

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MISC. PETITION NO.E001 OF 2025

**WILFRED
OGUTU.....PETITIONER**

VERSUS

**REGISTRAR GENERAL OF COMPANIES.....1ST
RESPONDENT**

**ATTORNEY GENERAL.....2ND
RESPONDENT**

**TUWAN FARM LIITED CPR/2011/40610.....3RD
RESPONDENT**

AND

**TUWAN FARM LIMITED CPR/1965/6563 ...INTERESTED
PARTY**

RULING

1. The petitioner herein Wilfred Ogutu has brought this constitutional petition asking this court to appoint him as an Administrator of **TUWAN FARM (1965) LIMITED** claiming that the original directors and shareholders are all deceased.

He further claims that the assets of the company are in danger of being wasted by intermeddlers and fraudsters.

2. He further pleads that there was declaratory finding made in Constitutional Petition No.E004 of 2023 on 14/3/2024 by Hon. A.C Mrima J that there are two companies namely **TUWAN FARM LIMITED CPR/1965/6563** and **TUWAN FARM LIMITED CPR/2011/40610**.
3. From the petition it is unclear what exactly the petitioner is seeking as triable reliefs from this court.
4. The 3rd respondent through learned counsel Mr David Ingosi unsurprisingly has raised a preliminary objection to the petition. The preliminary objection is dated 26/8/25. The grounds are as follows;

a) That there is no competent petition satisfying constitutional requirements. That the petitioner has not specifically set out the right(s) that has/have been breached and how they have been violated.

b) That the petition and the application violates Article 22(2) of the Constitution and Mutunga Rules.

c) That the petitioner's application is misconceived, mischievous, in bad faith, frivolous and vexatious.

5. In its written submissions dated 24/10/25 through counsel, the 3rd respondent submits that the petition as filed violates Rule 10(2) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013(commonly referred as Mutunga Rules). The 3rd

respondent points out that the cited Rule requires a petition to disclose the following;

- (a) Petitioner's name and address.*
- (b) Facts relied upon.*
- (c) The constitutional provision violated.*
- (d) The nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit, or in a public interest case to the public class of persons or community.*
- (e) Details regarding any civil or criminal case involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition.*
- (f) That the petition shall be signed by the petitioner or the advocate of the petitioner and*
- (g) The relief (s) sought by the petitioner.*

6. The 3rd respondent contends that the petition contains general statements about violations of articles of the constitution but is vague and evasive as regards alleged constitutional violations. That the petitioner has not stated with precision the acts which respondents have allegedly done which are in breach of Articles 10,22,23,40 and 47 of the Constitution or shown how his rights and fundamental freedoms or those of **TUWAN FARM (1965)LIMITED 1965 CPR No.6563** have been infringed.

7. It submits that the petitioner has made unsubstantiated omnibus claims without setting out with precision how the cited provisions have been violated or infringed, the manner of violation and the link between the alleged violations with the respondents' action(s). It relies on **Japheth Ododa Origa -vs- Nairobi Chancellor University of Nairobi and 2 others (2018)eKLR** where the court inter alia held that in a constitutional litigation where a party seeks reliefs vide a constitutional petition he must plead with high degree of precision and show the constitutional rights or fundamental freedom violated, the manner of violation and the jurisdictional basis for the litigation.

8. The 3rd respondent has cited the decision in **Anarita Karimi Njeru -vs-A.G (1979)KLR, Meme -vs- Republic (2004)eKLR, Communication Commission of Kenya & 5 Others -vs- Royal Media Services Ltd & 5 Others (2014)eKLR** and **Mumo Matemu -vs- Trusted Society for Human Rights Alliance & 5 Others.**

In all the above decisions the courts emphasized the importance and imperative for a party in a constitutional petition to plead with precision the nature of constitutional rights infringed, the manner or basis of infringement and the reliefs sought.

9. The 3rd respondent further points out that not every violation of law need be raised in a constitutional court as a constitutional issue especially where other alternative

remedies exist. In that regard relies on the case of **Benard Murage -vs-Fine Serve Africa Ltd & 3 Others (2015)eKLR**. The 3rd respondent submits that the petition herein has not disclosed any reasonable cause of action against the 3rd respondent going by the pleadings and reliefs sought. That the petition does not seek substantive reliefs stipulated under Article 23(3) of the Constitution.

10. The 3rd respondent further questions who the petitioner is to the subject company to be appointed an administrator. That he has not identified his right under Article 22 of the Constitution or Rule 4 of Mutunga Rules.
11. The interested party through Joseph Bett has also weighed in by joining forces with the 3rd respondent. He faults the 1st and 2nd respondents for deregistering it as a company in 1976 and registering a new company in 2011 without the knowledge of shareholders.
12. The interested party submits that the petitioner has initiated the proceedings herein without sufficient interest in the matter. That he has not sought consent or authority of shareholders who are still alive like Taita Towet and other beneficiaries. He contends that the petitioner lacks locus standi to file this suit. It prays that the petition be struck out with costs.
13. In response, the petitioner insists that he has raised serious allegations of fraud, intermeddling with deceased

estate and illegitimate usurpation of a company's name and assets.

14. He contends that the finding by judge Mrima that there are 2 distinct entities **TUWAN FARM LTD CPR/1965/6563** (which is dormant) and **TUWAN FARM LTD CPR 2011/40610** (active) shows that his case is not frivolous. He contends that his suit is not speculative but based on Article 22 (2) (a) of the Constitution and enforcement of deceased's right to property under Article 40 of the Constitution.
15. He submits that he has legitimate interest in the estate of deceased directors and has brought this action to prevent violation and dissipation of the rights of the deceased persons. That because the deceased are unable to act from their graves, a living person should champion their rights and in his view he is that person and that Article 22 (2) as well as Rule 4 (2) of Mutunga Rules gives him room or window to agitate for their grievances.
16. He further submits that the preliminary objection raised is an attempt to elevate procedural technicalities over substantive justice contrary to Article 159 (2) (d) of the Constitution. He urges this court not to allow what he calls procedural smokescreen to defeat justice and prays that the preliminary objection be dismissed.
17. This court has laid out both the preliminary objection, grounds advanced in support of the objection and the response by the petitioner.

18. The preliminary objection raised is basically hinged on the competency of the petition. The 3rd respondent's main bone of contention is that the petition filed does not meet the threshold of a constitutional petition. For the interest of time, I will go straight to the requirements of a constitutional petition of a person claiming that any of his/her fundamental freedom have or has been infringed or threatened with infringement. One of the greatest pillars in the Constitution of Kenya 2010 is the Bill of Rights and its place in Kenya. Article 19 of the Constitution clearly spells this out. It states;

“(1) The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.

(2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

(3) The rights and fundamental freedoms in the Bill of Rights—

(a) belong to each individual and are not granted by the State;

(b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations contemplated in this Constitution.”

19. The petitioner has invoked the provisions of Article 22 (1) and (2) which provide as follows;

“(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.”

20. The procedure for instituting a suit to realize or enforce the above rights is provided under Rule 4(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as Mutunga Rules). The Rule provides as follows;

“(1)Where any right or fundamental freedom provided for in the Constitution is allegedly denied, violated or infringed

or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”

21. The above provisions are clear. A person is required to identify or state with precision or specificity the nature of right, or fundamental freedom in the Bill of Rights that has been denied, violated, infringed or is threatened. The identification is imperative and that is the essence of the procedural rules under the cited Rule 4 of Mutunga Rules. It begins by stating..... ***“where any right or fundamental freedom provided for in the Constitution is allegedly denied, violated or infringed or threatened..... a person so affected or likely to be affected.....may move the court in accordance with Mutunga Rules.”***

So there are no two ways about it. A litigant must follow the procedure provided under Mutunga Rules.

22. The petitioner herein has been faulted for simply restating the rights provided for in the Constitution but failing to show the link between those rights and his grievances and how the 3rd respondent has either contributed to the infringement or acted in contravention of those rights. In the cited case of **Japheth Ododa Origa - vs- Vice Chancellor University of Nairobi & 2 Others (2018)eKLR** and **Mumo Matemu -vs- Trusted Society**

for Human Rights Alliance & 5 Others (2013)KECA 445 KLR, the courts were unanimous that the principle set in the case of **Anarita Karimi Njeru** underscored the need to plead with precision the rights infringed and how they have been violated. In **Anarita Karimi Njeru -vs- R (1979)KEHC 30 (KLR)** the court inter alia held that it is well settled that in constitutional litigation a party seeking reliefs through a constitutional petition on the basis of violation of the constitutional rights and fundamental freedoms, must be pleaded with a higher degree of precision, the rights that have been violated, the manner of violation and specific provision violated.

23. The petitioner herein has not specified what rights the respondents have violated and how they have been violated.

24. The provisions of Rule 10(2) Mutunga Rules provide as follows;

“(2)The petition shall disclose the following—

(a)the petitioner’s name and address;

(b)the facts relied upon;

(c)the constitutional provision violated;

(d)the nature of injury caused or likely to be caused to the petitioner or the person in whose name the

petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
(e)details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
(f)the petition shall be signed by the petitioner or the advocate of the petitioner; and
(g)the relief sought by the petitioner.”

25. The petition before me even on the face of it has not complied with the above basic Rule.
26. Secondly and more importantly it is quite clear from the petitioner’s written submissions that he is championing the rights of dead persons. He has however not stated clearly who the dead persons are and his relationship with them or any of them leave alone stating whether he is acting as a personal representative.
27. The Law of Succession Act and more specifically the provisions of Section 2(1) of Law of Succession Act provides

that, that Act will apply to the administration of the estate of deceased persons. The section states;

(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.”

28. The provisions of section 79 of Law of Succession Act provides that the property of deceased persons including land or shares in a company vests in a personal representative.

Section 79 LSA provides;

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the

deceased shall vest in him as personal representative.”

The petitioner herein as observed above has not stated if he is an appointed administrator to any of the estate of alleged deceased persons and whether he is duly appointed and authorized to act pursuant to section 56 of the Law of Succession Act.

29. The provisions of section 82 of Law of Succession Act gives power to personal representative and no one else to institute civil proceedings on behalf of an estate or rights of a deceased person. The petitioner cannot therefore come to court, however spirited as he may be, that he is fighting for the rights or grievances of the dead without first stating who the dead persons are and if he is duly appointed to act as their personal representative. The rights of deceased persons vests on personal representatives or administrators duly appointed by court.

30. The petitioner or any other person for that matter cannot hide under Article 22(1) or Article 258(1) of the Constitution and say that because the Constitution provides that **“every person”** has a right to institute constitutional petition alleging violation of his rights or fundamental freedoms, he has instituted proceedings on behalf of the dead. For one to act for a deceased person in Kenya, he must comply with the Law of Succession Act. This court has

highlighted the relevant specific provisions which the petitioner has failed to apply to do.

31. This court has said enough to show that the petition filed herein falls way short of requirements of a constitutional petition. A party cannot file a constitutional petition where other remedial avenues exist. If the petitioner alleges that the estates of deceased persons are wasting away and he is either a dependant or a beneficiary, he can institute succession proceedings and not a constitutional petition for a remedy. This petition as presented is incompetent and bad in law. It is struck out with costs to the 3rd respondent.

**DELIVERED, DATED and SIGNED at KITALE this26th day of
.....FEBRUARY....., 2026.**

**HON JUSTICE R.K. LIMO
KITALE HIGH COURT**

Ruling delivered in open court

In the presence of

Kaosa holding brief for Ingosi for 3rd Respondent

No appearance for the Petitioner

Joseph Bett -Interested Party

Duke/Chemosop- Court assistants