

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND AT NAIROBI**

**ELC. PETITION CASE NO. E078 OF 2024**

**IN THE MATTER OF: ARTICLES 22(1) AND 258(2) OF THE  
CONSTITUTION OF KENYA 2010.**

**AND**

**IN THE MATTER OF: ARTICLES 1, 2, 3, 4(2), 10, 23, 73, 75, 94, 95, 309,  
165, 232, 234, 258 & 259 OF THE CONSTITUTION OF  
KENYA 2010**

**IN THE MATTER OF: SECTION 24, 25 & 26 OF LAND REGISTRATION  
ACT, CAP 300**

**AND**

**IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 1, 2 4(2) 10,  
40, 60, 61, 62, 63, 64, 73, 94, 95, 188, 201 232, & 234  
OF THE CONSTITUTION OF KENYA 2010.**

**AND**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF SECTIONS  
24, 25 & 26 OF THE LAND REGISTRATION ACT, CAP  
300**

**AND**

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF  
THE CABINET SECRETARY MINISTRY OF INTERIOR  
AND COORDINATION OF NATIONAL GOVERNMENT  
AND MINISTRY OF EDUCATION FORCEFUL  
NATIONALIZATION OF PRIVATELY OWNED  
PROPERTY OWNED BY PRIVATE SCHOOL  
GOODRICH SCHOOLS LIMITED (THE PETITIONER)  
WITHOUT DUE COMPENSATION**

**BETWEEN**

**GOODRICH SCHOOLS LIMITED.....**  
**PETITIONER**

**CABINET SECRETARY, MINISTRY OF EDUCATION..... 1<sup>ST</sup>**  
**RESPONDENT**

**CABINET SECRETARY, MINISTRY OF INTERIOR**  
**& COORDINATION OF NATIONAL GOVERNMENT .....2<sup>ND</sup>**  
**RESPONDENT**

**THE HON. ATTORNEY GENERAL .....1<sup>ST</sup> INTERESTED**  
**PARTY**

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

**THE NATIONAL LAND COMMISSION .....3<sup>RD</sup> INTERESTED**  
**PARTY**

### **JUDGMENT**

1. The petitioner filed the petition dated 24<sup>th</sup> September, 2024 praying for the following orders:-

*a. That a declaration that the 1<sup>st</sup> and 2<sup>nd</sup> respondents' possession of property title numbers L.R. No. 209/21922 & LR. No. 209/22091 was in contravention of Article 40 (3) of the Constitution.*

*b. That a declaration that the petitioner's right to acquire own and deal with its property without being deprived of the same as guaranteed by Article 40 of the Constitution was violated by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.*

*c. That a declaration that any continued occupation of the said portion of the suit property without compensation amounted to acquisition contrary to Article 40 (3) of the Constitution.*

- d. That a declaration be and is hereby issued that the petitioner takes immediate possession of title number LR No. 209/ 21922 & LR. No. 209/ 22091.***
- e. In the alternative, an order for the payment of Kshs.324,000,000 being the (then) current value of the suit property, with interest thereon at the (then) prevailing central bank rates from the date of illegal repossession and or acquisition to full payment.***
- f. Such other orders as this honourable court shall deem just.***
- g. That there be no order as to costs.***

2. The facts of the petition are that on 3<sup>rd</sup> January, 2019, the respondents raided the petitioner's private investment being the Goodrich Schools erected on LR. Nos. 209/21922 and 22091 under the guise of a purported imaginary land dispute. While conducting the raid, the respondents caused destruction on the suit properties by painting the same with colours suggesting that the government had taken over the school. Further, that these acts were crystallized on 7<sup>th</sup> January, 2020 when the government forcefully evicted the petitioner from the school by deploying heavily armed anti-riot police including the chiefs and other government machinery to harass and intimidate the petitioner's directors and their servants.

3. The petitioner contends that the purported acquisition of the suit properties was done under the supervision and control of the 2<sup>nd</sup> respondent's officers specifically the then Embakasi Sub-county Deputy Counter Commissioner Mr. Kenneth Murungi. As a result, the petitioner has suffered loss of income, loss of property and reputational damage. Further, that the respondents contravened the petitioner's right to property having failed to communicate their intention to acquire the suit properties or to comply with compulsory acquisition procedures.
4. The petitioner averred that the suit properties are privately owned, having acquired the title on 24<sup>th</sup> August, 2011 the same having arisen from allotment through advertisement by the Ministry of Lands. The petitioner further contended that following a resurvey following a boundary dispute, the suit properties were resurveyed and new titles were issued. Thereafter, they petitioned for a change of user from a community facility to an educational facility which resulted to fresh leases which are now the suit properties. They contend that the titles have never been impeached through any judicial process and thus there was breach.
5. The petitioner pleaded particulars of breach which included forceful acquisition of the suit property, illegal possession and the

limitation of its rights to property. The petitioner contended that the respondents violated **Articles 10, 40, 73, 75, 232 and 234** of the **Constitution**, **Sections 24, 25(1) and 26(1)** of the **Land Registration Act** and **Sections 49 and 52** of the **Basic Education Act**.

6. The petition was supported by the affidavit of Karen Mwebia, the director of the petitioner sworn on even date. The said affidavit contains averments similar to those raised in the petition and there would no need to reproduce the same save to note its contents.
7. The respondents and the 1<sup>st</sup> interested party filed their memorandum of appearance dated 17<sup>th</sup> January, 2025. However, they did not file their response to the petition. Mr. Arunga for the 2<sup>nd</sup> interested party, informed the court orally that they are in support of the petition.
8. The petition was canvassed through written submissions. The petitioner filed its written submissions dated 26<sup>th</sup> January, 2026 where it raised four issues as listed below:-

***1. Whether the petitioner is the legal proprietor of property L.R No. 209/21922 and LR. No. 209/22091.***

**2. Whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents unlawfully and illegally took possession of LR. No. 209/21922 and LR. No. 209/22091.**

**3. Whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents have violated the petitioner's rights under the Constitution and relevant statutes.**

**4. Whether the petitioner is justified in seeking the reliefs sought.**

9. On the first issue, it was submitted that through the genealogy of events narrated in the petition, the petitioner has proved the legality leading to the ownership of the suit properties, and that there is no evidence placed before this court demonstrating that the titles were acquired through fraud, misrepresentation illegality or through unprocedural means. To further buttress on this issue, the petitioner relied on the cases of **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, and **Dr. Joseph Arap Ngok v Justice Moijo Ole Keiwua & 5 Others, Nai Civil Appeal No. 60 of 1997**.

10. On the second and third issues, the petitioner submitted that the respondents' actions of illegally and unlawfully possessing the suit properties violated **Article 40 (3) of the Constitution**. Reliance was placed in the cases of **Patrick Musimba v National Land Commission & 4 Others [2016] eKLR**, **Mitu-Bell Welfare**

**Society v Kenya Airports Authority & 2 Others [2021] eKLR, Elijah Makeri Nyang'wara v Stephen Mungai Njuguna & Another [2013] eKLR, and Arnacherry Limited v Attorney General [2014] eKLR.**

11. On the fourth issue, the petitioner submitted that it is clear that the actions by the respondents to dispossess it of its properties are in gross violation of its rights under the **Constitution** and statues and is thus entitled to the reliefs sought. The petitioner relied on the case of **Virendra Ramji Gudka & 3 Others v Attorney General [2014] eKLR.**
12. I have considered the petition and the written submissions filed by the petitioner. I am of the view that the issue for determination is *whether the petitioner is entitled to the declaratory orders sought.*
13. The petitioner contended that the respondents raided the suit properties on 3<sup>rd</sup> January, 2019 under the guise of a land dispute. While conducting the raid, the respondents caused destruction on the suit properties by painting the same with colours suggesting that the government had taken over the school. On 7<sup>th</sup> January, 2020 the petitioner alleged that the government forcefully evicted it from the school by deploying heavily armed anti-riot police including the chiefs and other government machinery to harass and intimidate the petitioner's directors and their servants. More

importantly, and I note is the contention that the suit properties are privately owned, having acquired the title on 24<sup>th</sup> August, 2011 the same having arisen from allotment through advertisement by the Ministry of Lands.

14. The provisions of **Sections 25 and 26** of the **Land Registration Act** are as follows:-

***“25.(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—***

***(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and***

***(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.***

***(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.***

***26. (1) The certificate of title issued by the registrar upon registration, or to a purchaser of land upon***

***a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—***

***(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.***

***(2) A certified copy of any registered instrument, signed by the registrar and sealed with the seal of the registrar, shall be received in evidence in the same manner as the original.”***

15. The above provisions of the law as well as **Article 40** of the **Constitution** protect the right to property and the right to enjoy the benefits appurtenant to that right. The **Act** specifies the circumstances under which the title of a registered proprietor can be impeached. The facts stated in this petition are not disputed, and the issues remain uncontested. In support of it's case, the petitioner supplied affidavit evidence following the narration of the events leading to the filing of this petition as stated in the petition and the supporting affidavit. While it may be easy to

conclude that the petitioner's rights were violated, there is need to interrogate the evidence and ascertain whether indeed these rights were violated.

16. Mukuru Community Centre (MCC) and Orphanage were formed by Julius Mupio, Phillip Kimeu and Gideon Kyalo Kimulu and in the year 1996, they identified unoccupied land which they proceeded to erect temporary structures to provide education to the community members. In 1998, MCC was registered, and it proceeded to apply for a letter of allotment for plot no. 209/11047/2. Following the allotment process, MCC was eventually issued with a certificate of title in the year 2011.
17. Following a dispute and a survey which was conducted, MCC surrendered the original title. Thereafter, a new lease known as LR. No. 209/21374 was registered on 12<sup>th</sup> August, 2015. The title was issued to Gideon Kyalo Kimulu, Philip Kimeu and Julius Mupio as registered trustees of MCC. Thereafter, MCC sought a subdivision of the same which resulted in LR. No. 209/21593 and 209/21594 and two other properties. The titles to these properties were issued on 12<sup>th</sup> February, 2016. Later, they applied for a change of user from community centre to educational

regularization. As contended by the petitioner, the suit properties were registered on 29<sup>th</sup> November, 2017.

- 18.** However, I am mindful to consider the terms of the trust deed dated 18<sup>th</sup> September, 2007 as it is the same document that founded MCC and further led to its ownership of the suit properties before the change of user. While this document is somewhat illegible, the clause on meetings of the trustees provides that the same shall hold meetings twice every year. There were no minutes supplied to indicate the decision of MCC for a change of user and the registration of the suit properties to the petitioner. Moreover, and as per the certificate of registration, MCC is/was a community-based organization, this means that its functions were to benefit the society in particular the area where the school is situated. As a community-based organization, MCC relied on contribution of members to develop the suit properties as stated in the letter dated 8<sup>th</sup> February, 2000. The question now is, under what basis was MCC able to have the suit properties registered in the names of the petitioner, a private limited company yet initially the same was registered in the names of trustees of MCC? In my view, this is where the disconnect is. One would also question whether the community was informed of this move, and whether they approved of the same.

**19.** Having carefully perused the documents in support of the petition, I am in doubt whether the petitioner is genuine as to the alleged violations meted out owing to the process of its acquisition of the suit properties. I am not satisfied that the petitioner has proved the alleged violations of the **Constitution** to warrant the orders sought. The petition dated 24<sup>th</sup> September, 2024 is hereby dismissed. I make no orders as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 17<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. MBOGO C.G.  
JUDGE  
17/03/2026.**

***In the presence of:***

*Ms. Benson Agungo - Court assistant*

*Mr. Gachuri holding brief for Mr. Muturi for the Petitioner*