional provisions, without particularising the alleged violations, does not attain the threshold required of a competent constitutional pleading. They emphasise the appellate court's pronouncement that a petition bereft of particulars falls short of the substantive test laid down in **Anarita Karimi Njeru**.
9. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents further submit that the requirement of precision has since been codified in the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which obligate a petitioner to set out, inter alia, the facts relied upon, the constitutional provisions violated, the nature of the injury caused or likely to be caused, and the relief sought.
10. They also invoke **Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others [2015] KECA 304 (KLR)** for the proposition that the rationale for particularising alleged constitutional violations is to afford

the respondent a fair opportunity to apprehend the exact nature of the complaint and to mount an appropriate response.

11. Applying the foregoing authorities, the Respondents contend that neither the original Petition nor the Amended Petition identifies any specific constitutional right alleged to have been violated, nor does it delineate the manner of such violation. They further observe that the prayers sought do not include any declaratory relief that the Petitioner's constitutional rights have been infringed. In their view, the pleadings fall short of the threshold of a competent constitutional petition.

### **The Petitioner's Case**

12. In his written submissions dated 22<sup>nd</sup> October 2025, the Petitioner opposes the Notice of Preliminary Objection lodged by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Applicants, contending that it is bad in law, misconceived, frivolous, and an abuse of the process of the Court, calculated only to waste judicial time and resources. He avers that the said Respondents have wilfully disregarded the express reliefs sought in the Amended Petition dated 24<sup>th</sup> February 2025 and have fundamentally misapprehended and mischaracterised both the nature and substance of his claim.
13. It is further submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have participated in these proceedings from their inception and did not oppose the application seeking leave to amend the Petition. Having acquiesced to the amendment, they cannot now, in the Petitioner's view, be heard to impugn the very pleading whose amendment was sanctioned by the

Court. He characterises the Preliminary Objection as a collateral and impermissible attempt to challenge the ruling granting leave to amend.

14. The Petitioner maintains that he is entitled, within the confines of the law, to amend his pleadings prior to the close of the case, and that this Court remains properly seized of jurisdiction to grant the reliefs sought in the Amended Petition.
15. On the substance of the dispute, the Petitioner submits that the Respondents have misdirected themselves in asserting that he seeks declaratory reliefs in respect of past constitutional violations. He clarifies that his principal claim is for restraining orders aimed at forestalling threatened violations of his rights.
16. He further avers that the facts pleaded disclose defamation of his character, including the making of an allegedly false report by the 1<sup>st</sup> Respondent to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents conduct which, he contends, warrants judicial interrogation at a full hearing.
17. The Petitioner argues that the matters raised in the Amended Petition are factual in character and call for evidentiary proof. As such, they are not amenable to determination by way of a preliminary objection, which is confined to pure points of law.
18. In the premises, the Petitioner urges the Court to affirm its jurisdiction to entertain the Amended Petition dated 24<sup>th</sup> February 2025, to dismiss the Preliminary Objection with costs, and to direct that the Petition proceed to hearing and determination on its merits.

### **The 5<sup>th</sup> Respondent's Case**

19. The 5<sup>th</sup> Respondent did not file separate written submissions. However, through its Grounds of Opposition, the 5<sup>th</sup> Respondent contends, in limine, that the Amended Petition discloses no cause of action against it, there being no specific allegations of constitutional violations directed at the 5<sup>th</sup> Respondent, nor any substantive prayers sought against it.
20. The 5<sup>th</sup> Respondent further avers that the Petitioners are seeking to mislead the Court by invoking constitutional proceedings as a means to forestall investigations and potential prosecution relating to transactions involving the ownership and transfer of the suit property. Such conduct, it is submitted, constitutes an improper attempt to impede lawful investigative and prosecutorial functions.
21. It is the 5<sup>th</sup> Respondent's position that the dispute in question fundamentally concerns ownership of land. Pursuant to Article 162(2)(b) of the Constitution, jurisdiction over disputes relating to land, including its use, occupation, and title, is vested in the Environment and Land Court. In this regard, the 5<sup>th</sup> Respondent draws attention to the existence of a pending suit ***Kikuyu ELC No. 3 of 2021 (formerly Kikuyu ELC E34 of 2023), Henry Kamau Waigwa v Isaiah Waweru Ngumi & 3 Others*** which was scheduled for hearing on 18<sup>th</sup> November 2025, which directly concerns the ownership of the suit property.
22. On that basis, it is contended that the present Petition offends the twin doctrines of exhaustion of alternative remedies and constitutional

avoidance, in that there exists an alternative competent forum already seized of the substantive dispute.

23. The 5<sup>th</sup> Respondent further submits that if the Petition were entertained, it would interfere with the statutory and constitutional mandates of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, particularly in relation to their mandate to investigate reported offences and make appropriate prosecutorial recommendations.
24. The 5<sup>th</sup> Respondent characterises the Petition as defective both in form and substance, unmeritorious, and brought in bad faith. It urges the Court, in the interests of justice and public policy, to dismiss the Petition with costs on the basis that it constitutes an abuse of the Court's process.

### **Analysis and Determination**

25. Having considered the pleadings and submissions filed by the parties, this Court distils the sole issue for determination to be whether the Preliminary Objection raises pure points of law capable of disposing of the Petition in limine.
26. It is axiomatic *de jure* that a preliminary objection must raise a pure point of law, be free from disputed facts, and be apparent on the face of the record. In Kenyan jurisprudence, a preliminary objection may be upheld where it concerns lack of jurisdiction, defects in pleadings, limitation or statutory bars, abuse of court process, forum-shopping, or the prematurity of proceedings. In the locus classicus, ***Mukisa Biscuit***

*Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696*, Law J.A. articulated the legal position as follows:

*"A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."*

27. In the instant matter, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Preliminary Objection challenges both the jurisdiction of this Court and the legal sufficiency of the Petition as amended. These clearly constitute pure points of law. The Petition seeks to invoke constitutional jurisdiction in respect of matters that are, in substance, disputes over the ownership and transfer of land.
  
28. Article 162(2)(b) of the Constitution vests jurisdiction over disputes concerning the use, occupation, and title to land in the Environment and Land Court. Further, Articles 165(3)(b) and (5) make it clear that the High Court does not have jurisdiction over matters falling within the exclusive competence of other courts. In this Petition, the Petitioner himself refers to the "suit property" and disputes over its transfer. The 5<sup>th</sup> Respondent has correctly noted that there is a pending **Environment and Land Court case, Kikuyu ELC No. 3 of 2021**, concerning the same property, that was scheduled for hearing on 18<sup>th</sup> November 2025. The existence of such an alternative forum engages the doctrines of exhaustion of alternative

remedies and constitutional avoidance. As observed in *Mala v Attorney General* [2025] KEHC 15335:

***"Where there exists an alternative method of dispute resolution established by Legislation, the Courts must exercise restraint in exercising the jurisdiction conferred by the constitution and must give deference to the dispute resolution bodies established by statute with the mandate to deal with such specific disputes in the first instance."***

29. Furthermore, an examination of the Amended Petition makes clear that on its face it is concerned with matters the ownership, possession, use and occupation of land which are not within the jurisdiction of the High Court of Kenya but rather that of the Environment and Land Court.
30. The Petition is further deficient in form and content. Under Article 22(1) of the Constitution, every person has the right to petition a court for contravention of constitutional rights. To give effect to this right, the Constitution (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, specifically Rule 10(2)(c) and (d), require that a constitutional petition clearly state the provisions alleged to have been violated, as well as the nature of the injury caused or likely to be caused.
31. In *Anarita Karimi Njeru v The Republic (No.1)* [1979] KLR 154, it was held that a petition must be drafted "with a reasonable degree of precision... setting out that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed." The Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR reaffirmed this standard, holding that a petition

which merely cites broad constitutional Articles and alleges violations in vague terms, with “little or no particulars... as to the allegations and the manner of the alleged infringements,” fails to meet the threshold of a competent constitutional petition.

32. In the instant matter, the Amended Petition enumerates numerous constitutional provisions but fails to link any specific act or omission by the Respondents to a particular right, nor does it articulate the manner in which such rights were allegedly violated. This omission denies the Respondents a fair opportunity to meet the case, contrary to the principle enunciated in ***Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others [2015] KECA 304***, which requires that alleged constitutional violations be sufficiently particularized to enable a respondent to mount an appropriate defence.
  
33. The deficiencies in the Amended Petition are further compounded by the Petitioner’s attempt to invoke this Court’s constitutional jurisdiction over matters that fall squarely within the exclusive remit of the Environment and Land Court, while simultaneously interfering with ongoing investigatory and prosecutorial processes, as correctly noted by the 5<sup>th</sup> Respondent. Such conduct constitutes an abuse of the Court’s process and forum-shopping. It is well established that a court possesses inherent jurisdiction to protect itself from misuse of its process and to prevent its procedures from being manipulated for improper purposes. In ***Republic v Kariuki & 3 Others; Law Society of Kenya (Ex parte Applicant) [2020] KEHC 10142***, the Court observed that:

***"Abuse of court process arises where a party has adopted the system of forum shopping in the enforcement of a conceived***

***right... the court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused."***

34. Similarly, in ***Paul Kihara Kariuki, A.G. & 2 Others ex parte Law Society of Kenya [2020] eKLR***, the Court reaffirmed that instituting multiple proceedings on the same subject matter, or invoking the judicial process for an improper purpose, constitutes an abuse. In the present case, the Petitioner has deliberately sought to bypass specialized tribunals and ongoing statutory processes, thereby misusing constitutional proceedings to forestall lawful actions. This Court cannot condone such conduct, which undermines the orderly administration of justice and interferes with the statutory mandates of other authorities.
35. Guided by the authorities cited above, the Court finds that the Preliminary Objection raises pure points of law. The Amended Petition fails to disclose a cause of action with the requisite specificity, is premised on matters within the exclusive jurisdiction of the Environment and Land Court, and amounts to an abuse of court process. The Preliminary Objection is therefore well-founded and must be upheld.
36. In the result, and for the foregoing reasons, this Court finds and orders as follows:
- a. The Preliminary Objection dated 12<sup>th</sup> May 2025 is hereby upheld in its entirety.
  - b. The Amended Petition dated 24<sup>th</sup> February 2025 is consequently struck out for want of jurisdiction and abuse of court process.

c. Each Party to bear own costs.

It is so ordered. File closed accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 12<sup>TH</sup> DAY OF FEBRUARY  
2026.**

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**BAHATI MWAMUYE MBS**

**JUDGE**

In the presence of :

Counsel for the Petitioner – Mr. Ashiruma

Petitioner in person- Mr. Isaiah Waweru Ngumi

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents – Ms. Ndege

Court Assistant – Ms. Lwambia