



**Ng'ang'a & another v Inspector General of the National Police Service & 2 others  
(Constitutional Petition E019 of 2025) [2026] KEHC 1633 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CONSTITUTIONAL PETITION E019 OF 2025**

**FN MUCHEMI, J**

**FEBRUARY 5, 2026**

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 24 AND  
25 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND IN THE MATTER OF ALLEGED VIOLATION OF RIGHTS AND FREEDOMS  
UNDER ARTICLES 25, 28, 29, 39, 40, 47 AND 57 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**EUNICE NJERI NG'ANG'A ..... 1<sup>ST</sup> PETITIONER**

**KANINA NG'ANG'A ..... 2<sup>ND</sup> PETITIONER**

**AND**

**INSPECTOR GENERAL OF THE NATIONAL POLICE  
SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Brief Facts**

1. The petition for determination dated 24<sup>th</sup> April 2025 seeks for orders as follows:-
  - a. A declaration that the summonses by the 1<sup>st</sup> respondent of the petitioners and subsequent detentions of the petitioners by the 1<sup>st</sup> respondent are an abuse of power, arbitral, unlawful and breach of the petitioners' constitutional rights protected under Articles 25, 28, 29, 39, 40, 47 and 57.
  - b. An order compelling the 1<sup>st</sup> respondent to return to the petitioners the confiscated titles of the petitioners' properties including:- Ruiru Mugutha Block 1/T 562, 1258, 4507, 4506, 4469,



2671, 2083, 2084, 2182, 2576, 2156, 2157, 2442, 369, 4206, 2068, 2335, 2375, 3044, 2390, 2025, 2335, 2189, 2187, 2334, 2023, 2931, 439, 2330, 2522 and 2670; Ruiru/Ruiru East Block 2/4790, 5003, 5294, 3581; Ruiru/Ruiru Block 2/3122, 4136 and Chania/Kanyoni/398.

- c. An order prohibiting the Inspector General of Police and all of his subordinates from summoning and investigating the petitioners over the following properties:- Ruiru Mugutha Block 1/T 562, 1258, 4507, 4506, 4469, 2671, 2083, 2084, 2182, 2576, 2156, 2157, 2442, 369, 4206, 2068, 2335, 2375, 3044, 2390, 2025, 2335, 2189, 2187, 2334, 2023, 2931, 439, 2330, 2522 and 2670; Ruiru/Ruiru East Block 2/4790, 5003, 5294, 3581; Ruiru/Ruiru Block 2/3122, 4136 and Chania/Kanyoni/398.
  - d. An order prohibiting the Director of Public Prosecutions from preferring any charges against the petitioners over the following properties:- Ruiru Mugutha Block 1/T 562, 1258, 4507, 4506, 4469, 2671, 2083, 2084, 2182, 2576, 2156, 2157, 2442, 369, 4206, 2068, 2335, 2375, 3044, 2390, 2025, 2335, 2189, 2187, 2334, 2023, 2931, 439, 2330, 2522 and 2670; Ruiru/Ruiru East Block 2/4790, 5003, 5294, 3581; Ruiru/Ruiru Block 2/3122, 4136 and Chania/Kanyoni/398.
  - e. General damages for the violation of the petitioners' fundamental rights and freedoms.
  - f. Costs of the petition.
2. In opposition to the petition, the 2<sup>nd</sup> respondent filed a Replying Affidavit dated 8<sup>th</sup> December 2025.

### **The Petitioners' Case**

3. The petitioners are described in the petition as adults of sound mind residing in Kiambu County and are a couple. They are older members of the society both aged over 80 years old. The 1<sup>st</sup> respondent is said to be a holder of a constitutional office established under Article 245 of *the Constitution* and is mandated with the exercise of independent command, control and management of the National Police Service pursuant to Section 10 of the *National Police Service Act*. The 2<sup>nd</sup> respondent is also a holder of a constitutional office established under Article 157 of *the Constitution* and is mandated with instituting and undertaking criminal proceedings against any person before any court in respect of any offence alleged to have been committed. The 3<sup>rd</sup> respondent is a holder of a constitutional office established under Article 156 of *the Constitution* and is mandated with representing the national government in court.
4. The petitioners state that at one instance, DCI Gatundu South raided their matrimonial home, conducted a search and confiscated more than 46 title deeds belonging to them and arrested them. Among the titles confiscated were:- Ruiru Mugutha Block 1/T 562, 1258, 4507, 4506, 4469, 2671, 2083, 2084, 2182, 2576, 2156, 2157, 2442, 369, 4206, 2068, 2335, 2375, 3044, 2390, 2025, 2335, 2189, 2187, 2334, 2023, 2931, 439, 2330, 2522 and 2670; Ruiru/Ruiru East Block 2/4790, 5003, 5294, 3581; Ruiru/Ruiru Block 2/3122, 4136 and Chania/Kanyoni/398.
5. The petitioners further state that the ODPP preferred charges of making documents without authority in respect of LR. No. Ruiru/Mugutha Block 1/T2024 contrary to Section 357(a) of the Criminal Procedure Code. The 1<sup>st</sup> petitioner was charged in Gatundu Magistrate's Court Criminal Case No. 596 of 2020. The matter was withdrawn under Section 87(a) of the Criminal Procedure Code and the 1<sup>st</sup> petitioner was discharged. To date, the titles have never been returned to them.
6. The petitioners further state that they were later arrested by DCI Ruiru and accused of conspiracy to defraud one Daniel Kamunyu Kahura a sum of Kshs. 15 million by falsely pretending that he was in a



position to sell land parcel number Ruiru/Ruiru East Block 2/4790. Criminal charges were preferred against the petitioners contrary to Section 317 of the Penal Code in Criminal Case No. 3362 of 2014 at Thika Magistrate Court. The said title was among the ones that were earlier confiscated. One Damaris Wanjiru Kamau, was said to be the owner of the said land whereas the 1<sup>st</sup> petitioner produced as exhibits the title, green card and search of the property in confirmation of her ownership. The court found that the complainant had no proof of ownership of the said land and the petitioners were acquitted on 26<sup>th</sup> March 2019 under Section 215 of the Criminal Procedure Code.

7. On 4<sup>th</sup> September 2023, Police Constable Masese of DCI Ruiru arrested the 1<sup>st</sup> petitioner and confiscated title to LR. No. Ruiru/Ruiru East Block 2/4790 indicating that they would be prosecuted again. The 1<sup>st</sup> petitioner was later released on cash bail but the Director of Public Prosecutions is yet to prefer charges against her to date. The petitioners argue that they are at a loss considering the decision of the magistrate in the Thika case where they were acquitted. The petitioners made a complaint to the Inspector General of Police and the Independent Policing Oversight Authority regarding the harassment by police officers. The said complaints were in relation to the unlawful retention of their titles which complaints were recorded as OB Numbers 56/23/02/21 and 58/23/02/21 which have never been acted upon.
8. The petitioners state that they live in fear following the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and have reasons to believe that due to their old age, the 1<sup>st</sup> respondent has engineered schemes to dispossess them of all their property considering they have refused to return their title deeds.
9. The petitioners argue that judgments have been entered in their favour in the said cases and it is unfair, unjust and highly prejudicial to them to be subjected to further arrests and criminal cases over the same land parcels. Such acts amount to inhumane and degrading treatment of the respondent rights and fundamental freedoms guaranteed in *the Constitution*. The 1<sup>st</sup> respondent has severally deprived them of their freedom of movement by effecting arbitral arrest, in violation of Article 39 of *the Constitution*, Article 12 of the International Convention on Civil and Political Rights and Article 13 of the Universal Declaration of Human Rights. Further the 2<sup>nd</sup> respondent has been preferring trumped up charges against them which is a clear infringement of their constitutional rights and freedoms.
10. The 1<sup>st</sup> respondent has confiscated the petitioners' titles to more than 90 properties contrary to the principles of natural justice and in contravention of Articles 40, 47, 48 and 50 of *the Constitution*. The petitioners further state that the 1<sup>st</sup> respondent has violated their constitutional rights to live in dignity and respect and be free from abuse as guaranteed to older members of the society in the Bill of Rights and Article 57 of *the Constitution*. The conduct of the 1<sup>st</sup> respondent amounts to a direct interference with the independence of the judiciary as stipulated under Article 160(1).

### **The 2<sup>nd</sup> Respondent's Case**

11. The 2<sup>nd</sup> respondent states that it is not enough to merely state that the rights of the petitioners have been violated and infringed without specifically stating the nature of violations of such rights.
12. The 2<sup>nd</sup> respondent argues that Article 157(6)(a) of *the Constitution* mandates the Director of Public Prosecutions to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed. The DPP does not require the consent of any person or authority for the commencement of criminal proceedings and in exercise of its powers or functions shall not be under the direct control of any person or authority.
13. The 2<sup>nd</sup> respondent states that the instant petition is premature as they have not made a decision whether to charge the petitioners with any offence. Further, the proceedings attached in respect to



Gatundu Criminal Case No. 956 of 2020 reveal that the case was withdrawn on 31<sup>st</sup> October 2023 under Section 87(a) of the Criminal Procedure Code. Upon withdrawal, the petitioners have not been arrested again.

14. The 2<sup>nd</sup> respondent states that although the petitioners allege that they were recently arrested in respect of confiscated titles, they have not stated when and which investigative agency. Further the petitioners have not given the OB numbers indicating any subsequent arrest. It appears that the petitioners are bringing up issues that happened before the criminal matter was withdrawn in Gatundu Court hence they have never made any attempts of subsequent arrests since the said withdrawal as there is no proof to that effect.
15. The 2<sup>nd</sup> respondent argues that if at all there are any confiscated titles, they are not in the custody of the 2<sup>nd</sup> respondents for as they are not an investigative agency. Further, it is in the public interest that all complaints made to the police be investigated and summons issued to the petitioners is part of the investigations. The police under Section 24 of the *National Police Service Act* have the mandate of carrying out investigations and if there is any offence alleged to have been committed then the police shall arrest and charge the perpetrators of the crime.
16. The 2<sup>nd</sup> respondent argues that the petitioners have not demonstrated any issues for the court to determine. Further they have not demonstrated that will suffer any substantial injustice should they be charged in court if need be as criminal cases are determined on merits.
17. The 2<sup>nd</sup> respondent avers that the instant petition is frivolous and vexatious and is only meant to prevent them and the police from carrying out their core mandates and to circumvent the criminal justice in Kenya.
18. Directions were issued that parties put in written submissions. The record shows that the respondents complied by filing submissions on 8<sup>th</sup> December 2025. The petitioners on the other hand had not filed their submissions by the time of preparing this ruling.

### **The 2<sup>nd</sup> Respondent's Submissions**

19. The 2<sup>nd</sup> respondent refers to Article 157 of *the Constitution* and the cases of Saisi & 7 Others vs Director of Public Prosecutions & 2 Others (Petition 39 & 40 of 2019) (Consolidated) [2023] KESC 6 (KLR) (Civ) (27 January 2023) (Judgment); Dande & 3 Others vs Inspector General National Police Service & 5 Others [2023] KESC 40 (KLR) and Geoffrey K. Sang vs DPP & 4 Others [2020] eKLR and submits that the DPP is independent and not subject to directions of any person. Further it is empowered to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed.
20. The 2<sup>nd</sup> respondent further refers to the cases of Thuita Mwangi & Another vs The Ethics and Anti-Corruption Commission & 3 Others Petition No. 153 & 369 of 2013 and Charles Okello Mwanda vs Ethics and Anti-Corruption Commission & 3 Others (2014) eKLR and argues that the decision to prosecute is discretionary and in its discretionary power, depending on the evidence gathered, the DPP may decide to prosecute where it is considered that there is sufficient evidence or refuse to prosecute where it is considered that there is no sufficient evidence, the strong opinion of the investigator notwithstanding.
21. The 2<sup>nd</sup> respondent argues that the petitioners have not demonstrated any violation of rights for determination. The petitioners' rights as claimed are not absolute but subject to some limitations. It is the public interest that all complaints made to the police should be investigated and the police under Section 24 of the National Police Act have the mandate of carrying out investigations and if there is



any offence alleged to have been committed then the police will arrest and charge the perpetrators of the crime. Further, the petitioners have not demonstrated how that will suffer any substantial justice if charged in court as criminal cases are determined on merits.

### Issues for Determination

22. The main issues for determination are:-
- a. Whether the petition meets the threshold for a constitutional petition.
  - b. Whether the petitioners' rights were violated as claimed in the petition.
  - c. Whether the petitioners are entitled to the reliefs and orders sought.

### The Law

#### Whether the petition meets the threshold for a constitutional petition

23. It is indisputable that a constitutional petition to be sustainable as such must at a minimum satisfy a basic threshold. It must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated threatened to be violated and the manner of the violation and/or threatened violation. This principle was enunciated in *Anarita Karimi Njeru vs Republic* (1979) KLR where the court stated as follows:-

If a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with precision that of which he complains the provisions said to be infringed and the manner in which they are alleged to be infringed.

24. The principle in *Anarita Karimi* was further enunciated in *Mumo Matemu vs Trusted Society of Human Rights Alliance* (2014) eKLR where the court said:-

We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by the court.

The principle in *Anarita Karimi Njeru* underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution*. Procedure is also a handmaid of just determination of cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenant of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* that established the rule that requires reasonable precision of framing of issues in Constitutional petitions is an extension of this principle.

25. It is thus clear from the above case law that it is not sufficient to merely cite constitutional provisions. One must provide the particulars of the alleged infringement to enable the respondent to be able to respond and/or answer the allegations or complaints. Furthermore, one must provide the manner in which the alleged violations were committed and to what extent must be shown by way of evidence.
26. In the instant case, the petitioners have premised their petition on Articles 25, 28, 29, 39, 40, 47 and 57 but substantively the petition focuses on the said rights save for Articles 25, 28 and 29. The petitioners have explicitly alleged that their rights to freedom of movement, right to property, fair administrative action, rights to a fair hearing and rights of older members of the society under Articles



39, 40, 47 and 57 of *the Constitution* were violated by the respondents. The manner of violation was stated to be through the respondents arbitrarily arresting the petitioners and subjecting them to criminal prosecutions on trumped up charges. Further upon arrest, the respondents confiscated their title deeds and never returned them. Being older members of the society, the petitioners argue that the 1<sup>st</sup> respondent has devised a scheme to dispossess them of their property. It is therefore my considered view that the petition sufficiently satisfies the threshold test of constitutional petitions.

**Whether the petitioners’ rights to freedom of movement, right to property, fair administrative action and rights of older members of the society were violated**

27. Section 107 of the *Evidence Act* places the burden of proof on the petitioner to prove his claim on a balance of probabilities. The person who alleges existence of certain facts and who wishes the court to find in his favour based on those set of facts must satisfy the court on the allegations. The burden of proof on a petitioner in a constitutional petition was addressed by the Supreme Court in *Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others* [2014] eKLR as follows:-

Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru vs Republic* (1979) KLR 154; the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

28. The petitioners argued that their rights under Articles 39, 40, 47 and 57 of *the Constitution* were infringed by the petitioners and thus, the filing of this petition.

29. Article 39 of *the Constitution* stipulates as follows:-

Every person has the right to freedom of movement.

Every person has the right to leave Kenya.

Every citizen has the right to enter, remain in and reside anywhere in Kenya,

30. Article 40(1) provides:-

1. Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-
  - a. of any description; and
  - b. in part of Kenya.

31. Article 47 provides:-

Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for that action.



32. Article 57 provides:-

The State shall take measures to ensure the rights of older persons-

- a. To fully participate in the affairs of the society;
- b. To pursue their personal development;
- c. To live in dignity and respect and be free from abuse; and
- d. To receive reasonable care and assistance from their family and the State.

33. In the instant case, it is the petitioners' case that they were maliciously charged in Thika Magistrate court vide Criminal Case No. 3362 of 2014 for the offence of conspiracy to defraud contrary to Section 317 of the Penal Code in respect of land parcel Ruiru/Ruiru East Block 2/4790. The petitioners state that they were acquitted under Section 215 of the Criminal Procedure Code. The petitioners were later arrested in September 2020 on a charge of false allegation of forgery of title deeds contrary to Section 350 of the Penal Code and were booked at Gatundu police station vide OB 51/12/09/2020. The DCI Gatundu sub county took their 47 title deeds and confiscated them. The petitioners were subsequently charged with the offence of making document without authority for title of L.R. No. Ruiru/Mugutha Block 1/T.2024. The second charge was forging a stamp contrary to S. 352(a) Penal Code plus two other charges at Gatundu Law Court vide Criminal Case No. 596 of 2020. The petitioners aver that they were discharged under Section 87(a) of the Criminal Procedure Code but they were recently arrested again but not formally charged. Furthermore, despite them making complaints in relation to the unlawful retention of their titles and provided OB numbers 56/23/02/2021 and 58/23/02/2021, the 1<sup>st</sup> respondent has failed to return the said titles or to act on the matter in any other way.

34. On perusal of the record, it is evident that the petitioners were charged with the offence of conspiracy to defraud contrary to Section 317 of the Penal Code in respect of land parcel Ruiru/Ruiru East Block 2/4790 vide Criminal Case No. 3362 of 2014. The record shows that the trial court acquitted the petitioners under Section 215 of the Criminal Procedure Code upon finding that the prosecution had not proved its case beyond reasonable doubt. The 2<sup>nd</sup> petitioner was then arrested and booked at Gatundu police station vide OB number 51/12/09/2020 for the offence of making a document contrary to Section 350 of the penal Code. The 2<sup>nd</sup> petitioner was then formally charged with the offence of making a document without authority contrary to Section 357(a) of the Penal Code in respect of land parcel Ruiru/Mugutha Block 1/T.2024 vide Criminal Case No. 596 of 2020 at Gatundu Law Courts. On 31/10/2023, the matter was withdrawn under Section 87(a) of the criminal Procedure Code and the 2<sup>nd</sup> petitioner was discharged.

35. Section 87 of the Criminal Procedure Code provides:-

In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal-

- a. If it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;
- b. If it is made after the accused person is called upon to make his defence, he shall be acquitted.

36. It is clear that if a party is discharged under Section 87(a) of the Criminal Procedure Code, he may be re-arrested and criminal proceedings brought against him on the earlier charges. The 2<sup>nd</sup> petitioner upon



being discharged under Section 87(a) of the Criminal Procedure Code were re-arrested and charged with the same offence. It is my considered view that the 2<sup>nd</sup> petitioner upon being arrested subsequently, the 1<sup>st</sup> respondent cannot be said to have violated his right of freedom of movement. The subsequent arrests were not contrary to the provisions of Section 87(a) of the Criminal Procedure Code. It is also noted that the case in Gatundu did not relate to the same property as the case in Thika. In my considered view, the subsequent charges at Gatundu court did not amount to double jeopardy.

37. In regard to violation of rights under Article 39, that is, the right to freedom of movement, the petitioners generally alleged that following the acquittal of the Thika Criminal Case No.3362 of 2014 and the Gatundu Criminal Case No. 596 of 2020, they have been arrested severally and later released without any charges being preferred against them. The durations of the unlawful detentions were not specifically stated. However, the 1<sup>st</sup> respondent did not deny these allegations. In the case of Moses Tengenya Omweng Vs Commissioner of Police and Another Civil Appeal No. 243 of 2011 eKLR. It was held that "detention is indeed deprivation of liberty. When it is illegal, it is not only an infringement of the freedom of movement, but also an act that undermines one's dignity". By the act of several arbitrary arrests without preferring Any criminal charges, the 1<sup>st</sup> respondent violated the petitioners constitutional rights under Article 39 of the Constitution. This violation was not denied by the 1<sup>st</sup> respondent.
38. The petitioners further state that their right to property has been infringed as their confiscated title deeds have never been returned to them. It is further stated that complaints were lodged in relation to their titles under OB Nos. 56/23/02/21 and 58/23/02/2021 but their concerns were never addressed by the 1<sup>st</sup> respondent. The attached correspondence show that the petitioners advocates have been following up release of the titles but to no avail. I have perused the record and noted that during the proceedings in Criminal Case No. 596 of 2020, the 2<sup>nd</sup> petitioner's advocates informed the court that the investigating officer had confiscated the title deeds without raising an inventory. The Gatundu court ordered the 1<sup>st</sup> respondent to prepare an inventory for all the title deeds it had confiscated. This was in the court's ruling dated 21<sup>st</sup> September 2020. On 21<sup>st</sup> October 2021, the investigating officer testified that he prepared an inventory the day he arrested the 2<sup>nd</sup> petitioner and he supplied a copy to the 2<sup>nd</sup> petitioner which the parties signed. He further added that investigations were still ongoing and the titles were to be verified by the land registrars of Gatundu, Ruiru and Thika. The court then directed that the land registrar Gatundu, Ruiru, Thika and Kitui where the parcels of land were registered do verify the titles in the inventory dated 12/9/2020 within 21 days. It was further ordered that the police do release the titles which were to be found genuine and not prefer any charges upon completing their investigation within 30 days. These orders were not complied with. The matter never took off for hearing due to failure by the prosecution to avail witnesses in court severally. The 2<sup>nd</sup> petitioner was discharged under Section 87(a) of the Criminal Procedure Code. It is evident that the title deeds were never returned to the petitioners as ordered by the court and upon the withdrawal of the case. The 1<sup>st</sup> respondent did not file any response to this petition. The petitioners have further demonstrated that they filed complaints and provided O.B. numbers in this petition in regard to their titles that continued to be held by the 1<sup>st</sup> respondent.
39. It is trite law that for a person to prove legal ownership of title to land, one must have conclusive evidence in form of documentation that includes a certificate of title or lease registered in their name. The petitioners had valid titles to their over 39 parcels of land which documents the 1<sup>st</sup> respondent confiscated. Assuming that there were complaints on the validity of the titles, the 1<sup>st</sup> respondent ought to have conducted their investigations within a reasonable time. If evidence was sufficiently gathered, the petitioners ought to have been arraigned in court to face criminal charges. It is noted that the petitioners went through a full criminal trial in Thika Criminal case No. 3362 of 2014 of which they



were acquitted for lack of evidence. This was only in respect of one title deed for L.R. No. Ruiru/Ruiru East Block 2/4790. After the acquittal, the 39 titles held by the 1<sup>st</sup> Respondent were not released. The 1<sup>st</sup> respondent has continued to hold the said title deeds to date despite demand to return them by the petitioners and their respective advocates.

40. In the Gatundu Criminal case No. 596 of 2020 the petitioners were charged with the offence of making a document without authority contrary to Section 357 (a) of the Penal Code only in regard to L.R. No. Ruiru/Mugutha/Block 1/T2024. The proceedings demonstrate a lot of laxity in the prosecution of the case in that on several occasions, no single witness was availed. The case was later withdrawn under Section 87(a) criminal procedure Code. The said titles were not released to the petitioners despite the petitioners being discharged on 31/10/2023. The time spent in court was a period of four (4) years without any fruitful prosecution. To date, the 1<sup>st</sup> respondent still holds the title deeds unlawfully and without justification.
41. Before the Gatundu court, the 1<sup>st</sup> respondent said severally that they were still working on verification of the validity of the titles. Four years down the line, the titles were neither verified nor released to the petitioners.

Section 24: -

- a. Section 24 of the *Land Registration Act* provides:- the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Section 25(1)|: -

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
  - a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

Section 26 (1):-

(1)The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—



- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The above provisions are candid on the rights of a proprietor of land and should not be taken for granted.

In the case of *Dima & Another Vs Kenya Ports Authority & Another* (Constitutional Petition No. E014 of 2023 (2024) KEELC 30/10/2024, the

defendants had illegally taken possession of the plaintiffs land without following the procedures relating to acquisition of land and utilized it for construction of a road.

The court found that the property rights of the petitioners had been violated.

- 42. The petitioners further claim that the respondents infringed their rights under Articles 47 of *the Constitution*. Article 47 guarantees every person the right to administrative action that is lawful, reasonable and procedurally fair. The *Fair Administrative Action Act*, 2015 operationalises the constitutional provision by requiring written reasons for adverse decisions, ensuring the right to be heard, and providing for a judicial review of administrative actions. The procedure is that before any administrative action is taken, an individual, must be given an opportunity to be heard and make representations where those persons rights are affected adversely.
- 43. It is a key principle that such action must be expeditious, efficient, lawful and reasonable. Following a series of arrests by the Director of Criminal Investigations and the police of the petitioners who are agents of the 1<sup>st</sup> respondent, and arraigning them in various courts as well as holding their title deeds for years, the petitioners wrote a complaint to 1<sup>st</sup> respondent and to the Independent Policing Oversight Authority (IPOA) who did not Act on the complaint. The petitioners continued to be harassed by police, more so the DCI Ruiru through arrests and detentions probably with a view of being discouraged from following up on the release of their title deeds.
- 44. The 2<sup>nd</sup> petitioners were acquitted on 26<sup>th</sup> March 2019 by Thika Magistrate's Court in Criminal Case No. 3362 of 2014 of conspiracy to defraud contrary to Section 317 of PC in respect of L.R/ Ruiru/Ruiru East Block 2/4790, being one of the confiscated titles. The 1<sup>st</sup> petitioner subsequently was arrested on 04/09/2023 by Ruiru DCI officers with the threat that both petitioners would be prosecuted in court again. However, no charges were preferred against them.
- 45. It is important to note that that the petitioners had earlier been charged in Gatundu Magistrate's Court in Criminal Case No. 596 of 2020 with making documents without authority contrary to Section 357(a) of the Penal Code in regard to L R No. Ruiru/Mugutha Block 1/T.2024. The case was later withdrawn under Section 87(a) of the Criminal Procedure Code.
- 46. Considering that the facts of this petition that there were several incidents of arrests and arraignment in court by the 1<sup>st</sup> respondent: that the petitioner were charged with selected offences one after another and after discharge or acquittal by the court; that one petitioner was charged separately followed by another in cases without tangible evidence as well as incidents of disobedience of court's orders to release the confiscated titles, the 1<sup>st</sup> respondent ought to have taken action against its officers or directed them to release the titles of the petitioners after he received the complaints. In my considered view, the 1<sup>st</sup> respondent denied the petitioner their right to fair administrative action on a matter where the officers had abused their power of office.



47. In regard to Article 40 of *the Constitution*, the petitioners plead that their 39 titles deeds listed herein and confirmed by Gatundu court have been held by the 1<sup>st</sup> respondent's officers for a period of over five (5) years.
48. Section 24, 25 And 26 of the *Land Registration Act* provide for rights of ownership of a proprietor with a valid title these provisions have been referred earlier herein. The petitioners have been denied their property rights by the 1<sup>st</sup> respondent for a long time. During the said period, their properties have not been of any use to them in various ways including use as collateral, occupation and use of the said land parcels. The petitioners have been subjected to economic loss, suffered stress, anguish and anxiety due to the unlawful actions of the 1<sup>st</sup> respondent of unlawfully holding the petitioner's title deeds for such a long period.
49. Article 57 of *the Constitution* provides for rights of older members of society which the state is obligated to fulfil. However, considering the facts of this petition, it is my considered view that the petitioners have not proved that any of their rights under Article 57 has been violated by the state.
50. It is noted that the 1<sup>st</sup> and the 3<sup>rd</sup> respondents did not file responses to this petition despite having been properly served. The 2<sup>nd</sup> respondent in its response and submissions made emphasis on its unlimited powers under Article 157 (4) of *the Constitution* to direct the Inspector General to investigate criminal offences. Article 157(6) deals with the powers of the 2<sup>nd</sup> respondent to prosecute in criminal cases which power the 2<sup>nd</sup> respondent submits was not abused in regard to the petitioners. Liability is denied in that the 2<sup>nd</sup> respondent did not make any decision to charge the petitioners after the date of discharge by Gatundu Magistrates' Court. The petitioners did not blame the 2<sup>nd</sup> respondent on any of the alleged violations of individual rights and freedoms. In my considered view, I find that the petitioners have not made any case of constitutional violations against the 2<sup>nd</sup> respondent. I find that the 2<sup>nd</sup> respondent is free from any liability on the alleged violations in this petition.
51. In regard to the 3<sup>rd</sup> respondent, no response was filed in defence to this petition. The petitioners constitutional rights were allegedly violated by 1<sup>st</sup> respondent who is a body of the National Government.. This imposes legal liability on the 3<sup>rd</sup> respondent as the legal representative of the Government. [It is my considered view, that the petitioners have proved that the 1<sup>st</sup> respondent violated their Constitutional rights under Articles 29, 39, 40 and 47 of *the Constitution*, and I so find.

**Whether the petitioners are entitled to the orders sought.**

52. Article 23 (3) of *the Constitution* provides:-
  - a. In any proceedings brought under Article 22, a court may grant appropriate relief including-
  - b. A declaration of rights;
  - c. An injunction;
  - d. A conservatory order;
  - e. A declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
  - f. An order for compensation; and
  - g. An order of judicial review.



53. I have already said that the petitioners have proved their case that their rights under Articles 29, 39, 40 and 47 of *the Constitution* were violated by the 1<sup>st</sup> respondent and as such the petitioners are entitled to remedies provided by the law.
54. As regards damages, it is well settled that an award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under *the constitution*.
55. On the question of damages, the Court of Appeal in the case of Peter Ndegwa Kiai t/a Pema Wines & Spirits vs Attorney General & 2 Others (Civil Appeal 243 of 2017) [2021] KECA 328 (KLR) (17 December 2021) (Judgment) stated:-
- .....that an award of general damages in constitutional petitions is discretionary and will depend on the circumstances of each case, and can indeed be granted as compensation for proven loss.
56. In *Gitobu Imanyara & 2 Others vs Attorney General Civil Appeal No. 98 of 2014 [2016] eKLR* the Court of Appeal held:-
- It seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in constitutional violation cases though is limited by what is
- “appropriate and just” according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In other words, an award of reasonable damages may be called for in addition to the declaration....
57. In assessing damages in this case, I rely on the case of *Haruni Thungu Wakaba Vs Attorney General Mis. Appl. No. 411 of 2024* where Okwengu, J, as she then was awarded damages for violations of incarceration and other constitutional rights of the petitioners ranging from Ksh.1,000,000 to Ksh.3,000,000. In the case of *Rumba Kinuthia Vs A.G. Nairobi Misc. Appl. No. 1408 of 2004*, Wendo J awarded Ksh.1,500,000 on similar violations. In the case of *Peter Kariuki Vs A.G. (2014) KLR* the appellant was awarded Ksh.15,000,000 for violations of his constitutional rights while in the case of *Koigi Wa Wamwere Vs A.G. (2015) eKLR*, the court awarded a global sum of Ksh.12,000,000 for violation of rights related to freedom of movement. It is noted that in the last two cases, the petitioners were incarcerated for long periods while in the case before me, the incarcerations were for a few days. I am persuaded by the said awards and note that most of the said case are more than ten (10) years old and that inflation trends ought to be considered. As for the petitioners herein, the violations not only concern freedom of movement but concern several areas of violation under Articles 29, 39, 40, and 47 of *the Constitution*. The 1<sup>st</sup> respondent has violated the Petitioners' rights of property for over five (5) years by holding 39 titles unlawfully. In awarding damages, the court will take all these factors into consideration.



## Conclusion

58. Bearing in mind the finding of this court the principles laid down in the cases cited herein, I hereby make the following orders in favour of the petitioners.

- a. A declaration that the acts of the 1<sup>st</sup> respondent of arresting the petitioners from time to time, detaining them and arraigning them in court or in some cases just releasing them without preferring charges following acquittal in Thika Criminal Case No 3362 of 2014 and discharge in Gatundu Criminal Case No. 596 of 2020 and the confiscation of the titles deeds for several years as well as denying them the right to fair administrative action are an abuse of power, unlawful and a breach of the petitioners constitutional rights under Articles 29, 39, 40 and 47 of *the Constitution*.
- b. An order for an award of general damages for violation of the petitioners' constitutional rights under articles 29, 30, 40 and 47 for Kenya Shillings Five million (Ksh.5,000,000).
- c. An order for release of the following title deeds by the 1<sup>st</sup> respondent within thirty (30) days: -
  1. Ruiru Mugutha Block 1/T 562
  2. Ruiru Mugutha Block 1/T 1258
  3. Ruiru Mugutha Block 1/T 4507
  4. Ruiru Mugutha Block 1/T 4506
  5. Ruiru Mugutha Block 1/T 4469
  6. Ruiru Mugutha Block 1/T 4469
  7. Ruiru Mugutha Block 1/T 2671
  8. Ruiru Mugutha Block 1/T 2083
  9. Ruiru Mugutha Block 1/T 2084
  10. Ruiru Mugutha Block 1/T 2182
  11. Ruiru Mugutha Block 1/T 2576
  12. Ruiru Mugutha Block 1/T 2156
  13. Ruiru Mugutha Block 1/T 2157
  14. Ruiru Mugutha Block 1/T 2442
  15. Ruiru Mugutha Block 1/T 369
  16. Ruiru Mugutha Block 1/T 4206
  17. Ruiru Mugutha Block 1/T 2068
  18. Ruiru Mugutha Block 1/T 2335
  19. Ruiru Mugutha Block 1/T 2375
  20. Ruiru Mugutha Block 1/T 3044
  21. Ruiru Mugutha Block 1/T 2390



22. Ruiru Mugutha Block 1/T 2025
23. Ruiru Mugutha Block 1/T 2335
24. Ruiru Mugutha Block 1/T 2189
25. Ruiru Mugutha Block 1/T 2187
26. Ruiru Mugutha Block 1/T 2334
27. Ruiru Mugutha Block 1/T 2023
28. Ruiru Mugutha Block 1/T 2931
29. Ruiru Mugutha Block 1/T 439
30. Ruiru Mugutha Block 1/T 2330
31. Ruiru Mugutha Block 1/T 2522
32. Ruiru Mugutha Block 1/T 2670
33. Ruiru/Ruiru East Block 2/T 4790
34. Ruiru/Ruiru East Block 2/T 5003
35. Ruiru/Ruiru East Block 2/T 5294
36. Ruiru/Ruiru East Block 2/T 3581
37. Ruiru/Ruiru Block 2/T 3122
38. Ruiru/Ruiru Block 2/T 4136
39. Chania/Kanyoni/398

59. The petition dated 24<sup>th</sup> April 2025 is partly merited.
60. The 1<sup>st</sup> respondent shall meet the costs of this petition.
61. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**F. MUCHEMI**

**JUDGE**

