

**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT NAIVASHA**

**ELC PETITION NO. E001 OF 2025**

**IN THE MATTER OF ARTICLES 2 (1) and (2), 3(1), 10, 19, 20, 21, 22, 23 (1) & (3), 159 (2) (e) & (e), 165 (3) (a), (b), 244 (02 249 (1), (b) and (c) AND 258 (1) and (2) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 3, 6, 10, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 40, 42, 43, 46, 47, 48, 53, 56 and 57 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 9, 10 AND 51 OF THE KENYA RAILWAYS CORPORATION ACT AND RULES 234 AND 235 OF THE GENERAL RULES OF KENYA RAILWAYS OF 1984**

**BETWEEN**

**BERNARD NDUNGÚ KAMAU & 142 OTHERS.....  
PETITIONERS**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....1<sup>ST</sup>  
RESPONDENT**

**THE MANAGING DIRECTOR**

**KENYA RAILWAYS CORPORATION.....2<sup>ND</sup>  
RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup>  
RESPONDENT**

**THE KENYA HUMAN RIGHTS COMMISSION.....4<sup>TH</sup>**  
**RESPONDENT THE NATIONAL ENVIRONMENT**  
**MANAGEMENT AUTHORITY.....5<sup>TH</sup>**  
**RESPONDENT**

**AND**

**THE INSTITUTION OF ENGINEERS OF KENYA.....INTERESTED**  
**PARTY**

**JUDGEMENT**

1. Vide a Petition dated the 3<sup>rd</sup> February 2025 and amended on 6<sup>th</sup> October 2025, the Petitioners herein sought the following orders;
  - i. That a declaration be made by the Honourable Court that the continued construction of the concrete tunnels and soil embankment bridge is a continuous threat of violation and infringement of their right to clean and healthy environment under Article 42 of the Constitution of Kenya 2010 since it increases the likelihood that violation and infringement of Petitioners' right to clean and healthy environment under Article 42 of the Constitution of Kenya.
  - ii. That an order do issue, compelling the 1<sup>st</sup> 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents to sufficiently compensate the victims for the violations of the environmental rights in accordance with Article 70 (2) (c) and 3 of the Constitution of Kenya 2010.
  - iii. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein be and are hereby ordered to stop and/or discontinue any further construction of the soil embankment tunnel bridges within the Mai Mahiu area.
  - iv. That the **(sic)** to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to conduct public participation together with the National Management Authority to provide an assessment on the

most appropriate modern bridge technologies, such as steel arch bridges, cable-stayed bridges, cantilever bridges, and segmental construction or any such measures to prevent or discontinue any act or omission that is harmful to the people living down the gorges of Mai Mahiu area.

- v. That the cost of the Petition be provided for.
  - vi. That the Court issues any other or further orders as it may deem just in the circumstances of the case.
2. Benard Ndungu Kamau, the 1<sup>st</sup> Petitioner herein, vide an Affidavit sworn on behalf of the Petitioners and in Support of the Amended Petition of 30<sup>th</sup> October 2025, deponed that sometime in April 2024, the Rift Valley Region, experienced heavy downpour, wherein on 29<sup>th</sup> April 2024, flash floods swept away people and their belongings in the villages of Kamuchira, Jerusalem, Githioro Georges and Ruiru in Maai Mahiu, within Naivasha subcounty- Nakuru county.
  3. The incident resulted from a structural failure within a blocked railway tunnel near Old Kijabe Town. This concrete tunnel, a 183-meter-long structure with a 10-foot diameter, locally known as the "Dark Tower," was designed to support a soil embankment bridge for the Kenya-Uganda Railway. Excessive floodwater accumulation caused the tunnel to burst, releasing the trapped water into the 100-meter gorge below.
  4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through their agents and employees, bore a continuous duty to monitor the bridge and track water levels during periods of heavy rain. Had the Respondents maintained a 24-hour vigil and implemented timely remedial actions, this avoidable catastrophe could have been prevented. Consequently, the Respondents' negligence and breach of duty directly resulted in the loss of lives, homes, and livelihoods, leaving the Petitioners destitute and reliant on unfulfilled promises.

5. Despite the previous disaster, the 1<sup>st</sup> Respondent had commenced reconstruction of an obsolete soil embankment bridge—identical to the failed 2020 and 2024 designs—without consulting the community or obtaining a mandatory Environmental Impact Assessment (EIA) from NEMA. This ongoing construction ignores the safety of downstream residents. Without an immediate injunction from this Court, the Respondents' insistence on utilizing outdated engineering will continue to pose a lethal threat to the Petitioners' lives and properties.
6. The collapse of the bridge was an avoidable disaster that violated the Petitioners' fundamental rights to life and property. The 1<sup>st</sup> Respondent's decision to rebuild with the same flawed, outdated design creates a perpetual risk, leaving the Petitioners in constant danger.
7. Beyond the physical loss, the Respondents' negligence had destroyed the Petitioners' livelihoods and social stability. This constitutes a breach of their constitutional socio-economic rights and their right to a safe environment as protected under Articles 42 and 70. The Petitioners have been left destitute and denied the protections the State is legally obligated to provide.
8. The 5<sup>th</sup> Petitioner, Hanna Njeri Gathoni, through an affidavit sworn on 29<sup>th</sup> May 2025, on behalf of the 5<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> - 20<sup>th</sup>, 22<sup>nd</sup>, 27<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup>, 34<sup>th</sup>, 35<sup>th</sup>, 38<sup>th</sup>, 40<sup>th</sup>, 42<sup>nd</sup>, 43<sup>rd</sup> - 44<sup>th</sup>, 46<sup>th</sup>, 48<sup>th</sup>, 50<sup>th</sup>, 52<sup>nd</sup>, 53<sup>rd</sup> - 56<sup>th</sup> Petitioners in support of the Petition, deposed that their lives as small-scale traders and property owners in Mai Mahiu were upended in April 2024. The burst of a blocked railway tunnel near Old Kijabe Town sent gushing waters through their community, destroying their commercial and residential properties and leaving them in a state of death and destruction.
9. The Petitioners aver that the tragedy was entirely preventable had the Respondents acted with due diligence to drain the floodwaters accumulating at the Old Kijabe railway at the onset of the rains. Despite the formation of the Maai Mahiu Floods Victim Self-Help Group to

advocate for their resettlement and address their grievances, the Respondents had failed to provide alternative land or a settlement. This inaction constituted a direct breach of the Petitioners' economic and social rights as enshrined under Article 43 of the Constitution.

10. As a result of the Respondents' protracted delay in executing the planned resettlement, the Petitioners had endured profound suffering. Consequently, they seek both specialised and general compensation for the catastrophic losses incurred, specifically the permanent loss of livelihoods, business income, real property, and personal effects.
11. In opposition to the Petitioner's Petition herein, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through an affidavit by Acting Corporation Secretary Stanley Gitari dated 5<sup>th</sup> December 2025, contend that under Section 8 of the Kenya Railways Corporation Act, their mandate did not extend to the prevention of "Acts of God" or force majeure events, such as unprecedented natural disasters. They emphasize the critical economic importance of the Uplands-Longonot section of the Meter Gauge Railway (MGR) for national transport and commerce.
12. The Respondents aver that between March and May 2024, Kenya experienced extraordinary rainfall—recorded by the National Drought Management Authority at 111% to over 200% above average. This El Niño-driven phenomenon caused widespread devastation across 42 counties, including Nakuru and the Central Rift Valley, where the railway's steep, varied terrain was particularly vulnerable to resulting landslides and debris.
13. The Respondents deny negligence, asserting that the drainage infrastructure was hydraulically sufficient for standard conditions. They argue that the failure at KM 604 was caused by external factors, specifically upstream deforestation. This led to an influx of boulders and tree stumps that blocked culverts, causing 'ponding' and eventual embankment failure. As this was the first such failure since the line's construction in the early 1900s, the Respondents maintain the event was

an unforeseeable “Act of God” compounded by third-party environmental degradation, despite mitigation efforts initiated during the 2023 rains, which included:

- i. Various repair teams had been deployed to monitor and assess the incident-prone areas.
- ii. Desilting of culverts and side drains has been undertaken to prevent blockages and improve drainage capacity.
- iii. Maintenance works to reinforce the railway embankments.

14. The 1<sup>st</sup> Respondent maintains that it exercised a proactive duty of care by outsourcing additional labour in April 2024 to enhance the maintenance of drainage structures and culverts in anticipation of the long rains. Furthermore, the 1<sup>st</sup> Respondent asserts that it performs routine internal assessments to verify the structural and hydraulic integrity of all bridges and cross-drainage systems. While the Respondents acknowledge the severity of the flood damage, they contend that the disaster was an uncontrollable event rather than a result of professional negligence.

15. The Respondents depone that the Petition is legally incompetent, as it is founded on a fundamental misconception of the law. Specifically, they argue the Petition misinterprets the statutory mandate of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and misattributes the legal causation of the flooding and subsequent damage. Consequently, the Respondents pray for the dismissal of the Petition in its entirety.

16. In a Supplementary Affidavit dated 10<sup>th</sup> December 2025, Eng. Shimrone Munga contended that the restoration of the Kenya-Uganda Meter Gauge Railway was a project of vital national and regional interest. He deposed that the infrastructure was essential for the East African Community’s economy, providing efficient cargo and passenger transport while reducing road congestion and environmental emissions.

17. He denied that the project was outdated, asserting instead that the design adhered to modern engineering standards reviewed and endorsed by the 1<sup>st</sup> Respondent, the Ministry of Transport, and the 5<sup>th</sup> Respondent. He also confirmed that all legal prerequisites, including Environmental Impact Assessments (EIA), environmental licensing, and public participation, were strictly satisfied prior to the commencement of works.
18. That the Petitioners' prayers had been overtaken by events because, pursuant to the court's ruling of 24th July 2025 that authorised the works, construction was now substantially complete, with full operations expected by late December 2025. Consequently, the requested reliefs were moot. He further argued that the Petitioners had failed to meet the legal threshold of precision required for constitutional claims, as they had not demonstrated how their rights had been infringed or provided new evidence to counter the Court's previous findings on the project's validity.
19. The 5<sup>th</sup> Respondent also opposed the Petitioners' Petition vide its Replying Affidavit dated 20<sup>th</sup> August 2025, which was sworn by Joseph Kopejo, who asserted its role as the primary government instrument under Section 7 of the Environmental Management and Co-ordination Act (EMCA). Its mandate was to supervise and coordinate environmental policies, including the mandatory issuance of Environmental Impact Assessment (EIA) Licenses for projects listed in EMCA's Second Schedule.
20. He deposed that upon receipt of the Petition, the 5th Respondent conducted a site inspection. The team noted that reconstruction had commenced before the formal application. In compliance with the provisions of the 2nd Schedule to EMCA, it had advised the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to obtain a different licence for the Proposed Campsite Development on plot LR No Kijabe/Kijabe Block 1/2162 and 2163 in Mai Mahiu location. That, upon review, it had, in line with the provisions of Section 62 of EMCA, requested the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to provide the ownership documents for L.R No. 1/2162, which were provided on 4<sup>th</sup> June 2025. That, accordingly, it had proceeded to contact the County

Government of Nakuru and other relevant agencies, inviting them to submit their input on the project. Having satisfied itself that the project would not have a significant impact on the environment, it had proceeded to issue the 3<sup>rd</sup> Respondent with the EIA Licences.

21. The 5<sup>th</sup> Respondent maintained that public participation was adequately conducted through posters and local administration notices, culminating in a public meeting on 15<sup>th</sup> April 2025 and the collection of views via questionnaires. It deponed that the Petitioners' claims regarding flood management were misdirected because NEMA's mandate did not extend to disaster management. That whereas the Petitioners had alleged a near-similar incident that had been allegedly averted in the year 2020, following complaints raised by the residents, it did not receive any such complaint. That, in any case, it did not receive the annual environmental audit in respect of the said project, the railway construction having commenced in the year 1986 and completed in the year 1901, decades before the establishment of the Republic of Kenya and the creation of the 5<sup>th</sup> Respondent; hence, no EIA licence had been sought or issued.
22. It thus denied that the Petitioners were entitled to any of the reliefs sought in the Petition against it since it had at all times remained conscious of its mandate and obligation to protect the environment.
23. In a rejoinder, the Petitioners vide their Further Affidavit dated 13<sup>th</sup> February 2026 sworn by Bernard Ndungu Kamau reiterated the contents of his Supporting Affidavit to deponed that the disaster was not a mere Act of God. They aver that while heavy rainfall occurred, the catastrophe was fundamentally caused by structural failures, blocked drainage systems, and the Respondents' failure to monitor railway infrastructure. The Petitioners maintain that rainfall alone would not have resulted in such devastation without these underlying institutional lapses.
24. They asserted that the Respondents failed to provide the community with sufficient information regarding future flood mitigation or the adequacy of current reconstruction measures. Furthermore, they highlight

a correspondence from the Public Procurement Regulatory Authority (PPRA) that raised serious concerns about procurement compliance for the reconstruction project. These issues directly impacted the transparency, accountability, and procedural propriety of the works currently affecting Mai Mahiu residents.

25. They emphasized that residents continue to live in fear of future disasters during rainy seasons due to the ongoing construction and argued that without stringent structural and environmental safeguards, another catastrophic flood remained a significant risk. They concluded that the Petition was brought in good faith and in the interest of protecting the lives, property, and environmental rights of the Mai Mahiu community.
26. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents and the Interested Party did not participate.
27. The Petition was disposed of by way of written submissions, herein summarized as under:

### **Petitioners' submissions**

28. Vide their Submissions dated 13<sup>th</sup> February 2026, the Petitioner summed up the case before framing their issues for determination as follows:
  - i. Whether the Respondents violated the Petitioners' constitutional rights under Articles 26, 28, 40, 42 and 43 of the Constitution.
  - ii. Whether the Respondents failed in their constitutional and statutory obligations to protect life, property and the environment.
  - iii. Whether the Honourable Court should grant the declaratory, compensatory and injunctive reliefs sought under Articles 23 and 70 of the Constitution.

29. The Petitioners' submissions presented a powerful argument for constitutional accountability, asserting that the Mai Mahiu tragedy was not an "act of God" but a direct result of institutional negligence and systemic failure. They argued that the right to life was the most fundamental right, imposing a positive obligation on the State to take anticipatory steps to safeguard it. They relied on the decided case of **Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others (sic)** where the Supreme Court had affirmed that the State must take positive steps to ensure the realization of life-related and socio-economic rights, to buttress this position.
30. That the Respondents had technical capacity, statutory mandate, and prior warning during the floods that occurred in 2020, yet chose inaction. Their omission to act, therefore, in the face of foreseeable danger constituted culpable negligence under Section 202 of the Penal Code and a direct violation of the provisions of Article 26 of the Constitution.
31. On the right to a Clean and Healthy Environment, they placed reliance on the provisions of Articles 42 and 70 of the Constitution that guarantee every person the right to a clean and healthy environment and provide the Court with a direct enforcement mechanism, without the Petitioners having to prove personal loss or injury, respectively. They hinged their reliance on the decided case of **Mohamed Ali Baadi & others v Attorney General & 11 others (sic)**, which emphasised the centrality of environmental protection and public participation.
32. They explained that the instant case was precisely about inter-generational equity. That reconstructing the same soil embankment structures, in the same fragile gorge, without robust environmental assessment, was not development, but institutional repetition.
33. Their reliance was also placed on the decision in the case of **Save Lamu & 5 others v National Environmental Management Authority & another (sic)**, where the High Court had highlighted that public participation was a mandatory constitutional dictate, not a mere formality

for the purposes of fulfilling the constitutional dictates. Their submissions were that consulting the community after burying their loved ones did not meet the constitutional threshold.

34. It was thus their submission that the reconstruction of similar embankment tunnels, carried out without an Environmental Impact Assessment (EIA), meaningful public participation, or the adoption of safer, modern mitigation technology, had violated the provisions of Articles (sic) 42 and 69 and the Environmental Management and Coordination Act (EMCA).
35. That the 5<sup>th</sup> Respondent, being the statutory regulator, had a constitutional and statutory duty to ensure environmental compliance before any reconstruction, and that silence or inaction by a regulator did not neutralise a constitutional breach but compounded it. The provisions of Article 42 of the Constitution are forward-looking, empowering the Court not only to remedy past harm but also to prevent future catastrophe.
36. On the right to property, the Petitioners submitted that the floods had destroyed homes, livestock and businesses, and that the State's action or omission had led to the arbitrary deprivation of property in violation of Article 40 of the Constitution. They maintained that the destruction was not merely an "act of God", since natural rainfall had become a deadly force because of blocked infrastructure and unmitigated human design. They further submitted that where the State alters natural drainage patterns through embankment construction, it assumes responsibility to ensure that those alterations did not become instruments of destruction. They also submitted that constitutional property protection not only guards against compulsory acquisition but also protects citizens from avoidable state-created risks that result in destruction. If infrastructure design amplifies danger and maintenance failures trigger disaster, constitutional accountability must follow.

37. On the State Obligations, they relied on Article 21(1), which requires the State to observe, respect, protect, promote and fulfil rights, to submit that constitutional remedies must be effective and meaningful, including compensation and structural interdicts where appropriate. They submitted that the Constitution does not contemplate passive courts but responsive ones, and that, pursuant to Article 23(3), the Court is empowered to grant declarations, compensation, injunctions, and any appropriate relief, and that this was not judicial overreach but constitutional obedience. They thus submitted that where systemic neglect has led to tragedy, structural remedies are not optional but necessary to restore public confidence in constitutional governance.
38. On Negligence and Foreseeability, they explained that the railway rules themselves required:
- i. Monitoring of culverts and flood levels.
  - ii. Anticipation of danger.
  - iii. Patrol and emergency measures during rainy seasons.
  - iv. Reporting interference with natural drainage.
39. That since the 2020 flooding incident placed the Respondents squarely on notice, the 2024 disaster was foreseeable, and that foreseeability transforms misfortune into liability. They contended that when danger was predictable, warnings were given, and regulations existed, and the responsible authority failed to act; that failure was not an oversight but negligence. When negligence results in loss of life, destruction of property, and environmental degradation, it becomes a constitutional violation.
40. That the Court stood as the final guardian between public power and public vulnerability, and therefore the Petitioners had placed their faith in it to affirm that constitutional duties are real, enforceable, and consequential. That this was a case where the Constitution calls for firm, principled intervention.

41. The Petitioners submitted that the constitutional declaratory reliefs sought do more than resolve disputes between parties, as they pronounce the law, affirm constitutional boundaries, and guide future state conduct. Constitutional declarations were appropriate where state conduct threatened fundamental rights, and where constitutional infractions were demonstrated, the Court must not hesitate to pronounce itself clearly and unequivocally. The Petitioners further submitted that the continued construction of similar embankment tunnels, without adequate environmental assessment, meaningful public participation, and structural reform, posed an ongoing and real threat, for which the Court ought to take judicial notice of what had already happened.
42. That a declaration in the instant matter would serve three critical purposes:
- i. It would affirm that constitutional rights cannot be subordinated to administrative convenience.
  - ii. It would send a clear signal that public infrastructure must conform to constitutional standards.
  - iii. It would reassure affected communities that the Constitution protects even those living in remote gorges, not only those in urban centers.
43. They submitted that sometimes communities needed recognition that what had happened to them was wrong in constitutional terms, hence the declaratory relief was not only justified, but it is necessary.
44. Regarding the sought injunctive order, they argued that when there is a genuine and imminent threat to constitutional rights, courts should intervene preemptively rather than reactively. The issue at hand involves not just a construction project but human lives, environmental safety, and constitutional accountability. If reconstruction continues unchecked and another rainy season arrives before proper safeguards are in place, the harm could become irreversible. They emphasized that the Court need not wait for another tragedy to uphold rights posthumously, as

constitutional courts are most effective when preventing harm rather than just providing redress. Therefore, they contended that an order to halt further construction until environmental and constitutional safeguards are met is a prudent, not punitive, measure. This does not stop development but ensures it proceeds lawfully, safely, and with public participation. They concluded that granting injunctive relief would demonstrate that constitutional courts actively prevent future violations, not just address past ones.

45. Relying on **Gitobu Imanyara & 2 others v. Attorney General**,(sic) they submitted that compensation was not charity but a necessary vindication of the law. With many of them having lost their loved ones and properties, many of them now live with trauma, displacement, and economic ruin, while money cannot restore life, it affirms that the loss mattered in law.
46. Denying compensation in cases of serious rights violations could normalize institutional negligence, while granting it affirmed that constitutional breaches have consequences. A declaration upholds the law, and an injunction ensures the future. Compensation addresses past harm, and by granting these remedies, the Honourable Court would not be favoring the Petitioners but rather upholding the Constitution.
47. In conclusion, they urged the Court to:
  - i. Declare that the Respondents violated the Petitioners' rights under Articles 26, 40, 42 and 43.
  - ii. Declare that continued reconstruction without compliance with environmental safeguards is unconstitutional.
  - iii. Grant injunctive relief halting further construction pending proper EIA and public participation.
  - iv. Award compensation pursuant to Articles 23 and 70 of the Constitution.
  - v. Grant costs of this Petition.

**The 8<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> - 20<sup>th</sup>, 22<sup>nd</sup>, 27<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup>, 34<sup>th</sup>, 35<sup>th</sup>, 38<sup>th</sup>, 40<sup>th</sup>, 42<sup>nd</sup>, 43<sup>rd</sup> - 44<sup>th</sup>, 46<sup>th</sup>, 48<sup>th</sup>, 50<sup>th</sup>, 52<sup>nd</sup>, 53<sup>rd</sup> - 56<sup>th</sup> Petitioners' Submissions.**

48. Vide their Submissions dated 12<sup>th</sup> January 2026, the Petitioners herein summarized the factual background of the matter and then framed their issues for determination as follows;

- i. Whether the Respondents owed the Petitioners a duty of care and whether they had breached that duty by negligence.
- ii. Whether the Defence of an act of God is available to the Respondent.
- iii. Whether the damages occasioned to the Petitioners were foreseeable by the Respondents.
- iv. Whether the Petitioners are entitled to compensation.

49. Regarding the first issue for determination, they relied on the case of **Renne & another versus Kenya Power and Lighting Company Limited (civil suit 13 of 2020) (2024) KEHC 9717 KLR**. In that case, it was established that in a negligence claim, the Plaintiff must prove that the Defendant owed a duty of care, breached that duty, and that damages resulted. They also referenced Articles 19, 20 (1), 28, and 40 of the Constitution to argue that any rights granted under these articles could only be limited as prescribed by the Constitution.

50. Their argument was that once the 1<sup>st</sup> Respondent built railway infrastructure near residential areas, it had a duty of care to prevent harm to residents. In this case, the water buildup that caused damage to the Petitioners was not sudden but foreseeable by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, who ignored this risk, resulting in harm to the Petitioners.

51. Regarding the second issue of whether the Defence of an act of God was applicable to the Respondent, they argued it was not, contending that the Respondents' reliance on this defence was unjustified. They cited

Lord Hobhouse's description in the case of **Transco v Stockport**, (sic) which characterized Acts of God as events that are unpreventable and unforeseeable.

52. They also relied on the case of **Timsales K Ltd v. Grace Bosibori (2010) KEHC 4069 (KLR)**, where the court cited the East Africa Court of Appeal's ruling in **Ryde v. Bushell & others (1967)**. It was argued that the key issue was not whether the event could have been foreseen, but whether human prudence should have predicted the risk and taken preventative measures. The blockage of the railway tunnel and culverts was caused by human error, not a natural incident, due to failure to maintain drainage systems. Consequently, the flooding that followed was not a natural occurrence but a consequence of human negligence; proper upkeep of the tunnel would have averted the disaster.
53. Regarding whether the Respondents could have foreseen the Petitioners' damages, they argued that heavy rainfall from March to May is a well-known, recurring event in Kenya. Therefore, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' claim that flooding has been unprecedented since the 1990s does not negate foreseeability; rather, it confirms longstanding knowledge of the area's climate. They also argued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were negligent because they received early warnings of intensified rains but failed to clear the drainage or secure the tunnel. Although the Respondents claimed they took mitigating measures after the flooding, it is well-established law that actions taken after damages occur do not remove prior negligence.
54. Regarding the fourth issue of whether the Petitioners are eligible for compensation, they relied on **Mitu-Bell's case** (supra) to argue that the Respondents' actions and omissions led to a violation of their rights under Articles 40, 43, and 28 of the Constitution, which rights the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had a duty to protect. The court in **Mitu-Bell's case** (supra) had specifically observed that state actions showing "callous disregard" for marginalised groups infringed upon the right to life and security. The

Petitioners contended that allowing the tunnel to become a deadly hazard through negligence reflected this callous disregard, especially as these Respondents moved swiftly to repair railway infrastructure for commercial purposes while delaying their (Petitioners') resettlement.

55. In conclusion, they argued that although the Respondents owed them a duty of care, they failed to maintain their infrastructure, so the defence of "Acts of God" was unavailable to them. The flooding was found to be foreseeable, preventable, and directly caused by the Respondents' acts and omissions and therefore they should be held liable and ordered to compensate the Petitioners for loss of property, business and livelihood as well as for general damages.

**1<sup>st</sup> and 2<sup>nd</sup> Respondents' Submissions.**

56. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' submissions dated 10<sup>th</sup> February 2026, summarised the case and then framed four issues for determination as follows;

- i. Whether the restoration works done on the railway line at Kijabe -uplands area is a continuous threat of violation and infringement of their right to a clean and healthy environment under Article 42 of the Constitution of Kenya.
- ii. Whether the flooding that happened on 29<sup>th</sup> April 2024 constituted an extraordinary natural event (Act of God) beyond the reasonable control of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents
- iii. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were negligent and or responsible for the disaster that occurred on 29<sup>th</sup> April 2024.
- iv. Whether the Petitioner is entitled to the relief sought

57. On the first issue for determination, they submitted that the Petitioners had failed to demonstrate that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' actions in the construction and rehabilitation of the soil embankment bridge amounted

to a violation or a threat to violate their right to a clean and healthy environment under Article 42 of the Constitution of Kenya, 2010. They relied on the decided case of **Anarita Karimi Njeru v Republic (Miscellaneous Criminal Application 4 of 1979) [1979] KEHC 30 (KLR) (Crim) (29 January 1979) (Judgment)**, where it was held that a party must clearly demonstrate how the said provisions of the law were alleged to have been infringed.

58. They argued that the amended Petition, which relies on Article 42 of the Constitution, is unfounded because the petitioners never claimed in the main body that their rights under Article 42 were violated. Additionally, the Petition did not specify how Article 42 had been infringed. They submitted that including that prayer contradicts established law, which requires a clear and precise statement of a constitutional violation and how it occurred.
59. They reaffirmed that the construction, rehabilitation, and restoration of the railway tunnels and soil embankment bridges along the Kenya Metre Gauge Railway corridor were conducted lawfully and directly align with the 1<sup>st</sup> Respondent's legal authority. The disputed project holds substantial national and regional significance, supporting the Kenya-Uganda railway corridor and improving passenger and cargo transportation. It also helps ease road congestion, cut emissions, and boost regional trade. Therefore, the project was carried out in the public interest and for the overall benefit of the public.
60. The Petitioners claim that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents acted negligently and in breach of their legal duties, lacked merit because the Respondents exercised their authority lawfully. Moreover, there was no evidence on record to challenge the professional opinions provided by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, as the Petitioners did not submit an affidavit from a qualified civil or structural engineer to dispute the engineering design, methodology, or safety of the works. Before starting the project, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proved that the project had gone through the

necessary environmental and social impact assessments and had been approved by the 5<sup>th</sup> Respondent, who issued an EIA license on 9<sup>th</sup> May 2025.

61. Their submission argued that the existence of a valid 5<sup>th</sup> Respondent's EIA license served as prima facie evidence of compliance, indicating that the EIA had been properly conducted since the Petitioners did not prove that the license was irregularly obtained or revoked afterwards. Furthermore, in the Ruling issued on 24<sup>th</sup> July, 2025, the Court held that issues arising from the issuance of EIA licenses fell under the jurisdiction of the National Environment Tribunal. To date, no complaint has been filed before the Tribunal challenging the license granted by the 5<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent for constructing the soil embankment bridges.
62. Additionally, the Court's decision affirmed the tunnel and embankment bridge designs as not being outdated, a decision that had not been appealed or overturned and remains binding. Moreover, the Petitioners did not make any effort to present new evidence to support their baseless claims after the court already determined they were unsubstantiated.
63. Regarding the second issue of whether the flooding on 29<sup>th</sup> April 2024 was an extraordinary natural event (Act of God) beyond the reasonable control of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, they argued in the affirmative. They relied on the definition of an Act of God from Black's Law Dictionary and cited the case in **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited [2018] eKLR**, where Jill M. Fraley's article, "Re-examining Acts of God" (2010), was mentioned (Pace Environmental Law Review, Vol 27). They also relied on the case in **Crystal Charlotte Beach Resort v Registrar of Lands, Bondo & 5 others [2022] KEELC 1366 (KLR)**, in which the court found that the destruction caused by flooding in Siaya was unforeseeable and beyond human control, to buttress their submission.

64. In this case, the Kenya Meteorological Department forecasted that Kenya would experience El Niño rains in October 2023 and January 2024, with the peak expected in November 2023. However, rainfall in April 2024 significantly surpassed historical averages, resulting in unprecedented flooding. These floods were severe and of extraordinary magnitude, affecting multiple regions across Kenya, including Tana River and Narok, not just Mai Mahiu, leading to widespread destruction. Consequently, these floods were a nationwide natural disaster, not solely caused by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It was, therefore, misleading to blame them for the catastrophic flooding in Mai Mahiu. Reliance was placed on the rulings in cases such as **F Lekulai & 90 others v Attorney General & 3 others [2023] KEHC 26467 (KLR)** and **Guyo v Kenya Electricity Generating Company PLC (KENGEN); National Assembly (Interested Party) [2025] KEELC 3 (KLR)**.
65. The Petitioners did not challenge the evidence illustrating the unprecedented severity of the rains and subsequent flooding. They argued that the events of April 24<sup>th</sup> 2024, were beyond anyone's control, caused by rainfall that exceeded even the forecasts of the Kenya Meteorological Department.
66. In their third issue for determination regarding whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were negligent or responsible for the disaster that occurred on 29<sup>th</sup> April 2024, they denied liability. They explained that the flooding and debris flow down to Mai Mahiu were caused by an extraordinary natural disaster beyond human control, which they could not have foreseen. They also stated that the 1<sup>st</sup> Respondent exercised due diligence in maintaining and monitoring the railway infrastructure, including regular inspections, repairs, and preventive measures along the railway line, as evidenced by their Replying Affidavit and a report documenting inspections of the Nairobi-Naivasha railway line and bridges, prior to the disaster. They therefore argued that they should not be held liable for the damages resulting from the flooding.

67. It was their submission that the 1<sup>st</sup> Respondent had clearly discharged their mandate in maintaining the railway line to the required standards. On the other hand, the Petitioners had failed to identify any unlawful act or omission by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, to demonstrate a causal link between their conduct and the alleged harm, or to show non-compliance with environmental or statutory standards. Furthermore, the Petitioners failed to prove a breach of the statutory duty placed on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or negligence on their part. That instead, the evidence on record had demonstrated lawful conduct, due diligence, regulatory compliance and proactive mitigation, negating any claim of constitutional violation or negligence. They thus maintained that they had not been negligent or responsible for the disaster that occurred on 29<sup>th</sup> April 2024.
68. On the fourth issue regarding whether the Petitioners are entitled to the reliefs requested, they argued that since they proved they acted within their legal authority, complied with all relevant engineering, environmental, and regulatory standards, and carried out the project in the public interest, the Petitioners did not meet the criteria for granting any of the reliefs. The declaratory relief was only applicable if a legal right had been violated or was at risk. Additionally, in this case, the Petitioners did not demonstrate any constitutional breach against them.
69. The claim of injunctive orders to stop construction and rehabilitation of the railway infrastructure were untenable as injunctions generally do not prevent a public body from executing a lawful statutory duty, especially when the actions in question were performed in the public interest and in accordance with the law. They argued that the works had been substantially completed, making points i, ii, and iv irrelevant.
70. Regarding compensation, they argued that Article 70(2)(c) of the Constitution does not guarantee automatic damages. Compensation was only applicable where a violation of environmental rights was proven and directly caused by their actions. In this case, no such link was demonstrated. They referenced the Supreme Court's decision in

**Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR**, noting that although the Petitioners faced unfortunate losses, without proof that these losses resulted from unlawful acts or omissions by themselves, rather than natural disasters, they could not justify constitutional compensation.

71. The Court noted that public participation was carried out as part of the Environmental Impact Assessment process, and the Petitioners failed to show any procedural or substantive flaws in that process. Additionally, the claim for alternative bridge technologies was baseless and would unlawfully infringe on their statutory and professional discretion. They requested a dismissal of the Petition and Amended Petition with costs.

#### **5<sup>th</sup> Respondent's Submissions.**

72. On its part, the 5<sup>th</sup> Respondent, in its submissions dated 8<sup>th</sup> February 2026, framed three (3) issues for determination as follows:

- i. Whether there was sufficient and adequate public participation in line with the provisions of the law.
- ii. Whether the 5<sup>th</sup> Respondent was in breach of its duty of care, thereby infringing on the Petitioners ' constitutional rights to a clean and healthy environment.
- iii. Who should bear the costs of the Application (sic).

73. In the initial issue for determination, reliance was on Section 58 (1) and Schedule 2 (g) of the Environmental and Co-ordination Act 1999 (EMCA) to argue that constructing a bridge is a medium-risk project requiring a detailed project report. Additionally, the case of **Community Party of Kenya v Nairobi Metropolitan Services & 3 Others [2022] KEELC 967 (KLR)** was referenced to clarify different project categorization methods. It was explained that project reports are governed by Part II of the Environmental (Impact Assessment and Audit) Regulations, 2003, which, under Regulation 7 (94), states that a comprehensive project report must include a strategic communication plan for inclusive

participation and a summary of issues discussed at the public participation forum.

74. It argued that, contrary to what the Petitioners claimed, there was evidence of adequate public participation consistent with EMCA and its Impact Assessment and Audit Regulations. The proponent had notified Project Affected Persons through posters and collected their feedback via questionnaires. Furthermore, the Petitioners' demand that the 5<sup>th</sup> Respondent should produce an EIA Report alongside the 1<sup>st</sup> and 2<sup>nd</sup> Respondents showed a significant misunderstanding of the law.
75. The wording of Section 58 clearly indicated that the 5<sup>th</sup> Respondent was not responsible for conducting EIA; instead, this was the project proponent's duty, while the 5<sup>th</sup> Respondent's role was to review the report. Reliance was on the case of **Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 Others [2015] KEHC 473 KLR**, where the Court examined Section 58 of EMCA and emphasised that the 5<sup>th</sup> Respondent's mandate should not be extended beyond what the law specifies.
76. Regarding the second issue of whether the 5<sup>th</sup> Respondent breached the duty of care and violated the Petitioners' Constitutional right to a clean and healthy environment, the Respondent referred to Section 9 of EMCA, which outlines its mandate, and emphasized that, in fulfilling these responsibilities, it did not act alone but collaborated with other designated lead agencies. The Respondent also cited the case of **Republic v National Environment Management Authority & another Ex-Parte Philip Kisia & City Council of Nairobi [2013] eKLR** in support of its position.
77. It also referenced the provisions in the 4th Schedule of the Constitution regarding the division of responsibilities between the two levels of government. Specifically, paragraph 11 of part two of the Second Schedule states that the County Government is responsible for managing stormwater systems in urban areas. It was argued that, according to the

Constitution, the authority could not interfere with the mandates of the County Governments unless they were completely unable to perform their duties, as its role is supervisory. Its oversight would be activated only if a party responsible for environmental protection neglected its duties, and only if such neglect was brought to its attention with supporting documentation. In this case, no such claim or evidence was presented before the incident even by the Petitioners. Reliance was placed on the decided case of **Gichu v Obuya Otieno Ritzau t/a Bamburi Community High School & 3 others [2023] KEELC 19222 (KLR)** as supporting authority.

78. It is a well-known fact that the massive flooding was caused by an act of God, specifically, unforeseeable and extreme rainfall. This led to the tunnel becoming blocked and the river, along with its tributaries, overflowing under high pressure, which dislodged the railway line and caused rapid downstream flow, resulting in damage. The case of **Guvo v Kenya Electricity Generating Company PLC (KENGEN); National Assembly (Interested Party) [2025] KEELC 3 (KLR)** was cited to support this argument.

79. No evidence was presented to the Court to demonstrate that it had failed to execute its duties. Moreover, stormwater management was the responsibility of the county government, and the Railway Bridge was maintained by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

80. In conclusion, it maintained that it did not breach its duty of care to Petitioners, thereby infringing their constitutional right to a clean and healthy environment, warranting compensation. It thus prayed that the instant matter be dismissed with costs to the Respondents.

#### **Analysis and Determination.**

81. I have considered the Petitioners' Petition herein, its Affidavit in support, the Respondents' response, the written submissions, the applicable law and the authorities herein cited. The Petitioners bring this Petition under the provisions of Articles 2 (1) and (2), 3(1), 10, 19, 20, 21,

22, 23 (1) & (3), 159 (2) (e) & (e), 165 (3) (a), (b), 244 (2), 249 (1), (b) and (c) and 258 (1) and (2) of the Constitution alleging violation of their fundamental rights and freedoms under Articles 3, 6, 10, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 40, 42, 43, 46, 47, 48, 53, 56 and 57 of the Constitution.

82. The Petitioners' claim comprises a Constitutional Petition and a Tortious Claim arising from the catastrophic flash floods in Mai Mahiu in April 2024. They argue that the tragedy was not merely a natural disaster but a state-created risk resulting from the Respondents' failure to maintain critical infrastructure.

83. They argue that the disaster stemmed from a blocked railway tunnel, known locally as the "Dark Tower," near Old Kijabe Town when the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (Kenya Railways) failed to monitor the tunnel around the clock or clear drainage systems, despite receiving early warnings and experiencing a similar incident in 2020. They noted that although there was heavy rain, it was the man-made blockage and the subsequent failure of the 183-meter-long concrete tunnel that turned the rain into a deadly force.

84. The Petitioners base their argument on the "Foreseeability Test," asserting that the Respondents are legally accountable because they were aware of the drainage problems and the weather forecast. They differentiate between an Act of God, an unavoidable event and Human Negligence, which involves failing to maintain a man-made structure, and they assign responsibility to the latter.

85. That the Respondents' callous disregard for safety led to violations of several fundamental rights under the Constitution, including the Right to Life under Article 26, in which they lost loved ones due to a preventable infrastructure failure; the Right to Property under Article 40, in which there was arbitrary destruction of homes, livestock, and businesses; Socio-Economic Rights under Article 43, when the Respondents left the victims destitute by failing to fulfil promises of resettlement; and lastly,

their Environmental Rights under Articles 42 and 70, when the Respondents decided to rebuild the same “outdated” soil embankments without proper safeguards or modern technology.

86. The Petitioners oppose the ongoing reconstruction, claiming it involves procedural shortcuts. They allege that the 1<sup>st</sup> Respondent began rebuilding the soil embankments without a proper Environmental Impact Assessment (EIA) or sufficient public consultation. They also raised concerns from the Public Procurement Regulatory Authority (PPRA) about the transparency of the restoration contracts. Furthermore, they argued that using the same flawed methodology in reconstruction continues to pose risks to the community. They therefore requested that the Court act as a protector of the vulnerable by issuing declaratory Orders confirming that the State violated their rights, granting injunctive Relief to stop further unsafe construction until environmental and safety standards are met, and ordering compensation for damages arising from the loss of life, livelihoods, and property.
87. The Respondents (Kenya Railways and NEMA) submitted their respective defences to the Petitioners' claim, primarily based on the legal concepts of Force Majeure (Act of God) and Statutory Immunity, contending that the disaster was caused by an extraordinary natural event that exceeded all reasonable human precautions. They submitted that the April 2024 floods were an extraordinary and unforeseen climatic event, with meteorological data indicating rainfall 111% to 200% above average. They contended that even the most well-designed infrastructure could not withstand such extreme forces driven by El Niño. They noted that the flooding affected 42 of 47 counties, demonstrating that the event was a nationwide crisis rather than an isolated failure of the Kijabe railway section.
88. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents (Kenya Railways) denied negligence or failure to act with due diligence, asserting that they were proactive in their maintenance responsibilities, having provided pre-disaster

maintenance and routine inspections, and having even hired additional labour in April 2024 to clear drainage and culverts. They argued that the blockage was caused by external environmental factors, specifically debris from upstream deforestation (boulders and tree stumps), which were beyond their control. They claimed that the original 1901 design has remained valid for over a century, and that the rebuilt version complied with modern standards approved by professional engineers.

89. The 5<sup>th</sup> Respondent (NEMA), on the other hand, argued that it had complied with all legal procedures under the Environmental Management and Co-ordination Act (EMCA). It had issued a valid EIA Licence on 9<sup>th</sup> May, 2025, following a proper site visit and a review of ownership documents. It contended that the legal requirement for public engagement was met through posters, questionnaires, and a public meeting held on 15<sup>th</sup> April, 2025. It clarified that it was a regulator, not a project proponent, and that storm water management was a devolved function of the County Government, not NEMA.

The Respondents argued that the Petitioners failed to clearly specify how each constitutional article was violated. Further, since the railway reconstruction was substantially complete and operational, the injunctive orders to halt construction were now moot. They also highlighted that the Petitioners failed to produce a report from a professional engineer to support their claim that the bridge design was outdated. Lastly, they argued that compensation was not an automatic right. Without proof of an unlawful act or omission, the State could not be held liable for damages caused by a natural disaster. They acted within their statutory mandates and complied with all environmental laws, and the tragedy was a non-compensable Act of God. They sought the dismissal of the Petition with costs.

90. From the aforesaid narration, I find the issues for determination herein as being;

- i. Whether the Petitioners have proved their case to the required standard.
- ii. Was the flash flood an unpreventable natural disaster (Act of God), or was it a foreseeable catastrophe caused by structural neglect?
- iii. Whether the ongoing reconstruction of the railway infrastructure complied with Articles 42 and 70 regarding a clean and healthy environment and the legal requirement for meaningful public participation.
- iv. Whether the prayer to halt construction has been overtaken by events.
- v. Whether the Petitioners are entitled to declaratory orders, permanent injunctions, and compensatory damages.

91. It is trite in respect to Constitutional Petitions for the Petitioners to prove, on a balance of probabilities that their fundamental rights and freedoms as protected by or under the Constitution had been violated, by not only clearly identifying the relevant and specific Articles of the Constitution that had been contravened, but by availing evidence, through affidavit or otherwise of such violation as per the required standard set out in the holding in the case of **Anarita Katimi Njeru vs The Republic [1979] eKLR** where the court had held 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.”*

92. On the first issue for determination, the Respondents argue that the Petitioners cited a bundle of Articles 26, 28, 40, 42, 43 without separating which specific action by the Respondents violated which specific clause and therefore failed the test of precision in their pleadings because for example, whereas they had cited Article 42 of the Constitution on the Right to a Clean and Healthy Environment, in their prayers, they had reportedly failed to explain in the body of the Petition exactly how this right had been breached by the reconstruction of the concrete tunnels and soil embankment bridge within the Mai Mahiu area. They also argue that the Petitioners made broad allegations of an outdated engineering of the construction without providing a specific technical nexus or a professional engineering report to support the claim.
93. In their defence, the Petitioners contended that their pleadings were precise because they provided a clear factual foundation by identifying the specific structure, the "Dark Tower" tunnel, the specific date of the disaster, and the specific omissions, namely the failure to monitor the tunnel and to clear drainage of any debris. They also contended that they linked the structural failure directly to the violation of their Right to Life and Property under Articles 26 and 40 of the Constitution, respectively. They argue that when people died, and their houses were swept away because a state-managed structure burst, the manner of infringement was self-evident and did not require complex legal jargon to be precise.
94. The rights the Petitioners' in their Petition, allege to have been violated by the Respondents include rights under Articles 3, 6, 10, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 40, 42, 43, 46, 47, 48, 53, 56 and 57 of the Constitution.
95. Based on the legal standards and the pleadings provided, I find the Petitioners' approach to be an omnibus pleading. While they were very clear on the factual tragedy, they appear to have struggled with the legal precision required for such a massive list of constitutional articles. Instead of creating a direct roadmap for each article, they used a single narrative

to cover 20-plus different laws and therefore failed to provide the specific manner of infringement as required by **Anarita Karimi Njeru** ( supra) on the following provisions of the law:

- i. Articles 3, 10, 19, 21 of the Constitution they deal with national values, the rule of law, and the duty of the state to protect rights, and although the Petitioners cited these provisions to bolster their case, however in **Anarita Karimi Njeru** (supra) terms, they could not simply alleged that the state had failed to promote their rights under Article 21, they ought to have gone further to show the specific act of promotion that was skipped.
- ii. Article 6 speaks of Devolution & Access; the Petitioners would have had to demonstrate that the Respondents' actions denied them reasonable access to services in Mai Mahiu compared to other regions. They needed to show that the failure to maintain the railway, or the subsequent lack of emergency response, was a systemic failure to decentralise or provide services for their specific location. Without showing a specific policy that denied Mai Mahiu services available elsewhere, the claim remained a broad grievance rather than a precise legal breach.
- iii. Article 10 of the Constitution talks about National Values & Governance; the petitioners should have provided particulars of how the decision-making process for the tunnel reconstruction lacked transparency or accountability, for example, that the 1<sup>st</sup> Respondent failed to publish the safety audit of KM 604.
- iv. Articles 22, 23, 24 of the Constitution deal with Enforcement of Rights, Jurisdiction of Courts, and Limitation of Rights and are procedural tools and

therefore one cannot technically violate Article 22 or 23, which provisions allow one to bring a Petition in the first place.

- v. Article 27 speaks to Equality and freedom from discrimination wherein no particulars had been provided showing that residents of other "gorges" or railway sections received better protection than the Petitioners, which is required to prove a breach of equality.
- vi. Article 46 deals with Consumer Rights, and it is rather difficult to understand how a railway infrastructure failure in a flood translates to a breach of "consumer goods and services" without detailed particulars on a specific contract for service.
- vii. Articles 53, 56 & 57 deals with Children, Minorities, and Older Members of the society and while it is acknowledged that some victims in the flood disaster may have fallen into these categories, the Petitioners likely failed to provide specific particulars on how the infrastructure failure uniquely violated a child's specific right e.g., right to basic nutrition or parental care versus a general violation of the right to life.

96. On the other hand, I find that the Petitioners were arguably precise on the violations in relation to Articles 26, 40, 42, 43 and 70 of the Constitution.

- i. Article 26 of the Constitution on the Right to Life provides as follows:

*Every person has the right to life.*

*(2)The life of a person begins at conception.*

*(3)A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.*

*(4)Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.*

97. By linking the victims' deaths to the burst of the "Dark Tower" tunnel, the Petitioners moved from a general grievance to a specific, evidence-backed allegation of State omission. They identified the "Dark Tower" tunnel and the place, KM 604 culverts, as the specific hazard and instrument of the breach, and also pointed out an omission by the 1<sup>st</sup> Respondent, namely the failure to maintain a 24-hour watch and to clear a known blockage despite being on notice since the 2020 floods, thereby turning a vague claim into a precise allegation of culpable negligence.

98. By filing a Petition backed by residents like Bernard Ndungu Kamau and the Maai Mahiu Floods Victim Self-Help Group, the Petitioners also provided the court with the specific identities of those whose rights under Article 26 of the Constitution had either been extinguished (the deceased) or were under continuous threat (the survivors). I find that on this aspect, they were precise in arguing that the deaths were not caused by the falling rain, which was a natural act, but by the tunnel's collapse, which was a structural failure. This distinction is critical for Article 26 because it shifts the cause of death from nature to state-managed infrastructure.

99. They argued that because the Respondents admitted to knowing about the El Niño forecast, their failure to evacuate or secure the tunnel was a deliberate inaction. They invoked Section 202 of the Penal Code on Culpable Negligence to assess the manner of the infringement of Article 26, claiming that the Respondents' conduct fell below the standard expected of a reasonable state agency. The details of the location being

at KM 604, the cause, which was the unclogged debris leading to the tunnel burst, the legal duty as a positive obligation to protect life, and the breach, being failure to monitor or patrol, were all precise and aligned with the criteria established in the **Anarita** case (supra).

100. Article 40 of the Constitution is on the Protection of the right to property and provides as follows;

*(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—*

*(a) of any description; and*

*(b) in any part of Kenya.*

*(2) Parliament shall not enact a law that permits the State or any person—*

*(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or*

*(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).*

*(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—*

*(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or*

*(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—*

*(i) requires prompt payment in full, of just compensation to the person; and*

*(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.*

*(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.*

*(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.*

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

101. Under this argument, the Petitioners focused on causality and the arbitrary nature of their deprivation rather than merely being homeless. They pointed out that the loss of their property was not a direct seizure by the State but a risk created by the State. They argued that constructing an artificial soil embankment and a concrete tunnel changed the area's natural drainage, and the Respondents failed to maintain the tunnel, which directly caused the destruction of their property. Their narrative shifted from simply saying "it 'rained'" to asserting that "your infrastructure funneled water into our homes."

102. They were precise in establishing their status as lawful owners and residents, a prerequisite for Article 40 protection. They did not merely

claim to be affected people, but proprietors deprived of the use and quiet enjoyment of their land.

103. Article 40 (3) of the Constitution safeguards citizens from the State taking property without fair compensation and proper legal procedures. The Petitioners contended that the Respondents' neglect in maintaining infrastructure led to an arbitrary loss of property. They emphasized that the State cannot circumvent constitutional protections under Article 40 by permitting infrastructure neglect that damages property. They asserted that negligent destruction amounted to a legally equivalent form of uncompensated taking since the outcome of the loss of property, was identical.

104. Article 40 imposed a negative obligation on the State to refrain from actions that jeopardise private property, and pointed out that by failing to clear the "Dark Tower" tunnel, the Respondents had actively interfered with their right to quiet possession. The 1st Respondent's failure to maintain the artificial embankment at KM 604 led to the blockage of the KM 604 culverts, which had been a continuous threat and eventually resulted in a hydraulic burst that culminated in the total destruction of their homes on 29<sup>th</sup> April 2024, thus depriving them of their homes and properties. The Respondents' omission to act on a known structural hazard constitutes a breach of the negative duty to protect property under Article 40(1) of the Constitution.

105. On this aspect, I find that the petitioners were precise because they established a direct nexus between a man-made structure (the railway) and the destruction of their private assets. They avoided the "Act of God" trap by arguing precisely that the property was not destroyed by nature but by infrastructure-augmented flooding. This gave the Respondents a clear legal basis to answer as to whether their *bridge design and lack of maintenance directly caused the destruction of these specific homes*.

106. As to whether the Petitioners' rights under Article 43 of the Constitution, which guarantees Socio-Economic Rights, were violated, the said provision provides as follows;

*Every person has the right—*

*(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;*

*(b) to accessible and adequate housing, and to reasonable standards of sanitation;*

*(c) to be free from hunger, and to have adequate food of acceptable quality;*

*(d) to clean and safe water in adequate quantities;*

*(e) to social security; and*

*(f) to education.*

*(2) A person shall not be denied emergency medical treatment.*

*(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.*

107. The Petitioners claimed that due to the Respondents' actions or omissions, they were left destitute because the Respondents failed to fulfill their promise to settle them. They argued that the flash floods not only destroyed structures but also left entire families homeless. By allowing the 'Dark Tower' tunnel to become a state-created risk, the Respondents essentially caused the forced eviction of residents by water. Since Article 43 imposes a positive obligation on the State to provide housing. The Petitioners contend that after the disaster, the State failed to provide temporary shelter or a structured resettlement plan, leaving them in makeshift camps or destitute.

108. That the flash floods of that magnitude inevitably destroyed boreholes, latrines, and water piping. They alleged that the destruction of local water

infrastructure, coupled with the State's failure to provide emergency water in the aftermath, violated their right to sanitation and exposed them to waterborne diseases, which was a direct breach of the State's duty to ensure reasonable standards of sanitation, thus infringing their Right to clean and safe water and Sanitation in contravention of the provisions of Article 43(1)(d) of the Constitution.

109. The loss of livestock and small-scale farms directly translated into a loss of food security and because the disaster was foreseeable due to the 2020 incident, the Petitioners argue that the State had a duty to have social safety nets in place wherein the failure to provide appropriate social security which included relief food, financial stipends, or insurance, to those unable to support themselves post-disaster was an infringement of their Right to be Free from Hunger and to Social Security as provided for under Art. 43(1)(c) & (e) of the Constitution

110. The issue of violation of the right to human dignity, adequate housing, property and clean and healthy environment under the provisions of Articles 28 and 43, 40 and 42 of the Constitution was decided by the supreme Court of Kenya in holding in the case of **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)**, when it observed as follows:

*"From the foregoing, the question as to when the right to housing accrues, in our view, is not dependent upon its progressive realization. The right accrues to every individual or family, by virtue of being a citizen of this Country. It is an entitlement guaranteed by the Constitution under the Bill of rights. The persistent problem is that its realization depends on the availability of land and other material resources. Given the fact that our society is incredibly unequal, with the majority of the population condemned to grinding*

*poverty, the right to accessible and adequate housing remains but a pipe-dream for many. What with each successive government erecting the defence of “lack of resources? The situation is compounded by the fact that, for reasons incomprehensible, the right to housing in Kenya is predicated upon one’s ability to “own” land. In other words, unless one has “title” to land under our land laws, he/she will find it almost impossible to mount a claim of a right to housing, even when faced with the grim possibility of eviction.*

*150.*

*This scenario has inevitably led to the emergence of the so called “informal settlements”, an expression that describes a habitation by the “landless”. In their struggle to survive, many Kenyans do occupy empty spaces and erect shelters thereupon, from within which, they eke their daily living. Some of these settlements sprout upon private land, while others grow on public land. It is these “settlers” together with their families who face the permanent threat of eviction either by the private owners or State agencies. The private owners will raise ‘the sword of title’, while the State agencies will raise ‘the shield of public interest’. So where does this leave the right to housing guaranteed by article 43 of the Constitution? ”*

111. From the above, it is clear that the Court held that the 2010 Constitution is a transformative document intended to protect the vulnerable. This case is often associated with the right to housing under Article 43 of the Constitution; that right includes a reasonable standard of sanitation as well. The decision’s applicability to Article 40 of the Constitution lies in how it redefines the State's relationship with citizens' security and assets. The Court held that the Constitution imposes positive

duties on the State to protect and fulfil rights. For the Mai Mahiu Petitioners, this means the Respondents had a positive duty to maintain the railway infrastructure to ensure it did not become a death trap or a destructive force for neighbouring private property.

112. Were the State to build infrastructure that poses a risk, the Mitu-Bell case suggested that inaction or negligent maintenance would constitute a breach of the State's constitutional duty to safeguard the property rights of those in proximity. The court condemned the State's actions, which showed callous disregard for the vulnerable. The Petitioners argue that ignoring the 2020 blockage and the 2024 El Niño warnings, while prioritising the commercial restoration of the railway over the safety of the residents, constituted this exact callous disregard. Under Article 40, they argue that allowing property to be destroyed through such disregard is functionally equivalent to an unconstitutional eviction or demolition.

113. Further, the Respondents cannot remain passive when a disaster strikes. The State's obligation to provide adequate housing was triggered the moment the tunnel burst, requiring an immediate and dignified resettlement process.

114. The Supreme Court in **Mitu-Bell** Case (supra) thus established that courts had the power to issue supervisory orders to ensure the State actually follows through on its Article 43 duties. The Petitioners are asking the court to use this power to force the Respondents to provide the resettlement and compensation they promised but have yet to deliver.

115. Having previously found (para 98) that the deaths were not caused by the falling rain, which was a natural act, but by the tunnel's collapse, which was a structural failure that caused the flooding, a state-created risk, citing the the **Mitu-Bell** precedent, I find that the State cannot simply say "we have no money" but must demonstrate that it is taking progressive steps to restore the housing and food security of the victims. Failure to provide even the minimum core of emergency shelter and water is, as per **Mitu-Bell**, a clear constitutional infringement.

116. As to whether the Petitioners were precise on infringement of their right under Article 42 of the Constitution, the same provides as follows;

*“Every person has the right to a clean and healthy environment, which includes the right—*

*(a)to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and*

*(b)to have obligations relating to the environment fulfilled under Article 70.”*

117. The Petitioners’ argument had been that the Respondents violated their rights under Article 42 of the Constitution by building an outdated bridge that threatens our right to a clean environment. They provided a clear environmental narrative that established a foreseeable risk and were precise in identifying that the soil embankment design was environmentally unsuitable for a fragile gorge. They argued that building the same structure that failed twice in 2020 and 2024, which thus violated the right of future residents to a safe environment. They specifically cited the absence of a comprehensive Environmental Impact Assessment (EIA) **before** reconstruction commenced, which constituted a procedural breach of Section 58 of EMCA and noted that because the community was not involved in the reconstruction design, in a public participation exercise, the process itself was unconstitutional, regardless of the engineering.

118. The Respondents contended that the Petitioners did not meet the required precision in their formal drafting. They pointed out that although Article 42 is mentioned in the prayers, the Petition's evidence did not specify which environmental standards had been violated. NEMA added that if the Petitioners had accurately identified an environmental breach, they should have filed their case with the National Environment Tribunal (NET) instead of the Court. Achieving precision on environmental design flaws typically required an expert’s report, such as from a hydrologist or

environmental engineer. The Petitioners relied on unsubstantiated allegations and lacked a professional affidavit to prove the bridge posed a technical safety hazard. They should have provided evidence that reconstructing soil embankments in a flood-prone gorge created ongoing environmental risks. Additionally, they needed to demonstrate that NEMA violated its duty by issuing a license or approving work without a new, site-specific EIA that considers the 2024 flood volumes.

119. With this in mind, I find that although the Petitioners were precise on the procedural breach on public participation and the lack of an initial EIA, however, they were less precise on the technical breach which involved the the specific engineering reasons why the soil embankment was environmentally unsound, as they relied on judicial notice of the past tragedy rather than filing a new independent engineering safety audit.

120. I find that the Petitioners cannot rely on the previous burst as enough precision to prove the current structure was an environmental threat. To have an absolute precision, the Petitioners would ideally have needed an expert affidavit confirming that the new 2025 plans contain the same fatal flaws as the 2024 design. Otherwise, without this, they are relying on Circumstantial Evidence.

121. Lastly, looking at the provisions of Article 70 of the Constitution, which deals with the Enforcement of Environmental Rights, the same provides as follows:

*“If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.*

*(2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate—*

*(a) to prevent, stop or discontinue any act or omission that is harmful to the environment;*

*(b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or*

*(c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.*

*(3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.*

122. While Article 42 of the Constitution grants the right, Article 70, on the other hand, provides the “teeth” to protect it. An infringement of Article 70 occurs when the State or a private entity prevents a citizen from accessing the court to stop environmental harm, or when the State fails to comply with the court's protective orders.

123. Article 70(1) allows a person to move to court if a right is likely to be threatened. Because Article 70 allows for a claim without proving personal loss, the Petitioners were precise in using it as the procedural vehicle to challenge the reconstruction of the soil embankments.

124. The Petitioners argue that by beginning the reconstruction of the soil embankments without a new EIA, the Respondents created a *fait accompli* (a done deal), effectively attempting to bypass the Petitioners' right to seek a preventive injunction before the risk was re-established. Secondly, the Respondents challenged their right to sue, arguing they had not suffered special damage unique to the public, which challenge, the Petitioners argued, was an infringement of Article 70(3), which explicitly states that an applicant does not have to demonstrate that any person has incurred loss or suffered injury to seek environmental redress. Lastly, the Petitioners argued that whereas Article 70(2)(b) allows the court to compel public officers to prevent acts harmful to the environment,

NEMA's regulatory capture in its failure to stop Kenya Railways from rebuilding a structure that previously failed, without allowing for the public participation proper EIA, constituted a structural infringement of the enforcement mechanism intended by Article 70 of the Constitution. They therefore sought an order of injunction to stop the work and compel NEMA to act.

125. In **Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment Management Authority & 3 others [2024] KESC 75 (KLR)**, the Supreme Court of Kenya had held as follows;

*'136. From the above authorities, it is clear that there is a distinct difference between damages in tort and damages for constitutional violations. The parameters to be examined in both are different. In a tortious claim, the fundamental principle guiding the court's quantification of damages is to restore the injured party to the position they would have been in had the tort not occurred. The damages awarded are compensatory, aimed at covering financial losses, personal injury, and sometimes pain and suffering caused by the tort. The goal is to address the harm by providing monetary compensation that reflects the actual damage suffered.*

*137. On the other hand, in constitutional claims, where fundamental rights have been violated, the court takes a broader approach to the assessment of damages. It considers various factors including;*

*a.the nature of the violation.*

*b.the length of time the alleged violation has taken.*

*c.impact on the victim and whether there is a direct harm.*

*d.the broader implications of the case, including the need to deter future violations, uphold the rule of law, and ensure that public authorities or private parties respect constitutional rights.*

*138. These differences in the approach between tortious claims and constitutional claims reflect the varying nature of the harm and the different objectives of each type of claim. While tortious claims are primarily about compensating specific losses, constitutional claims often aim to address broader issues of justice and the protection of fundamental rights.*

*139. The Court of Appeal in this case took the same trajectory as it took in Musembi (supra) where it had cited that there was no evidence placed before the trial court to enable it assess damages, and further, that in the circumstances of the case, it was incumbent upon the 2nd to 11th appellants to place material before the court on the basis of which the court would undertake an enquiry to ascertain the extent of loss so as to arrive at a reasonable amount in compensation.*

*140. We have already outlined above that under the provisions of article 70 (3) of the Constitution, an applicant does not have to demonstrate that he/she has incurred loss or suffered injury. From the decisions cited it is clear that even in the absence of clear evidence to quantify the damage caused by the breach, courts may still award remedies based on the principle that the violation of constitutional rights itself warrants redress. These remedies can include a declaratory relief, nominal damages, or compensatory damages assessed on a more general basis, particularly in cases where the nature of the harm is difficult*

*to quantify precisely. This ensures that the breach does not go unaddressed, upholding the integrity of the constitutional rights framework and providing some measure of justice to the aggrieved party.”*

126. From the above holding, the Supreme Court emphasised that regulatory bodies must be proactive, not reactive, and although the Respondents herein argue that the Petitioners have not proven exactly how the new bridge is a threat, the **Owino-Uhuru** case (supra) affirmed that constitutional damages and redress are different from tort law, and that redress under Article 70(3) does not require proof of specific or actual loss. The mere violation or threat of violation to the environment is enough to warrant a court's intervention and therefore, Petitioners' argument that they did not need a hydrologist's report to prove the new bridge is a threat and the fact that the State bypassed an EIA and public participation was, in itself, an actionable threat under Article 70 of the Constitution for which under Article 70(2) of the Constitution, the court had power to give directions to protect the environment. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents (Kenya Railways) argued that, as a state body, their works were presumed safe and legal. However, in the **Owino-Uhuru** case (supra), the Supreme Court held that the presumption of regularity is not a shield for accountability. It does not absolve one agency (like EPZA or Railways) from the duty to probe and verify if another agency (like NEMA) actually did its job, when the court held as follows (at para 111)

*“In any event the presumption of regularity does not oust a State organ’s responsibility to probe the administrative duties of another institution where in its opinion it finds that such institution has not complied with due process. We are therefore in agreement with the Court of Appeal’s finding that EPZA was not only in direct violation of article 69 of the Constitution and section 23 of the EPZ Act, but also assumed the legal risk and responsibility for any*

*shortcoming by NEMA in its process of issuance of the EIA license to Metal Refineries.”*

127. Under Article 70 of the Constitution, the court can “look under the hood” of the government's plans. Indeed, in the **Owino-Uhuru** case (supra), the Supreme Court gave judges the green light to ignore the Respondents' claims of internal expertise and to demand transparency, which is vital for enforcement under Article 70 of the Constitution, as it prevents the blame game and the State from saying that the incidence is over after the construction and the water receding. Further, if the 1<sup>st</sup> Respondent is the builder, NEMA and the Ministry of Health may be held liable under Article 70 for failing to intervene.

128. A summary of the court's finding is that the Respondents’ failure in their constitutional and statutory obligations is established by the nexus between the physical blockage and the subsequent regulatory inaction.

129. The State’s obligation to protect life under Article 26 of the Constitution includes a duty to mitigate foreseeable hazards. The Water Resources Authority (WRA) and National Disaster Management Authority (NDMA) failed to act on the Kenya Meteorological Department’s 2023/2024 El Niño warnings. Secondly, by allowing debris (trees, stones, and mud) to accumulate in the railway tunnel, the 1<sup>st</sup> Respondent (Kenya Railways) created a "man-made dam." The failure to patrol and clear this tunnel constituted a breach of the statutory duty of maintenance, which directly led to the loss of lives.

130. The Respondents failed to prevent an arbitrary deprivation of property under Article 40 of the Constitution, where the railway embankment being an artificial structure, changed the natural flow of water and when it burst, it was not an "Act of God" but a structural failure of State-managed property, which led to the destruction of private property.

131. The Respondents failed in their role as the custodians of the environment under Articles 42 & 70 of the Constitution, as the 5<sup>th</sup> Respondent, NEMA, had a statutory obligation under Section 9 of EMCA to

ensure that infrastructure did not pose an environmental threat. The fact that the tunnel remained blocked for years without a NEMA-mandated environmental audit was a clear regulatory failure. Secondly, the current reconstruction, which was rushed without a prior site-specific Environmental Impact Assessment (EIA), violated the Precautionary Principle as was established in the **Mohamed Ali Baadi & 9 others v Attorney General & 11 others [2018] eKLR**, also known as the LAPSSET Case, which primarily focused on preventing future catastrophes.

132. The Petitioners requested a permanent injunction to stop the construction of the bridge . However, because the construction is already completed or will be finished by early 2026, a prohibitory injunction is no longer applicable. Instead, the Petitioners can seek a Mandatory Permanent Injunction requiring the Respondents to decommission or modify the bridge if it is found to pose an ongoing environmental threat, based on independent safety audits conducted periodically.

133. As to whether the Petitioners are entitled to compensatory damages, it is trite that constitutional damages are not meant to be punitive but restorative and therefore, to be entitled to damages, the Petitioners must prove actual loss that cannot be remedied by a mere declaration. In the **Owino-Uhuru** case (supra), the Supreme Court reinstated Ksh 1.3 billion in damages because the State's regulatory failure led to physical injury and property loss. In this case, I find that the Petitioners were entitled to general damages for the violation of the right to life and the loss of dignity.

134. Declaratory orders are the foundation of constitutional relief because they declare the legal status or the existence of a violation. Under Article 23(3)(a) of the Constitution, the Court can issue a declaration of rights. With this in mind, I find that the "Act of God" defence is invalid and the Petitioners are entitled to declarations as follows:

- i. A declaration that the Respondents violated the Petitioners' constitutional rights under Articles 26, 28, 40, 42 and 43 of the Constitution.
- ii. A declaration that the Respondents failed in their constitutional and statutory obligations to protect life, property and the environment under Articles 26, 42 and 70 of the Constitution.
- iii. Given that under Article 70, the court has wide and unlimited powers to make any order necessary to protect the environment and since the court has not been furnished with sufficient information on whether or not the Petitioners were evicted from their respective parcels of land as a consequence of the Respondents actions or inactions, and given that the Petitioners sought compensation for the violations of their environmental rights, each victim is herein awarded Ksh 50,000/= as compensation.
- iv. The Respondents shall undertake and publish a comprehensive, independent Safety and Hydrological Audit of the new bridge within 60 days.
- v. The Respondents to file quarterly reports to the Court for the next three years, detailing the maintenance and clearing of the drainage tunnels at KM 604.

The Petition having been brought in public interest, there shall be no costs.

**Dated and delivered via Teams Microsoft at Naivasha this 30<sup>th</sup> day of April 2026.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT- JUDGE**