

**REPUBLIC OF KENYA**

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

**ELC PETITION NO. E005 OF 2025**

**IN THE MATTER OF: THE ENFORCEMENT OF THE BILL OF RIGHTS AND  
FUNDAMENTAL**

**FREEDOMS AS PER ARTICLES 21,22,23,60,70 AND 258 OF THE  
CONSTITUTION OF KENYA**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLES 2  
(1) (5) (6), 10.20 (1). (2)**

**21 (1), (3)26, 35, 42,43,47,69 (1) AND 70 OF THE CONSTITUTION OF KENYA.  
2010**

**IN THE MATTER OF: RULES 2, 3, 4, 11, 20 AND 24 (1) OF THE  
CONSTITUTION OF KENYA 2010**

**(PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS) PRACTICE  
AND PROCEDURE**

**RULES 2013**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLES 111  
AND 112 OF THE**

**TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICA COMMUNITY**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLE 12  
OF THE**

**INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL  
RIGHTS.**

**THE ALLEGED CONTRAVENTION OF ARTICLES 16 AND 24 OF THE  
AFRICAN CHARTER ON**

**HUMANS AND PEOPLE'S RIGHTS**

**BETWEEN**

**WAMIRI KIGOCHI.....PETITIONER**

**VERSUS**

**THE COUNTY LANDS REGISTRAR**

NAKURU COUNTY.....1<sup>ST</sup> RESPONDENT  
THE COUNTY GOVERNMENT  
OF NAKURU.....2<sup>ND</sup> RESPONDENT  
NAKURU COUNTY SURVEYOR.....3<sup>RD</sup> RESPONDENT  
NAKURU COUNTY PHYSICAL  
PLANNER.....4<sup>TH</sup> RESPONDENT  
CABINET SECRETARY LAND.....5<sup>TH</sup> RESPONDENT  
NATIONAL LAND COMMISSION.....6<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL.....7<sup>TH</sup> RESPONDENT

**JUDGMENT**

1. By a Petition dated 20<sup>th</sup> August, 2025, the Petitioner sought orders against the Respondents as follows:

- i) *THAT this Honourable court be pleased to compel the 1<sup>st</sup> and 3<sup>rd</sup> respondents by an order of MANDAMUS to visit land parcel TOL LR Number 7473/4/1 to determine and fix the boundary locations in regard to the property and further to determine the ground position of the road of access in accordance with the relevant Registry Index Map (RIM).*
- ii) *THAT this Honourable court be pleased to issue an order of MANDAMUS to compel the National Land Commission and the Chief Registrar of Titles to convert TOLL LR Number 7473/4/1 and issue a long-term lease to the petitioner in respect of the suit property.*
- iii) *THAT this Honourable court be pleased to issue a DECLARATION that the group members of the petitioner are the rightful owners of the property TOLL LR Number 7473/4/1*

iv) ***THAT this Honourable court be pleased to issue an order of PROHIBITION to stop the National Land Commission and Chief Registrar of Titles from issuing grants in respect of the suit property or a grant in respect of TOLL LR Number 7473/4/1 to any other person or persons other than the petitioner, or dealing with the suit property in any manner that will deprive the petitioner proprietary rights and interest in the suit property.***

v) ***Costs of the Petition.***

2. The Petition is supported by the annexed Affidavit of Waimiri Kigochi, the Petitioner, sworn on 20<sup>th</sup> August, 2025 where he deponed that on 28<sup>th</sup> September, 1968, they were allocated unsurveyed land TOL LR Number 7473/4/1 by the late Mzee Jomo Kenyatta.
3. The Petitioner gave a factual background to the dispute, which is elaborately captured in the Supporting Affidavit. The Petitioner stated that together with 5 other members were allocated unsurveyed land TOL LR Number 7473/4/1 in September 1968 by the late Mzee Jomo Kenyatta. They have lived on and cultivated the said land until 1992 when tribal clashes began, which led to them vacating the land, as they feared for their lives.
4. The Petitioner further stated that the group was issued with an original letter of allotment but the letter of allotment got lost, mislaid and/or misplaced. The allotment letter was in possession of the late KABARU NJAGI who is now deceased.
5. It was the Petitioner's case that through various correspondences with the respondents, attempted to convert TOL LR Number 7473/4/1 to a long-term

lease, which has not yet materialized. To date, the 1<sup>st</sup> Respondent has failed, refused, and/or declined to issue the Petitioners with a long-term lease. That the Petitioners for over fifty years, have hopped from one land office to another in Nakuru, Nairobi, and Ruaraka Survey in search of justice, but to no avail.

6. Further, the National Land Commission, by a letter dated 11<sup>th</sup> September 2013, approved the conversion of the TOL to leasehold, and subsequently, the County Government of Nakuru also approved the conversion on the condition that the ownership is not disputed, as indicated in a letter dated 27<sup>th</sup> June 2013. The Petitioners also stated that they have been paying land rent for the suit property since 1968 without fail and are up to date with the land rates, which indicates commitment and adherence to legal requirements, removing any speck of doubt regarding ownership.
7. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents filed what they termed, as a response to the Petition which was not a replying affidavit to the averments by the Petitioner in his Supporting affidavit. In the said response they stated that they are strangers as to whether the 6<sup>th</sup> Respondent approved the conversion of TOL LR No. 7473/4/1 in 2013.
8. The 1<sup>st</sup> 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and 7<sup>th</sup> Respondents further stated that the Petitioner has not been in occupation of the suit parcel and that the dispute if any, is capable of being resolved through other means other than the present Petition and cited the Supreme Court case of **Communication Commission of Kenya & 5 Others V Royal Media Services Ltd & 5 Others [2014] eKLR**
9. According to the Respondents, the Petition fails to meet the threshold as set out in the case of **Anarita Karimi Njeru V Republic [1979] eKLR** and urged the court to dismiss the Petition with costs.

10. The Petitioner filed a Further Affidavit sworn on 12<sup>th</sup> March, 2026, and deponed that failure by the 1<sup>st</sup> Respondent to issue a long-term lease after years of requests constitutes a violation of his right to own the property and urged the court to allow the Petition with costs.
11. The 2<sup>nd</sup> Respondent only filed a Memorandum of appearance and neither responded to the Petition nor filed submissions. The Petition was canvassed by way of written submissions and only the Petitioner's counsel complied. The Respondents never filed any submissions.

#### **PETITIONER'S SUBMISSIONS**

12. Counsel for the Petitioner filed submissions dated 12<sup>th</sup> March, 2026, and identified the following issues for determination:
  - a) *Whether the petition herein meets the threshold set out in the case of Anarita Karimi Njeru (supra).*
  - b) *Whether the petitioner has exhausted all other means of dispute resolution before instituting this petition in this Honourable court.*
  - c) *Whether the petitioner's rights under Articles 40,47,48,27,50 and 67 of the Constitution of Kenya 2010 have been violated.*
  - d) *Whether the petitioner is entitled to the orders sought.*
  - e) *Which party is entitled to costs?*

13. On the first issue, as to whether the Petition meets the threshold set out in the **Anarita Karimi Njeru** case, counsel relied on **Article 22(1)** of the Constitution of Kenya 2010, and submitted that the specific Articles of the Constitution contravened by the Respondents have been set out with precision and the manner in which these rights were violated or infringed, by the Respondents has been clearly illustrated.
14. Counsel submitted that the Petition clearly identifies the following violated provisions: Articles 40(1) and 40(3) (right to property and protection from arbitrary deprivation), Article 47 (fair administrative action), Article 48 (access to justice), Article 27 (equality before the law), Article 50 (fair hearing), and Article 67 (the NLC's constitutional mandate). Further that each article is matched to a specific factual act or omission of the Respondents, hence the petition meets the threshold of constitutional Petitions.
15. Mr. Otieno submitted that the Petitioner invoked the specific constitutional provisions infringed upon and also gave details of the Respondents' acts constituting constitutional violations, and relied on the Court of Appeal case **Mohamed Fugicha V Methodist church in Kenya (suing through its registered trustees) & 3 others [2016] eKLR**, where the court expounded on formalism in constitutional petitions.
16. On the second issue, as to whether the petitioner has exhausted all other means of dispute resolution before instituting this petition in this Honourable court, counsel submitted that if ever there were a case where the doctrine of exhaustion of remedies could not fairly be invoked, it is in this case, as the Petitioner has done everything any government could reasonably ask of a citizen to do.

17. According to counsel, the petitioner has been following up on the suit property since 1968, which is more than 5 decades of moving from one respondent's office to another, trying to get a long-term lease for land that is rightfully his. Counsel referred the court to their bundle of documents, where there is detailed correspondence between the petitioner and the respondents.
18. According to counsel, the Respondent's attempt to allude to the doctrine of constitutional avoidance by claiming that the petitioner has not exhausted all other means of dispute resolution, is misplaced as the facts before this Honourable Court do not show a failure to exhaust remedies. Counsel submitted that the Respondents who now raise exhaustion as a defence are the same Respondents whose inaction made this petition necessary and relied on the case of **Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (Constitutional Petition 159 of 2018 & 201 of 2019 (Consolidated)) [2020] KEHC 10266 (KLR)**, where the court elaborately dealt with the doctrine of exhaustion doctrine
19. Additionally, counsel relied on the cases of **Night Rose Cosmetics (1972) Ltd V Nairobi County Government & 2 others [2018] eKLR**, and **East Africa Wildlife Society & 3 others v Kenya National Highways Authority & 3 others; Law Society of Kenya & 5 others (Interested Parties) [2025] KEELC 1259 (KLR)**, and submitted that the petitioner having exhausted every mechanism to protect his interests, the issues raised in the Petition cannot be decided without recourse to the Constitution hence are Constitutional questions. Further, the doctrine of constitutional avoidance cannot thus be raised to frustrate this instant Petition.

20. On the third issue, as to whether the Petitioner's rights under Articles 40,47,48,27,50 and 67 of the Constitution of Kenya 2010 have been violated, counsel relied on **Article 40** of the Constitution and submitted that the Constitution of Kenya unequivocally guarantees every person the right to own property. Counsel argued that the Petitioner's interest in addition to being backed by a legitimate expectation, is an accrued proprietary interest awaiting formalization. Counsel relied on the case of **Diana Kethi Kilonzo & another V Independent Electoral & Boundaries Commission & 10 others Nairobi Petition No 359 of 2013 [2013] eKLR**, where the court described the term legitimate expectation and submitted that the Petitioner having been allotted the suit property and the failure by the 1<sup>st</sup> Respondent to issue him with a long-term lease despite requests and consistent payment of land rent constituted violation of the Petitioner's right to own and enjoy property.
21. On **Article 47** of the Constitution counsel submitted that 'expeditious' cannot be used to refer to the 56 years of the Respondents' delay or refusal to issue the Petitioner with a long-term lease and more specifically, the 12 years they have taken since formal approval was given by the 6<sup>th</sup> and 2<sup>nd</sup> Respondent. Counsel relied on the Court of Appeal cases of **Benson Wekesa Milimo V National Land Commission & 2 others [2021] eKLR** and **Republic V National Cohesion and Integration Commission; Chama Cha Mawakili Limited (Exparte) (Judicial Review Application E057 of 2022) [2022] KEHC 10206 (KLR)**, and submitted that the Respondents have violated the Petitioner's right to fair administrative action by failing and/or neglecting to make expeditious decisions regarding the suit property or communicating these decisions to the Petitioner.
22. Counsel relied on **Article 48** of the Constitution and submitted that the Petitioner has written numerous letters, physically visited multiple land

registries and followed every possible administrative channel, yet no resolution has materialized. Further, the Respondents' inaction has rendered the Petitioner remediless, thus violating his right to access to justice and relied on the case of **Kenya Bus Services Limited and Anor V Minister of Transport & 2 Others [2012] eKLR.**

23. On Article 27 of the Constitution counsel submitted that the allotment letter to the suit property was one of many issued to various people by the late Mzee Jomo Kenyatta, and further submitted that since 1968, most if not all of the other TOL holders managed to convert their interests into long- term leases within reasonable time frames, hence the inaction amounted to discrimination against the Petitioner.
24. Mr. Otieno also relied on **Article 50** of the Constitution and the cases of **Republic V Kenya Medical Practitioners and Dentists Board & 2 others [2013] KEHC 3861 (KLR), Msagha vs. Chief Justice & 7 Others Nairobi HCMCA no. 1062 of 2004 (HCK) [2006] 2 KLR 553 as relied upon in Car & General (Trading) Limited v Ngui & another (Civil Appeal E067 of 2021) [2023] KEHC 25321 (KLR),** and submitted that it is a settled principle of law that the right to be heard requires that whenever an administrative decision is to be made, the person affected by such a decision be given an opportunity to express himself in that regard.
25. Additionally, counsel submitted that the Petitioner was not heard before the Respondents decided not to convert the suit property to a long-term lease, and added that the Petitioner is yet to know the fate of his proprietary interest in the suit property thus violation of his right to be heard.

26. Counsel for the Petitioner relied on Article 67(2)(a) of the Constitution and submitted that the 6<sup>th</sup> Respondent had formally approved the conversion of the TOL to leasehold and directed the Petitioner to liaise with the Director of Physical Planning for the planning of the site. He submitted that despite the Petitioner having complied with the directives, the conversion was never completed. It was his submission that the 6<sup>th</sup> Respondent cannot discharge its duties under Article 67 by approving a conversion on paper and then standing by while nothing happens.
27. Mr. Otieno submitted on whether the Petitioner is entitled to the orders sought in the Petition, in the affirmative and relied on **Article 23** of the Constitution and the case of **Letuya & 21 others V Attorney General & 5 others (Environment and Land Case Civil Suit 821 of 2012) [2014] KEELC 683 (KLR)**. He submitted that the Petitioner has proved on a balance of probabilities that he is entitled to the orders sought herein and urged the court to allow the Petition with costs as per the case of **Rai & 3 others V Rai & 4 others (Petition 4 of 2012) [2014] KESC 31 (KLR)**, **where** it was held that costs follow the event.

### **ANALYSIS AND DETERMINATION**

28. The factual background of this Petition has been elaborately captured in the Petitioners Supporting affidavit and the submissions by the Petitioners counsel, however, just for clarity and to put things into perspective, it is imperative to give a brief background to the facts that have necessitated the filing of this Petition. The Petitioner stated that, together with 5 other members they were allocated unsurveyed land TOL LR Number 7473/4/1 in September 1968 by the late Mzee Jomo Kenyatta. They have lived on and cultivated the said land until 1992 when tribal clashes began, which led to them vacating the land, as they feared for their lives.

29. The Petitioner further stated that the group was issued with an original letter of allotment but the letter of allotment got lost, mislaid and/or misplaced. The allotment letter was in possession of the late KABARU NJAGI, who is now deceased.
30. It was the Petitioner's case that through various correspondences with the respondents, they attempted to convert TOL LR Number 7473/4/1 to a long-term lease, which has not yet materialized as to date, the 1<sup>st</sup> Respondent has failed, refused, and/or declined to issue the Petitioners with a long-term lease. That the Petitioners for over fifty years, have hopped from one land office to another in Nakuru, Nairobi, and Ruaraka Survey in search of justice, but to no avail.
31. Further, the National Land Commission by a letter dated 11<sup>th</sup> September 2013, approved the conversion of the TOL to leasehold, and subsequently, the County Government of Nakuru also approved the conversion on the condition that the ownership is not disputed, as indicated in a letter dated 27<sup>th</sup> June 2013. The Petitioners also stated that they have been paying land rent for the suit property since 1968 without fail and are up to date with the land rates, which indicates commitment and adherence to legal requirements, removing any speck of doubt regarding ownership.
32. The Respondents filed a Memorandum of Appearance and a Notice of Appointment but, never complied with the directions of the court that the petition was to be canvassed by way of written submissions. By the time of writing this Judgment, only the Petitioner's counsel had complied by filing submissions dated 12<sup>th</sup> March 2026.

33. The issues for determination that arise in this petition are as follows:
- a) *Whether the Petition herein meets the threshold set out in the case of Anarita Karimi Njeru.*
  - b) *Whether the Petitioner has exhausted all other means of dispute resolution before instituting this petition in this Honourable court.*
  - c) *Whether the Petitioner is entitled to the orders sought.*
  - d) *Which party is entitled to costs?*

34. In a constitutional Petition, the court is bound to determine the issue whether the Petition meets the threshold of constitutional petitions as was laid down in the case of **Anarita Karimi Njeru V Republic (Miscellaneous Criminal Application 4 of 1979) [1979] KEHC 30 (KLR)** where the court stated as follows:

*“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with 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.*

*That based on this holding for petition to meet the constitutional threshold to be entertained by the Constitutional Court it must meet with a reasonable degree of precision the three-tier test, that is stating that which one complains of, the provision said to be infringed, the manner in which they are alleged to be infringed.*

*That although the petitioner has enumerated Articles 28, 31 and 40 of the Constitution as the articles that have been infringed, no particulars are pleaded with reasonable clarity on how they have been violated and the extent of the violation. That the petitioner has not demonstrated how the respondent who is not the State has failed to support or infringed such right under Article 40(5) of the Constitution of Kenya when the said right is the responsibility of the State.”*

35. Similarly, in the case of **Matemu V Trusted Society of Human Rights Alliance & 5 others (Civil Appeal 290 of 2012) [2013] KECA 445 (KLR)** the court in paragraph 23 held as follows:

*“It should be noted the case of Anarita Karimi Njeru (supra) has been relied upon from time and time again to demonstrate the threshold of a successful constitutional petition. It should be appreciated the requirements for a successful constitutional petition are simple and are thus: - the petitioner should set out the constitutional provisions, which he believes have been violated or threatened, and the manner in which the respondent(s) have violated those provisions. It is not enough for the petitioner to just list the constitutional provisions without demonstrating how they were infringed upon...”*

36. For a constitutional petition to be sustained it must meet the basic ingredients of a petition. It must have a reasonable degree of precision, identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation and/or threatened violation. It follows that Petitioner cannot just throw in a few constitutional provisions and expect the court to look for the violation if it is not precisely identified. The precision is to enable the respondents respond to the alleged infringements and

violations. If this were not done then it would be difficult to engage with the petition.

37. This is in a bid to stem the abuse of constitutional jurisdiction with matters that are purely civil cases in nature without any underpinning constitutional rights violations. There are laid down dispute resolution procedures in courts and other quasi-judicial bodies, which have mandates to hear and determine specific cases.
38. From the Petition and the Supporting affidavit, I note that the Petition clearly identifies the following violated provisions: Articles 40(1) and 40(3) (right to property and protection from arbitrary deprivation), Article 47 (fair administrative action), Article 48 (access to justice), Article 27 (equality before the law), Article 50 (fair hearing), and Article 67 (the NLC's constitutional mandate), which Articles are matched to a specific factual act or omission of the Respondents.
39. Additionally, it is evident that the Petitioner invoked the specific constitutional provisions infringed upon and also gave details of the Respondents' acts constituting constitutional violations, which conforms to formalism in constitutional petitions as was held in the case of **Mohamed Fugicha V Methodist church in Kenya (suing through its registered trustees) & 3 others (Supra)**. I therefore find that the Petition meets the threshold for constitutional Petitions as per the **Anarita Karimi case (supra)**.
40. On the second issue as to whether *the* Petitioner has exhausted all other means of dispute resolution before instituting this petition in this Honourable court, it is on record which is not disputed that the Petitioner was allocated the suit parcel TOL LR Number 7473/4/1 in 1968 and has been paying land Rent which he

attached the payment receipts. It is further on record that there has been numerous back and forth correspondence between the Petitioner and the Respondents on the issue of conversion from TOL to a long- term lease.

41. The Petitioner has been following up on the suit property since 1968, which is more than 5 decades of moving from one respondent's office to another, trying to get a long-term lease for land that is rightfully his, but the same has not born any fruit hence the petition before this court.
42. Specifically, the Petitioner wrote several letters and visited the Respondents' offices which is documented in the letters. On 27<sup>th</sup> June 2013, the County Secretary, County Government of Nakuru wrote a letter to the National Land Commission referring to a letter by the Commission dated 29<sup>th</sup> June 2013, on the conversion of the Petitioners land to long- term lease and indicated that they had no objection to the conversion of Plot No. 7473/4/1, Naivasha to title deed certificate on condition that the ownership was not disputed.
43. This further culminated in the National Land Commission writing a letter dated 11<sup>th</sup> September 2013 to the Petitioner on the issue of conversion of the suit property to a long-term lease informing the Petitioner that his application in respect of the conversion dated 5<sup>th</sup> February 1988, had been approved subject to the planning of the site. The National Land Commission advised the Petitioner to liaise with the Director for Physical Planning for the planning of the site to facilitate the formalization of the conversion.
44. There is no evidence that there was any dispute as to the ownership of the suit land and the Respondents having given a go -ahead on the conversion, should have acted as they had approved to avert this petition. The Petitioners have suffered a great deal moving from one office to another with numerous

correspondences that are never acted upon. The intentions to act are on paper but not implemented. It follows that the Petitioner did his best to exhaust all known mechanisms to solve this matter but the Respondents never acted on their part. The only recourse to the Petitioner was to file this Petition.

45. In the case of **Republic vs National Environment Management Authority ex-parte Sound Equipment Limited [2011] eKLR**, the court held that the doctrine of exhaustion is not absolute and that it should not be applied mechanically where alternative forums are incapable of granting effective and sufficient forms of relief.
46. The court is also cognizant of the application of the doctrine of exhaustion as was held in the case of **Geoffrey Muthinja & Another Vs Samuel Muguna Henry & 1756 others (2015) eKLR**, that:

*‘the exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside of courts.’*
47. On the issue as to whether the Petitioner is entitled to the orders sought, having found in the affirmative that the petition meets the constitutional threshold, that it does not suffer from the doctrine of exhaustion and further laid down the factual background on the genesis of this petition which is uncontroverted and additionally that the Respondents had already approved the conversion by their letters which are on record but not acted upon. I find that the Petitioner is entitled to the orders sought in the Petition.

48. The Respondents should have acted upon this matter many years ago when they wrote their approval letters for conversion. Why has it taken them many years, taking the Petitioner in circles instead of doing the right thing at the right time.
49. Consequently, I make the following specific orders:
- a) *An order of Mandamus is hereby issued compelling the 1<sup>st</sup> and 3<sup>rd</sup> respondents to visit land parcel TOLL LR Number 7473/4/1 to determine and fix the boundary locations in regard to the property and further to determine the ground position of the road of access in accordance with the relevant Registry Index Map (RIM).*
  - b) *An order of Mandamus is hereby issued compelling the National Land Commission and the Chief Registrar of Titles to convert TOLL LR Number 7473/4/1 and issue a long-term lease to the petitioner in respect of the suit property.*
  - c) *A declaration is hereby issued that the group members of the petitioner are the rightful owners of the property TOLL LR Number 7473/4/1.*
  - d) *An order of Prohibition is hereby issued stopping the National Land Commission and Chief Registrar of Titles from issuing grants in respect of the suit property or a grant in respect of TOLL LR Number 7473/4/1 to any other person or persons other than the petitioner, or dealing with the suit property in any manner that will deprive the petitioner proprietary rights and interest in the suit property.*
  - e) *Costs of the Petition awarded to the Petitioners.*

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 23<sup>RD</sup>  
DAY OF APRIL 2026.**

**M. A. ODENY  
JUDGE**