



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

PETITION NO. E002 OF 2024

**IN THE MATTER OF DENIAL OF RIGHTS, VIOLATION AND
INFRINGEMENT OF ARTICLES 2(4), 10,22,23, 24, 25,
27,28,41,47,48,50,75,236,258, AND 259 OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE SECTIONS 3,4 & 12 OF FAIR
ADMINISTRATIVE ACTIONS ACT, NO. 4 OF 2015**

AND

**IN THE MATTER OF RULES 3(4), 4, 11, 13, 19 AND 23 OF
THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS PRACTICE AND
PROCEDURE RULES, 2013**

KIAMBU CLUB LIMITED.....

PETITIONER

VERSUS

KIAMBU COUNTY GOVERNMENT.....1ST

RESPONDENT

NATIONAL LAND COMMISSION.....2ND

RESPONDENT

HON FRANCIS KOINA MCA KIAMBU TOWN.....3RD

RESPONDENT

JUDGMENT

1) The Petitioner filed the Petition dated 19/02/2017 alleging denial of rights, violation and infringement under Articles 2(4), 10,22,23, 24, 25, 27,28,41,47,48,50,75,236,258, and 259 of the Constitution. And violation of Sections 3,4 & 12 of Fair Administrative Actions Act, No. 4 of 2015. Also, violations of Rules 3(4), 4, 11, 13, 19 and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013.

2) The Petitioner prayed for the following Orders:-

a. A declaration that the Petitioner has inalienable constitutional right to access the Court to claim violation of the Constitution and fundamental rights under Articles 22,48, 50 (1) as read with Article 25(c) and 258 with the Court possessing concomitant jurisdiction for judicial review as per Article 162 (2) (b) in conjunction with Article 165 (3) (b) (d) (ii) and the authority to employ remedies under Articles 23 and 2(4) as pleaded

- b. A declaration that the Respondent's actions to demand 20 acres as a lease renewal condition is without inventory and just compensation, contravention of provisions and guidelines under the Land Act, Physical Planning Act, County Government Act, and FAA 2015 and the Constitution imperatives as pleaded, lacks merit or legal basis and infringes upon the Petitioner's pre-emption rights, unlawful, unconstitutional null and void ab initio**
- c. A permanent injunction, to restrain the Respondents, its officials, and agents from interfering with the buildings, developments, amenities, or peaceful possession of the Petitioner's property known as Kiambu Club LR No. 9037**
- d. The 1st and 2nd Respondents violated their legitimate expectation and right of pre-emption under Article 40 rendering those rights legally binding. Consequently, the Petitioner claims renewed and extended pre-emption right for a new 33-year cycle starting in 2022 based on the doctrine of legitimate expectation.**
- e. General damages for violation of the Petitioner's fundamental right to a fair administrative action,**

resulting from the delayed renewal of the lease threatened eviction and disruption on the Petitioner's Kiambu Club LR No. LR 9037.

f. Costs and incidental to the Petition herein, cost and interest.

- 3) The Petition is premised on the grounds set out in the Petition and the Supporting Affidavit sworn by Thomas Kimari, the Chairman of the Petitioner herein who has authority from the Company to swear the Affidavit.
- 4) The brief facts of the Petition are that the Petitioner which is the Golf Club at Kiambu began as a Kiambu Club in 1916 and that on 1/04/1956 the British Colonial Government granted the Petitioner a 33-year lease expiring on 30/03/1989. It was later renewed for another 33 years ending in March 2022. During this period the Petitioner avers to have met all lease conditions such as payment of all taxes, dues, rates and rent to both County and National Governments.
- 5) The Petitioner asserts that it has a constitutional right to property ownership under Article 40 including the right of preemption upon the expiration of leases subject to reasonable and lawful conditions as prescribed by law.
- 6) The Petitioner further avers that there is an established legitimate expectation of renewal of leases based on customary practice, consistent fulfillment of all lease

obligations and timely tax payments through the previous terms, establishing a customary practice of renewal.

7) That the Respondent's inaction, refusal and neglect to extend or renew the lease coupled with the 1st and 3rd Respondent's organization of a street demonstration in Kiambu Town on Saturday 17/02/2024 create a situation where the Petitioner is apprehensive of a potential invasion of its property by the 1st and 3rd Respondents constituting a gross illegality.

8) According to the Petitioner, the Lease Renewal and Extension Guidelines provide procedures for government agencies, lessees, professionals, and others on renewing or extending leases. That based on Section 13 of the Land Act which were developed jointly by the Ministry of Lands and the National Land Commission vide Gazette Notice No. 5734 on 9/06/2017, lessees have pre-emptive rights during allocation of leases.

Particulars of violation of Articles 47, 50 (1) and 25 (c) of the Constitution

9) The Petitioner has listed the following as violations under the Articles stated above:

- a. The Petitioner has not been notified to attend and participate and present in any resolution of the 2nd Respondent to require 20 acres of its land.

- b. The Respondent purporting to demand 20 acres of land is capricious, arbitrary, and unreasonable without any resolution known to the Petitioner.
 - c. On the 17th of February 2024, the 1st and 3rd Respondent organized demonstrations in Kiambu town to incite public violence and demonstration in Kiambu Town, indicating bad faith and malice.
 - d. There is an apprehension by the Petitioners that unhindered by an order of the Court, the Respondent may unilaterally, illegally and forcibly take over the 20 acres of the Petitioner's Property.
- 10) The Petitioner further contended that the 1st Respondent's action of not renewing the lease was carried out arbitrarily without following due process and therefore violated his fundamental right to fair administrative action. The Petitioner contended the 1st Respondent's action was ultra vires and made without jurisdiction and was accordingly null and void and this Court ought to quash the decision calling of the surrender of 20 acres before renewal of the lease.
- 11) Each of the three Respondents filed a response in opposition to the Petition. The 1st Respondent filed a Replying Affidavit dated 18/03/2024.
- 12) The 1st Respondent contends that the Petition is incurably defective. Specifically, it argues that the Petitioner,

a juristic person has filed the suit through a deponent, Thomas Kimari who lacks the requisite written authority or board resolution to institute legal proceedings.

- 13) Furthermore, the Respondent challenges the Petitioner's locus standi. The 1st Respondent states that under Section 13 of the Land Act No. 6 of 2012, the preemptive right to a lease renewal is a statutory preserve of Kenyan Citizens. The Respondent asserts that the Petitioner has failed to demonstrate such citizenship, thereby disqualifying it from claiming protection under this provision.
- 14) The 1st Respondent characterizes the matter not as a constitutional crisis, but as a purely civil dispute between a former lessor and a former lessee, governed by Sections 8-36 of the Land Act.
- 15) Citing the landmark authority of **Anarita Karimi Njeru v. Republic (1979) KLR 154**, the Respondent argues that the Petitioner has failed to meet the high legal threshold of specifically alleging and proving how its fundamental rights were infringed. The Respondent maintains that the Petitioner is an exclusive private members' club with limited membership of approximately 350 members, whose interests cannot supersede the constitutional rights of the broader public in Kiambu.
- 16) Furthermore the 1st Respondent clarifies that the subject property, LR No. 9037 reverted to the County

Government upon the expiry of the lease on March 31, 2022. Under Article 62(1)(c) and (2) of the Constitution, this land is held in trust for the people of Kiambu.

- 17) The 1st Respondent emphasizes that Section 13 of the Land Act does not grant a *carte blanche* or unqualified right to renewal. Renewal is conditional upon: proof of Kenyan citizenship and the land not being required by the government for public purposes among others.
- 18) The 1st Respondent in their response reveal that it has offered to renew the lease subject to reasonable conditions, including the ceding of 20 acres for social amenities; a bus park, market, and public park and the upward revision of land rates from agricultural to commercial in accordance with the Kiambu County Rating and Valuation Act 2016 and the Finance Act 2022.
- 19) On the issue of Legitimate Expectation, the Respondent argues that the doctrine of legitimate expectation is inapplicable. There was never an unequivocal or lawful promise made to the Petitioner that the lease would be renewed on its original terms.
- 20) Ultimately in its response, the 1st Respondent dismisses the claim of compulsory acquisition under Article 40, noting that since the lease has expired, the Petitioner holds no property capable of being acquired. Furthermore, Section 25(a) of the Land Act stipulates that improvements on public

land revert to the government without compensation upon the determination of a lease exceeding 30 years.

- 21) Further, the 1st Respondent asserts that the land has not been gazetted as ecologically sensitive under Sections 11 or 12 of the Land Act, rendering the Petitioner's environmental conservation arguments spurious.
- 22) Thus, that the Petitioner is in illegal occupation of the land and has unilaterally attempted to self-assess and pay lower rates of Ksh 500,000 in violation of Section 24 of the Land Act, which mandates the payment of reserved rent and taxes.
- 23) Finally, the 1st Respondent defends the residents' rights under Article 37 of the Constitution to assemble and demonstrate/picket. It denies mobilizing any protests but maintains that the Court cannot be used to curtail the democratic rights of Kiambu citizens to Petition public authorities regarding the use of public land.
- 24) The Replying Affidavit of Francis Koina, the 3rd Respondent sworn on 14/03/2022 the elected Member of County Assembly (MCA) for Kiambu Township Ward, centered on the themes of public interest, legislative mandate, and the expiration of private interests over public land.
- 25) The 3rd Respondent asserts his standing as the elected representative of Kiambu Township Ward, emphasizing his constitutional mandate to promote the interests of his

constituents. He argues that the Petitioner an exclusive Golf Club occupies approximately 75 acres of public land to serve only 350 members. He contrasts this with the needs of over 34,615 registered voters as evidenced by Annexure **"FK-6"** who he contends require that same land for essential public amenities, including markets, schools, bus parks, and health centers. He contends that the public interest of the many overrides the recreational hoarding of land by a privileged few.

- 26) The 3rd Respondent dismisses the Petitioner's claims of orchestrated intimidation as a figment of imagination. He clarifies that his correspondence was a formal request for information in his capacity as an MCA, not a threat.
- 27) Further, that while a peaceful procession was initially planned, it was formally re-scheduled to allow for dialogue as per Annexure **"FK-5"**. He deposes that no demonstration actually occurred on the dates alleged, making the Petitioner's claims of imminent harm unfounded.
- 28) He cites Article 37 of the Constitution, maintaining that the residents have an unfettered right to peaceably assemble and picket, particularly regarding the management of public property.
- 29) The Respondent also argues that the pre-emptive right to lease renewal is not absolute. He further states the pre-

emptive right is strictly qualified by whether the National or County Government requires the land for public purposes.

- 30) He asserts that since the Petitioner's lease expired on 31/03/2022, all developments and buildings on the land have legally passed to the County Government without compensation. Consequently, the request to cede 20 acres cannot be deemed compulsory acquisition because the Petitioner no longer holds a valid interest in the property as provided under Section 25(a) which address reversionary rights.
- 31) He notes that the Petitioner has failed to pay the correct commercial land rates assessed at Ksh 4,728,000.00, thereby violating the implied conditions of a lease under Section 24 of the Act.
- 32) The Respondent also challenges the Petitioner's reliance on the doctrine of Legitimate Expectation. He argues that there was no clear, express, or unambiguous promise from the 1st Respondent to renew the lease on its former terms. Further that mere adherence to previous lease terms or the payment of rates does not create a right to renewal in perpetuity.
- 33) Additionally, he averred that any promise that offends the law or the public interest as provided under Article 62 would be unlawful and therefore cannot sustain a legitimate expectation.

- 34) Finally, the 3rd Respondent argues that the Petitioner has failed to satisfy the legal requirements for conservatory orders. He contends there is no prima facie case with a probability of success, nor has there been any demonstration of irreparable harm. He posits that "reduced playing ground" for an elite sport does not constitute legal prejudice compared to the potential loss of public revenue and community development.
- 35) The 2nd Respondent did not file any response.
- 36) The Court issued directions on a site visit to be undertaken on 20/05/2024 and directed that the site visit to be done on 5/06/2024 in the presence of the District Land Registrar, Kiambu, District Surveyor Kiambu and the Honorable Deputy Registrar of the Court to appreciate conditions for surrender of 20 acres of the Petitioner's leased land. At the same time the parties were given 45 days from 20/05/2024 for parties to file their written submissions.
- 37) The parties eventually visited the site on 6/02/2025 after being rescheduled twice and the report confirms that the Golf Course is approximately 75 acres and the Chief Land Registrar during the site visit produced a copy of the surrender dated 3/05/1961 marked as "**S1**". At the same time, he handed over to the Court a copy of the extension of the lease dated 2/10/1989 marked as "**S2**".

38) The Petitioner filed their submissions dated 10/07/2025, the 1st Respondent filed theirs dated 9/10/2025 and the Petitioner filed rejoinder submissions dated 14/10/2025 to the 1st Respondent's submissions. I have not seen the 3rd Respondent submissions and so I assume that he did not file any submissions and neither did the 2nd Respondent file any.

Petitioner's Submissions.

39) In its submissions, the Petitioner contends that it is a legal person as defined under Article 260, entitled to full protection under the Bill of Rights. It rejects the 1st Respondent's claim that it lacks standing as a corporate entity, citing **Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 Others [2014] KESC 6 (KLR)**, where the Supreme Court affirmed that the 2010 Constitution expanded *locus standi* to empower both corporate and non-incorporated entities to contest constitutional contraventions. Furthermore, relying on **Okiya Omtatah Okiiti v. Portside Freight Terminals Ltd & 12 Others (SC Petition No. E011 of 2024)**, the Petitioner argues that any person can initiate proceedings to address threats to the Constitution.

40) The Petitioner argues that this is not a mere private lessor-lessee dispute but a Constitutional matter involving the management of public land under Articles 62 and 67. It maintains that the Environment and Land Court has

jurisdiction under Article 162(2)(b) to resolve these questions. Citing **Nicholus v. Attorney General & 7 Others [2023] KESC 113 (KLR)**, the Petitioner asserts its right to frame its case as a Constitutional Petition. It further relies on **Jovet (Kenya) Limited v. Bavaria NV [2025] KESC 27 (KLR)**, where the Supreme Court held that:

"Constitutional questions may arise from commercial agreements when there is a clear violation of constitutional rights."

41) A central pillar of the Petitioner's case is the legitimate expectation that its lease renewal application would be considered fairly. The Petitioner emphasizes that it applied for renewal two years prior to expiry, complied with all conditions, and continued to pay rates. It relies heavily on the recent precedent of **Sehmi & Another v. Tarabana Company Limited & 5 Others [2025] KESC 21 (KLR)**, quoting paragraph 77:

"77. It is the application for renewal that ignites the legitimate expectation, given the fact that it is addressed to an authority that has the competence to renew the lease."

42) The Petitioner argues that the 1st Respondent's failure to process the application while continuing to accept rent violates this doctrine. It further cites **Communications Commission of Kenya v. Royal Media Services Limited**

[2014] KESC 53 (KLR) and **Kenya Revenue Authority v. Export Trading Company Limited [2022] KESC 31 (KLR)** to establish that legitimate expectation is an objective legal standard.

43) The Petitioner challenges the 1st Respondent's demand that it cedes 20 acres of land for public purposes. It argues this demand is arbitrary and lacks the mandatory oversight of the National Land Commission (NLC). Further, the Petitioner contends that under Section 13 of the Land Act, a public purpose exception requires NLC approval and a five-year prior notice, neither of which occurred. The Petitioner cites **Popat & 7 Others v. Capital Markets Authority [2020] KESC 3 (KLR)** to argue that public interest cannot justify a breach of law:

"There can never be public interest in breach of the law... because public interest must accord to the Constitution and the law."

44) The Petitioner highlights the ecological significance of the 75-acre green space, aligning with Article 69. It asserts that the Respondents incited public incursions that led to vandalism, violating its right to property under Article 40. It relies on the case of **Satrose Ayuma v. Kenya Railways Trustees [2011] KEHC 3992** and **EPZA v. NEMA [2024] KESC 75 (Owino-Uhuru Case)** to argue the indivisibility of

rights, where property and environmental breaches implicate the national values of Article 10.

- 45) The Petitioner rejects the claim that the land automatically reverted to the County. It argues that under Section 43 of the Land Act, the continued acceptance of rent created a periodic tenancy. It maintains that as a Kenyan Company, it enjoys pre-emptive rights under Section 13, distinguishing its status from non-citizen restrictions under Article 65.

1st Respondent's Submissions

- 46) In their submissions, the 1st Respondent characterize the Petition as a frivolous attempt to bypass lawful statutory processes under the guise of constitutional litigation. The 1st Respondent contends that the Petitioner's grievance is not a violation of rights, but rather a subjective dissatisfaction with the severity of conditions imposed for a lease renewal conditions which are explicitly sanctioned by law.
- 47) The 1st Respondent argues that the Petition violates the doctrine of constitutional avoidance, which requires Courts to resolve disputes through ordinary statutory frameworks rather than constitutional interpretation where a complete legal regime exists. They assert that the Land Act, 2012 provides a comprehensive mechanism for lease renewals.
- 48) Citing **Ibrahim Wakhanyanga & 2 Others v. Chief Magistrate's Court Kakamega & 2 Others [2022] eKLR**,

they maintain that where legislation exists to give effect to a constitutional right, a litigant cannot found a cause of action directly on the Constitution. They further rely on **Sumayya Athmani Hassan v. Paul Masinde Simidi & Another [2019] eKLR**, arguing that the Petitioner should have filed an ordinary suit or Judicial Review rather than a Constitutional Petition.

49) The 1st Respondent contends that Article 40 of the Constitution protects only lawfully held property. Since the Petitioner's lease expired on 31/03/2022, the proprietary interest was extinguished by effluxion of time, and the land reverted to the public.

50) They argue that the Petitioner cannot appropriate and reprobate by claiming an existing property right while simultaneously invoking a pre-emptive right of allocation under Section 13 of the Land Act. In their view, a pre-emptive right is a residual statutory preference, not a vested constitutional property right. They distinguish **Jovet (Kenya) Limited v Bavaria NV (Petition E039 of 2024) [2025] KESC 27 (KLR) (Constitutional and Judicial Review) (16 May 2025) (Judgment)**, noting it involved interference with existing contracts, whereas this case involves an expired interest.

51) The 1st Respondent asserts that the power to impose conditions for lease renewal is a statutory discretion granted

to the County Government. They argue that under the Fourth Schedule of the Constitution, the County has a mandate to provide public utilities.

- 52) Invoking the **doctrine of separation of powers**, they cite **Mitu-Bell Welfare Society v Kenya Airports Authority & 2 Others; Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) (Judgment)**, arguing that Courts cannot substitute their own policy preferences for those of the Executive. The decision to cede 20 acres for public use is a policy matter aimed at addressing the immense pressure for social amenities in Kiambu Town, which the Court should not disturb unless the action is shown to be unfounded in law.
- 53) The 1st Respondent rejects the Petitioner's reliance on the Supreme Court case of **Sehmi & Another v Tarabana Company Limited & 5 Others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)**, arguing that legitimate expectation in public leases does not equate to an automatic unconditional renewal.
- 54) Referring to **Communications Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others [2014] KESC 53 (KLR)**, they argue there was no clear, unambiguous, and unqualified promise to renew the lease on old terms. They further cite **Kenya Revenue Authority & 2**

Others v. Darasa Investments Limited [2018] eKLR, stating that even if an expectation existed, the 1st Respondent has demonstrated an overriding reason in the public interest to vary the terms due to the town's growth and the need for public utilities.

- 55) The 1st Respondent challenges the Petitioner's factual claims on several fronts. They argue that under Section 11(2) of the Land Act, only the National Land Commission (NLC) can gazette ecologically sensitive areas. No such gazette exists for the Golf Course.
- 56) They contend that the government does not require permission from the public to use public land for public purposes. They argue that processing a lease renewal is a discretionary administrative act, not a policy decision requiring broad public participation.
- 57) They assert the Petitioner failed to provide a comparator proof that others in similar circumstances received unconditional renewals while the Petitioner did not.
- 58) The 1st Respondent maintains that they complied with Article 47 by processing the application and providing a written response as per the letter dated 11/04/2023 outlining the reasons for the conditions. They dismiss the claim of a five-year delay as sensationalist, noting that the delay was largely due to the absence of an official search from the Land Registrar, an entity separate from the 1st Respondent.

Petitioner's Rejoinder Submissions

- 59) In its Rejoinder filed on 14/10/2025, the Petitioner argues that the County's Defense is legally hollow and fails to address the specific statutory and constitutional breaches at the heart of the dispute.
- 60) According to the Petitioner by the 1st Respondent failing to rebut specific facts, the 1st Respondent has effectively conceded several critical points such as the NLC Non-Participation. It is the Petitioner's submission and emphasis that the 1st Respondent ignored the National Land Commission's (NLC) mandatory role under Article 67(2) and the Land (Extension and Renewal of Leases) Rules, 2017. Specifically, they contend that the failure to issue a five-year pre-expiry notice is a fatal procedural breach.
- 61) They further assert that because they have continued to pay rates post-expiry as evidenced in Annexure **"TK 14"**, a periodic tenancy was established under Section 43 of the Land Act. This preserves their rights under Article 40 (Property) and Article 47 (Fair Administrative Action), contrary to the Respondent's claim that all rights were extinguished.
- 62) The Petitioner notes that the 1st Respondent offered no evidence to rebut their environmental contributions, including the preservation of 50 indigenous tree species,

which aligns with the state's obligations under Article 69(1) (b).

- 63) Further that the Respondent's description of constitutional avoidance argument is described by the Petitioner as self-defeating. They argue that the 1st Respondent's own submissions engage deeply with constitutional questions, thereby validating the framing of the Petition.
- 64) The Petitioner cites **Nicholas v. Attorney General [2023] KESC 113 (KLR)** to affirm their right to frame the case as a constitutional matter.
- 65) They distinguish the cases cited by the Respondent specifically **Sumayya Athmani Hassan and Consumer Federation of Kenya [supra]** arguing they involved private contractual or employment disputes that did not touch on the Fundamental Administrative and Property Rights present here.
- 66) They further argue that Judicial Review is now a core component of constitutional doctrine under Article 47, making the Respondent's suggestion that they should have filed a Judicial Review an implicit admission of the Petition's legitimacy.
- 67) The Petitioner maintains that the demand to cede 20 acres is an unconstitutional acquisition masquerading as a lease condition. Citing the **Jovet Case (supra)**, they argue

that demanding land without compensation violates Article 40(3).

- 68) They reiterate that any public interest claim requires NLC oversight and public participation under Article 10 and Section 12(1) of the Land Act. Since the 1st Respondent provided no evidence of unpleaded devolution priorities, the condition remains irrational and unlawful.
- 69) It is the Petitioner's contention that for the 1st Respondent to take possession, they must follow the formal forfeiture process under Section 31(2) of the Land Act, which was never initiated.
- 70) The Petitioner relies heavily on **Sehmi & Another v. Tarabana Company Limited [2025] KESC 21 (KLR)** to buttress the doctrine of legitimate expectation under Article 47. By arguing that 109 years of occupation and consistent past renewals (supported by the principles in **Communications Commission of Kenya v. Royal Media Services [2014]eKLR** established a practice that entitles them to fair consideration rather than an arbitrary demand to hive off land.
- 71) They clarify that they are not seeking automatic renewal but lawful consideration, which the 1st Respondent failed to provide by bypassing the statutory timelines and NLC involvement.

72) Finally, the Petitioner links the destruction of their property to the 1st Respondent's actions. They point to the 3rd Respondent's admission of planned demonstrations and the Court's site visit report as evidence by Annexure **"TK 13"** as proof of a violation of their Article 50 which protects fair hearing and Article 25(c) which addresses the non-derogable right to a fair trial rights, as the vandalism was intended to prejudice their ongoing legal challenge.

Analysis and Determination

73) I have noted in considering this matter that it presents a complex intersection of property law, administrative justice, and constitutional supremacy. I am equally well guided by the written submissions by both parties which are well researched and clearly articulated.

74) Further, this Court recognizes the 1st Respondent's duty to provide public amenities for the people of Kiambu. However, this duty cannot be discharged by trampling on the rule of law. If the County requires 20 acres, it must utilize the formal pathways of the Land Act, involving the NLC and providing just compensation for developments as per the Constitution.

75) According to **Black's Law Dictionary (11th ed.)**, a *lease* is defined as a

“contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent.”

When such a term expires, the transition of rights from the lessee back to the lessor particularly a public lessor must be governed by the rule of law to prevent arbitrary state action.

76) Having considered the Petition, responses filed and the submissions it is my view that the following are the key issues I need to address to enable me arrive at a fair determination:

- i. Whether the Petitioner, as a corporate entity, can maintain a Constitutional Petition in what the Respondents term a private commercial dispute.*
- ii. Whether the Petitioner’s 109-year occupation and compliance with lease terms created a binding expectation for renewal under Article 47.*
- iii. Whether the 1st Respondent’s demand for 20 acres as a condition for renewal complies with Section 13 of the Land Act and Article 40 of the Constitution.*
- iv. Whether the continued payment and acceptance of rates created a periodic tenancy under Section 43 of the Land Act.*

v. *Whether the actions of the Respondents (including alleged incitement of demonstrations) violated Articles 10, 47, and 50.*

- 77) The Respondents argue that this is a simple landlord-tenant dispute. However, the 2010 Constitution shifted the landscape of standing. Under Article 258, any person has the right to institute Court proceedings claiming that the Constitution has been violated. Under **Article 260** of the Constitution, a person includes a Company or Association. In **Mumo Matemu v. Trusted Society of Human Rights Alliance [2014] KESC 6 (KLR)**, the Supreme Court held that *locus standi* is now expansive. Furthermore, **Jovet (Kenya) Limited v. Bavaria NV [2025] KESC 27 (KLR)** affirms that constitutional questions can arise even from commercial agreements when fundamental rights are at stake.
- 78) The management of public land by a County Government is a matter of high public and constitutional importance, not a mere private contract.
- 79) On the issue of legitimate expectation and Article 47, I note that the Petitioner relies on **Sehmi & Another v. Tarabana Company Limited [2025] KESC 21 (KLR)**, which establishes that an application for renewal ignites or creates a legitimate expectation of fair consideration. Black's Law Dictionary defines *legitimate expectation* as;

"A benefit that a person can reasonably expect to receive based on a promise or a past practice."

- 80) While the 1st Respondent cites **Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment)** to argue there was no unambiguous promise, the Court notes that 109 years of consistent use and the prompt application for renewal two years prior to expiry created a procedural legitimate expectation. The state cannot remain silent or act capriciously when a long-term investor seeks renewal. Government actions must be lawful, rational, fair, and transparent, rather than arbitrary or hidden.
- 81) On the sticky issue of the 20-Acre condition and pre-emptive Rights. Section 13 of the Land Act grants a lessee a pre-emptive right of allocation provided the land is not required for public purposes. However, the Land (Extension and Renewal of Leases) Rules, 2017 require the National Land Commission to give a five-year notice if the land is required for public use.
- 82) The 1st Respondent's demand for 20 acres was made without NLC oversight and without the requisite notice. As held in **Alnashir Popat & 7 Others v. Capital Markets**

Authority [2020]eKLR, public interest cannot be used as a shield for a breach of the law. The demand to cede land without compensation while a pre-emptive right exists is a constructive taking that offends Article 40(3), which guarantees protection against uncompensated deprivation of property.

83) I will spend some considerable time here to explain this cardinal principle in ownership of property. When the state or a public body disrupts the use or ownership of land without formal acquisition such as by allowing squatter occupation, demolishing structures, or coercing the surrender of land as is the case in this instant matter, it constitutes a taking that requires compensation.

84) As already stated at paragraph 81, the Constitution under Article 40(3) strictly forbids the deprivation of property unless it is for a public purpose/interest, carried out according to law, and accompanied by prompt payment in full of just compensation. Therefore, whereas the deprivation of the property can be done there has to be **just compensation**. [Emphasis added]

85) The Respondents argue that upon the expiry of the lease on 31/03/2022, the Petitioner became a trespasser and the land reverted to the County under Article 62(1)(c). While it is true that the legal term ended, the Petitioner has

continued to pay rates which the Respondents have accepted.

86) Under Section 43 of the Land Act, where a lessee remains in possession with the lessor's consent after the lease expires, a periodic tenancy is created. The continued acceptance of rent/rates creates a periodic tenancy. While this is not a 99-year title, it is a lawful possession that entitles the Petitioner to the protection of the law. Property rights under **Article 40** are not limited to absolute titles but encompass the bundle of rights held by a lawful occupant.

87) Consequently, the land did not automatically revert in a way that extinguished all of the Petitioner's rights. The Petitioner remains a lawful occupant until a proper legal process such as forfeiture under Section 31 is concluded.

88) The 1st Respondent and 3rd Respondent argue for the needs of the 34,000 residents over 350 club members. However, the Petitioner brought up the issue of public interest and environmental conservation which is mandated by Article 69, where the state is supposed to encourage environmental conservation.

89) Now, the Petitioner's evidence of 50 indigenous tree species and groundwater recharge contributions cannot be ignored. The 3rd Respondent's admission regarding demonstrations, coupled with the site visit report showing

vandalism, indicates a violation of Article 50 of the Right to a Fair Hearing and Article 10 on the Rule of Law.

Final Decision and Orders

90) While the Court recognizes the 1st Respondent's duty to provide public amenities for the people of Kiambu. This duty cannot be discharged by trampling on the rule of law. If the County requires 20 acres, it must utilize the formal pathways of the Land Act, involving the NLC and providing just compensation for developments as per the Constitution.

91) In conclusion, upon a holistic review of the pleadings and the law, the Court finds the Petition is meritorious. The 1st Respondent's attempt to hive off 20 acres without following the Land Extension and Renewal of Leases Rules, 2017 is procedurally flawed and unconstitutional. Therefore, the Court issues the following orders:

i) A declaration is hereby issued that the Petitioner has a legitimate expectation, of valid pre-emptive right of renewal of the lease for LR No. 9037 processed in accordance with Section 13 of the Land Act, 2012 and the Fair Administrative Action Act, 2015.

ii) A declaration is hereby issued that the 1st Respondent's demand for the Petitioner to cede 20 acres of land as a condition for renewal, without following the statutory

procedures involving the National Land Commission oversight and failure to provide five years' notice is unconstitutional, null, and void.

- iii) An order of certiorari is hereby issued quashing the 1st Respondent's decision contained in the letter dated 11/04/2023 to the extent that it imposes the surrender of 20 acres as a pre-condition for renewal.***
- iv) An order of mandamus is hereby issued directing the 1st Respondent and the 2nd Respondent the National Land Commission to re-process the Petitioner's application for lease renewal within 90 days, from the date of this Judgment adhering strictly to the statutory guidelines in Section 13 of the Land Act and the Sehmi v. Tarabana precedent.***
- v) A permanent injunction is hereby issued restraining the Respondents from forcibly entering, alienating, interfering or hiving off any portion of LR No. 9037 until the renewal process is lawfully concluded.***
- vi) The Court awards General Damages to the Petitioner for the violation of Article 47 rights and property damage resulting from the 3rd***

Respondent's admitted actions, for Kesh 3,000,000 to be paid by the 1st and 3rd Respondents jointly and severally.

vii) Costs of this Petition are awarded to the Petitioner.

Orders Accordingly

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 23RD DAY OF APRIL, 2026.

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**MOGENI J
JUDGE**

In the Presence of:

Mr. Mululu holding brief for Mrs. Karanu for the Petitioner

Mr. Ometo for the 1st Respondent

Ms. Kemunto holding brief for Ms. Kamini for the 2nd Respondent

Mrs. Misiati for the 3rd Respondent

Mr. Melita - Court Assistant.

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**MOGENI J
JUDGE**