



**Criticos v Attorney General & 2 others (Environment and Land Petition E010 of 2025)
[2026] KEELC 1155 (KLR) (Environment and Land) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION E010 OF 2025
EK WABWOTO, J
FEBRUARY 26, 2026
(FORMERLY NAIROBI MISC 1019 OF 2004 & NAIROBI ELC PET. E062 OF 2025)**

BETWEEN

HON BASIL CRITICOS PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

COMMISSIONER OF POLICE 2ND RESPONDENT

MINISTER OF STATE, THE OFFICE OF THE PRESIDENT .. 3RD RESPONDENT

JUDGMENT

Background

1. This Petition has a chequered history. It highlights the challenges and intricates litigants go through in pursuant of justice before courts of law. For more than 20 years the Petitioner has carried the heavy weight for waiting for justice in our courts. All of this stands in contrast to the promise in our Constitution at Article 159 (2) (b) that justice shall not be delayed a command that our courts have echoed time and again often through familiar words that justice delayed is justice denied.
2. The Petition was initially instituted before the High Court of Kenya at Nairobi vide an Originating Summons dated 30th April 2004 which was later amended on 16th September 2016 and transferred to the Nairobi ELC on 9th July 2025 and later transferred to this court on 22nd September 2025.

The Petitioner’s case and submissions

3. The Petitioner sought the following reliefs in his Amended Originating Summons dated 16th September 2016:-



- i. THis Honourable Court do make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the provisions of Sections 75, 76, 70 and 82, Constitution of Kenya in relation to the Applicant and in particular:
- ii. A Declaration that the invasion of Jipe Sisal Estate, L.R No. 10287 in Taita Taveta District, Coast Province was and is illegal and creates no rights in any of the persons invading and trespassing on the land and that none of the rights title or interest of the Applicant in the said land have been derogated from by the said invasion and trespass.
- iii. A Declaration that the invasion of Taveta Sisal Estate, L.R Nos. 5865/2, 5827, 6731 and 6732 in Taita Taveta District, Cost Province was and is illegal and creates no rights in any of the persons invading and trespassing on the land and that none of the rights title or interest of the Applicant in the said land have been derogated from by the said invasion and trespass.
- iv. A Declaration that the compulsory taking of possession and or compulsory acquisition of part of the said Jipe Sisal Estate, L.R No. 10287 by the Government is illegal and contrary to the provisions of S. 75 of *the Constitution* of Kenya.
- v. A Declaration that the compulsory taking of possession and or compulsory acquisition of part of the said Taveta Sisal Estate, L.R Nos. 5865/2, 5827, 6731 and 6732 in Taita Taveta District by the Government is illegal and contrary to the provisions of S. 75 of *the Constitution* of Kenya.
- vi. A Declaration that the entry by the invaders on the premises of the Applicant, to wit Jipe Sisal Estate, L.R No. 10287 was and is illegal and in contravention of the provisions of S. 76 of *the Constitution* of Kenya.
- vii. A Declaration that the entry by the invaders on the premises of the Applicant, to wit Taveta Sisal Estate Taveta Sisal Estate, L.R Nos. 5865/2, 5827, 6731 and 6732 in Taita-Taveta District was and is illegal and in contravention of the provisions of S. 76 of *the Constitution* of Kenya.
- viii. A Declaration that any basis of race upon which the Government has refused neglected and failed to protect the rights titles interests and fundamental freedoms of the Applicant in relation to himself and the said Sisal Estates is unlawful and in contravention of S. 82, Constitution of Kenya.
- ix. A Declaration that the Applicant has been deprived of his fundamental rights and freedoms and the protection of the law contrary to the provisions of S. 70, Constitution of Kenya (repealed) and Article 40 of *the Constitution*.
- x. A Declaration that the conduct of the Government by the provincial Administration, The Kenya Police and the Administrative Police in respect of the said land invasions have each been contrary to the Rule of Law and a violation of the Applicant’s right to the protection of the law.
- xi. A Declaration that the Kenya State whose officers or employees who persistently disobeyed various court orders requiring the removal of squatters and trespassers in Taveta Sisal Estate Taveta Sisal Estate, L.R Nos.5865/2, 5827, 6731 and 6732 in Taita Taveta District and encouraged the invasion of the Petitioner’s land in particular Land Reference Numbers 6731 and 6732 by constructing roads and canals on the properties using public funds violated the Petitioner’s rights under Article 40 of *the Constitution* of Kenya 2010 relating to the protection of the right to ownership of property and prompt, full, fair and just compensation in the event of compulsory acquisition for public use or appropriation and the conduct of the State



amounted to compulsory acquisition or appropriation of the Petitioner's property namely Land Reference Numbers 6731 and 6732 situated in Taita Taveta District.

- xii. A Declaration that the Petitioner's rights under Article 2, 12 and 17 of the Universal Declaration of Human Rights 1948, applicable to Kenya by dint of Article 2 (5) and (6) of *the Constitution* of Kenya 2010 have been violated.
- xiii. An order directing the government valuer to submit to court a valuation report based on the current market value of the Petitioner's Land Reference Numbers 6731 and 6732 situated in Taita Taveta District for purposes of assessing compensation prior to the delivery of the judgment and further that the Petitioner be at liberty to provide an alternative report if the government valuer's report grossly undervalues the suit properties.
- xiv. An order for special damages under Article 23(3) of *the Constitution* of Kenya 2010 being compensation for Land Reference Numbers 6731 and 6732 situated in Taita Taveta District based on the valuation report submitted by the government valuer or private valuer.
- xv. An order of mandamus directed by the Commissioner of Police to take all lawful steps necessary to bring to an end the invasion of the properties known as Jipe Sisal Estate, (L.R No. 10287) and Taveta Sisal Estate (L.R Nos. 5865/2, 5827, 6731 and 6732 in Taita-Taveta District, Coast Province, until the right of quiet enjoyment in respect of both the said properties has been restored to the Applicant and or all persons lawfully holding under him.
- xvi. An order of mandamus directed to the Commissioner of Police to carry out the duties of the Police under the Police Act, Cap.85 and in particular Sections 14, 14A and 15 thereof at all time in relation to the Applicant as well as the said properties.
- xvii. An order of prohibition directed to the Provincial Commissioner of Coast Province, the District Commissioner of Taveta District and the District Officer of Taveta Division prohibiting them and each of them and their subordinates from carrying out their constitutional and statutory duties in a manner amounting to refusal, neglect or failure to bring to an end the invasion of the properties known as Jipe Sisal Estate, (L.R No. 10287) and Taveta (L.R Nos. 5865/2, 5827, 6731 and 6732) both in Taita-Taveta District, Coast Province or in a manner denying the right of quiet enjoyment to the Applicant in respect of any of his properties.
- xviii. An order of prohibition directed to the Provincial Police Officer, Coast Province and all his subordinates in particular in Taita-Taveta District and Taveta Division thereof prohibiting them and each of them from carrying out their constitutional and statutory duties in a manner amounting to refusal, neglect or failure to bring to an end the invasion of the properties known as Jipe Sisal Estate, (L.R No. 10287) and Taveta Sisal Estate (L.R Nos. 5865/2, 5827, 6731 and 6732) both in Taita Taveta District, Coast Province or in a manner denying the right of quiet enjoyment to the Applicant in respect of any of his properties.
- xix. An order that the Government of Kenya jointly and severally do pay general damages to the Applicant in such sum as this Honourable Court deems just.
- xx. An order that the Government of Kenya jointly and severally do pay special damages to the Applicant in such sum as this Honourable Court deems proved and just.
- xxi. An order that the Government of Kenya jointly and severally do pay aggravated and exemplary damages to the Applicant in such further sum as this Honourable Court deems just.



- xxii. An order that the Government of Kenya jointly and severally do pay compensation to the Applicant in such sum as this Honourable Court deems just.
 - xxiii. Directions to the Provincial Police Officer, Coast Province and his subordinates in the said Province, in particular in Taveta District and Taveta Division thereof, to assist the Applicant in recovering, taking over and maintaining the quiet enjoyment of the said Jipe Sisal Estate, (LR. No. 10287) and Taveta Sisal Estate (L.R Nos. 5865/2, 5827, 6731 and 6732) and respond in manner prescribed by law to any future reports relating to any violation of the said quiet enjoyment.
 - xxiv. Directions To the Provincial Commissioner, Coast Province and his subordinates in the said Province, in particular the District Commissioner in Taveta District and the District Officer in Taveta Division thereof, to assist the Applicant in recovering, taking over and maintaining the quiet enjoyment of the said Jipe Sisal Estate, (L.R No. 10827) and Taveta Sisal Estate (L.R Nos. 5865/2, 5827, 6731 and 6732) and to respond in manner prescribed by law to any future reports relating to any violation of the said quiet enjoyment.
 - xxv. Such further other and consequential orders, writs and directions as this Honourable Court may consider appropriate for the purpose of enforcement of any of the provisions of Sections 70 to 83 (inclusive), Constitution of Kenya.
 - xxvi. The respondents jointly and severally do pay to the Applicant the costs of and incidental to this Petition.
4. The same was supported by an affidavit sworn by Hon. Basil Criticos on 16th August 2016.
 5. Later vide a Notice of Partial withdrawal dated 6th November 2025, the Petitioner withdrew prayer numbers; 15, 16, 18, 19, 24 and 25 that had been sought in the Amended Originating Summons dated 16th April 2016.
 6. It was deponed that he filed the application dated 2nd November 2021 and 3rd June 2015 in the present Petition seeking orders to compel the police to evict the squatters and on 11th March 2016 the court allowed the said application and issued the following orders: -
 - a. The Petitioner to identify all such invaders and trespassers on all his properties in Taveta and report the same to the Officer Commanding Police Division Taveta for action in the usual manner.
 - b. The Officer Commanding Police Division Taveta District upon receiving such report do effect the functus orders by ejecting such invaders and trespassers out of all the Applicants' properties and specifically L.R Nos. 6731 and 6732 Taveta.
 7. It was averred that in spite of serving the Order dated 11th March 2016, the letter dated 5th April 2016 and the list of squatters, the police refused to take any action.
 8. Various state players and other parties have interfered with his land charged to AFC as follows; without his consent, the Rural Electrification Authority proceeded to connect electricity to various squatters on the land, roads have been constructed on the AFC land by the government without his consent. This has facilitated easy access for invasion of the said land, the government rehabilitated the canals running through the AFC land without his consent and thus encouraging invasion of his land. The Constituency Development Fund approved and implemented a water pipe line project to supply water to the new squatters on his land charged to AFC and specifically on LR. No. 6731. In spite of Justice Sergon issuing an order on 7th April 2006 in Mombasa HCCC No. 159 of 2005 Hon. Basil Criticos



v Hon. Naomi Shaban & Others, requiring the removal of, inter alia, all pipes on the AFC land, the Order was not obeyed.

9. It was averred that he wrote a complaint to World Vision on 21st August 2007 protesting that they were sponsoring various squatters who had invaded his land under their food for work program. By letters dated 3rd and 12th December 2007, World Vision responded and stated, inter alia, that the communities being assisted had been identified by the Government of Kenya officials who were implementing projects. The Ministry of State for Special Programmes sent a letter dated 7th December 2007 to the District Commissioner of Wundanyi asking him to investigate his complaint but no action was taken to arrest the food for work program on my land.
10. In both Petitions Numbers 258 of 2011 and 576 of 2012 it was averred that since 1986 he has donated, sold or been dispossessed of land equivalent to 39,524 acres within Taveta and which land is vested in the Settlement Land Trustees and he could not understand the magnitude of victimisation being meted on him.
11. It was also averred that no account has ever been given to show how many squatters have been resettled on his former land and why no steps have being taken to transfer squatters from his present land to his former parcels of land.
12. It was also averred that he is seeking compensation equivalent to the market value of his entire land charged to AFC. At the moment he cannot afford to hire the services of a private valuer, and seek the court to compel the government valuer to submit a valuation report based on the market value at the time of judgment in respect to his land charged to AFC – LR Numbers 6731 and 6732.
13. It was also averred that he had instructed Mwaka Musau Consultants whose valuation report dated 9th January 2010 assessed the then market value of L.R No. 5865/2 Taita Taveta District. This was the land that was illegally sold by National Bank of Kenya. The report will given the court a rough estimate of the value of sisal as he also seeks compensation. In 2010 the value of land was about kshs. 200,000 per acre. By now, the value is likely more than quadrupled doubled considering that the AFC land is very fertile and the road has now been tarmacked.
14. It was stated that the following are some of the values ascribed to his former land situated in Taita Taveta that will guide the court.

Particulars Of Value Of Land In Taita Taveta In 2010 Exhibited At Page 103

 - a. 2000 Acres near town Kshs. 200,000 per acre Kshs.400,000,000
 - b. 8338 Acres @Kshs. 65,000 per acre Kshs. 541,970,000
 - c. Sisal Old PlantationsLand 3000 acres @Kshs. 65,000 Kshs. 195,000,000Crops Kshs. 768,000,000
 - d. Sisal New PlantationsLand 1200 acres @Kshs. 65,000 Kshs. 78,000,000Crops Kshs. 614,000,000
15. It was further stated that the inaction of the State in evicting, the squatters amounts to compulsory acquisition of his land.
16. In support of his case, the Petitioner filed two sets of written submissions.The submissions dated 14th October 2016 and supplementary submissions dated 6th November 2025.
17. Petitioner submitted on the following issues:-



- a. Does the court have jurisdiction to grant the prayers sought?
 - b. Is the Petitioner entitled to the Declarations sought?
 - c. Should the Petitioner be compensated for his loss of land?
 - d. Should the government valuer be ordered to carry out a valuation report for Land References 6731 and 6732.
 - e. Is the Petitioner entitled to exemplary and aggravated damages?
 - f. Should orders of mandamus and prohibition be issued?
 - g. Costs.
18. It was submitted that the Petition relates to the old constitution when it was filed in 2004 and hence the High Court has jurisdiction to deal with the matter. It was submitted that the Petitioner seeks compensation for infringement of his fundamental rights to property rights under Section 75 of *the Constitution* (Repealed) and Article 40 (3) of *the Constitution*. It was argued that the Petitioner was deprived of his fundamental rights and freedoms under Section 70 of *the Constitution* (Repealed) and the State contravened Section 82 of *the Constitution* (Repealed). The case of *Arnachery Limited =Versus= A.G (2014) eKLR* was cited in support.
19. In respect to the declaratory orders sought, it was submitted that the Petitioner is entitled to the same and reliance was placed to the cases of *President of RSA & Another =Versus= Modderklip Boerdery (Pty) Ltd & Others and Arnachery Limited =Versus= A.G (2014)*, it was argued that the Petitioner is entitled to compensation for his loss of land.
20. Citing the case of *A.G =Versus= Nguruman Limited (2025) KECA 348 (KLR)*, it was further submitted that the said case is similar to the facts herein and in that case the Court of Appeal stated that the State may be liable for failure to prevent illegal invasion of private property by squatters if it is shown that the State has failed in its Constitutional obligations to protect private property. It was further submitted that in the present Petition the Petitioner had proved and demonstrated various breaches and in action by the Respondents and was entitled to the reliefs sought. The Court was urged to grant the reliefs sought together with costs of the Petition.

The Respondent's case and submissions

21. The Respondent field grounds of opposition dated 2nd February 2026 and written submissions dated 2nd February 2026 in advancing their case.
22. It was their case that the Court lacks jurisdiction on account of the doctrine of subjudice, the Petition as otherwise concerned are proceedings for contempt disguised as Constitutional Petition as orders sought are in the nature of enforcement of alleged breach of existing court orders.
23. It was also the Respondent's case that the Petition is a judicial review application disguised as a constitutional petition, there has been no exhaustion of the available remedies available in law and further that the same does not disclose any genuine constitutional grievance and or course of action against the Respondents.
24. In their written submissions Counsel submitted on the following issues:-
 - h. Whether the Petition is competent.
 - i. Whether the orders sought should issue.



25. It was argued that the Petition is an abuse of the Court process, the Petition is seeking to enforce orders and or seek reliefs from orders arising in other matters and equally contempt proceedings against the Respondent. Reliance was placed in the cases of Muchanga Investments Limited =Versus= Safari Unlimited (Africa) Ltd & 2 Others (2009) eKLR, Joyce Cherop Kaspaniden & 609 Others =Versus= Kenya Power & Lighting Company Limited HCJR No. 202 of 2017 and Anarita Karimi Njeru =Versus= The Republic (1976 – 1980) KLR 1272.
26. As to whether the Petitioner is entitled to the Orders sought, it was argued that the guiding principles for the procedure and process of eviction in private land in Kenya have been provided under Sections 152 (B) and (E) of the Land (Amended) Act and there have been no compliance to the same. Reliance was placed in the cases of Joseph Letuya & 21 Others =Versus= Attorney General & 5 others (2014) eKLR, Symon Gatutu Kimiamo & 587 Others =Versus= East African Portland Cement & Co. Ltd (2011) and Wanjiru Gikonyo & 2 Others =Versus= The National Assembly of Kenya & 4 Others (2016) eKLR.
27. The Court was urged to dismiss the Petition with costs.

The Petitioner’s rebuttal submissions

28. The Petition filed rebuttal submissions dated 10th February 2026.
29. On whether the matter is subjudice and while making reference to Mombasa ELC 113 of 2015 Emfil Ltd =Versus= The Attorney General & 423 Others it was argued that the said matter has not been determined, the Petition is not a party to the same, the matter does not relate to the present dispute and no evidence of its nexus to the present Petition has been adduced.
30. In respect to the disobedience of Court orders and failure to rebut evidence, it was argued that the Petition is premised to protect the Petitioner’s right to property and the failure to obey the court orders in the present Petition. No evidence has been adduced by the Respondent to demonstrate compliance with the orders issued by Justice Mohamed Ibrahim (as he then was) on 13th September 2005. No further affidavit has been filed to dispute that position.
31. On whether the Petition is competent, it was argued that the Petition is competent. There has been no rebuttal or attempt to distinguish the Petitioner’s submissions.

Analysis and Determination

32. Having carefully considered the pleading, the affidavits, the annexures and the written submissions filed by the parties, the following issues arise for determination:-
 - j. Whether the Court lacks jurisdiction to hear this Petition on account of subjudice.
 - k. Whether the Petition is merited.
 - l. Whether the Petitioner is entitled to the reliefs sought.

Whether this Court lacks jurisdiction to hear this Petition on account of subjudice and failure to exhaust the available remedies

33. It was the Respondent’s contention that this Court lacks jurisdiction to hear this matter on account of subjudice and failure to exhaust the available remedies before filing the instant Petition.



34. The issue of jurisdiction having been raised by a party should be determined at the earliest possible opportunity. This is because jurisdiction is the lifeline of a case and without jurisdiction, a Court ought to down its tools. See Owners of the Motor Vessel "Lillian SS" vs Caltex Oil Kenya Limited (1989) KLR 1. A Court's jurisdiction flows from either *the Constitution* or legislation or both. The Supreme Court in The Matter of the Interim Independent Electoral Commission Constitutional Application No. 2 of 2011 discussed the issue of jurisdiction in the following manner:

“Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*; by statute law, and by principles laid out in judicial precedent.... the Lillian "SS" case establishes that jurisdiction flows from the law, and the recipient, the Court, is to apply the same with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavours to discern or interpret the intentions of Parliament where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court their respective jurisdiction is donated by *the Constitution*".

35. Section 6 of the *Civil Procedure Act* provides that

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between the same parties, or between parties under whom they or any of them claim, litigating under the same title where such suit or proceedings is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

36. Sub judice, requires that proceeding or litigation in the subsequent suit should be pending in a court of competent jurisdiction. In that respect, sub judice is a fundamental legal principle that prevents re-litigation of issues that are pending before another court of competent jurisdiction. This principle is intended to avoid multiplicity of suits so that different courts seized of the same matter between the same parties over the same issues do not render contrary decisions. That way, sub judice serves to uphold the principles of judicial efficiency, fairness, and the rule of law.

37. The import of sub judice is that once a matter has been instituted in a court of competent jurisdiction, no other court should subsequently entertain a suit or issue in which the matter in dispute is directly and substantially in issue in an earlier suit pending in another court. The overarching objective of sub judice is to prevent multiplicity of proceedings, ensure the finality of judicial decisions and promote judicial economy and certainty in the legal system.

38. In *Satyadhyan Ghosal v. Deorajin Debi & Anr.* 1960 SCR (3) 590; 1960 AIR 941, the Supreme Court of India elucidated the concept of “directly and substantially in issue” under section 10 of the Indian Civil Procedure Code (Code of Civil Procedure) which is the equivalent of our section 6 of the *Civil Procedure Act*. The Court held that for sub-judice to apply, it is not necessary that the entire subject matter of the subsequent suit should have been directly and substantially in issue in the former suit. Rather, it suffices if the matter in issue was relevant for the determination of the former suit.

39. Equally in the case of *Showcase Properties Limited v Kenya Commercial Bank Ltd & another* [2023] KEHC 24601 (KLR) it was stated: -

“The rationale behind the doctrine of subjudice is to prevent situations of having conflicting orders emanating from two or more different Courts over the same subject matter. A five-judge bench in the case of *David Ndi & others versus Attorney General & others*



2021 eKLR, had this to say in regard to the doctrine of subjudice –“The rationale behind this provision (Section 6 of the *Civil Procedure Act*) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will...”

40. For the doctrine of subjudice to be successfully invoked, the person seeking to invoke it has to demonstrate that the matter in issue in the subsequent suit is directly and substantially in issue in a previously instituted suit, proceedings must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title and such suit or proceeding must be pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.
41. To determine whether or not a matter is sub judice, one has to look at the facts of the latter suit or proceedings, including the prayers sought, visa vis the facts of the former suit, the prayers sought therein as well as the parties in the two suits. In other words, cases must be civil in nature; must have been filed at different times; matters in issue must be substantially similar; courts should have jurisdiction over the subject matters; parties should be the same or litigating through their representatives or same title and the suits or proceeding should be pending.
42. In the instant Petition the Respondents save for mentioning that the matter is subjudice Mombasa ELC 113 of 2015 Emfil Ltd =Versus= The Hon. Attorney General & 23 Others, in their written submissions, they never furnished this court with any pleadings to demonstrate the nexus between the mentioned case and the instant Petition.
43. In the circumstances the Court is unable to agree with the Respondents as to whether the instant Petition is subjudice since the Respondent have failed to demonstrate the same.
44. In respect to the exhaustion of alternative remedies, it is worth noting that the instant Petition was initially commenced in the year 2004 which is over 20 years and the Respondents have been parties to this proceedings. The Respondents never raised any objection in respect to the same save as raising it in their grounds of opposition dated 2nd February 2026 which can only be considered as an afterthought. It is also worth noting that the Respondents have failed to demonstrate which alternative legal remedies and the specific provisions of the law that were available to the Petition as at the year 2004 when the instant Petition was commenced. In the circumstances the said objection is declined.

Whether the Petition is merited

45. It was the Petitioner’s case that between the year 1998 and 2000, thousand of persons invaded his sisal estates and no steps were taken by State officials to remove the invaders in spite of request by the petitioner to do so.
46. Following the protestations by the Petition over the invasion of his properties he was sacked from his position as Assistant Minister for Roads and Public Works. Senior State officials in Government encouraged the invasions of private land.
47. According to the Petition, the sisal factory and 4,400 acres of sisal were burnt between 1998 and 1999 upon which he provided photographs demonstrating the same.
48. It was also the Petitioner’s case that following the destruction of his property about 1,600 Kenyans employed in his farms were rendered destitute and the services of thousands of casual workers were terminated. He lost all his future income and was financially crippled. He also had to flee the county.



49. It was his case that he sold 23,400 acres to Settlement Funds Trustees in 1991 to settle squatters. The State did not settle squatters on the provided land.
50. According to the Petitioner the State and other public bodies aided and abetted the invasion of the Petitioner's land by connecting electricity to squatters homestead, construction of public roads on the Petitioner's private land, rehabilitation of water canals to ease irrigation for the squatters, use of Constituency Development Fund to provide piped water to squatters contrary to orders disobeyed in HCCC No. 159 of 2005 and encouraged World Vision to provide food for work to the squatters in the Petitioner's land.
51. In view of the foregoing the Petitioner seeks exemplary and aggravated damages against the Respondents.
52. The Respondents did not respond to the assertion of facts and evidence tendered by the Petitioner. The Respondents did not provide any written reasons to justify the actions and accusations made against them. The actions of the Respondents and or its officers amounted to an infringement and a violation of the Petitioner's rights.
53. As rightfully submitted by the Petitioner, the Petition is premised on breach of fundamental rights to protect the Petitioner's right to property and the failure to obey the court orders issued in the present Petition. No evidence has been adduced by the Respondents to demonstrate compliance with the express orders of the court that were issued on 13th September 2005 by Justice Mohamed Ibrahim (as he then was).
54. Failure to file an affidavit to rebut breaches of fundamental rights can only be deemed to amount to an admission of facts especially where strong allegations are made and subsequently proved by affidavit evidence to support the same. This was also the position taken by the Court of Appeal in the case of *Mutai & 9 Others =Versus= A.G (2019) KECA 125 (KLR)* which case was cited by the Petitioner.
55. The Petitioner in his submissions relied extensively on the cases of *A.G =Versus= Nguruman Limited (2025) KEA 348 (KLR)*, *Arnacherry Limited =Versus= Attorney General (2014) KEHC 8304 (KLR)* in demonstrating that the actions of the Respondents were unwarranted and that his Petition was merited.
56. Considering this issue, it is apposite to recall and reiterate the holding of the Court in the case of *Arnacherry Limited v Attorney General [2014] eKLR*; where the Learned Judge dealt with a similar situation and remarked thus:

“ 57. Turning back to the allegation of violation of constitutional rights, the core right at the centre of this dispute is the right to property under article 40 of *the Constitution*, which has been reproduced elsewhere above. The facts in support of the allegation have not been contested and it is by now obvious that whereas the initial invaders of the suit land were civilians, the Government of the Republic of Kenya joined them and proceeded to establish a police station therein and also built schools and posted teachers to the said schools. It also set up its offices on the suit land including those of a Chief and Sub-Chief.

58. What other conclusion can be reached in the circumstances other that the State has, without lawful process, compulsorily acquired the said parcel of land? Acquisition is ordinarily direct and by processes known to the Land Acquisition Act (Repealed) and now the Lands Act, 2012. Constructive acquisition however may well occur in circumstances such as the ones



obtaining in the present Petition and there is no doubt that article 40 was thereby violated.”

57. Furthermore, the court proceeded and stated as hereunder;

“77. This is indeed a sad and distressing Petition. It is not expected that the State, in this age and time and with a robust Constitution such as ours, can actively participate in acts of impunity such as the forceful take-over of personal property without due compensation. The take-over has lasted 30 years and that makes the said action all the more disturbing.

78. I watched Justice Lutta testifying in Court. A man whose judgments and fingerprints dot our Law Reports now looks dejected and broken. His advanced years show more than they should, all because what he worked for in his youth was stolen by conniving civilians with Government protection. No Kenyan should ever again be so treated and the State must draw lessons from this judgment.”

58. Having determined the said issue and the evidence tendered and further being guided by the cited cases, it is the finding of this Court that indeed the Petition is merited and the Petitioner has been able to demonstrate that the actions of the Respondents amounted to a violation of his constitutional rights.

Whether the Petitioner is entitled to the reliefs sought

59. In the instant Petition, the Petitioner has sought for various reliefs over and above the declaratory remedies. Equally in his notice of partial withdrawal dated 6th November 2025, he withdrew a number of reliefs that had been overtaken by events.

60. Article 23 (3) of *the Constitution* specifies the reliefs that this court may grant. The Court however is given the liberty to consider an appropriate relief.

61. In his submissions, the Petitioner urged the Court to award aggravated and exemplary damages including A Declaration for violation of his constitutional rights. He urged the Court to award a sum of Kshs. 100 Million on account of the same. This was based on the fact that owing to the Respondents actions, he was unable to pay his creditors whose debts which has escalated on account of accrued interest. The loan of Kshs. 100 Million was to be paid from the sale of land that was sub divided and it had to take a Court order to compel the Land Control Board to allow the application for subdivision.

62. The Petitioner also sought for an order directing the Government Valuer to carry out a valuation report for Land Reference 6731 and 6732 because according to him he has no means of financing the valuation exercise.

63. in considering whether or not to grant the said relief, the Court takes the position that the main objective of the constitutional remedy is not punishing the violator rather it is vindicatory in nature in that it signifies the affirmation of the constitutional right and emphasizes that it is a threat to the social order and to forestall those kinds of breaches from a particular violation.

64. In deciding what would be the extent of compensation, this Court would focus on assessing what is appropriate and just in the circumstances of the case and no more. The Court of Appeal decision in Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others [2021] KECA 328



(KLR) aptly captures the vindicatory approach that characterizes assessment of compensatory awards in constitutional reliefs. It explained:

- “ 15. The relevant principles applicable to award of damages for constitutional violations under *the Constitution* were also explained by the Privy Council in the case of *Siewchand Ramanooop vs The AG of T&T*, PC Appeal No 13 of 2004. It was held by Lord Nicholls at Paragraphs 18 & 19 that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense as follows:

“When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A Declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

16. The guiding principle to be gleaned from these decisions is that an award of general damages in constitutional petitions is discretionary and will depend on the circumstances of each case, and can indeed be granted as compensation for proven loss.”

65. Next is the issue of Exemplary damages. The law on Exemplary damages is well settled. In the case of *Godfrey Julius Ndumba Mbogori & another v Nairobi City County* [2018] eKLR:

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute”.

66. In the case of *Kental Enterprises Ltd =Versus= A.G & 4 Others* (Petition No. 2 of 2019 (2025) KEELC 147 (KLR) (24th March 2025) the ELC Court after finding that there was a violation of the Petitioner’s right and awarded exemplary damages of Kshs. 50,000,000/= for unconstitutional actions.



67. In view of the foregoing this court proceeds to award a sum of Kshs. 20,000,000/= on account of general damages for constitutional violation and Kshs. 10,000,000/= as exemplary damages against the Respondents.
68. I must say that in arriving at and awarding the sum of Kes.20, 000, 000/= and 10,000,00 only, I have taken into account the guidelines espoused by the Court of Appeal in the case of Kenya Power & Lighting Company Ltd v Ringera & 2 others (Civil Appeal E247 & E248 of 2020 (Consolidated)) [2022] KECA 104 (KLR) (4 February 2022) (Judgment).
69. Similarly, I have also been guided by the dicta espoused by the supreme court of Kenya in the Attorney General v Zinj Limited (Petition 1 of 2020) [2021] KESC 23 (KLR) (3 December 2021) (Judgment), wherein the court also enunciated the principles to be taken into account.
70. In respect to the order directing the Government Valuer to conduct valuation of his property upon which the Court can base its claim and award compensation for the same. It is worth noting that the same is akin to seeking a claim of special damages on account of a Court's intervention.
71. It is evident that special damages must be specifically pleaded and proved and directing as such will be contrary to the set tenets in proving claims of special damages and as such this court is unable to accede to the said request.

Disposition

72. In conclusion, the Amended Originating Summons dated 16th April 2016 and in light of the Notice of Partial Withdrawal of certain reliefs is hereby determined as follows:-
- i. A Declaration is hereby issued that the Petitioner has been deprived of his constitutional rights contrary to the provisions of Article 40 of *the Constitution* of Kenya, 2010.
 - ii. An order of compensation of general damages of Kshs. 20,000,000/= is hereby awarded to the Petitioner against the Respondent's violation on the Petitioner's constitutional rights.
 - iii. An order of compensation is hereby issued awarding the Petitioner exemplary and aggravated damages of Kshs. 10,000,000/=
 - iv. The Petitioner shall have costs payable by the Respondents.
 - v. Any other Reliefs not expressly granted are hereby denied.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 26TH DAY OF FEBRUARY 2026.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Allen Gichuhi S.C for the Petitioner.

Mr. Kemei for the Respondents.

Court Assistant: Mary Ngoira

