

**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. E004 OF 2023**

**IN THE MATTER OF ALLEGED CONTAVENTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS IN ARTICLES 28, 40(3) (a) and (b), 47 THE  
CONSTITUTION OF THE REPUBLIC OF KENYA 2010.**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS IN ARTICLES 2, 3, 19, 20, 22 & 23 OF THE  
CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 10, 10(1), 10(3) OF THE PUBLIC SERVICE (VALUES  
AND PRINCIPLES) ACT**

**BETWEEN**

**JAMINI AGENCY LIMITED ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1ST RESPONDENT**

**LAND REGISTRAR ..... 2ND RESPONDENT**

**DIRECTOR OF SURVEYS ..... 3RD RESPONDENT**

**DEPARTMENT OF ENVIRONMENT ..... 4TH RESPONDENT**

**MATHARI TEACHING AND REFERRAL HOSPITAL ..... 5TH RESPONDENT**

**KENYA NATIONAL HIGHWAY AUTHORITY ..... 6TH**

**RESPONDENT JUDICIAL SERVICE COMMISSION ..... 7TH**

**RESPONDENT STATE DEPARTMENT OF DEFENCE ..... 8TH**

**RESPONDENT DEPARTMENT OF LIVESTOCK ..... 9TH**

**RESPONDENT THE HON. ATTORNEY GENERAL .....**

**10TH RESPONDENT**

**JUDGEMENT**

**Introduction**

1. Before this court for determination is the Amended Constitutional Petition by Jamini Agency Limited filed on 30<sup>th</sup> October 2023. The Petitioner invokes the jurisdiction of this Court seeking remedies for the alleged contravention of its fundamental rights and freedoms. Specifically, the Petitioner alleges violations of the right to equality, freedom from discrimination, human dignity, right to property, and the right to fair administrative action under Articles 10, 27, 28, 40(3)(a) and (b), and 47 of the Constitution of Kenya, alongside assertions of contraventions under Articles 2, 3, 19, 20, 21, 22, and 23 of the Constitution of Kenya. The Petitioner further grounds its claim on the provisions of the Fair Administrative Action Act, as well as Section 10 of the Public Service (Values and Principles) Act.
2. At the heart of this Amended Petition is a protracted legal and historical dispute over the ownership, subdivision, and subsequent allocation of the land parcel known as **Ngong/Ngong/21400** (hereinafter referred to as 'the suit property'). The contest entails a private entity claiming historical proprietary rights against multiple state organs and agencies that currently hold, occupy, and operate public utilities on the subdivided portions of the suit property.
3. The Petitioner avers that the subject property, **Ngong/Ngong/21400**, was originally excised from a larger tract known as **Ngong/Ngong/2627**. It is deposed that this parent parcel was originally allocated by the late President Jomo Kenyatta to a collective identified as the "Gikuyu and Mumbi group".
4. The Petitioner states that although a title deed was initially issued to the said Gikuyu and Mumbi group, it was subsequently lost. Consequently, the group executed a Power of

Attorney in favor of the Petitioner, Jamini Agency Limited, authorizing the company to pursue the recovery and issuance of a replacement title on its behalf.

5. Acting on this authority, the Petitioner moved the court to compel the issuance of a new title for **Ngong/Ngong/2627**. The Petitioner asserts that an order was issued on 6th July 2012 by Justice George Dulu, which directed the Land Registrar to gazette the lost title and subsequently issue a provisional title deed. The Petitioner acknowledges partial compliance with this court order, noting that the loss of the title was indeed published via Gazette Notice No. 13200 on 21st September 2012. However, the Petitioner laments that despite this gazette, the Land Registrar arbitrarily refused to issue the provisional title deed as directed by the court.
6. The crux of the Petitioner's grievance crystallized in 2020 when, upon conducting an official search, it discovered that the land had been subdivided into eight (8) distinct parcels. The deponent asserts that these newly minted parcels were distributed among the 4th, 5th, 6th, 7th, 8th, and 9th Respondents.
7. Crucially, the Petitioner avers that the 1st, 2nd, and 3rd Respondents (the National Land Commission, Land Registrar, and Director of Surveys) acted in concert, fraudulently, illegally, and unprocedurally to subdivide the private suit property without notice or consent of the Petitioner. The Petitioner maintains that the subdivision and subsequent allocation was executed in total disregard of the law, specifically bypassing the mandatory statutory procedures for compulsory acquisition under the Land Act, ignoring a valid court order, and failing to provide any compensation whatsoever to the Petitioner.
8. In opposition to the Amended Petition, the 8th Respondent, the State Department of Defence, filed a Replying Affidavit sworn on 19th December 2023. Through this

deposition, the 8th Respondent paints a starkly different historical and legal picture of the suit property, categorically denying the Petitioner's assertions.

9. The 8th Respondent contends that the parent parcel, Ngong/Ngong/21400, is not private property but has historically been unalienated Government Land reserved as such since 1975. According to the deponent, the subdivision of this land into parcels Ngong/Ngong/100130 through to 100137 by the National Land Commission (1st Respondent) was a lawful, regular process that strictly adhered to the due process. Specifically, the 8th Respondent avers that it was lawfully allocated the resultant parcel known as Ngong/Ngong/100135, measuring approximately 71.05 Hectares. Following this allocation, a Certificate of Lease was legally issued on 22nd December 2021 in the name of the Cabinet Secretary to the National Treasury, to hold in trust for the Ministry of Defence.
10. The 8th Respondent deposes that it has enjoyed quiet and continuous possession of this parcel, which is actively utilized by the Kenya Defence Forces (KDF) to host a critical public institution: the National Defence University - Kenya (NDU-K). The 8th Respondent disclaims any knowledge of the "Gikuyu and Mumbi Group" or the Petitioner's alleged historical allocation. Anchoring its defense on the doctrine of indefeasibility of title as enshrined under Section 26 of the Land Registration Act, the State Department of Defence maintains that its title is absolute and unassailable, particularly arguing that the Petitioner has failed to prove any fraud or misrepresentation in the acquisition process. Ultimately, the 8th Respondent characterizes the amended Petition as baseless, frivolous, vexatious, and an abuse of the court process, urging this Court to dismiss it in its entirety with costs.

11. The 7th Respondent, the Judicial Service Commission (JSC), too filed a Replying Affidavit sworn by Winfrida B. Mokaya, the Chief Registrar of the Judiciary, in response to the amended Petition on 25th April 2025. The 7th Respondent strongly aligns the 8th Respondent's position that the suit property is, and has always been, public land. Specifically, the JSC avers that it was lawfully allocated the parcel of land known as **Ngong/Ngong/100133** for the construction of the Judiciary Training Academy (JTA), with a Certificate of Lease subsequently issued in December 2021.
12. Significantly, the 7th Respondent introduces critical procedural challenges that strike at the very foundation of the Petitioner's case. The JSC characterizes the Petition as *res judicata*, an abuse of the court process, and marred by egregious material non-disclosure. Chief among these allegations is the revelation that the court order by Justice George Dulu dated 24th April 2012, which the Petitioner heavily relies upon to legitimize its claim, was actually set aside on **13th March 2015** by Justice Charles Kariuki. The 7th Respondent accuses the Petitioner of deliberately concealing this subsequent ruling to mislead this Court.
13. The 7th Respondent further challenges the Petitioner's *locus standi*. The deponent asserts that the "Gikuyu and Mumbi Group" ceased to exist as an unincorporated entity when it was incorporated into a limited liability company (Gikuyu Na Mumbi Holdings Limited) in February 2011. The JSC argues that this incorporation effectively extinguished the 2008 Power of Attorney upon which the Petitioner relies, rendering Jamini Agency Limited, devoid of the legal standing required to institute or maintain these proceedings.
14. The Petitioner filed a supplementary Affidavit sworn by Daniel Njore Waweru on 15th April 2024. In this supplementary deposition, the Petitioner vehemently disputes the 8th

Respondent's (State Department of Defence) assertion that the suit property had been unalienated Government land since 1975, pointing out the State's failure to produce any title deed or documentary evidence to prove the allegation. The Petitioner argues that it is legally untenable for the State to secretly process and acquire titles to the land while an active 2012 court order affirming the Petitioner's interests remained in force. Consequently, the Petitioner contends that the 1st Respondent's attempt to "regularize" the allocation was merely a scheme to sanitize an illegality and land grabbing by State agencies. The Petitioner therefore, invites the court to look beyond the face of these titles, asserting that the Respondents cannot seek statutory refuge under the doctrine of indefeasibility of title, as their acquisitions are fundamentally tainted by fraud, illegality, and a blatant disregard of judicial directives.

15. In rejoinder to the Petitioner's supplementary claims, the 8th Respondent filed a Further Replying Affidavit on 17th May 2024. In this subsequent deposition, the 8th Respondent firmly dismisses the Petitioner's heightened allegations of fraud, illegality, and unprocedural conduct, characterizing them as 'bare' and wholly unsubstantiated.
16. To contextualize the State's acquisition, the deponent clarifies the role of the National Land Commission (the 1st Respondent). He explains that the NLC, acting within its statutory mandate to investigate and determine claims of historical land injustices in the Ngong area, explicitly directed the regularization of land that was already occupied by various public entities.
17. The 8th Respondent asserts that the survey and subsequent issuance of the title to the Ministry of Defence was the direct, lawful implementation of this formal NLC directive. Consequently, the 8th Respondent vehemently refutes the Petitioner's narrative that the

titles were processed secretly or as part of a fraudulent scheme to sanitize an illegality, reiterating that the entire regularization process was conducted strictly within the confines of the law.

18. The 7th Respondent too filed a Further Replying Affidavit on 17th September 2025. In this supplementary deposition, the Judicial Service Commission fortifies its claim to the parcel, Ngong/Ngong/100133, by producing concrete documentary evidence. The deponent provides a Letter of Allotment issued by the National Land Commission on 2nd December 2021, explicitly offering the site for the proposed Judiciary Training Institute.
19. Furthermore, the 7th Respondent avers that an official search conducted at the Kajiado North District Land Registry confirmed the legal finality of this allocation. The search revealed that on 3rd December 2021, a Certificate of Lease and the corresponding Green Cards were officially registered and issued to the Cabinet Secretary to the National Treasury (as a body corporate) to hold in trust for the Judicial Service Commission. Relying on these official statutory records, the 7th Respondent reiterates its stance that the State's acquisition and allocation process was entirely lawful, once again urging the Court to dismiss the Petitioner's case for want of merit and for being an abuse of the court process.

#### **Directions by the court**

20. The Petition was canvassed by way of written submissions, the submissions of which have been duly considered in the writing of this judgement.

#### **Analysis of Submissions filed**

#### **The Petitioner's Submissions**

21. The Petitioner's legal arguments are anchored on a three-pronged approach: establishing its absolute right to the suit property, demonstrating that the State's reallocation violated its constitutional right to property, and justifying the remedies sought.
22. The Petitioner argues that its ownership of the suit property, Ngong/Ngong/21400, is a settled matter in law. To fortify this position, the Petitioner heavily relies on the court order issued by Justice George Dulu on 24th April 2012, which directed the Land Registrar to gazette the loss of the title and issue a provisional title. The Petitioner submits that this order remains valid and in force, having never been set aside, and constitutes a definitive judicial affirmation of its claim to the land.
23. Furthermore, the Petitioner invokes the doctrine of indefeasibility of title under Sections 24, 25, and 26 of the Land Registration Act, 2012. The Petitioner argues that registration vests absolute ownership that cannot be defeated except on strictly proven grounds of fraud, misrepresentation, or illegal acquisition.
24. Relying on the Court of Appeal's holding in **Dr. Joseph Arap Ngok v. Justice Moijo Ole Keiwa & 5 Others**, the Petitioner maintains that its title is *prima facie* proof of ownership. The Petitioner contends that the Respondents have failed to mount any credible challenge to impeach the title; neither did they challenge the 2012 court orders.
25. A central theme of the Petitioner's submissions is the allegation that the State agencies acted with full knowledge of the Petitioner's existing rights over the property. The Petitioner points to the State's partial compliance with Justice Dulu's order, specifically the publication of the loss of title via Gazette Notice No. 5905, as an admission of the knowledge. The Petitioner also highlights various internal correspondences, including letters from the Attorney General's counsel and the Chief Land Registrar, as evidence that

the custodians of the land registry were acutely aware of the court directive favoring the Petitioner.

26. The Petitioner submits that the subsequent subdivision and issuance of new titles (Ngong/Ngong/100132 to 100137) in favor of the 4th through to the 9th Respondent was executed in flagrant disregard of the law. Relying on the Supreme Court's jurisprudence in *Attorney General v. Zinj Limited*, the Petitioner argues that the only lawful mechanism for the State to deprive a citizen of private property is through compulsory acquisition strictly aligned with Article 40(3) of the Constitution. This process mandatorily requires requisite notices to interested parties, a clear statement of the public purpose, and the prompt payment of full and just compensation. The Petitioner asserts that because none of these mandatory statutory processes were followed, the State's actions amount to an unconstitutional deprivation of property, an illegality, and what it terms as "daylight robbery without violence".

27. Premised on the foregoing, the Petitioner maintains that the allocation of the land to the State agencies is a nullity. Consequently, the Petitioner prays for an order cancelling the resultant titles generated by the 1st, 2nd, and 3rd Respondents.

28. In the alternative, the Petitioner prays that the 1st Respondent be directed to revert all undeveloped parcels back to the Petitioner and to pay prompt compensation for the portions that are currently developed by the State. The Petitioner also seeks an award for special and general damages, alongside interest and costs of the suit.

### **The 7th Respondent's Submissions**

29. The 7th Respondent systematically dismantles the Petitioner's claim that the land was originally a private allocation to the "Gikuyu and Mumbi Group." Through a detailed historical tracing of the title, the 7th Respondent establishes that the property has an unbroken history as public land:

- a. The parent parcel, Ngong/Ngong/1959, was formally set aside as early as 1957 via Gazette Notice No. 890 for use as a veterinary farm and training center upon application by the Veterinary Department.
- b. The land was vested in the OlKejuado County Council in 1974 before being officially transferred to the Government of Kenya on 14th March 1975.
- c. Crucially, the 7th Respondent attacks the Petitioner's core premise by submitting that under the prevailing laws at the time, the President fundamentally lacked the legal capacity or authority to arbitrarily allocate unalienated Government Land to private entities like the Gikuyu and Mumbi Group.
- d. The 7th Respondent strongly contends that the Petition is an abuse of the court process because the fundamental issues raised have already been subjected to prior judicial scrutiny.
- e. Relying on Supreme Court jurisprudence (such as the *Muiri Coffee* case), the 7th Respondent argues that the suit is barred by the doctrines of *res judicata* and issue estoppel. The 7th Respondent highlights that the 2012 court orders issued by Justice George Dulu, which the Petitioner entirely relies upon as proof of ownership, were actually challenged in subsequent legal proceedings, including an application by the Attorney General in Machakos and subsequent Judicial Review proceedings.

- f. The 7th Respondent accuses the Petitioner of deliberately concealing these subsequent judicial developments from the current Court, thereby coming to equity with unclean hands.
30. The 7th Respondent raises an objection regarding the Petitioner's standing to bring the suit. They submit that Jamini Agency Limited lacks the requisite *locus standi*. The 7th Respondent argues that the Petitioner has failed to definitively demonstrate proprietorship or prove that the Power of Attorney it relies upon remains valid, particularly given the ambiguous legal status and eventual incorporation of the alleged principal (the "Gikuyu and Mumbi Group"). Furthermore, they highlight the Petitioner's failure to ever produce an original copy of the Certificate of Title.
31. Finally, the 7th Respondent defends the statutory process that culminated in its acquisition of the subdivided parcel, **Ngong/Ngong/100133**. The 7th Respondent outlines that in 2021, the State Department for Physical Planning prepared a formal Part Development Plan (PDP) to regularize the long-standing public utilities on the land.
32. Following the NLC's constitutionally mandated processes regarding public land under Article 67, the property was lawfully allocated to the Judicial Service Commission. Because the JSC is an unincorporated entity, the Certificate of Lease was legally registered in the name of the Cabinet Secretary to the National Treasury to hold in trust on their behalf. Relying on the Land Registration Act, the 7th Respondent maintains that the certificate of title issued to a purchaser or lawful allottee is conclusive evidence of proprietorship. Since the Petitioner has not proven any fraud or misrepresentation in this 2021 process, the 7th Respondent's title is indefeasible and absolute.

33. Ultimately, the 7th Respondent submits that since the land has always been public, the Petitioner's prayers for reversion or compensation do not lie, and the Petition should be dismissed with costs.

#### **The 8th Respondent's Submissions**

34. The 8th Respondent firmly opposes the Petition. Their defense is built on a detailed historical timeline, statutory processes conducted by the National Land Commission (NLC), and the ultimate legal registration of the properties.

35. The 8th Respondent confronts the Petitioner's claim that the land was a private allocation. They trace the unquestionable root of the title to prove it has always been public land.

36. They submit that the land was originally adjudicated as **Ngong/Ngong/1959** on 10th May 1974 under the Olkejuado County Council. On 14th March 1975, it was registered to the Government of Kenya and subdivided into parcels 2627, 2628, and 2629. Parcel 2627 was strictly reserved as a veterinary farm, tracing back to earlier gazettements in 1956 (Gazette Notice No. 3818) and 1957 (Gazette Notice No. 890). It was later subdivided into 21399 and 21400.

37. The 8th Respondent establishes that the Ministry of Defence has been in active, continuous occupation of portions of the suit property since 1990. They utilize two parcels (measuring approx. 4.832 Ha and 40.78 Ha) for critical military functions, including accommodating Kenya Defence Forces (KDF) athletic disciplines, general training grounds, and pre-deployment training for United Nations peacekeeping missions. This defeats the Petitioner's narrative of sudden or recent "grabbing."

38. The submissions provide crucial context regarding *why* the subdivisions occurred in 2021. The 8th Respondent explains that the process was not arbitrary but a formal resolution of historical land injustices. Following a 2018 Petition to the Senate and National Assembly by local communities (Ilkeekonyike-Olmorogi and Olsaleri Grouping ranch), the NLC's Historical Land Injustice Committee intervened.
39. On 7th February 2019, the NLC directed the resurvey of the land to **regularize the allocations to the specified public utilities and agencies** already in occupation, while reverting residual unutilized land to the community. The NLC specifically found that the land was properly set apart for government institutions, and the government has the right to vary land use as need arises.
40. The 8th Respondent directly challenges the legitimacy of Jamini Agency Limited's claim. They cite a report by the District Land Registrar which concluded that the Petitioner's claim to a freehold title over the property was highly questionable, as there are absolutely "no records of transactions leading to such an acquisition" in the land registry.
41. Finally, the 8th Respondent defends the legality of its current titles by stating that: Following the NLC directive and a 2021 Part Development Plan (PDP), the 8th Respondent was formally allotted parcels **Ngong/Ngong/100135** and **100136** via Letters of Allotment dated 3rd December 2021. On the same day, Certificates of Lease were officially registered in the name of the Cabinet Secretary to the National Treasury to hold in trust for the Ministry of Defence. Official searches confirm that similar lawful titles were issued simultaneously to the other state agencies occupying the land (e.g., State Department for Environment, Mathari Hospital, and the Judicial Service Commission).

### **Issues of Determination**

42. Having carefully considered the Amended Petition, the replying and further affidavits on record, the annexures thereto, and the rival written submissions filed by the parties, this Court distills the following fundamental issues for determination:

- i. Whether the Petition is procedurally competent;*
- ii. Whether the suit property, Ngong/Ngong/21400, was lawfully allocated private property or unalienated public land;*
- iii. Whether the subdivision and subsequent allocation of the suit property to the Respondents was lawful and protected by the doctrine of indefeasibility of title;*
- iv. Whether the State's actions violated the Petitioner's constitutional rights under Articles 40 and 47; and*
- v. Whether the Petitioner has established its case to the required standard to be entitled to the reliefs sought.*

#### **Analysis and Determination**

##### **I. Whether the Petition is procedurally competent.**

43. The first fundamental issue for this Court to determine is whether the instant Petition is procedurally competent. Both the 7th and 8th Respondents have mounted a robust objection challenging the Petitioner's *locus standi* and averring that the suit is an abuse of the court process, barred by the doctrines of *res judicata*, issue estoppel, and vitiated by material non-disclosure.

44. Factually, the Petitioner anchors its legal standing on a Power of Attorney executed in 2008 by an unincorporated entity known as the "Gikuyu and Mumbi Group." Substantively, the Petitioner legitimizes its claim of ownership by heavily relying on an

order issued on 24th April 2012 by Justice George Dulu. In sharp rebuttal, the 7th Respondent has adduced uncontradicted evidence demonstrating that the "Gikuyu and Mumbi Group" was incorporated into a limited liability company, Gikuyu Na Mumbi Holdings Limited, in February 2011. Furthermore, the 7th Respondent revealed that Justice Dulu's order of 2012 was subsequently set aside on 13th March 2015 by Justice Charles Kariuki, a critical judicial development that the Petitioner entirely omitted from its pleadings and submissions.

45. The legal framework governing such procedural bars is deeply entrenched in Kenyan jurisprudence. The doctrine of *res judicata* is statutorily anchored in **Section 7 of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)**, which provides verbatim:

*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."*

46. The doctrine of *res judicata* applies to constitutional litigation too as held by the Supreme Court of Kenya in *John Florence Maritime Services Limited & another v. Cabinet Secretary for Transport and Infrastructure & 3 others (2012) eKLR*. The court held that;

*"We reaffirm our position as in the Muiri Coffee case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is*

*founded and the doctrine of res judicata prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.....*

*If we were to find that the doctrine does not apply to constitutional litigation, the doctrine may very well lose much of its legitimacy and validity. We say this in light of the fact that constitutional tenets permeate all litigation starting with the application of Article 159 of the Constitution in both civil and criminal litigation, and its application now embedded in all procedural statutes. Further Article 50 on right to fair hearing and Article 48 on access to justice are fundamental rights which every litigant is entitled to. Such a holding may very well lead to parties, that whenever they need to circumscribe the doctrine of res judicata, they only need to invoke some constitutional provision or other.”*

47. Additionally, it is a cardinal rule of constitutional litigation that a litigant must approach the seat of justice with clean hands as affirmed by the Supreme Court of Kenya in the above cited case. A party that deliberately suppresses or conceals material facts, especially prior judicial pronouncements on the subject matter, commits a grievous abuse of the court process.

48. Applying these legal principles to the factual matrix in the case at hand, it becomes evident that the Petitioner’s standing and procedural posture are incurably defective. First, on the question of *locus standi*, it is a trite principle of agency law that a Power of Attorney issued to an agent cannot survive the legal extinction or fundamental alteration

of the principal. The Court of Appeal in *Meru & 3 others v Meru [2023] KECA 1600 (KLR)*, affirmed that the power of attorney is extinguished upon death (extinction) of the donor.

49. Once the unincorporated "Gikuyu and Mumbi Group" transitioned into a distinct corporate entity in 2011, the 2008 agency relationship with Jamini Agency Limited ceased to carry legal force. Consequently, the Petitioner instituted these proceedings devoid of the requisite legal capacity to represent a non-existent entity.
50. More egregiously, the Petitioner's deliberate concealment of the orders of 13th March 2015 by Justice Charles Kariuki strikes at the very heart of the integrity of its Petition. By actively parading the vacated 2012 orders to feign a legitimate proprietary interest while suppressing the subsequent orders that set them aside, the Petitioner engaged in blatant material non-disclosure.
51. Furthermore, because the validity of the Petitioner's claim and the status of the 2012 orders were already litigated and conclusively determined in those prior proceedings, this Court is statutorily estopped under Section 7 of the Civil Procedure Act from reopening, re-litigating, and re-trying those issues. Consequently, I find and hold that the amended Petition is procedurally incompetent. It is incurably defective for want of *locus standi*, vitiated by material non-disclosure, and barred by the doctrine of *res judicata*.
52. Ordinarily, this finding alone is fatal and would suffice for this Court to strike out the Petition forthwith. However, given the profound public interest vested in the suit property and the involvement of multiple critical state installations, I will proceed to evaluate the substantive merits of the ownership dispute *ex abundanti cautela* (out of an abundance of caution).

**II. Whether the suit property, Ngong/Ngong/21400, was lawfully allocated private property or unalienated public land.**

53. The factual controversy surrounding this second issue presents two diametrically opposed historical narratives. The Petitioner alleges that the suit property, Ngong/Ngong/21400, traces its root to a parent parcel known as Ngong/Ngong/2627, which was purportedly allocated by the first President of the Republic of Kenya to the "Gikuyu and Mumbi Group" as private property.

54. Conversely, the 7th and 8th Respondents have adduced detailed historical evidence tracing the suit property's origin to Ngong/Ngong/1959. They aver that the land was formally set aside via Gazette Notice No. 890 of 1957 for use as a veterinary farm and training center upon application by the Veterinary Department. The Respondents state that the land was vested in the OlKejuado County Council in 1974 before being formally transferred and registered to the Government of Kenya on 14th March 1975. The Respondents maintain that the property has since remained unalienated public land utilized by various State agencies, with the Ministry of Defence actively occupying portions of it since 1990.

55. Flowing from these competing facts, the fundamental legal issue that arises for determination is whether the suit property was lawfully alienated as private land to the Petitioner's alleged principals, or whether it retained its unbroken historical status as unalienated public land strictly reserved for government use.

56. The resolution of this dispute is governed by the statutory rules dictating the burden of proof. Section 107(1) of the Evidence Act (Chapter 80 of the Laws of Kenya) strictly mandates:

***"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."***

57. Furthermore, this evidentiary threshold is buttressed by Section 108 of the Evidence Act, which provides:

***"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."***

58. In matters of land ownership, particularly where a private citizen asserts a claim over land historically documented as public utility land, it is incumbent upon such a claimant to present concrete, documentary evidence of lawful alienation. Under the land regimes applicable at the time, the alienation of government land required strict adherence to statutory procedures, including formal letters of allotment, payment of requisite stand premiums, and official Gazette Notices of alienation.

59. Applying these statutory precepts to the evidence on record, it is apparent that the Petitioner's case collapses under the weight of its own evidentiary deficits. The Petitioner, having asserted a private historical allocation, bore the burden of proving that the land was lawfully excised and legally transferred to the "Gikuyu and Mumbi Group." However, the Petitioner has merely asserted a historical presidential allocation but has woefully failed to produce any documents of title, a formal letter of allotment, payment receipts for stand premium, or proof of degazettement of the land from its original public utility status. A mere historical assertion of a presidential directive, devoid of the mandatory statutory conveyancing processes, does not operate to confer a valid legal

estate in land. In any case the President had no such powers to alienate any land that had already been set aside for a public purpose as rightly held in the case of **James Joram Nyaga & another vs Attorney General and another (2007) eKLR**. The allocation of such land, if at all, is null and void ab initio.

60. In stark contrast, the Respondents have effectively discharged their evidential burden by tendering a coherent, unbroken, and documented chain of custody. They have successfully exhibited the 1957 Gazette Notice No. 890 setting the land apart for the Veterinary Department, its subsequent adjudications, and its definitive registration to the Government of Kenya in 1975. The Petitioner has offered absolutely no evidence to rebut this evidence, nor has it demonstrated that the government land was ever lawfully degazetted and conveyed to a private entity.

61. Consequently, I find and hold that the Petitioner has failed to discharge the burden of proof required to establish private ownership. The court finds and holds that the suit property, Ngong/Ngong/21400, is not private property but is, and has historically always been, public land.

**III. Whether the subdivision and subsequent allocation of the suit property to the Respondents was lawful and protected by the doctrine of indefeasibility of title.**

62. The Petitioner contends that the subdivision of Ngong/Ngong/21400 and the allocation of the resultant parcels Ngong/Ngong/100130 to Ngong/Ngong/100137 to various state agencies was fraudulent, illegal and undertaken without its consent. According to the Petitioner, the process amounted to an unconstitutional deprivation of private property and the resultant titles cannot therefore benefit from the statutory protection accorded to registered proprietors. On their part, the Respondents maintain that the subdivision and

allocation of the land was undertaken lawfully pursuant to the constitutional and statutory mandate of the National Land Commission following investigations into historical land injustices in the Ngong area. They assert that the land was already occupied by various public institutions and that the subdivision process was part of a formal regularization exercise. The Respondents further state that following the preparation of a Part Development Plan, letters of allotment were issued and Certificates of Lease were subsequently registered in December 2021 in the name of the Cabinet Secretary to the National Treasury to hold the land in trust for the respective state organs and agencies.

63. The applicable law on the sanctity and protection of registered titles is found under the Land Registration Act, 2012. **Section 26(1) of the Act** provides that:

*“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... 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.”*

64. The jurisprudence of Kenyan courts has consistently affirmed the centrality of this principle while at the same time recognizing that the protection accorded to title is not absolute where illegality or fraud is established. In *Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015] eKLR*, the Court of Appeal held that:

*“The law is extremely protective of title and provides only two instances for challenge of title. The title is indefeasible unless it is shown that it was obtained through fraud or misrepresentation to which the person is a party, or where the title was acquired illegally, unprocedurally or through a corrupt scheme.”*

65. Similarly, the Court in *Funzi Island Development Limited & 2 Others v County Council of Kwale & 2 Others [2014] eKLR*, emphasized that the doctrine of indefeasibility cannot be used to sanitize illegality, stating that:

*“A title to land which is rooted in illegality cannot be protected by the doctrine of indefeasibility of title. The doctrine cannot be used as a shield to sanitize an illegality.”*

66. Guided by these legal principles, the Court must examine whether the process leading to the issuance of the Respondents’ titles was tainted by illegality, procedural impropriety, or fraud as alleged by the Petitioner. In addressing the second issue, this Court has already found that the Petitioner failed to establish that the suit property was ever lawfully alienated to it or its alleged Principal as private property. The evidence placed before the Court instead demonstrates that the land historically remained public land reserved for government purposes. Once the land is properly categorized as public land, its administration and allocation fall within the constitutional mandate of the National Land Commission pursuant to **Article 67(2)(a) of the Constitution**, which mandates the Commission to manage public land on behalf of the national and county governments.

67. The evidence on record indicates that the subdivision of Ngong/Ngong/21400 into parcels Ngong/Ngong/100130 to Ngong/Ngong/100137 was undertaken following a directive of the National Land Commission during a process aimed at regularizing land occupied by public institutions. There is no evidence presented that this process or its outcome was ever challenged in any court of law.

68. The Respondents have produced documentary evidence including the Part Development Plan, letters of allotment issued in December 2021, and Certificates of Lease registered on 3rd December 2021 in the name of the Cabinet Secretary to the National Treasury to hold in trust for the respective government institutions. These records demonstrate that the allocation process followed the administrative and statutory procedures governing the allocation of public land.

69. The Petitioner has alleged that the process was fraudulent and unprocedural. However, allegations of fraud must not only be specifically pleaded but must also be strictly proved. In the well-known case of Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA (as he then was) states as follows:

***“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”***

70. The standard of proof for fraud is higher than that on a balance of probabilities though not as high as beyond reasonable doubt. As regards the standard of proof, the court in the case of *Kinyanjui Kamau –vs George Kamau [2015] eKLR* expressed itself as follows;-

*“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo –vs- Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”*

71. The Petitioner has not placed before this Court any cogent evidence demonstrating that the Respondents participated in the alleged fraud or that the titles were obtained through an illegal or corrupt scheme. On the contrary, the material on record shows that the institutions currently occupying the land, including the Ministry of Defence, have been utilizing portions of the property for public purposes long before the regularization process that culminated in the issuance of the titles in 2021.

72. In the absence of evidence demonstrating fraud, illegality or procedural impropriety in the allocation process, the titles issued to the Respondents attract the protection afforded by Section 26(1) of the Land Registration Act. The Court cannot impeach titles that were issued pursuant to statutory processes merely on the basis of unsubstantiated allegations of fraud and impropriety.

73. In the circumstances, this Court finds that the subdivision of Ngong/Ngong/21400 into the resultant parcels Ngong/Ngong/100130 to Ngong/Ngong/100137 and their subsequent allocation to the Respondents was undertaken pursuant to the lawful mandate of the National Land Commission in administration of public land. The Petitioner has not established that the impugned titles were either obtained through fraud or misrepresentation to which the institutions were a party, or that they were acquired illegally, unprocedurally or through a corrupt scheme. Consequently, the Certificates of Lease issued to the Respondents constitute valid and indefeasible titles under Kenyan law and the challenge mounted by the Petitioner against those titles fails.

**IV. Whether the State's actions violated the Petitioner's constitutional rights under Articles 40 and 47.**

74. The fourth issue for determination is whether the actions of the State violated the Petitioner's constitutional rights under Articles 40 and 47 of the Constitution. The Petitioner contends that the subdivision and subsequent allocation of the suit property to various State agencies amounted to an unlawful deprivation of its property and that the process was undertaken without notice, consultation, or compensation. The Petitioner therefore asserts that its constitutional right to property under Article 40 and its right to fair administrative action under Article 47 were infringed.

75. Article 40(1) of the Constitution guarantees every person the right either individually or in association with others to acquire and own property of any description in any part of Kenya. However, Article 40(6) of the Constitution expressly limits this protection by providing that:

***“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”***

76. The Kenyan courts have consistently interpreted this provision to mean that constitutional protection under Article 40 is only available to lawfully acquired property. In ***Chemey Investment Limited v Attorney General & 2 Others [2018] eKLR***, the Court of Appeal emphasized this limitation and stated:

***“Article 40 of the Constitution protects the right to property but the protection does not extend to property that has been unlawfully acquired. Where property is found to have been acquired unlawfully, the Constitution does not shield such property from being recovered.”***

77. Similarly, the Supreme Court in ***Dina Management Limited v County Government of Mombasa & 5 Others [2023] eKLR***, asserted that constitutional protection of property rights cannot be invoked to sanitize illegality or to protect interests that have no lawful foundation.

78. In the present case, this Court has already determined under the preceding issues that the Petitioner failed to demonstrate that the suit property, Ngong/Ngong/21400, was ever lawfully alienated to it or its alleged Principal as private land. The Petitioner did not produce any documentary evidence demonstrating a lawful allocation, a letter of allotment, payment of stand premiums, or a valid title capable of conferring proprietary rights. Instead, the evidence placed before the Court demonstrates that the land historically remained public land reserved for government purposes and subsequently administered by the National Land Commission.

79. In those circumstances, the Petitioner cannot invoke Article 40 of the Constitution to claim protection over land it did not own. Without proof of a legally recognizable proprietary interest, there can be no constitutional violation of the right to property.

80. With regard to Article 47 of the Constitution, the Petitioner argues that the subdivision and allocation process were undertaken arbitrarily and without adherence to the principles of fair administrative action. Article 47(1) provides that:

***“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”***

81. The scope of this constitutional right was explained by the Court of Appeal in ***Judicial Service Commission v Mbalu Mutava & Another [2015] eKLR***, where the Court stated:

***“Article 47 marks an important and transformative development of administrative justice. It entrenches the right to fair administrative action as a fundamental right and freedom.”***

82. However, for a claim under Article 47 to succeed, a claimant must demonstrate that a specific administrative action affecting their rights or legitimate interests was undertaken in a manner that was unlawful, unreasonable, or procedurally unfair.

83. In the present case, the Petitioner has not established the existence of any legally recognized proprietary interest over the suit property capable of attracting procedural protection. The administrative processes undertaken by the National Land Commission related to the management and regularization of public land occupied by State institutions. Since the Petitioner has failed to demonstrate a lawful interest in the land, it cannot assert that those administrative processes infringed its rights.

84. Furthermore, the evidence on record demonstrates that the subdivision and allocation process was undertaken pursuant to the constitutional mandate of the National Land Commission to administer public land on behalf of the national government. The Petitioner has not demonstrated that the process violated any statutory procedures or that it was conducted in bad faith.

85. Consequently, this Court finds that the Petitioner has failed to demonstrate that the actions of the Respondents violated its constitutional rights under Articles 40 or 47 of the Constitution.

**V. Whether the Petitioner has established its case to the required standard to be entitled to the reliefs sought.**

86. The fifth and final issue for determination is whether the Petitioner has established its case to the required standard to warrant the grant of the reliefs sought in the Petition. In constitutional litigation, the burden of proof rests upon the party alleging violation of constitutional rights. This principle was articulated in **Anarita Karimi Njeru v Republic (No. 1) [1979] KLR 154**, where the Court held:

***“If a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”***

87. This principle has been reaffirmed in numerous decisions, including **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR**, where the Court of

Appeal reiterated that constitutional Petitions must meet the threshold of precision in both pleadings and proof.

88. Applying these principles to the present Petition, it is evident that the Petitioner has not discharged the burden required to succeed in a constitutional claim. First, the Petitioner failed to establish the foundational premise of its case, namely that it possessed a lawful proprietary interest in the suit property. Secondly, the Petitioner failed to demonstrate that the subdivision and allocation of the land to the Respondents was undertaken illegally or fraudulently. Thirdly, the Petitioner failed to prove that any constitutional rights guaranteed under Articles 40 or 47 were violated.

89. The Court also notes that the Petition suffers from serious procedural infirmities, including the lack of locus standi and the material non-disclosure of the fact that the court orders issued in 2012, which the Petitioner heavily relied upon, were subsequently set aside. These deficiencies further undermine the credibility and legal sustainability of the Petition.

90. In light of the foregoing findings, this Court concludes that the Petitioner has failed to establish its case on a balance of probabilities and has not demonstrated any constitutional or legal basis upon which the reliefs sought can be granted. In the premises, the Court finds that the Petition is devoid of merit.

91. The very last issue that the court must determine is that of costs. The court has the discretion to award costs **under** section 27 of the Civil Procedure Act. I am further guided by the decision in the case of *Party of Independent Candidate of Kenya & Another vs. Mutula Kilonzo & 2 Others HCEP No. 6 of 2013*, it was held that;

*“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (Fripp vs Gibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at...In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”*

92. Considering that the Petitioner’s case has failed, I see no reason to deny the successful parties, in this case, the 7<sup>th</sup> and 8<sup>th</sup> Respondents the costs of the Petition. I hereby award the costs to the 7<sup>th</sup> and 8<sup>th</sup> Respondents.

93. Accordingly, the undated Amended Constitutional Petition by Jamini Agency Limited filed on 30<sup>th</sup> October 2023 is hereby dismissed in its entirety with costs to the 7<sup>th</sup> and 8<sup>th</sup> Respondents.

Orders accordingly.

**Dated Signed and Delivered at Kajiado Virtually this 19<sup>th</sup> Day of March 2026**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Mr. Kamau Kariuki the representative of the Petitioner

Mr. Mungai for the 7<sup>th</sup> Respondent

Ms. Ajierh for the 8<sup>th</sup> Respondent

N/A by the 1<sup>st</sup> – 6<sup>th</sup> and the 9<sup>th</sup> & 10<sup>th</sup> Respondents

Court Assistant: Alex

**M.D. MWANGI**  
**JUDGE**

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