



**Mutamba v Governor, Trans-Nzoia County & another (Constitutional  
Petition 9 of 2023) [2026] KEHC 4540 (KLR) (27 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4540 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CONSTITUTIONAL PETITION 9 OF 2023  
PJO OTIENO, J  
MARCH 27, 2026**

**BETWEEN**

**STEPHEN SHIKUKU MUTAMBA ..... PETITIONER**

**AND**

**THE GOVERNOR, TRANS-NZOIA COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF TRANS-NZOIA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Background of the Appeal**

1. Before this court is a Constitutional Petition primarily alleging fundamental breaches of *the Constitution* relating to the principle of separation of powers, the division of functions between National and County Governments as well as adherence to principles of public finance. Precisely, the petition challenges the administrative actions of the 2<sup>nd</sup> Respondent's current executive leadership regarding the establishment of a specific committee tasked with the implementation of a public land report.
2. This administrative endeavours began in earnest on 25/062021, when the then Governor of Trans-Nzoia issued Gazette Notice Number 6211. The Notice unveiled an eleven-member task force whose primary mandate was to conduct exhaustive investigations into official land records, reclaim grabbed public land, and regularize all parcels belonging to the government within various jurisdictions of the county.
3. Notably, the taskforce operated for an initial six-month period, which was subsequently extended due to reasons of voluminous and intricate nature of the land records under review. By June 2022, shortly before the general elections that ushered in a change of administration, the task force completed its mandate and submitted a 396-page report. The gist of the report's findings was that land conflicts in Trans-Nzoia were largely fuelled by a lack of proper titling and boundary disputes. The task force



acknowledged the supreme constitutional role of the National Land Commission under Article 67, recommending that while county governments have a duty to repossess illegally alienated land, they must do so in strict collaboration with the NLC.

4. Following the August 2022 general elections, the 1<sup>st</sup> Respondent assumed office as the Governor of Trans-Nzoia and his administration was faced with the task of transitioning the county's governance and addressing the findings of the previous regime's land task force. On 03/02/2023, the 1<sup>st</sup> Respondent issued Gazette Notice Number 1142, which established the Public Land Report Implementation Committee. The committee consisted of eleven members with a tenure commencing on 06/02/2023 with an expected reporting timeline of 90 days. The Committee's mandate was to analyse the report prepared by the 2021 task force, review relevant laws, and ascertain the legal processes required to deal with irregular land allocations.

### **The Petition**

5. The Petitioner took umbrage at this administrative move filing the instant petition on 07/07/2023 challenging the Respondents' exercise of executive authority. The Petitioner grounds his case in a vast array of constitutional provisions, specifically citing Articles 1, 2, 3, 10, 35, 47, 67, 68, 73, 110, 129, 131, 132, 174, 175, 176, 183, 185, 186, 187, 190, 195, 201, 230, 248, 249, 252, and 258; which provisions it is asserted that when read together, establish a framework of governance based on the rule of law, the separation of powers and the prudent management of public resources which it is claimed to have been violated by the Respondents.
6. The Petitioner asserts that the creation of the new committee was not only a duplication of efforts and a wastage of public resources but also a direct usurpation of the constitutional powers of the National Land Commission. The Petitioner contends that the Governor lacks the authority to donate powers of land investigation and title review to personal nominees, because these are functions explicitly reserved for the NLC and other national state organs. Consequently, the Petitioner moved this court to declare the formation of the committee unconstitutional and to stop any further expenditure of public funds on its operations.
7. On the face of the Petition, the Petitioner seeks the following primary reliefs:
  - a. A declaration that the Respondents' action in constituting the Public Land Report Implementation Committee is a usurpation of the functions of the National Government and the National Land Commission, particularly in its attempt to investigate and nullify land titles.
  - b. A declaration that the Gazette Notice Number 1142 of 2023 is unconstitutional, null, and void as it purports to confer powers of inquiry and land administration upon personal nominees of the Governor outside the established legal framework.
  - c. An order of permanent injunction restraining the Respondents from facilitating or funding the activities of the said committee, including the payment of allowances to its members.
  - d. An order of certiorari to quash any reports, findings, or recommendations already generated by the committee.
8. There was filed with the petition a Notice of Motion application, which sought interim conservatory orders, and predicated on grounds found on its face and reiterated in the Petitioner's Supporting affidavit sworn on 07/07/2023. The argument was a reiteration of the assertion that the 1<sup>st</sup> Respondent was attempting to donate powers that *the Constitution* has already assigned to the NLC and Parliament under Articles 67 and 68 and that the mandate to repossess public land and investigate historical injustices cannot be legally performed by a committee of personal nominees.



9. It is stressed that if the court did not intervene, the residents of Trans-Nzoia would suffer irreparable loss through the pilferage and wastage of resources intended for broader social development. The Application emphasized that the committee's mandate which includes ascertaining the legal process required to deal with irregular allocations, is essentially a judicial or quasi-judicial function that a county executive cannot lawfully delegate to a task force. Pointing to SRC Circular Ref: MSPS.2/1A VOL XVIII/(119) dated 02/08/2013 which limits the duration of task force assignments to a maximum of 20 days, it is deposed that the Implementation Committee was granted a 90-day mandate, which was later extended, in direct defiance of these guidelines meant to ensure prudent financial management.
10. The 2<sup>nd</sup> Respondent's fiscal discipline is further challenged with allegations that the appointment of the task force ignored the mandatory guidelines issued by the Salaries and Remuneration Commission regarding the duration and compensation of such bodies. That the 1<sup>st</sup> Respondent's action is an attempt to create a parallel land administration system that undermines the National Land Commission, thereby threatening the constitutional order of land governance in Kenya.

Outcome of the application?

### **Response to the Petition**

11. The Respondents opposed the Petition and the application through a Replying Affidavit sworn by Truphosa Amere, the County Secretary, Trans-Nzoia County, on 15/11/2024. The Affidavit raises both procedural and substantive objections to the Petitioner's claims.
12. Procedurally, it is argued that the Petition fails to meet the threshold for a constitutional petition because it lacks precision and specificity. It is contended that the Petitioner has merely listed numerous constitutional articles without demonstrating how his personal rights have been violated or providing specific evidence of the alleged infringements.
13. On the merit substance, the Respondents defend the creation of the Implementation Committee on several grounds; Firstly, it is argued that when a new administration takes office, it has a duty to review and transition the work of the previous regime. It is pointed out that because the 1<sup>st</sup> Taskforce report was submitted only three months before the transition, the 1<sup>st</sup> Respondent required a team to distil, synthesize, and analyse the findings of that task force to ensure a smooth transition and effective policy implementation.
14. The Respondents deny any usurpation of power not vested on it and state that the committee's role is that of a complainant to the NLC. They assert that the NLC cannot manage land in a vacuum and requires county governments to identify public land and boundary issues. The committee, they argue, is merely gathering information to liaise with the NLC, which remains the only body empowered to nullify titles.
15. The two cite Section 103(b) of the County Government Act and the Fourth Schedule of *the Constitution*, which grant county governments functions in county planning, land survey, and mapping. It is argued that the 1<sup>st</sup> Respondent has the power under Section 31(d) of the County Government Act to take actions necessary for the execution of his duties.
16. The Respondents deny any pilferage of funds and demand strict proof of the same and argue that the 2013 SRC circular cited by the Petitioner was addressed to national government Cabinet Secretaries and does not automatically bind county governments, which are independent executive units. They also accuse the Petitioner of gross material non-disclosure for failing to attach Gazette Notice No. 6211 of 2021, which they claim proves that the NLC was fully involved in the initial task force process. They



argue the Petitioner has approached the court with unclean hands and that the petition is politically motivated thus deserving dismissal.

### Summary of the Petitioner's Submissions

17. The Petitioner's submissions focus on the principles of constitutional interpretation and the specific limitations placed on executive power within the framework of devolution. The Petitioner invites the court to adopt a liberal and purposive approach to interpreting *the Constitution*, citing the Supreme Court's decision in *The Speaker of the Senate & Another vs Attorney-General & Others* (.....) eKLR, which emphasized the de-concentration of power to county units to have targeted better service delivery.
18. Relying on the case of *Trusted Society of Human Rights Alliance v Attorney General & 2 others* [2012] eKLR, the Petitioner argues that there is no supremacy outside *the Constitution*. That every state organ, including the Governor, must act within its constitutional boundaries and that the 1<sup>st</sup> Respondent's attempt to donate power of land investigation is a transgression that the court, as the guardian of *the Constitution*, must address.
19. The Petitioners further submits that Article 67(2) of *the Constitution* vest the NLC with the exclusive function to manage public land and initiate investigations into land injustices. He argues that the Implementation Committee's terms of reference, such as ascertaining the legal process to deal with irregular allocation of land, are essentially judicial or quasi-judicial functions that the Governor cannot lawfully perform or delegate.
20. The Petitioners thus argue that the appointment of the task force violated the mandatory guidelines of the Salaries and Remuneration Commission, which are intended to control the public wage bill and ensure fiscal transparency. He cites the *Kenya County Government Workers Union v Salaries and Remuneration Commission & 4 others* [2024] KEELRC 2843 (KLR) case to illustrate that SRC advisories are binding on counties. He contends that the 90-day duration of the committee without SRC approval constitutes an illegal expenditure of public money.
21. It is submitted that Article 10 mandates public participation in all governance processes. That the Respondents have provided no evidence of how the public or the County Assembly were involved in the formation of the committee or the approval of its budget. Finally, the Petitioner argues that while courts should be cautious in political matters, any action that contravenes *the Constitution* is justiciable. It is asserted that the 1<sup>st</sup> Respondent's appointment is not a mere policy decision but a structural violation of the separation of powers concluding that the court had been properly approached with adequate materials to warrant grant of the orders sought

### Summary of the Respondent's Submissions

22. The Respondents' submissions, dated 15/11/2024, emphasize the threshold for constitutional litigation and the administrative necessity of the Implementation Committee.
23. on the legal competence of the petition, it is their case that a constitutional petition must be pleaded with reasonable precision on the violated provisions of *the constitution* and the manner of such violation. The decision in *Anarita Karimi Njeru v Republic* [1979] KEHC 30 (KLR) is cited for that proposition with an assertion that the instant matter fails that test.
24. They submit that the 1<sup>st</sup> Respondent acted within his powers under Section 31(d) of the County Government Act to execute the duties of his office. The committee is thus described as an



administrative tool intended to ensure that the work of the previous task force was not lost but continued to fruition, during and after the change of regimes.

25. The respondents rely on the Fourth Schedule, Part II of *the Constitution*, and argue that county governments have specific functions in county planning, survey, and mapping. They submit that devolution requires and mandates cooperation between the national and county governments, and the committee's role in gathering data for use by the NLC is a legitimate exercise of this cooperation.
26. It is further argued that the committee does not exercise the powers of the NLC but rather serves as a mechanism for the county to identify land injustices and report them to the NLC for formal investigation. That there is no overlap in roles because the NLC remains the final arbiter in title nullification recommendations.
27. The Respondents argue that the Petitioner has failed to prove any actual wastage or pilferage of funds contending that the SRC circular of 2013 is not applicable to county governments and that the committee performed its task within the gazetted period and budget. Finally, the Respondents submit that the committee has already concluded its task, making the Petitioner's request for an injunction moot. They urge the court to dismiss the petition with costs as it is an abuse of the court process.

### **Issues, Analysis and Determination**

28. The court has carefully perused the Petition, the affidavits, and the detailed submissions of both parties, and isolates issues for its determination of the petition to be:
  - a. Whether the Petition meets the legal threshold of precision and specificity required for constitutional litigation?
  - b. Whether the 1<sup>st</sup> Respondent has the legal and constitutional authority to establish the Public Land Report Implementation Committee under the County Government Act and *the Constitution*?
  - c. Whether the mandate and terms of reference of the said committee usurp the constitutional functions of the National Land Commission?
  - d. Whether the formation and operation of the committee violated the principles of public finance management and the mandatory guidelines issued by the Salaries and Remuneration Commission?
  - e. Whether the petitioner merit being granted the orders sought or any of the them?

### **Whether the Petition meets the legal threshold of precision and specificity required for constitutional litigation?**

29. The Respondents have challenged the competence of the petition, arguing that it lacks the precision required as enunciated by the court in the Anrita Karimi Kimani case. The law demands that a party must plead with reasonable clarity the specific articles of *the Constitution* alleged to have been violated and the manner of such violation. The demand under *the constitution* is however not to stifle but rather to facilitate access to justice in all its forms devoid of formal and procedural strictures. The demand on the applicant is to establish a discernible violation of a provision or general norm under *the constitution* and point to the manner of violation. The court then is mandated to take cognizance of the liberalized constitutional litigation and article of locus standi under the 2010 Constitution. Article 22 and 258 allow any person acting in the public interest to institute proceedings claiming a contravention of *the Constitution*. In George Ragui Karanja (Suing as Director of Interactive Advertising Limited) Vs



Central Bank of Kenya; Equity Bank Kenya Limited (Interested Party) [2021] KEHC 1883 (KLR), the court observed that while specificity is required, a petition that clearly states the facts and cites the relevant constitutional provisions to explain the nature of the injury meets the basic requirements.

30. In the instant, while the Petitioner has cited a long list of articles, the core of his grievance is succinctly articulated: the alleged illegal creation of a committee that replicates the work of a previous body and usurps the mandate of the NLC, leading to a wastage of public funds. The facts regarding Gazette Notice 1142/2023 are clear, and the legal issues regarding Article 67 on NLC mandate and Article 201 of Public Finance are well-framed.
31. Therefore, the court finds that the petition is sufficiently precise to allow the Respondents to defend themselves and the court to adjudicate. The preliminary objection on this ground is dismissed.

**Whether the 1<sup>st</sup> Respondent has the legal and constitutional authority to establish the Public Land Report Implementation Committee under the County Government Act and *the Constitution***

32. The second issue concerns the 1<sup>st</sup> Respondent's power to establish an implementation committee. The Respondents rely on Section 31(d) of the County Government Act, which grants the Governor powers necessary for the execution of the duties of his office pursuant to article 179 of *the Constitution* which vests executive authority in the County Executive Committee.
33. The court must distinguish between a Commission of Inquiry reserved for the executive of the National Government and an administrative task force or committee. While the Petitioner argues that only the President can appoint a commission of inquiry into land matters, the Environment and Land Court in Republic Vs Nyandarua County Assembly Service Board & another; Mundia (Exparte Applicant) [2022] KEELRC 4868 (KLR) clarified that a Governor has the legal authority to establish a land task force for the purposes of county planning and identifying public utility land. That decision stands undisturbed and the court finds no justification to depart from the reasoning. To contrary the court is wholly persuaded that the decision enunciates the accurate position of the law.
34. The court holds that identifying the county's assets including public land is a legitimate executive function essential for the county planning and development role assigned to counties in the Fourth Schedule, Part II of *the Constitution*. As the custodian of public land held in trust for the residents, a county executive has an inherent interest in regularizing its land records. Thus, the general power to appoint such a committee exists, provided it operates within its administrative bounds.

**Whether the mandate and terms of reference of the said committee usurp the constitutional functions of the National Land Commission.**

35. Article 67(2) of *the Constitution* vest the National Land Commission with the mandate to manage public land on behalf of both national and county governments and to investigate historical land injustices. The Petitioner argues that the committee's terms of reference to ascertain the legal process to reverse irregular allocations and issue instructions for title nullification are a direct usurpation of this mandate.
36. The Supreme Court in Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR) underscored that irregular or illegally acquired titles cannot be protected by the doctrine of bona fide purchaser, and county governments have the power to repossess such public utility land. However, the process of repossessing such land must follow the constitutional and statutory path. The NLC Act allows the Commission to review grants and dispositions of public land to establish their propriety.



37. The court notes that Gazette Notice 1142/2023 uses the term liaise with relevant institutions. In the Matter of Council of Governors & 47 others [2020] KESC 65 (KLR), the court emphasized that while governments at different levels must consult, they must respect each other's functional integrity. The Public Land Report Implementation Committee cannot legally nullify a title. Its role is limited to being an administrative mechanism for the county to identify potential illegalities and then formally lodge complaints with the NLC or the courts. That as long as the committee's output is a recommendation to the NLC for formal review under Section 14 of the NLC Act, it is a collaborative administrative act rather than usurpation. However, any attempt by the committee to issue instructions for further investigation to state organs outside the county or to directly nullify titles would be ultra vires.

**Whether the formation and operation of the committee violated the principles of public finance management and the mandatory guidelines issued by SRC**

38. The Petitioner alleges that the committee's operation violates Article 201 on Public Finance and Article 230 on SRC mandate. The SRC Circular Ref: MSPS.2/1A VOL XVIII/(119) dated 02/08/2013, provides strict guidelines: task forces should be limited to 20 days, and public servants in certain job groups are not eligible for extra allowances.
39. The Respondents' defense that these guidelines do not apply to counties is untenable. The Supreme Court and the High Court have repeatedly held that the SRC has a mandatory role in advising on the remuneration of all public officers, including those at the county level. In Kenya County Government Workers Union v Salaries and Remuneration Commission & 4 others [2024] KEELRC 2843 (KLR), the court ruled that SRC advisories cannot be ignored as they are rooted in the constitutional requirement for a sustainable wage bill.
40. In this matter while it is alleged that there was disregard for the SRC circular, there is no demonstration that the remuneration paid to the committee members was never budgeted for. It was equally not disclosed that its operations bludgeoned the county budgets as to exceed the ceiling for the executive expenditure. In the circumstances, the court finds no merit in the Petitioner's claim regarding the duplicity of roles. The 1<sup>st</sup> Respondent was always entitled, by public expectation, that on taking charge unfinished initiatives by his predecessor, on which public resources had been spent be progressed towards completion. There is nothing to lead the court into the conclusion that public funds were not used in a prudent and responsible manner as required by Article 201(d). Section 149 of the PFM Act and Regulation 104(1) of the PFM (County Government) Regulations require that all public money be authorized by the appropriate authority and properly supported. There is no evidence that any expenditure on the committee was unapproved in accordance with the law, yet it was the duty of the petitioner to discharge that burden.
41. The court finds that the appointment of the committee was within the 1<sup>st</sup> Respondent's general executive powers and that its funding and remuneration was equally within the budget of the executive office of the governor. Accordingly, the court finds that there was no demonstration that there was a disregard of the mandatory guidelines of the SRC and the PFM Act.
42. In conclusion, the court answers all the issues against the contentions of the petition and therefore finds and holds that the petition is devoid of merits and is thus dismissed.
43. The court makes no orders as to costs because the petition was clearly and evidently in pursuit of public as opposed to private interests.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**



**PATRICK J O OTIENO**  
**JUDGE**

