

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KWALE**

**PETITION NO. E011 OF 2025**

**1. OFFICE OF THE COUNTY ATTORNEY - KWALE COUNTY**

**2. ABDALLA SAIDI RACHITU (*Suing on behalf of the public*)**

.....**PETITIONERS**

**- VERSUS -**

**GOMBATO (1975) LIMITED..... 1<sup>ST</sup>**

**RESPONDENT**

**NATIONAL BANK OF KENYA LIMITED.....2<sup>ND</sup>**

**RESPONDENT**

**KEYSIAN AUCTIONEERS.....3<sup>RD</sup>**

**RESPONDENT**

**RULING**

**I. Introduction**

1. Before the Honourable Court for its determination is the Notice of Preliminary Objection dated 24<sup>th</sup> November 2025 raised by the *NATIONAL BANK OF KENYA LIMITED*, the 2<sup>nd</sup> Respondent herein.

2. As a matter of background, the Constitution Petition instituting the instant suit was dated 19<sup>th</sup> June 2025 by *OFFICE OF THE COUNTY ATTORNEY - KWALE COUNTY ABDALLA SAIDI RACHITU (Suing on behalf of the public)* the 1<sup>st</sup> & 2<sup>nd</sup> Petitioners herein. The Petition was brought before court pursuant to several provisions of the constitution and statute. These included the provision of Articles 10, 19, 20, 22, 23, 27, 28, 33, 35, 39, 40, 42, 43, 46, 47, 48, 50, 60, 61, 62, 63, 65, 66, 67,68, 69, 70, 71 72 and 258 of the Constitution of Kenya 2010, Sections 4, 5, 9,10,12,13,14,15 and 84 of the Consumer Protection Act, 2012 and lastly Sections 3, 4, 5 (2) ( c ) and 7 of the Fair Administrative Actions Act, 2015.

3. The Petitioners averred that the 1<sup>st</sup> Respondent allegedly took out a loan of a sum of Kenya Shillings Two Million (Kshs 2,000,000/-) by charging all that parcel of land comprised in title LR No 8517/9 CR 26610 measuring approximately 135.6Ha as collateral. Nonetheless, he failed to service the loan resulting in the 2<sup>nd</sup> Respondent exercising its statutory power of sale. That all the advertisements for auction and efforts

to sale the land amount to unfair trade practices in consumer transactions, false representation, unconscionable representation and non-disclosure an act in contravention of the Constitution and the Consumer Protection Act.

4. Upon service, the Petition was opposed by a notice of preliminary objection by the 2<sup>nd</sup> Respondent dated 24<sup>th</sup> November 2025 and which is the basis of this ruling.

## **II. The Petitioner' s case**

5. The Petitioners therefore sought for the following orders before court;

***a. A declaration that the consumers/purchasers of land advertised for sale in an auction are entitled to full and frank disclosure from the auctioneers /their principals on any adverse occupation of the land and other encumbrances/ overriding interest on the land which are not registered on the face of title but apparent on the land***

***b. A declaration that the advertisement of sale of the land known as LR No 8517/9 CR 26610 as vacant by Keysian Auctioneers is a false representation which contravenes the constitutional rights of consumers thus illegal null and void ab initio.***

**c. A declaration that any sale arising out of the purported auction of 20<sup>th</sup> June 2025 by Keysian Auctioneers or any auction of the land known as LR No 8517/9 CR 26610 purporting that the land is vacant, is based on false representation thus illegal and null and void ab initio.**

**d. A permanent injunction restraining the respondents by themselves, their servants, workmen agents or persons whomsoever from advertising the land LR No 8517/9 CR 26610 and or in any manner dealing with the land either through an auction or sell on the premises that the same is vacant**

**e. Any other relief that the court may deem fit to grant.**

6. The Petition was based on the grounds, testimonial facts and averments made out under the 12 Paragraphed supporting affidavit sworn by ABDALLA SAIDI RACHITU the Chairman of Gombato Farm Community together with annexures marked as "C - 1" annexed thereto. He averred as follows that:-

a) He was the Chairman of Gombato Farm Community.

b) The Petition was about the protection of the consumer, prevention of unfair trade practices in consumer, false &

unconscionable representation, non - disclosure by the Respondents.

- c) He was aware that the 1<sup>st</sup> Respondent had allegedly taken a loan from the 2<sup>nd</sup> Respondent of sum of Kenya Shillings Two Million Only (Kshs 2,000,000/-) and charged all that parcel of land comprised in title LR No 8517/9 CR 26610 situated in Msambweni Kwale County. (Hereinafter referred to as “The Suit Land”).
- d) He was aware that the 1<sup>st</sup> Respondent had allegedly failed to service the loan resulting in the 2<sup>nd</sup> Respondent exercising its statutory power of sale.
- e) He was aware that the 2<sup>nd</sup> Respondent had attempted to auction the land severally and had advertised the land as vacant, a position that the deponent stated was not true. The auctions were as follows; year 2023 Purple Royal Auctioneers, year 2024 Keysian Auctioneers and year 2025 Keysian Auctioneers.
- f) The suit property was habited by people who had been in occupation of it from time immemorial and who would suffer loss in the event that the property was auctioned.

- g) Further that unless the Respondents actions were checked, they were bound to dupe innocent members of the public keen on purchasing the property.
- h) The residents on the property and the public at large were restless because of the impending dangers and the uncertainties which were likely to occur as a result of the attempted auction without full disclosure and notice of the true facts on the ground to the innocent members of the public.
- i) The consumers/purchasers of the suit property through the public advertisement for sale were entitled to a frank and full disclosure of the encumbrances, overriding interests and the adverse occupation of the suit property.
- j) The Petitioners sought for a permanent injunction restraining the Respondents from advertising the suit property for sale and in any manner whatsoever dealing with the suit property.

### **III. The Notice of Preliminary Objection by the 2<sup>nd</sup> Respondents Case**

7. In opposing the Petition, the 2<sup>nd</sup> Respondent herein National Bank of Kenya Limited filed a notice of

preliminary objection and sought to have the Petitioners' petition struck out with costs on the following grounds that: -

- a) The Petition dated 19<sup>th</sup> June 2025 contravenes the doctrine of Constitutional avoidance and ought to be struck out
- b) Consequently, the Petition is incurably defective and bad in law.

#### **IV. Submissions**

8. On 25<sup>th</sup> November 2025, in the presence of Mr Wafula Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and in the absence of Counsel for the Petitioners and the 1<sup>st</sup> Respondent, directions were issued by this court to have the preliminary objection dated 24<sup>th</sup> November 2025 canvassed by way of written submissions.

9. Unfortunately, at the time of writing this ruling, only the 2<sup>nd</sup> respondent had complied with the said directions. The court will nevertheless proceed and render its verdict.

#### **A. The Written Submissions by the 2<sup>nd</sup> Respondents.**

10. The Law firm of Messrs. Cootow & Associates Advocates filed submissions on behalf of the 2<sup>nd</sup> Respondent dated 15<sup>th</sup> December 2025. Mr. Wafula Advocate commenced his submission by stating that all the issues raised in the Petition were not constitutional issues. According to him, they were ordinary disputes dressed as constitutional matters
11. The Learned Counsel submitted that this court was set up pursuant to the provision of Article 162 of the Constitution. Base on the provision of Section 13 of the Environment and Land Court Act, 2011, the ELC has jurisdiction in matters to do with the environment and the use and occupation of, and title to, land as well as in matter concerning redress of a denial or infringement or threat to rights or fundamental freedom relating to a clean and healthy environment under the provision of Articles 42, 69 and 70 of the Constitution. The court's jurisdiction also extends to claims concerning breaches of other fundamental rights related to the environment and land. The Honourable Court was referred to the case of "**Daniel**

***N. Mugendi - Versus - Kenyatta University & 3 others (2013) eKLR***".

12. According to the Learned Counsel, while the court has jurisdiction to hear and determine constitutional petitions, the Petitioner must be alive to the circumstances which would deprive this Court jurisdiction to sit as constitutional court and which is the principle/doctrine of constitutional avoidance. The said doctrine frowns upon the practice of bringing ordinary disputes to the constitutional court dressed as Constitutional disputes.

13. Reference was made to the Black's Law Dictionary on the definition of the term "**Constitutional avoidance**" and which states as follows:-

***"The doctrine that a case should not be resolved by deciding constitutional question if it can be resolved in some other fashion."*** It was also submitted that this

Principle was enunciated in the Supreme Court decision of:- "***Communications Commission of Kenya & 5 Others - Versus - Royal Media Services Limited & 5 Others Pet. 14A, 14B & 14C of 2014 of (2014) eKLR***"

where the court stated that:- "***(256).. The principle of***

***avoidance entails that a court will not determine a constitutional issue, when a matter may properly be decided on another basis."***

14. The Learned Counsel made further reference was made to several other authorities which included ***"Southlake Panorama - Versus - Kenya Electricity Transmission Company Limited & 3 others (2021); "John Harun Mwau - Versus - Peter Gastrow & 3 Others (2014) eKLR"; "Recreation Commission - Versus - Sagittarius Wrestling Club and Another" "Isaac Makokha Okere - Versus - Mumias Out growers Sacco Society Limited & 9 Others (2021) eKLR)"*** and also as was affirmed in ***"Sumayya Athmani Hassan - Versus - Paul Masinde Simidi & Another (2019) eKLR"*** all in which the court stated that in dealing with constitutional questions unless the existence of a remedy depends on it; if a remedy is available to an applicant under some other legislative provision or some other basis, whether legal or factual, a court will usually decline to determine whether there has been in addition to a breach of the other declaration of rights.

**15.** It was further submitted that the effect of the doctrine of constitutional avoidance was that where there

were adequate statutory options and decline to entertain the dispute. In essence therefore, when formulating his claim, a Claimant must pursue statutory relief where it was available through an ordinary suit as opposed to approaching the constitutional court.

16. The Counsel contended that while this court has jurisdiction to entertain a constitutional petition, that jurisdiction is limited by the doctrine of constitutional avoidance as was held by the Court of Appeal case of **“Lemita Ole Lemein - Versus - Attorney General & 2 Others (2020) eKLR”** where Justice P.O Kiage held that a party had to exhaust all available remedies in instituting a suit before seeking to constitutionalise an ordinary claim.

17. Lastly, the Counsel argued that that the complaints by the Petitioners herein being ordinary complaints, ought not to be entertained by this court as constitutional disputes because doing so would amount to rewarding the Petitioners for constitutionalizing ordinary legal disputes that were

amenable to settlement through ordinary civil process.

18. The Counsel urged the Court to find the Notice of preliminary objection was merited and have it upheld accordingly.

## **V. Analysis and Determination**

19. I have carefully read and considered the pleadings herein by the parties, the written submissions, the myriad of cases cited herein by the Respondents, the relevant provisions of the Constitution of Kenya, 2010 and statutes.

20. In order to arrive at an informed, just, equitable and reasonable decision, the Honourable Court has framed three (3) issues for its determination. These are: -

- a) Whether the Preliminary objection raised by the 2<sup>nd</sup> Respondent dated 24<sup>th</sup> November 2025 meets the laid -down threshold for such objection based on Law and precedents.***
- b) Whether or not the Petition raises constitutional issues***
- c) Who bears the costs of the preliminary objection dated 24<sup>th</sup> November 2025?***

**ISSUE No. a). Whether the Preliminary objection raised by the 2<sup>nd</sup> Respondent dated 24<sup>th</sup> November 2025 meets the laid -down threshold for such objection based on Law and precedents.**

21. Under this sub - heading, the Honourable Court will be examining the substratum of a Preliminary Objection. According to the Black Law Dictionary a Preliminary Objection is defined as being:

**“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”**

22. The above legal preposition has been made graphically clear in the now celebrated case of **“Mukisa Biscuits Manufacturing Limited - Versus - West End Distributors Limited, Civil Appeal No. 9 of 1969 [1969] EA 696”**, Law, JA was of the following view:

**“A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission**

***that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

23. In furtherance of the above point, I wish to cite the Supreme Court in the case of:- ***“Independent Electoral & Boundaries Commission - Versus - Jane Cheperenger & 2 Others [2015] eKLR”*** made the following observation as relates to Preliminary Objections:

***“..... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”***

24. The Tanzanian Court of Appeal sitting in Dar es Salaam, in the case of:- ***“Karata Ernest & others - Versus - Attorney General (Civil Revision No 10 of 2020) [2010] TZCA 30 (29 December 2010), (Luanda, JA,***

*Ramadhani*", CJ, Rutakangwa, JJA), put the issue of preliminary objections in a more concise manner: -

***"At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only "consists of a point of law which has been pleaded, or which arises by dear implication out of the pleading obvious examples include: objection to the jurisdiction of the court; a plea of limitation; when the court has been wrongly moved either by non-citation or wrong citation of the enabling provisions of the law; where an appeal is lodged when there is no right of appeal; where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required; where the appeal is supported by a patently incurably defective copy of the decree appealed from; etc. All these are clear pure points of law. All the same, where a taken point of objection is premised on issues of mixed facts and law that point does not deserve consideration at all as a preliminary point of objection. It ought to be argued in the "normal manner" when deliberating on***

***the merits or otherwise of the concerned legal proceedings.***

25. In the instant case, the preliminary objection is based on the allegation that the petition herein contravenes the doctrine of constitutional avoidance which provides that where there exists an alternative remedy under statutory law or otherwise, then such a remedy should be pursued instead of a constitutional petition.

26. From the above, I am satisfied that the preliminary objection is raised on a pure point of law as the same touches on the jurisdiction of this court to determine the instant petition given that there might be an alternative remedy provided for in law for determining the same other than the constitutional court. This is an issue that does not need evidence to establish.

**ISSUE No. b). Whether or not the Petition raises constitutional issues**

27. It is trite that a Constitutional Petition must clearly state the constitutional rights alleged to have been infringed and how they have been infringed. It must be clear to the constitutional court what the Petitioners

are claiming to be a violation of their rights and how it was committed. The requirement for a Petition to be precise and concise were stated in the now "*Classicus locus*" case of:- "**Anarita Karimi Njeru - Versus - Republic [1979] KEHC 30 (KLR)** thus:

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

28. The "**Anarita Karimi Case [Supra]**" was referred to in the case of "**Mumo Matemu - Versus - Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**" where it was held:-

***"We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that***

***precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.***

29. Additionally, in the case of: ***“Sports and Recreation Commission - Versus - Sagittarius Wrestling Club and Anor, 2001 (2) ZLR 501 (S)”***, the South African Court held thus:

***“...Courts will not normally consider a constitutional question unless the existence of a remedy depends upon it; if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a court will usually decline to determine whether there has been, in addition, a breach of the Declaration of Rights.”***

30. Further in the case of:- ***“Ostenah Ogero Taracha - Versus - Ethics & Anti-Corruption Commission & Attorney General [2017] eKLR”*** the court held that:

***“It is not however, enough to allege that one’s fundamental freedoms or rights have been violated. The violation must be proved. Section 107 (1) of the Evidence Act Cap. 80 Laws of Kenya is clear in this regard and provides as follows; “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”***

31. Now in applying these sound legal principles to the instant case and the issues giving rise to the Petition herein. From the filed pleadings, the Petitioners allege that the advertisements for auction and efforts to sale the land by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents all intended to recover their owned outstanding debt amounts to unfair trade practices in consumer transactions, false representation, unconscionable representation and non-disclosure an act in contravention of the Constitution and the Consumer Protection Act, 2012. I have perused the Petition as presented before court, I dare say that the Petitioners have not listed under any

of the 13 paragraphs how their rights have been infringed, violated, denied or threatened upon by the Respondents. On the face of it, the petition is not merited.

32. It is also noted that the Petitioners do not deny the fact that the suit property herein is charged, they however state that the 2<sup>nd</sup> Respondent in wanting to exercise its statutory power of sale is in fact infringing upon their rights. The question therefore is what is the position in law under such circumstances.

33. The statutory power of sale as provided for under the Land Act 2012 is exercised when the chargor fails to adhere to the terms of the charge and defaults on payment. The Land Act 2012 lays down the requirements for a valid statutory notice and the procedure for exercising the statutory power of sale.

Section 90(1) of the Land Act provides that: -

**“if the chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in performance or observation of any covenant, express or implied, in any charge, and continues to**

**be in default for one month, the chargee may serve the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.**

34. The provision of Section 90 (3), of the Act provides that if the chargor does not comply within two (2) months after the date of service of the notices under subsection (1), the chargee may:

- a. sue the chargor for any money due under the charge,
- b. appoint a receiver of the income of the charged land,
- c. lease the charged land, or if the charge is of a lease, sublease the land,
- d. enter into possession of the charged land; or
- e. Sell the charged land

35. Section 96(1) of the Land Act provides that:

**-“...where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90 (1), a chargee may exercise the power to sell the charged land.”**

36. I have delved into highlighting the provisions of law guiding the statutory power of sale in order to establish that this was a legitimate process. Having established that the 2<sup>nd</sup> Respondent is allowed by law to exercise its statutory power of sale in the event that a chargee defaults in the repayment of the loan, the court is now tasked to establish whether this issue can be resolved by the court in a normal suit or falls under the constitutional court. In essence, has the doctrine of constitutional avoidance been invoked?

**37.** I must admit the Learned Counsel for the Respondent while submitting has elaborately deliberated on this legal issue. Nonetheless, the Court only wishes to emphasise that the doctrine of constitutional avoidance was discussed in the case of:-

***“Mombasa HC Constitutional Petition No. 61 Of 2012, Jackson Maina Ngamau - Versus - Ethics and Anti-Corruption Commission & 3 Others”*** as follows:

***“The principle of ‘constitutional avoidance’ as discussed by the Supreme Court of Kenya in Communications Commission of Kenya & 5 Ors. - Versus - Royal Media Services Limited & 5 Ors.***

***(2014) eKLR that the Court will not determine a constitutional issue or question even where it is properly before it, if there is another basis upon which the case can be disposed of, does not oust the jurisdiction of the Court but rather calls for judicial restraint in cases where there exists a statutory or other remedy. In addition, in accordance with the rule in The Speaker of the National Assembly - Versus - Karume (2008) EG&F, it is now accepted as a principle of constitutional adjudication that where the constitution or statute makes provision for the process for determination of a particular matter that procedure should be strictly followed.***

38. In the case of ***“Royal Media Services - Versus - Attorney General, Civil Appeal No. 45 of 2012 (2018) eKLR***, the Court of Appeal comprising P. N. Waki J, R. N. Nambuye J and A. Makhandia J, while determining an appeal where the Appellant had filed a Petition in the High Court seeking to recover debt ensuing from a contract held as follows: -

***“In our view the judge cannot be faulted for holding that a constitutional petition procedure adopted by***

***the appellant in ventilating its claim was ill suited for the kind of claim it had laid before the trial court namely debt collection. We had occasion in the past to bemoan the current trend of filing constitutional petitions and references on matters or claims that have no iota or scintilla of any constitutional bearing. This trend of constitutionalizing virtually everything, which is actually, in our view an abuse of the court process, needs to be nibbed in the bud and frowned upon. We stated thus in the case of Gabriel Mutava & 2 Others v Managing Director Kenya Ports Authority & Another (2016) eKLR:***

***“Time and again it has been said that where there exists other sufficient and adequate avenue to resolve a dispute, a party ought not to trivialize the jurisdiction of the Constitutional Court by bringing actions that could very well and effectively be dealt with in that other forum. Such a party ought to seek redress under such other legal regime rather than trivialize constitutional litigation.....”***

39. The Petition herein is in protest of the 2<sup>nd</sup> Respondents exercise of its statutory power of sale. Legally speaking, the mandate to exercise this power is not an

abuse of rights as insinuated by the Petitioners unless the same is outside the confines of law for instance the failure to serve the relevant notice to the concerned parties as provided for under Section 96(2) of the Land Act which states as follows:

**“Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for sale of the charged land until at least forty days have elapsed from the date of the service of the notice to sell”.**

40. It is evident that the issues raised can be dealt with by the court in the way of a normal suit as they do not amount to any violation of rights whereby a Constitution Petition ought to be invoked. The Environment and Land Court has overtime dealt with issues regarding a chargees rights of sale and the position has been affirmed in several decisions amongst them the case of: [“Margaret Muthoni Njoroge - Versus - Housing Finance Company Limited & another \[2020\] eKLR”](#) the Court held that:-

***“...the manner of exercise of the chargee’s right of sale is contained in the Land Act, 2012 and Land Registration Act, 2012, and both statutes provide that it is the Environment and Land Court (and the Magistrate’s Court, subject to pecuniary limits) which has jurisdiction to handle disputes arising from the matters in the said statutes. I really do not see the place of the argument that the Environment and Land Court has no jurisdiction to determine issues relating to a charge or the manner of exercise by a chargee of its statutory right to sell.”***

41. It is trite that the courts have consistently struck out matters that are framed as constitutional disputes when in reality they are not. In the case of:- ***“Uhuru Muigai Kenyatta - Versus - Nairobi Star Publication Limited (2013) eKLR*** Lenaola J (as he then was) stated:

***“...Where there is a remedy in civil law, a party should pursue that remedy and I say so well aware of decision of Haco Industries where the converse may have been expressed as the position. My mind is clear however that not every ill in the society should attract a constitutional sanction as stated in AG V Dutambala Criminal Appeal No. 37 of 1991 (Tanzania Court of Appeal) such sanctions***

***should be reserved for appropriate and really serious occasions...”***

42. In the circumstances of this case, the Court finds that the Petition does not raise proper constitutional issues and the said dispute ought to be resolved in an ordinary civil claim. This Court, therefore, finds that it lacks jurisdiction to determine the Petition on the principle of constitutional avoidance.

43. In saying so, I am guided by the holding in “***Francis Oyagi - Versus - Samwel Motari Mangare and 2 Others (2018) eKLR***” the Honourable Court observed and which observation I agree with that:-

***“The court must guard against improper transmission of normal disputes or ordinary issues of litigation being clothed in Constitutional petitions. I am aware that the existence of an alternative remedy or procedure may not oust the jurisdiction of the court. But the court in deciding whether to entertain a suit must take into account the existence of such a remedy and its application to the issues at hand.”***

**ISSUE No. c). Who bears the costs of the preliminary objection dated 24<sup>th</sup> November 2025?**

44. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of legal action or proceeding in any litigation. The proviso of Section 27 of the Civil Procedure Act, Cap. 21 provides that costs should follow an event unless the court for some good reason orders otherwise. By following the event means the result of the legal action.

45. I wish to point out that whenever costs are sort it is not with the intention to punish the Applicant but rather for compensation for the trouble the Respondent has gone through defending the suit and prosecuting the case and restore them in the position as it were prior to the institution of proceeding against them. (See the case of "**Rosemary Wairimu Munene Ex - Parte Applicant - Versus - Ihururu Party Farmers' Co - operative Society J.R. No. 4/2014** as cited in the case of **Cecilia Karuru Ngayu - Versus - Barclays Bank of Kenya & Another [2016] eKLR**".

46. In the instant case, therefore, the court opines that it is proper for the 2<sup>nd</sup> Respondent have the costs of the preliminary objection and Petition.

## **VI. Conclusion and Disposition**

47. Consequently, upon conducting an elaborate analysis of the issues framed out herein, this Honourable Court is satisfied that the Preliminary objection is merited and ought to be allowed. Thus, specifically, the Honourable Court proceeds to grant the following orders:

**a) THAT the Preliminary Objection dated 24<sup>th</sup> November 2025 raised by the 2<sup>nd</sup> Respondent be and is hereby allowed.**

**b) THAT the Petition dated 19<sup>th</sup> June 2025 be and is hereby struck out for it offends the Doctrine of Constitution Avoidance and does not meet the threshold of a Constitution Petition.**

**c) THAT the costs of the Preliminary Objection and the Petition to be awarded to the 2<sup>nd</sup> Respondent to be borne by the Petitioners herein.**

**IT IS ORDERED ACCORDINGLY.**

**RULING DELIVERED THROUGH THE MICRO - SOFT TEAMS**

**VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS...5<sup>TH</sup>**

**..... DAY OF .....MARCH.....2026**

.....

**HON. MR. JUSTICE L.L NAIKUNI,**

**ENVIRONMENT & LAND COURT**

**AT**

**KWALE.**

**Ruling delivered in the presence of: -**

- a) Mr. Daniel Disii, the Court Assistant.**
- b) Mr. Mwawasaa Advocate for the Petitioners.**
- c) Mr. Wafula Advocate for the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents.**
- d) No appearance for the 1<sup>st</sup> Respondent.**