



**Owino v Piccadily Holdings Limited & 3 others; Kenya Railways Corporation
& another (Interested Parties) (Environment and Land Constitutional
Petition E083 of 2025) [2026] KEELC 551 (KLR) (3 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E083 OF 2025
MN KULLOW, J
FEBRUARY 3, 2026**

BETWEEN

FRANCIS OWINO PETITIONER

AND

PICCADILY HOLDINGS LIMITED 1ST RESPONDENT

EXCEL LIMITED 2ND RESPONDENT

MINISTRY OF LANDS AND PHYSICAL PLANING 3RD RESPONDENT

NAIROBI COUNTY GOVERNMENT 4TH RESPONDENT

AND

KENYA RAILWAYS CORPORATION INTERESTED PARTY

THE HON ATTORNEY GENERAL INTERESTED PARTY

RULING

1. Before this court for determination is a notice of preliminary objection dated 18th October 2025 raised the respondent herein, where he states the following grounds;
 - a. The petition as is does not raise any constitutional question for the Honourable court to determine
 - b. That the petition offends the doctrine of constitutional avoidance and ripeness, as the petitioner’s grievances, if any, can effectively be addressed in a forum created by statute and or in a civil suit.



- c. That the petition does not, with reasonable precision, state the specific provision of the constitution and the rights threatened with violation and or violated, the matter of infringement is not stated and or substantiated, and the respondent is inhibited from understanding and appreciating the petitioner's alleged constitutional issues.

2nd Interested party's Submissions

2. In support of the notice of preliminary objection, the 2nd interested party submitted on the following issues.

Whether the court has jurisdiction to entertain the petition

3. Counsel submitted that the petition did not disclose any reasonable course of action and the court therefore lacked jurisdiction to entertain the same. He quoted the case of Phoenix of E.A Assurance Company Limited -Vs- Simeon Murachi Thiga t/a Newspaper service (2019) eKLR

Whether the petition offends the doctrine of constitutional avoidance.

On this issue they argued that the petitioner ought to have brought the suit under the Civil Procedure Act or rules, as the constitutional petition does not raise any triable issues to have affected the petitioner's rights On the doctrine of constitutional avoidance, they quoted the supreme court case of Communications commission of Kenya & 5 others vs. Royal Media Services Limited & 5 others (2014)eKLR as well as Mumo Matemo vs Trusted Njeru Society Of Human Rights Alliance & 5 others (2013)eKLR

The other issue was of whether the petition is set out with reasonable precision, and quoted the case of Anarita Karimi Njeru vs. Republic (1979) eKLR. Counsel submitted that although the petitioner cited several constitutional provisions, he failed to state with precision how the same was violated, thus the Petition should be struck out with costs.

Whether the petitioner had locus standii to institute the petition

Counsel submitted that the petitioner lacked the locus standii to institute the petition as there was no genuine public interest litigation. That he had failed to show how the issues in the dispute affected him.

Counsel also submitted that the petition was an abuse of the court process.

1st Respondents' submissions

4. Counsel for the 1st Respondent listed and addressed the same issues as in the 1st interested party's submissions in support of the notice of preliminary objection. The issues raised were
 - i. challenges the jurisdiction of this Honourable Court to hear and/or determine this petition,
 - ii. Whether the Petition offends the Doctrine of Constitutional Avoidance and does not raise a Bonafide constitutional issue,
 - iii. Whether that the Petitioner lacks locus standi to institute the petition,
 - iv. Whether the petition is a classic case of abuse of court process.

Petitioner's submissions

5. On the issue of jurisdiction, the petitioner submitted the issues raised in the petition touched on alienation of public land and issues of fraud affecting entries in the land registry which are were grounded on the constitution and hence invoking this court's jurisdiction



He further on the issue raided on doctrine of constitutional avoidance indicating that the constitutional issues arising affected public land and could not be addressed in an ordinary civil claim.

He also submitted to having an interest in the suit property being public land hence had locus to institute the petition.

Analysis and Determination

6. I have looked at the notice of preliminary objection, including the parties' arguments, and the following issues for determination;

Whether the petition offends the doctrine of constitutional avoidance;

The respondent has argued that the petition herein offends the principle of constitutional avoidance, and as such, the issues the petitioner raises can be determined in a civil claim, having not met the threshold to institute a constitutional petition.

The doctrine of constitutional avoidance is a judicial principle that discourages courts from deciding constitutional issues when a matter can be resolved through statutory or ordinary legal mechanisms.

In *Bernard Murage v Fine Serve Africa Ltd & 3 others* [2015] eKLR, Muriithi J held that:

Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, that route must be pursued first

The Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* [2014] eKLR succinctly held:

The principle of constitutional avoidance entails that a court will not determine a constitutional issue when a matter may properly be decided on another basis. It is a sound judicial practice for courts to decide cases on non-constitutional grounds if that course is available. Likewise, in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, the Court of Appeal stated that where a clear procedure is prescribed by law for redress of a grievance, that procedure must be strictly followed before resorting to constitutional remedies.

In relying on the above-mentioned principles in the present case, the petitioner's allegations concern issues touching of use, occupation and title to land specifically listing issues inter alia the legality of a lease over LR N0 209/391 herein referred to as the suit property and the cancellation of purported illegally issued certificates, orders of eviction and issuance of vacant possession over the suit property, Orders of enforcement of notices over the suit property, orders of injunctions as against the respondents. It is my view that the predominant issues and on which the whole dispute herein rests are issues to do with legality to leases which goes into the issue of ownership.

It is my view that the said issues are purely civil in nature, and the proper forum for their resolution is a civil suit, which civil courts have clear jurisdiction over and procedures for redress of such grievances. I find that the petitioner's attempt to file a constitutional petition in what is essentially is a civil matter claim offends the doctrine of constitutional avoidance. The alleged acts does not require constitutional interpretation. This Court's constitutional jurisdiction is invoked where there is a genuine constitutional controversy, not where ordinary civil remedies are available.



In view of the foregoing, this Court declines jurisdiction to entertain this Petition on the basis of the doctrine of Constitutional avoidance. The court will not consider the rest of the issues framed and will thus down its judicial tools at this point.

The Court makes the following Orders: -

1. The 2nd interested party's Preliminary Objection dated 18th October 2025 is merited
2. The petition is hereby struck out
3. Each party to bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 3RD DAY OF FEBRUARY 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered virtually in the presence of: -

No appearance for the Petitioner

Mr. Muoka for the 1st Respondent

Mr. Allan Kamau for the 3rd Respondent and 2nd Interested Party

Mr. Oyier for Kosgey for the 1st Interested Party

No appearance for the 4th Defendant

Ms. Philomena W. - Court Assistant

