

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC EP NO E018 OF 2024

IN THE MATTER OF ARTICLE 22 (2) (C) OF THE CONSTITUTION

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 39
& 42 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ARTICLES 10, 19, 20, 21, 23, 39, 69, 70, 72 & 162(2)
OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTION 13 (3) OF THE ENVIRONMENT AND
LAND COURT ACT CAP 8 D LAWS OF KENYA**

AND

**IN THE MATTER OF SECTION 3 (1) (3) OF THE ENVIRONMENTAL
MANAGEMENT AND CO-ORDINATION ACT CAP 387**

AND

IN THE MATTER OF THE KENYA ROADS ACT, CAP 408

AND

IN THE MATTER OF THE ENERGY ACT, CAP 314

AND

**IN THE MATER OF SECTIONS 5, 16 & 30 OF THE NAIROBI CITY
COUNTY SOLID WASTE MANAGEMENT ACT 2015**

NAMENYA OBULI.....1st PETITIONER

NYONGESA NAMUDE.....2nd PETITIONER

ODHIAMBO AKUDE JURA.....3rd PETITIONER

VERSUS

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY.....1st RESPONDENT

THE COUNTY GOV'T OF NAIROBI.....2nd RESPONDENT

KENYA POWER & LIGHTING CO.....3rd RESPONDENT

KENYA RURAL ROADS AUTHORITY.....4th RESPONDENT

JUDGMENT

1. Vide an Amended Petition dated the 20th September, 2024, the Petitioners seeks the following reliefs:

- i. **A declaration that their right to a clean and healthy environment as guaranteed by Article 42 and 43 of the Constitution of Kenya 2010 has been violated by the acts and or omissions of the Respondents.**

- ii. **A declaration that their right to freedom of movement and residence under Article 39 of the Constitution of Kenya has been violated.**
- iii. **An order compelling the 2nd & 4th Respondents to remove all the garbage on the road linking Umoja 1 and Umoja 2 market.**
- iv. **An order compelling the 4th Respondent to open and rehabilitate the said link road in (iii) above.**
- v. **A permanent injunction to stop the dumping of waste materials in Umoja dumpsite and along the power line.**
- vi. **An order compelling the 3rd Respondent to put appropriate restrictive measures, ensuring that all the garbage along the power line are collected and that the dumping site be closed permanently.**
- vii. **An order for compensation from the damage suffered from the dumpsite.**
- viii. **Any other appropriate relief that this Honorable Court may deem just and fit to grant.**

2. The Petitioners are residing within Umoja I Estate and Umoja Innercore Estate in Nairobi County, bring this Petition on their own behalf and in the

wider public interest. Their grievance arises from what they deem the continued operation and unchecked expansion of an illegal and ungazetted solid waste disposal site situated along Umoja I & II Road/SDA Road, commonly known as the Umoja Dumpsite. They contend that what began as a localized nuisance has steadily intensified, evolving into a grave environmental, public health, safety, and human-dignity crisis with far-reaching consequences for the residents of Umoja and the surrounding neighbourhoods.

3. According to the Petitioners, the dumpsite continues to swell on a daily basis and has become a persistent menace within a residential area. They aver that the site has accumulated massive heaps of decomposing waste, which have attracted rodents of unusual size that have migrated into residential homesteads, instilling fear and anxiety, particularly among young children. The Petitioners state that this situation has profoundly undermined their sense of safety, dignity, and well-being.
4. They further contend that the dumpsite emits a constant and pungent stench, forcing residents to incur additional costs on perfumes, air fresheners, and other masking agents simply to make their homes habitable. The Petitioners complain that large, green flies emanating from the dumpsite infest their

houses almost instantly whenever food is prepared compelling them to invest in insect repellents. They are apprehensive that these flies, having contact with decomposing waste, are likely vectors of disease. The stench has, according to them, made it difficult to prepare and serve meals in a dignified manner within their own homes.

5. It is the Petitioners case that that the situation has deteriorated to such an extent that human scavengers, stray dogs, pigs, marabou storks, and other scavenging birds have made the dumpsite their habitation. Garbage has piled up so extensively that it has completely obstructed the road connecting Umoja 1 to Umoja 2 market. This road, which falls under the mandate of the Kenya Rural Roads Authority, has become impassable severely curtailing their freedom of movement, and forcing them and other residents to take longer and more expensive alternative routes. This additional transport cost is burdensome given the prevailing harsh economic conditions.
6. According to the Petitioners, the garbage heap has grown into a mound that now reaches overhead electricity supply lines running from Likoni in the Industrial Area through Dandora, Embakasi North, and beyond. They apprehend a real and imminent danger of electrocution and loss of life should dumping continue unchecked. They note that this concern has been

publicly corroborated by the Senator for Nairobi City County, Hon. Edwin Sifuna, who questioned the County Government on why residents of Umoja are being allowed to live in such hazardous conditions.

7. They further aver that the dilapidated state of the affected road, characterized by stagnant water, trenches, and potholes filled with waste has created an ideal breeding ground for mosquitoes, leading to an increase in malaria cases within the area. The Petitioners believe that the dumpsite is illegal and ungazetted, being located at the heart of a residential area, yet continues to attract garbage collectors from various parts of Nairobi. They contend that the increasing number of homeless persons scavenging at the site poses a serious and ongoing security threat to residents.
8. The Petitioners state that sometime in the recent past, a mutilated and decomposing body of an adult female was discovered at the dumpsite, an incident that sent shockwaves and fear throughout the community. They further describe the dehumanizing conditions under which women, some carrying infants, scavenge through the waste with bare hands and without protective gear. According to the Petitioners, this exposes both the scavengers and surrounding residents, especially children, to serious health

risks and infectious diseases, thereby entrenching cycles of vulnerability and indignity.

9. They aver that during the rainy season, contaminated water mixed with sludge, sanitary pads, baby diapers, used condoms, household refuse, and plastic waste flows from the dumpsite into residential compounds. They contend that this poses a high risk of outbreaks of water-borne and other communicable diseases. The Petitioners describe the road as accessible only on foot due to extensive damage and garbage accumulation, forcing pedestrians to pinch their noses because of the stench and to navigate through filthy water. They further aver that discarded medical waste, including used syringes, has been observed at the site, posing an extreme and unacceptable danger.

10. The Petitioners assert that these conditions constitute a violation of their constitutional rights. In particular, **Article 42** of the **Constitution of Kenya, 2010**, which guarantees every person the right to a clean and healthy environment, including the right to have the environment protected for the benefit of present and future generations through legislative and other measures contemplated under **Article 69**, and to have environmental obligations enforced under **Article 70**. They also rely on **Article 39**, which

guarantees freedom of movement and residence, and **Article 28**, which protects human dignity.

11. They further invoke **Article 23** of the **Constitution**, which vests this court with jurisdiction to uphold and enforce the Bill of Rights and to grant appropriate reliefs in proceedings brought under **Article 22**, including declarations, injunctions, conservatory orders, and compensation.
12. The Petitioners attribute responsibility to the Respondents as follows. They contend that the 1st Respondent has failed in its statutory obligation to ensure environmental protection by allowing uncontrolled dumping of waste without any effective regulatory or mitigation measures, and in so doing, facilitating the dumping of waste materials that has decayed to a level threatening human health conditions and right to a clean environment.
13. As regards the 2nd Respondent, they contend that it has failed to undertake collection or disposal of solid waste materials contrary to their mandate set out in the Fourth Schedule to the Constitution, read together with **Articles 185(2), 186(1), and 187(2)** of the **Constitution**. They aver that while environmental protection and natural resource management is the role of the National Government, refuse removal, refuse dumps, and solid waste disposal fall squarely within the mandate of the 2nd Respondent.

14. The Petitioners further state that the 3rd Respondent, has laid electricity infrastructure through the area and allowed dumping beneath power lines and buffer zones. According to them, this conduct, whether with or without knowledge, constitutes a breach of the Petitioners' right to a clean and healthy environment and exposes residents to grave and foreseeable danger.
15. As regards the 4th Respondent, it is their case that it has abdicated its statutory duty to construct, rehabilitate, and maintain roads under its control. The spillage of garbage onto the road connecting Umoja 1 and Umoja 2 markets has rendered the road unusable, forcing residents to incur additional costs and restricting their movement.
16. In conclusion, the Petitioners contend that the cumulative acts and omissions of the Respondents amount to a gross and continuing violation of the constitutional rights of Umoja residents, including the right to a clean and healthy environment under **Article 42**, the right to human dignity under **Article 28**, and the right to freedom of movement and residence under **Article 39**. They aver that no meaningful mitigation or precautionary measures have been undertaken and that unless this court intervenes, the

situation is likely to precipitate a serious public health and environmental disaster with immediate, incalculable, and irreversible consequences.

17. In response to the Petition, the 1st Respondent, through Samuel Lopokoiyit, swore a Replying Affidavit on the 20th November, 2024. He deponed that he is the County Director of Environment, Nairobi County and an employee of the National Environment Management Authority (NEMA).

18. He explained that NEMA is the principal government institution established under **Section 7** of the **Environmental Management and Coordination Act (EMCA), Cap 387 (EMCA)** with the statutory mandate to exercise general supervision and coordination over all matters relating to the environment. In particular, the Authority is tasked with the review of Environmental Impact Assessment Reports and the issuance of Environmental Impact Assessment (EIA) licenses for development projects, a process intended to evaluate proposed projects for environmental concerns prior to implementation.

19. According to Mr. Lopokoiyit, the 1st Respondent expressly denies the allegations that it had breached the Constitution or any relevant statutes. He explained that, under **Part 2** of the **Fourth Schedule** to the **Constitution**, the functions relating to refuse removal, refuse dumps, and solid waste

disposal are devolved functions falling squarely within the mandate of county governments.

20. He clarified that NEMA's role in waste management is governed by EMCA and the Waste Management Regulations, 2024, and is limited to regulatory functions such as licensing waste disposal sites and treatment plants, licensing waste transporters, and issuing permits for waste export. Consequently, even where waste disposal concerns are reported to the Authority, such matters are ordinarily referred to the relevant county government, which bears the primary constitutional responsibility for waste management.

21. The 1st Respondent further stated that a review of NEMA's records revealed that, prior to the filing of the Petition, the Petitioners had not lodged any complaint with the Authority concerning the alleged dumping at the subject site. On that basis, he denied the assertion that NEMA had allowed the continued dumping of waste, contending that the matter had not been brought to its attention before the institution of the proceedings.

22. Nonetheless, and without prejudice to that position, he stated, the 1st Respondent acknowledges its supervisory and coordinating mandate and following the filing of the Petition, a site inspection was conducted on 3rd

July 2024. During that inspection, it was observed that the dumpsite was active, unfenced, and unmanned; that it was situated between residential buildings and beneath power lines; and that the accumulated waste had blocked part of the road connecting Umoja 1 and Umoja 2 markets.

23. Following the inspection, the 1st Respondent issued an environmental restoration order to the 2nd Respondent, requiring the removal and clean-up of the accumulated waste at the site. The deponent further explained that, according to information provided by Counsel on record, the 2nd Respondent confirmed, through a replying affidavit sworn on 30th September 2024 that approximately 9,000 tonnes of waste has been removed from the power line area and that waste removal efforts were ongoing.

24. He emphasized that effective waste management requires collaborative action involving not only NEMA and county governments, but also private entities, citizens, and waste generators. In this regard, he referred to obligations under the Sustainable Waste Management Act, which require waste to be disposed of only through licensed service providers or designated collection points.

25. In light of the foregoing, it was urged that the 1st Respondent has not acted in dereliction of its statutory duties. It remains conscious of its

mandate to protect the environment and had made *bona fide* efforts to ensure compliance with EMCA. On that basis, the 1st Respondent prayed that the Petition and all prayers directed against it be dismissed with costs.

26. The 2nd Respondent, through Ms. Lesly Karwitha, the Chief Environment Officer for Embakasi West Sub-County within Nairobi City County swore a Replying Affidavit on the 30th September, 2024. She deponed that the Nairobi City County Government has only one designated final waste disposal site, namely the Dandora Dumpsite, which is situated in Embakasi North Sub-County. All waste collected within Nairobi County is intended to be transported to this final disposal site, although she acknowledged that some waste ends up being illegally dumped in undesignated sites, rivers, and drainages, thereby rendering the environment uncondusive for residents.

27. She explained that the County Government has employed support staff whose primary mandate is to ensure a clean and healthy environment for all residents, and that these teams have been working across all sub-counties to unclog drainages, sweep streets, and collect garbage within the County's eighty-five wards. In relation to the Umoja Dumpsite, she averred that it arose from the accumulation of residential waste along open spaces

within the electric power line corridor, and that the County has over the years provided, and continues to provide, trucks and machinery to ferry such waste to the Dandora Dumpsite.

28. According to Ms. Karwitha, the County Government has managed to remove approximately 9,000 tonnes of waste from the powerline area and continues to remove the waste gradually, with the objective of clearing the accumulation and providing Nairobi residents with a clean and healthy environment. She added that the responsibility for proper waste disposal rests with all waste generators, including residents, and that improved disposal practices would help reduce the proliferation of illegal dumpsites within residential estates.

29. Also filed was a response to Petition dated the 2nd May, 2025. In it the 2nd Respondent denied the assertions as set out in the amended Petition reiterating the averments of Ms Karwitha that the 2nd Respondent has employed staff in an attempt to manage garbage in the County; they have so far removed over 9000 tonnes and waste management is a collective responsibility.

30. The 3rd Respondent, through its wayleaves officer, Emmanuel Ochieng Ouma, swore a Replying Affidavit on the 25th October, 2025. He

deponed that the 3rd Respondent is a public utility company operating under the Ministry of Energy and Petroleum, with the mandate of bulk purchase, distribution, and retail supply of electricity to over ten million customers across the country. Its operations, are governed by the Energy Act, 2019.

31. The 3rd Respondent stated that it is merely a licensee under the Energy Act for the distribution of electrical energy and does not engage in solid waste management. It was averred that the Petitioners had misapprehended the law, as **Section 107** of the **Energy Act, 2019** relates to construction permits and not wayleaves, as alleged.

32. Mr Ouma explained that there exists other distinct energy sector players, including the Geothermal Development Company, Kenya Electricity Transmission Company Limited, and the Rural Electrification and Renewable Energy Corporation, each with separate mandates. It was clarified that Kenya Electricity Transmission Company Limited is a state corporation established solely for the construction and transmission of high-voltage electricity.

33. According to Mr Ouma, the Petitioners have not produced any proof of land acquisition by the 3rd Respondent, nor any wayleave agreements,

approvals, or evidence linking the 3rd Respondent to the alleged wayleave trace or infrastructure complained of.

34. On advice of Counsel, he averred, no constitutional issue has been raised against the 3rd Respondent, nor has any dispute been demonstrated between the Petitioners and the 3rd Respondent, particularly given that the Energy Act, 2019 does not vest the 3rd Respondent with any powers relating to solid waste management. The 3rd Respondent, he urged, is not a necessary party to these proceedings and the claims against it are ripe for dismissal.

35. Further, the Petitioners have merely cited various provisions of the Constitution without demonstrating how the 3rd Respondent had violated them. It was contended that the reliefs sought, including declaratory and prerogative orders, offended settled principles governing the grant of equitable reliefs and the provisions of **Order 40** of the **Civil Procedure Rules, 2010**, particularly in the absence of any actionable claim against the 3rd Respondent.

36. The 4th Respondent did not file a response to the Petition.

SUBMISSIONS:

37. The Petitioners filed their submissions on 22nd August, 2025. Counsel submitted that the right to a clean and healthy environment under **Article 42**

is not aspirational but fully justiciable, and includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures contemplated under **Article 69**, and to have obligations relating to the environment fulfilled under **Article 70**.

38. According to Counsel, **Article 69(1)** imposes positive obligations upon the State, including eliminating processes and activities likely to endanger the environment, among others while **Article 69(2)** places a duty upon every person, including State entities and corporations to cooperate in environmental protection and conservation. **Article 70** provides a direct mechanism for enforcement.

39. Counsel asserted that the Petitioners have placed before the court factual material demonstrating persistent and uncontrolled dumping of solid waste at the heart of Umoja residential estates, and the resultant health and safety risks. No evidence has been demonstrated of effective or timely intervention by the 1st and 2nd Respondents and their inaction has enabled unsafe and dehumanizing scavenging conditions. On their part, the 3rd Respondent has failed to secure the wayleave whereas the 4th Respondent has failed to maintain roads under its control, repair the affected thoroughfare, and protect the road reserve from encroachment by waste.

40. In support of the argument that regulatory inaction may amount to a constitutional violation, Counsel placed reliance on **Patrick Kababuge & 38 Others v Metal Refinery (EPZ) Ltd & 6 Others [2021] KEELC 22906 (KLR) (the Owino Uhuru case)**, contending that this court set out a robust standard for duty-bearers in upholding the constitutional environmental right, and emphasized that applicants moving the court under **Article 70** need not demonstrate personal injury so long as actual or likely environmental harm and failure of duty is shown.
41. Counsel also relied on **Muindi Kimeu and 3074 others v Kenya Pipeline Company Ltd and NEMA, Petition No. 9 of 2019**, to advance the proposition that where environmental degradation detrimentally impacts both the environment and human life, the court is empowered to grant remedies protecting the environment as an independent entity and orders protective of human life. Also cited was **Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation (Supreme Court of Nigeria, SC. 319/2013)** for the comparative proposition that where agencies mandated to enforce environmental compliance fail to do so in circumstances of degradation, courts should not hesitate to grant protective orders.
42. Reference was further made to international and regional norms, including **Article 24** of the **African Charter on Human and Peoples'**

Rights, and allied statements in African human-rights scholarship, for the proposition that all peoples are entitled to a satisfactory environment favourable to development and that states bear supervisory responsibilities for environmental protection and conservation. Counsel also referred to *Peter K. Waweru v Republic [2006] eKLR*, submitting that the courts have recognized the close interrelationship between the right to life, dignity, and a healthy environment, and that environmental justice should not be undermined by procedural technicalities where harm is shown or threatened.

43. As regards entitlement to remedies, Counsel argued that **Articles 23** and **70** of the **Constitution** as read with **Section 13(3)** of the **Environment and Land Court Act** provide a broad remedial architecture for enforcement of the Bill of Rights, including the right to a clean and healthy environment.

44. Counsel submitted that declaratory relief is central in constitutional and environmental litigation, as it clarifies the legal position and affirms whether rights have been violated. In support reference was made to the case of *Institute of Social Accountability & Another v National Assembly & 4 Others [2015] eKLR* to underscore the value of declarations in public-interest litigation. Counsel also relied on *Save Lamu & 5 Others v National Environmental Management Authority & Another [2019] eKLR* for the proposition that courts may grant injunctive and mandatory relief to halt

harmful activity pending compliance with environmental duties, because constitutional compliance must prevail over administrative convenience.

45. Finally, Counsel submitted that compensation is expressly available under **Article 23(3)(e)** and **Article 70(2)(c)**, and serves both remedial and deterrent purposes in environmental-rights litigation, including for collective harm, distress, nuisance and loss of amenity. Counsel contended that, as illustrated in the Owino Uhuru jurisprudence, courts may award substantial damages where long-term neglect and regulatory failure results in environmental harm, and argued that comparable relief was justified given the health hazards, psychological distress, indignity, and loss of amenity alleged to arise from the Umoja dumpsite. In conclusion, Counsel urged the court to find in favour of the Petition.

46. The 1st Respondent filed submissions dated the 2nd September, 2025. Counsel submitted that while the 1st Respondent bears a general obligation to ensure a clean and healthy environment through the exercise of supervision and coordination over environmental matters, that mandate is not unlimited. It is circumscribed by the Constitution of Kenya, 2010 and the Environmental Management and Co-ordination Act (EMCA). Counsel emphasized that the 1st Respondent's role must therefore be understood within the broader constitutional architecture of devolution.

47. In support of this position, reliance was placed on the decision in *Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others [2018] KEELC 4040 (KLR)*, where the court in considering the mandate of the NEMA held that under **Section 9(2)** of **EMCA**, it has mandatory obligations to coordinate with lead agencies to ensure proper environmental management, and to render advice and technical support where possible. The court further observed that NEMA is well placed, and indeed has a legal duty, to assist county governments in developing policies and strategies to address urban waste management challenges.

48. Counsel further relied on *Republic v National Environment Management Authority & another ex parte Philip Kisia & City Council of Nairobi [2016] eKLR*, where the court underscored that while lead agencies are required to cooperate with NEMA in environmental protection, EMCA vests in NEMA the mandate of general supervision and coordination. The court held that NEMA is the principal instrument of government in environmental matters and is empowered to invoke its statutory enforcement powers where a lead agency fails to comply with lawful directives. It was submitted that, viewed against that jurisprudential backdrop, the role of the 1st Respondent in matters of waste management is principally regulatory and supervisory.

49. Counsel urged the court to find that the 1st Respondent has exercised its mandate in accordance with the law. Waste management laws, policies and strategies have been progressively put in place to promote sustainable waste management, including the Sustainable Waste Management Act, which seeks to promote circularity in waste handling. Further, pursuant to **Sections 86 and 147 of EMCA**, the Waste Management Regulations, 2024 were gazetted to regulate the handling, storage, transportation, segregation and disposal of waste.
50. On the other hand, Counsel submitted, **Section 5(2)(c) of the County Governments Act**, read together with **Article 186** and the **Fourth Schedule to the Constitution**, vests responsibility for refuse removal, refuse dumps and solid waste disposal squarely in county governments. These provisions, counsel argued, are couched in mandatory terms and leave no ambiguity as to where the primary obligation lies.
51. In this regard, further reliance was placed on ***Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others(supra)*** where the court expressly held that following the promulgation of the 2010 Constitution, the functions of refuse removal, refuse dumps and solid waste disposal were devolved to county governments under **Part 2(g) of the Fourth Schedule**.

The court affirmed that the primary obligation in waste disposal and management rests with county governments.

52. Counsel submitted that, as a national government entity, the 1st Respondent can only intervene within the parameters set by **Section 9(1)** of **EMCA**, and only where a legally mandated authority has neglected its environmental responsibilities and such failure has been brought to NEMA's attention with supporting evidence. In the present case, it was argued that no evidence had been placed before the court to demonstrate that the 2nd Respondent was unable or unwilling to discharge its mandate so as to warrant direct intervention by the 1st Respondent.

53. Indeed, Counsel pointed out, the 2nd Respondent vide its' Replying Affidavit of 30th September, 2024, confirmed that the County Government had removed approximately 9,000 tonnes of waste from the power line area and was continuing with gradual removal efforts. Further support was drawn from the decision of the *Mombasa Environment and Land Court in Gichu v Obuya Otieno Ritzau t/a Bamburi Community High School & 3 others [2023] KEELC 19222 (KLR)*, where the court held that, in deference to devolution, a national government entity cannot interfere with the mandate of county governments unless it is demonstrated that the counties are completely unable to discharge their functions. The court affirmed that

devolution must be given practical effect, and that mere dissatisfaction with county action does not justify national intervention.

54. Notwithstanding the foregoing, Counsel submitted that the 1st Respondent had not remained passive. In recognition of its supervisory and coordinating role, it conducted a site inspection and thereafter issued an Environmental Restoration Order. In conclusion, the 1st Respondent urged the court to find that it acted with due diligence, within its constitutional and statutory mandate, and that it did not violate the Petitioners' right to a clean and healthy environment under **Article 42 of the Constitution**. Counsel accordingly prayed that all prayers sought against the 1st Respondent be dismissed with costs.

55. The 2nd Respondent filed its submissions on 10th July, 2025. Counsel submitted that the Petitioners' allegations against it, and in particular its evidence must be tested against the rules of evidence under the Evidence Act (Cap. 80). It was submitted that **Section 63(1) and (2)** requires oral evidence to be direct, and that the burden of proof lies on the party asserting facts, pursuant to **Sections 107, 108, 109 and 110 of the Evidence Act**.

56. On that basis, Counsel contended that Exhibit AJ-2 amounted to inadmissible hearsay, since neither the alleged maker of the statement (Hon. Sifuna) nor the publisher was before the court; the statement was not on

oath; it was not subject to cross-examination; and its reliability could not be tested. Counsel maintained that reliance on such material undermines the 2nd Respondent's right to a fair trial under **Article 50** of the **Constitution**.

57. In support of the objection to hearsay, Counsel referred to *Myers v DPP [1965] AC 1001*, submitting that even records appearing to be kept in the ordinary course of business may be ruled hearsay where the maker does not testify, and that exceptions only arise in limited circumstances such as death, inability to be found, incapacity, or where procuring attendance would cause unreasonable delay or expense. On that footing, Counsel urged the court to find that the Petitioners had not presented admissible proof that the 2nd Respondent had been negligent or indifferent.

58. It was submitted that as explained in *Raila Odinga & Others v Independent Electoral & Boundaries Commission & Others, Petition No. 5 of 2013*, and *John Harun Mwauer & 2 others v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR*, the burden of proof lies, at all times, on the petitioner; that generalized claims without evidence meeting the requisite threshold are of no value; and that the Petitioners must supply proof to the required standard. Having failed to do, they cannot sustain their claims of breach, In support the cases of *Anarita Karimi Njeru v Republic [1979] KECA 12 (KLR)*, *Kiambu County Tenants Welfare*

Association v Attorney General & another [2017] eKLR and Christian Juma Wabwire v Attorney General [2019] eKLR, Suleiman Kasuti Murunga v IEBC & 2 Others, Bungoma High Court Election Petition No. 2 of 2017 (2018)eKLR and Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR were cited.

59. Conversely, Counsel submitted that the 2nd Respondent had demonstrated active mitigation measures through its Reply to the Petition dated 2nd May, 2025, and supporting material. It was explained that the County has one designated final disposal site, namely the Dandora Dumpsite in Embakasi North Sub-County; that it has employed staff tasked with ensuring a clean and healthy environment, working across the sub-counties including unclogging drainages, sweeping streets, and collecting garbage within Nairobi's 85 wards; and that over the years the County has continued to provide trucks and machinery to ferry waste, having recently removed over 9,000 tonnes of waste from the powerline area and continuing gradual removal.

60. Counsel stated that this position was corroborated by Annexure 1, being the status report on the alleged Umoja 1 dumpsite dated 4th July, 2024

by the Chief Environmental Officer, Embakasi West, and further by the 2nd Respondent's Replying Affidavit sworn by Leslie Karwitha, Chief Environmental Officer, Embakasi West, dated 30th October, 2024. Counsel also pointed out that the County, working with the County Assembly, enacted the Nairobi City County Solid Waste Management Act, 2015, which recognizes residents' right to a clean and healthy environment, sets out the County's mandate on waste management and establishes offences and penalties related to waste management, in fulfilment of the County's constitutional mandate under **Article 186(1)** and **Part 2** of the **Fourth Schedule**.

61. Ultimately, Counsel maintained that the 2nd Respondent recognizes and respects the rights under **Articles 42** and **43**, and that the problem of illegal dumpsites is longstanding and cannot be resolved in a single day, but is being addressed progressively. Counsel emphasised that the situation requires a collective societal response, including responsible conduct by waste generators, to avoid illegal dumping and to ensure proper disposal so as to prevent further swelling of illegal heaps. The 2nd Respondent urged that the Petition be dismissed.

62. The 3rd Respondent filed its written submissions on 25th October 2025. Counsel submitted that the sole issue for determination is whether the 3rd

Respondent bears any responsibility for waste management. Counsel reiterated that the 1st -3rd Respondents already set out their mandates as regards waste disposal which the court ought to take note of.

63. Counsel urged the court to consider the findings in *Odando & another (suing on their own behalf and as the registered officials of Ufanisi Centre) v National Environmental Management Authority & 2 others; County Government of Nairobi & 5 others (Interested Parties) [2021] KEELC 2235 (KLR)*, where the court extensively addressed the governance of waste management in Nairobi. Counsel highlighted that in that decision, the court issued far-reaching directives to NEMA and the County Government (then Nairobi Metropolitan Services) relating to waste identification, disposal, decommissioning of the Dandora dumpsite, river clean-up, public participation, and environmental oversight. It was submitted that those orders underscore that constitutional and statutory responsibility for waste management lies with environmental regulators and county authorities, not electricity distributors.

64. The foregoing, Counsel argued, demonstrates that waste management falls exclusively within the mandate of the 1st and 2nd Respondents. The 3rd Respondent's role, it was submitted, is limited to the retail and distribution of electricity, and it has neither the statutory authority nor the technical

mandate to manage solid waste. At most, like any other citizen or entity, the 3rd Respondent may only report incidents of illegal dumping to the competent authorities.

65. On the issue of costs, Counsel invoked **Section 27(1)** of the **Civil Procedure Act**, submitting that costs ordinarily follow the event unless the court directs otherwise for good reason. Reliance was placed on *Kenya Sugar Board v Ndungu Gathini (2013) eKLR* for the proposition that an award of costs is a matter of judicial discretion, to be exercised judiciously. It was contended that the 3rd Respondent had expended considerable resources in defending proceedings in which no cause of action lay against it, and was therefore entitled to costs.

66. In conclusion, the 3rd Respondent submitted that it had been wrongly joined to the proceedings, that no constitutional or statutory breach had been demonstrated against it, and that the Petition as against the 3rd Respondent ought to be dismissed with costs.

ANALYSIS & DETERMINATION:

67. Having considered the Petition, Responses and submissions, the issues that arise for determination include:

i. Whether the Petitioners have demonstrated the alleged violations and/or threats to violation of their rights protected under Articles 39, 42 & 43 of the Constitution; and

ii. What are the appropriate reliefs to issue?

I. Whether the Petitioners have demonstrated the alleged violations and threat to violation of the rights protected under Articles 39, 42 & 43 the Constitution?

68. Vide the present Petition, the Petitioners seek declaratory, injunctive, mandatory, and compensatory reliefs from the Respondents arising from what they describe as the continued operation and unchecked expansion of an illegal and ungazetted solid waste dumpsite situated along Umoja I & II Road/SDA Road, commonly referred to as the Umoja Dumpsite.

69. The Petitioners contend that the impugned dumpsite has progressively degenerated into a grave environmental, public health, safety, and human-dignity crisis. Whereas several constitutional provisions have been cited, the gravamen of the Petition, and the reliefs sought are anchored on the alleged violation of the right to a clean and healthy environment under **Article 42** of the Constitution, together with **Article 43** and the right to freedom of movement and residence under **Article 39**.

70. It is settled law that a party alleging violation of constitutional rights bears the obligation to plead such violation with precision. The Petitioners must identify the specific constitutional provisions alleged to have been infringed, set out the factual basis of the infringement, and demonstrate a nexus between the acts or omissions complained of and the alleged constitutional breach. This principle was articulated in *Anarita Karimi Njeru v Republic (1979) KLR 154* and has consistently guided constitutional adjudication in this jurisdiction.

71. Further, the court is guided by the established principles governing the burden of proof under the law of evidence. Pursuant to **Sections 107(1) and (2)** of the **Evidence Act, Cap 80**, the obligation to prove a fact rests upon the party who asserts its existence and seeks the court's determination on the basis of that assertion. Where a party bears the duty to establish a particular fact, the evidential burden lies squarely upon that party.

72. In elaboration of this principle, **Section 108** of the Act provides that the burden of proof in any suit or proceeding lies on the party who would fail if no evidence were adduced on either side. **Section 109** further clarifies that the burden of proving any specific fact rests with the person who wishes the court to accept its existence, save where the law expressly places that burden upon another party.

73. These evidentiary principles were affirmed by the Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR*, which emphasized that while **Article 22(1)** of the **Constitution** permits any person to institute proceedings for the enforcement of fundamental rights and freedoms, a litigant invoking that jurisdiction must clearly demonstrate the specific rights alleged to have been violated and the factual basis upon which the grievance is founded.

74. The court is so guided and will determine the issue under the following sub-heads:

- i. **Violation of Articles 42 and 43: right to a clean and healthy environment and social and economic rights?**

75. The right to a clean and healthy environment is fundamental to human survival and well-being. In Kenya, this right is expressly guaranteed under **Article 42** of the Constitution, which entitles every person to a clean and healthy environment and obliges the State to protect it for the benefit of present and future generations. Complementing this guarantee, **Article 69** sets out the obligations of the state in environmental governance, including

the duty to conserve biodiversity, protect genetic resources, and eliminate activities and processes that pose a threat to the environment.

76. The Constitution further places a corresponding responsibility on citizens. **Article 69** obliges every person to cooperate with State organs and others in the conservation and protection of the environment, and in ensuring the sustainable use of natural resources in a manner that promotes ecological sustainability.

77. To give practical effect to these guarantees, **Article 70(1)** confers standing upon any person to approach the court where the right to a clean and healthy environment has been, is being, or is likely to be denied, violated, infringed, or threatened. Importantly, **Article 70(3)** dispenses with the requirement to demonstrate personal loss or injury as a precondition to seeking redress. This approach is mirrored in **Section 3(3)** of the **Environmental Management and Co-ordination Act**, which permits actions to be brought in the public interest for the enforcement of environmental rights.

78. Further, **Section 13** of the **Environment and Land Court Act** vests this court with jurisdiction to hear and determine disputes relating to the denial, violation, infringement, or threat to environmental rights, as well as matters concerning the use, occupation, and title to land.

79. Taken together, these provisions affirm the broad and foundational character of the right to a clean and healthy environment, which is intrinsically linked to the enjoyment of other constitutional rights and freedoms. Speaking to this, the court in *Peter K Waweru v Republic [2006]* *Eklr* the court stated:

“The right of life is not just a matter of keeping body and soul together because in this modern age, that right could be threatened by many things including the environment. The right to a clean environment is primary to all creatures including man; it is inherent from the act of creation, the recent restatement in the Statutes and the Constitutions of the world notwithstanding. This right and the other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.”

80. And in *Adrian Kamotho Njenga v Council of Governors & 3 others [2020] eKLR* the court stated:

“Article 42 of the Constitution guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations

through the measures prescribed by article 69. The right extends to having the obligations relating to the environment under article 70 fulfilled. Unlike the other rights in the bill of rights which are guaranteed for enjoyment by individuals during their lifetime, the right to a clean and healthy environment is an entitlement of present and future generations and is to be enjoyed by every person with the obligation to conserve and protect the environment.”

81. The African Commission on Human and People’s Rights in the case of *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria, Communication No 155/96* held that environmental rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual, and as a consequence, the state is required under the African Charter to take reasonable measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.

82. It is well settled that in addressing environmental disputes, the court is enjoined to adopt an approach that prioritizes environmental protection and

sustainability. This was underscored by the court in *Wemali v Mutuku; National Environment Management Authority & 2 others (Interested Parties) (Environment & Land Petition E047 of 2021) [2022] KEELC 2765 (KLR) (30 June 2022) (Ruling)* which authoritatively stated thus:

“Section 3(1) of *EMCA* provides that every person in Kenya is entitled to a clean and healthy environment in accordance with *the Constitution* and relevant laws, and is required to safeguard and enhance the environment. Section 3(2A) of *EMCA* provides that every person shall cooperate with State organs to protect and conserve the environment and ensure the ecological sustainable development of natural resources.

Alongside the statutory responsibility, Kenyans owe future generations a duty to sustain the environment for their benefit, as highlighted in the preamble to *the Constitution*. As earlier stated, the court is required by section 3 of *EMCA* to be guided by principles of intergenerational and intragenerational equity and the precautionary principle when exercising its jurisdiction in claims where a person alleges that the right to a clean and healthy environment has been denied or violated and or is threatened. It

behoves every person, including the parties herein to ensure that the environment is protected.”

83. The Petitioners’ case is premised on the assertion that the continued existence, unchecked expansion, and ongoing operation of the Umoja dumpsite has resulted in sustained environmental degradation within a densely populated residential area, thereby violating their right to a clean and healthy environment under **Article 42** of the **Constitution** and relatedly, their entitlement to the highest social and economic standards guaranteed by **Article 43**.

84. They aver that the accumulation of decomposing waste has generated persistent foul odours, infestation by rodents, flies, and scavenging animals, contamination of surface and storm water, and the proliferation of disease vectors. According to the Petitioners, these conditions have rendered their neighbourhood unsafe, unhealthy, and incompatible with human dignity, exposing residents, particularly children and other vulnerable persons to serious and foreseeable health risks.

85. The Petitioners further contend that the environmental harm complained of is continuous and escalating. They cite, *inter alia*, the obstruction of the road linking Umoja I and Umoja II markets by accumulated waste, the dumping of refuse beneath overhead electricity lines

posing a real risk of electrocution, the presence of medical and sanitary waste at the site, and the overflow of contaminated water into residential compounds during the rainy season.

86. The Petitioners expressly attribute responsibility for the violation of **Articles 42 & 43** to the Respondents, both individually and collectively. They contend that the 1st Respondent, as the principal environmental regulator, failed to undertake appropriate measures as empowered to prevent or abate illegal dumping at the site, thereby allowing an environmentally hazardous situation to persist. They further assert that the 2nd Respondent, being constitutionally and statutorily mandated to manage refuse removal, refuse dumps, and solid waste disposal within Nairobi County, abdicated its duty by permitting the proliferation of an illegal and ungazetted dumpsite within a residential area.

87. As regards the 3rd Respondent, the Petitioners allege that by allowing dumping beneath power lines and within electricity wayleave buffer zones, it exposed residents to grave danger and thereby contributed to the violation of their environmental rights. As regards the 4th Respondent, it is deemed to have failed to maintain the road under its control and facilitating the illegal

dumping of waste materials thereby violating petitioners' right of movement and a healthy environment.

88. In response, the 1st Respondent maintains that it has at material times acted within the confines of its statutory and regulatory mandate under the Constitution and the EMCA asserting that refuse removal and solid waste management lies with county governments, and that its role is limited to supervision, licensing, and enforcement. Prior to the institution of the Petition, it asserts, no complaint had been formally lodged with it regarding the Umoja dumpsite.

89. Nevertheless, upon becoming aware of the issue through these proceedings, it conducted a site inspection, confirmed the existence of environmental concerns, and issued an environmental restoration order to the 2nd Respondent, which it submits demonstrates compliance with its statutory obligations.

90. The 2nd Respondent, while acknowledging the existence of illegal dumping within the area, denies liability for a violation of the Petitioners' right to a clean and healthy environment. It maintains that Nairobi City County has a designated final disposal site at Dandora and that all waste collected within the County is intended to be transported there. According to

the 2nd Respondent, the Umoja dumpsite emerged from the accumulation of residential waste in undesignated areas, including along the power line corridor.

91. It avers that it has taken remedial measures, including the deployment of staff, trucks, and machinery, and that approximately 9,000 tonnes of waste have already been removed, with clean-up efforts continuing. It further contends that waste management is a shared responsibility and that residents themselves bear a duty to dispose of waste properly.

92. The 3rd Respondent denies any responsibility for waste management and asserts that it has been wrongly impleaded. It maintains that its statutory mandate under the Energy Act, 2019 is confined to the transmission and distribution of electricity, and that it neither owns nor operates dumpsites nor regulates solid waste disposal. The 3rd Respondent further contends that no evidence has been tendered to demonstrate that it authorized dumping beneath power lines or otherwise contributed to the environmental degradation complained of, and therefore submits that no violation of **Article 42** has been established against it.

93. Before addressing whether these rights have been violated, the court must first situate the respective mandates of the Respondents within the

constitutional and statutory framework governing environmental governance in Kenya.

94. The 1st Respondent, the National Environment Management Authority (NEMA), is a body corporate established under **Section 7** of the **Environmental Management and Co-ordination Act, Cap 387. Section 9(1)** of the **Act** provides that the object and purpose for which NEMA is established is to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

95. **Section 9(2)** of the Act elaborates NEMA's functions, including coordinating environmental management activities undertaken by lead agencies; promoting the integration of environmental considerations into development policies, plans, programmes, and projects; developing, publishing, and disseminating guidelines relating to environmental management and the prevention or abatement of environmental degradation; and rendering advice and technical support to entities engaged in environmental protection..

96. The scope of NEMA's mandate in waste management was considered in detail by the court in *Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others [2018] KEELC 4040 (KLR)*. The issue in this case was the Gioto Waste disposal site in Nakuru County. The Petitioners has instituted a suit against the Nakuru County Government, Municipal Council of Nakuru and NEMA asserting that the dumpsite violated their right to a clean and healthy environment.

97. They sought *inter-alia*, to have the site relocated and restored. The court discussing the role of NEMA in waste management clarified that while NEMA's supervisory and coordinating functions under **Section 9** of the Act are mandatory, its powers under **Section 12** to undertake or cause restorative measures to be undertaken are discretionary.

98. The court stated:

“Nevertheless, NEMA is not just an investigator and a prosecutor. Its success cannot be measured in terms of successful investigations and prosecutions. It has a bigger mandate: to be the principal instrument of government and the people of Kenya in the implementation of all policies relating to the environment. In deed under section 9 (2), NEMA has mandatory obligations to among others co-ordinate with lead agencies to ensure the proper

management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya and to render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection.

NEMA is well placed and has a legal duty to assist the county governments to come up with policies and strategies for dealing with the constant problem of urban waste disposal and management. For example, can incinerators be used for particular types of urban waste? If so, what type of incinerators? What about recycling? I mention just a few. NEMA needs to show that it has taken practical steps in these matters pursuant to its functions under section 9 of EMCA. This however does not mean that county governments should blame NEMA. The primary obligation in waste disposal and management rests with the county government.”

99. I do concur with this position.

100. The Constitution of Kenya, 2010 introduced a devolved system of government comprising the National Government and County Governments. **Article 186(1)**, read together with **Part 2** of the **Fourth Schedule** sets out

their respective functions. In particular, County Governments are responsible for county health services, including, under **paragraph 2(g)**, refuse removal, refuse dumps, and solid waste disposal.

101. This constitutional position is further reinforced by statute. **Section 5(2)© of the County Governments Act, Cap 256** reiterates that the functions of the County are those provided for under **Article 186** and assigned in the **Fourth Schedule** of the **Constitution**. Equally, the Sustainable Waste Management Act, Cap Cap. 387C places County Governments at the centre of waste-management implementation.

102. **Section 9** of the **Act** assigns to counties responsibility for implementing the devolved waste-management function and for establishing the financial and operational conditions necessary for its effective performance. Counties are required to provide waste-management infrastructure, promote waste segregation, recycling, and recovery, **manage designated disposal sites and landfills, maintain registers of waste service providers, and mainstream waste management into county planning and budgeting.**

103. At the county level, the Nairobi City County Solid Waste Management Act, 2015 establishes a comprehensive legal regime governing solid waste management. The Act expressly states that its objective is to among others provide a county legal framework for solid waste management as

contemplated under **Part 2** of the **Fourth Schedule** to the **Constitution**. It regulates waste categorisation, collection, transportation, treatment, disposal, zoning, licensing, and enforcement, **and empowers the County Government to directly collect waste, regulate private actors, designate disposal sites, and prohibit non-compliant operations.**

104. The courts have also affirmed this position. In *Castle Rock Gardens Management Limited v Attorney General & 4 others [2018] eKLR*, the court underscored that, following devolution, county governments are the primary institutions responsible for managing solid waste within their jurisdictions, subject only to regulatory oversight by national agencies. [See also *Halai Concrete Quarries & 4 others v County Government of Machakos & 4 others; Kenya Power & Lighting Company Ltd & another (Interested Parties) [2020]eKLR*.

105. It is therefore clear that, both constitutionally and statutorily, the primary responsibility for solid waste management rests with the County Government.

106. The 3rd Respondent is an entity within the energy sector regulated under the Energy Act, with a mandate limited to the transmission, distribution, and retail supply of electricity, together with the protection and maintenance of its electrical infrastructure. The Petitioners contend that environmental

protection is a collective responsibility and that the dumping of waste along, within, or beneath power line corridors and buffer zones, whether with or without the knowledge of the 3rd Respondent, violates their right to a clean and healthy environment.

107. It is, however, necessary to distinguish between environmental concerns arising from waste accumulation and the statutory functions of the 3rd Respondent. The energy sector comprises several actors with distinct mandates, including the Kenya Electricity Transmission Company (KETRACO), which is responsible for high-voltage transmission lines, and other licensed entities involved in distribution. In the present case, it has not been demonstrated which specific electricity infrastructure is implicated, or that the waste complained of falls within a corridor over which the 3rd Respondent exercises operational control.

108. In any event, while the presence of waste beneath or near power lines may legitimately raise issues of safety and risk to electrical infrastructure, the governing statutory framework does not impose upon the 3rd Respondent any obligation relating to refuse removal, dumpsite management, or solid waste disposal. Those functions are constitutionally and statutorily vested in County Governments and not in energy-sector licensees. The court therefore finds that waste management does not fall within the mandate of the 3rd

Respondent, and its role, if any, is confined to addressing risks to its infrastructure rather than assuming responsibility for solid waste management.

109. The 4th Respondent, the Kenya Rural Roads Authority (KeRRA), is a State Corporation established under the Kenya Roads Act, 2007. Its statutory mandate is limited to the construction, rehabilitation, maintenance, and management of rural roads. The road network in Kenya is administered by several distinct public entities, principally the Kenya National Highways Authority (KeNHA) and KeRRA, each exercising jurisdiction over different classes of roads. From the material placed before the court, it is not clearly demonstrated under which authority the road in question falls.

110. Nonetheless, even assuming that the road was to fall within the mandate of the 4th Respondent, its functions remain confined to matters of road engineering, infrastructure, and usability. Road maintenance concerns the physical condition and safety of the roadway itself. As with the 3rd Respondent, the statutory functions of the 4th Respondent do not extend to refuse collection, waste disposal, or solid waste management. The accumulation of waste on a roadway is therefore indicative of failures in waste management systems, rather than a matter arising from road construction or maintenance responsibilities. To impose responsibility for

solid waste management upon the 4th Respondent would thus amount to an unwarranted expansion of its statutory role.

111. In sum, the waste-management framework clearly delineates mandates.

The County Government bears the primary constitutional and statutory responsibility for refuse removal, refuse dumps, and solid waste disposal. NEMA bears a supervisory, coordinating, and advisory role designed to guide and support waste management across sectors and levels of government. Kenya Power and the Kenya Rural Roads Authority do not have statutory mandates in waste management.

112. Having set out the respective mandates of the Respondents, the next issue for determination is whether the 1st and 2nd Respondents breached the Petitioners' constitutional rights. The Petitioners' grievance, as earlier outlined, is that the continued and unchecked dumping of waste along Umoja I & II Road and within the power line corridor has resulted in serious environmental, public health, safety, and mobility concerns.

113. Although the 2nd Respondent, contested certain aspects of the Petitioners' evidence, including the admissibility of Exhibit AJ-8, it is evident that the factual situation complained of is not substantially disputed. Notably, the 2nd Respondent itself acknowledged the existence of the dumping problem in its

report titled Status Report of the Alleged Umoja 1 Dumpsite (Ref: SCEO/E.WEST/029/2024).

114. In that report, the 2nd Respondent conceded that approximately 9,000 tonnes of waste have so far been removed from the power line area and that waste removal operations are ongoing. It further explained that the site developed from the gradual accumulation of residential waste along the power line corridor, and that trucks and machinery have been deployed over time to transport the waste to Dandora, which remains the only formally gazetted dumpsite for Nairobi County

115. The 1st Respondent also adduced a Field Inspection Report produced by the 1st Respondent titled “**Re: Field Inspection Report on Dumping Site at Umoja Inncore, Embakasi Sub-County, Nairobi County**” dated 3rd July 2024. The report confirms that the dumpsite was active at the time of inspection; that a large heap of garbage had accumulated; that vehicles were observed delivering waste; that waste segregators were operating on site; that the dumpsite was situated between residential buildings and directly beneath power lines; that the garbage had blocked part of the road linking Umoja One and Umoja Two markets; and that the site was neither fenced nor manned. These findings substantially corroborate the Petitioners’ description of the prevailing conditions on the ground.

116. In the circumstances of this case, the evidence demonstrates that an illegal and uncontrolled dumpsite has been allowed to subsist and expand within a residential estate over a sustained period of time, obstructing a public road, exposing residents to health and safety risks, and degrading their living environment. The County Government's gradual clean-up efforts, while commendable, do not displace the fact that the situation had been permitted to exist and reach such proportions in the first place.

117. The court therefore finds that the primary responsibility for the conditions complained of rests with the 2nd Respondent, the Nairobi City County Government. By failing to prevent the emergence and continued operation of an illegal dumpsite within a residential area, and by not ensuring timely and effective waste management measures, the County Government breached its constitutional obligation in relation to refuse removal and solid waste disposal.

118. In so doing, it violated the Petitioners' right to a clean and healthy environment as guaranteed under **Article 42** of the Constitution as well as the Petitioners' rights under **Article 43** in particular the rights to the highest attainable standard of health, and reasonable standards of sanitation.

119. As regards the 1st Respondent, the court finds that its mandate in waste management is supervisory and coordinative, not operational. No material has been placed before the court to show that it failed to discharge its role in this respect. However, the court reiterates that, in undertaking its role, NEMA must remain proactive in providing technical guidance, policy support, and coordination to county governments in addressing persistent and systemic waste management challenges, in keeping with its constitutional and statutory mandate as the principal instrument of Government in environmental governance.

ii. Violation of Article 39: Right to freedom of movement?

120. **Article 39** of the **Constitution** provides as follows:

“(1) Every person has the right to freedom of movement.

(2) Every person has the right to leave Kenya.

(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya.”

121. The Petitioners invoke this Article on the basis that the accumulation of waste has rendered the road linking Umoja I and Umoja II markets impassable, thereby forcing them to use longer and more costly alternative routes.

122. While the court does not trivialize the inconvenience and hardship occasioned to the residents by the obstruction of the road, it is important to appreciate the ambit and purpose of **Article 39** of the **Constitution**. The right to freedom of movement, as contemplated hereunder guards against unlawful or arbitrary restrictions on a person's ability to enter, leave, or reside within any part of the Republic. Typical violations of this right arise where there are formal or informal travel bans, curfews, cordons, checkpoints, or administrative measures that prevent or limit lawful movement without justification.

123. In the present case, the difficulty complained of arises from the physical condition of the road occasioned by waste accumulation, rather than from a deliberate or direct restriction of movement imposed by law or state action. Accordingly, although the obstruction of the road has undoubtedly caused inconvenience and additional transport costs to the Petitioners, such inconvenience does not, of itself, amount to a violation of **Article 39** of the Constitution as properly understood.

124. The grievance is more appropriately addressed within the framework of environmental protection and public service delivery under Article 42 and the statutory regime governing waste management, rather than as a direct infringement of the constitutional right to freedom of movement.

II. What are the appropriate reliefs?

125. **Article 23** of the **Constitution** vests this court with authority to uphold and enforce the Bill of Rights. Under **Article 23(3)**, in proceedings brought under **Article 22**, the court may grant appropriate relief, including declarations, injunctions, conservatory orders, compensation, and judicial review orders.

126. Having found that the primary responsibility for solid waste management rests with the 2nd Respondent and that the Petitioners' rights under **Article 42** and **43** were violated by the County Government's failure to prevent, abate, and effectively manage the impugned dumping site, this court will grant appropriate declaratory and injunctive reliefs against the 2nd Respondent.

127. Conversely, having found no statutory basis for imposing waste-management duties upon the 3rd and 4th Respondents, the reliefs sought against those Respondents do not lie. As to the 1st Respondent, the court has found its role to be supervisory and coordinative; and on the material placed before the court, no breach has been established against it.

128. Moving to damages, the Supreme Court in **Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment Management Authority & 3 others (Petition E021 of 2023) [2024] KESC 75 (KLR) (6 December 2024) (Judgment)** delineated the principles governing compensation as a remedy for constitutional violations, and in doing so clarified that constitutional damages are not to be approached through the narrow lens applicable to ordinary private-law claims. The court expressed thus:

“This court has in various cases addressed itself to the apportionment of compensation as a remedy to constitutional violation. In Wamwere & 2 others v Attorney General SC Petition No 34 & 35 of 2019 [2024] KECA 487 (KLR), this court held that the crafting of remedies in human rights adjudication goes beyond the realm of compensation for loss as it is principally for vindicating rights. In that case, the court further held that though the appellants did not lead any evidence of the loss they may have suffered due to the violation of their right and freedom from inhuman treatment, it was important for the court to vindicate and affirm the importance of the violated rights. In CMM (Suing

as the next friend and on behalf of CWM) & 6 others v Standard Media Group & 4 Others, [2023] KESC 68 (KLR) this court equally addressed itself to what a trial court should do in its assessment of an award of compensation in constitutional rights violation claims when it held;“...All the trial court was expected to do in considering this prayer was to assess what, in the circumstances of the case would be the appropriate compensation, or what other relief would vindicate the appellants’ contravened rights. Examples of factors the court would have taken account of include the fact that the violations related to children; that some of the children had to transfer from the school; some were ridiculed, and being minors they were bound to suffer distress, trauma, anguish, fear and lowered self-confidence. On the other hand, exculpatory factors to consider would be the fact that some of the respondents, upon learning of the complaints about their publications immediately pulled down the offending story.[100]In the result, it was erroneous for the two courts below to ignore settled principles for the award of compensation in constitutional rights violation claims; namely, that once the burden of proving a violation was discharged, it was not necessary for the appellants

to prove any damage or loss so as to be entitled to any of the reliefs contemplated in article 23(3)...”

134.....

135. In *The Matter of African Commission on Human And Peoples’ Rights v Republic of Kenya* Application No. 006/2012 Judgment (Reparations) 23 June 2022 (the Ogiek case) the African Court of Human and People’s Rights in paragraphs 88 and 90 held; “The court confirms, therefore, that international law requires that the determination of compensation for moral damage should be done equitably taking into account the specific circumstances of each case. The nature of the violations and the suffering endured by the victims, the impact of the violations on the victim’s way of life and length of time that the victims have had to endure the violations are among the factors that the court considers in determining moral prejudice.....While it is not possible to allocate a precise monetary value equivalent to the moral damage suffered by the Ogiek, nevertheless, the court can award compensation that provides adequate reparation to the Ogiek. In determining reparations for moral prejudice, as earlier pointed out, the court takes into consideration the reasonable exercise of judicial

discretion and bases its decision on the principles of equity taking into account the specific circumstances of each case....”

136. From the above authorities, it is clear that there is a distinct difference between damages in tort and damages for constitutional violations. The parameters to be examined in both are different. In a tortious claim, the fundamental principle guiding the court's quantification of damages is to restore the injured party to the position they would have been in had the tort not occurred. The damages awarded are compensatory, aimed at covering financial losses, personal injury, and sometimes pain and suffering caused by the tort. The goal is to address the harm by providing monetary compensation that reflects the actual damage suffered.

137. On the other hand, in constitutional claims, where fundamental rights have been violated, the court takes a broader approach to the assessment of damages. It considers various factors including; a. the nature of the violation. b. the length of time the alleged violation has taken. c. impact on the victim and whether there is a direct harm. d. the broader implications of the case, including the need to deter future violations, uphold the rule of

law, and ensure that public authorities or private parties respect constitutional rights.

138. These differences in the approach between tortious claims and constitutional claims reflect the varying nature of the harm and the different objectives of each type of claim. While tortious claims are primarily about compensating specific losses, constitutional claims often aim to address broader issues of justice and the protection of fundamental rights.

129. In line with the foregoing jurisprudence, once a violation of **Article 42** of the Constitution is established, a court is not confined to the narrow confines of strict proof of individualized loss or injury. Environmental rights are by their nature collective and public-facing.

130. The Petitioners did not propose a specific quantum of compensation, and the Petition was instituted in the public interest. As observed in ***Odando & another (Suing on their own behalf and as the Registered Officials of Ufanisi Centre) v National Environmental Management Authority & 2 others; County Government of Nairobi & 5 others (Interested Parties) [2021] KEELC 2235 (KLR)***, in cases of environmental harm, it is often impossible to determine with precision the total number of persons affected.

131. In such circumstances, compensation may only be awarded to identifiable litigants who have come before the court. Guided by that approach, this court holds that any monetary compensation in the present case shall be payable only to the Petitioners.

132. Having found that the Petition has substantially succeeded, and having further found that the continued existence of an illegal and uncontrolled dumpsite within a residential estate constitutes a systemic failure of environmental governance, this court considers that the appropriate remedy must go beyond the reliefs sought. The nature of the violation disclosed in this case warrants supervisory relief to ensure future compliance with constitutional and statutory obligations relating to waste management. A structural interdict is therefore warranted in order to secure sustained remedial action and institutional accountability.

133. Accordingly, court issues the following orders:

- i. **A declaration does hereby issue that the Petitioners' rights under Articles 42 and 43 of the Constitution have been violated by the acts and omissions of the 2nd Respondent, Nairobi City County Government, in failing to prevent, control and abate the illegal dumping of solid waste within the Umoja residential area.**

- ii. The 2nd Respondent, Nairobi City County Government, shall within four months (120 days) of the date of this Judgment, clear all accumulated waste at the Umoja dumpsite including along the link road and power lines therein and restore the affected area to an environmentally safe and sanitary condition in accordance with the Environmental Management and Co-ordination Act and the applicable Waste Management Regulations.**
- iii. The 2nd Respondent shall file before this court, within 4.5 months (135 days) of the date of this Judgment, a detailed compliance report setting out:**
- a. the steps taken to clear and rehabilitate the site;**
 - b. the measures put in place to prevent recurrence of illegal dumping; and**
 - c. the institutional arrangements established to ensure continuous and lawful waste management in the area.**
- iv. Upon receipt of the compliance report, the matter shall be mentioned for purposes of confirming compliance and issuing such further directions as may be necessary to secure full realization of the Petitioners' rights under articles 42 and 43 of the Constitution.**

- v. The court awards the Petitioners compensation of Kshs.30, 000/= each payable by the 2nd Respondent.
- vi. The Petitioners are awarded half the costs of the Petition, to be borne by the 2nd Respondent.

Dated, signed and delivered at Kisii, virtually this 5th day of February, 2026

A. OMOLLO

JUDGE

ORIGINAL