

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELC PETITION NO. 11 OF 2023

IN THE MATTER OF ARTICLES 10, 19, 20(1),(2)&3, 21(1),22,23, 24(1),(2)&(3),27(1)&(2), 40(1),(2),(3),(4)&(6),47,48,50(1),60(1) (b),64, 67(1),(2)(e)&(3),73 AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013.

AND

IN THE MATTER OF THE VIOLENT, UNLAWFUL, IRREGULAR AND ILLEGAL INVASION AND OCCUPATION OF THE PARCEL OF LAND TO WIT L.R. NO. 208753, OL KALOU WITHIN NYANDARUA COUNTY BELONGING TO MUHU HOLDINGS LIMITED BY INTERNALLY DISPLACED PERSONS

AND

IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT OF THE CONSTITUTIONAL RIGHTS OF MUHU HOLDINGS LIMITED UNDER ARTICLES 10,27, 40(1), (2), (3), (4) & (6),47,48,67(2) (e), 73,156 AND 245 OF THE CONSTITUTION OF KENYA, 2010.

MUHU HOLDINGS LTD.....PETITIONER.

VERSUS

EVANS KARANJA NJUGUNA & 7 OTHERS.....RESPONDENTS

JUDGMENT:

In the Petition dated 16/12/2022 and amended on 10/2/2025, the Petitioner, Muhu Holdings Limited, has sued the Respondents herein being the Chairman, Treasurer and Co-Ordinator of Muhu Farm IDP Camp respectively, the Director of Land Adjudication and Settlement, the Honourable Attorney General, the National Land Commission, the Principal Secretary Ministry of Lands, public works, Housing and Urban Development and the Inspector General of Police. The 5th Respondent is sued as the Principal Legal Advisor to the Government of Kenya. Under Article 156 of the Constitution of Kenya 2010, the 6th Respondent is responsible for *inter-alia* investigating current and past historical land injustices, managing public land on behalf of the National and County Governments, recommending a National Land Policy to the Government, advising the National Government on a program for registration of Title in land throughout Kenya, assessing tax on land and premiums on immovable property in any area designated by law and monitoring and exercising oversight responsibilities over land use planning throughout the Country. The 7th Respondent is responsible for implementing Government policies and promoting the values and principles spelt out in Articles 10 and 232 of the Constitution of Kenya and the 8th Respondent (who I believe ought not to have been a party in this Petition) is responsible for enforcing the law. The Petitioner prays for the following orders: -

- a. That a Declaration be issued to the effect that the Petitioner being the registered proprietor of L.R No. 5605/3, I.R No. 208753

in Ol-kalou, Nyandarua County, (the suit property) is in possession of an indefeasible Title and is entitled to unimpeded access, possession, occupation and use of the same at the exclusion of the Respondents, their agents and/or servants.

b. That a Declaration be issued to the effect that the forceful entry and occupation of L.R No. 5605/3, I.R No. 208753 in Ol Kalou, Nyandarua County (the suit property) without the consent of the Petitioner by the 1st, 2nd and 3rd Respondents with the connivance of the 4th, 5th,6th, 7th and 8th Respondents, jointly and severally, violated and/or infringed on the Petitioner's right to own property guaranteed under Article 40 as read together with Articles 10,27,48,67,73,156,245 and 258 of the Constitution and as a result of such violations and/or infringement, the Petitioner is entitled to an award of special and General Damages against the Respondents both jointly and severally.

c. That an eviction order be issued against the 1st, 2nd and 3rd Respondents and all other internally Displaced Persons settled on the suit property, their agents, servants and/or any other person claiming through them to forthwith vacate the suit property to wit L.R NO. 5605/3, I.R No. 208753 situate at Ol Kalou, Nyandarua County and allow the Petitioner unimpeded access, possession, occupation and use of the same.

d. That an order be issued for Compensation to the Petitioner by the 1st, 2nd,3rd,4th,5th,6th,7th and 8th Respondents for loss of user and/or income from 2009 to 19th June, 2024 amounting to Kenya shillings Sixty six Million, seven hundred and seventy thousand

(Kshs 66,770,000/-) plus additional compensation for loss of user and/or income at the rate of Kshs 10,000 per Acre (approximately 521.65 Acres) from June 2024 until compensation in full.

e. That an order be issued for compensation to the Petitioner by the 1st, 2nd,3rd,4th,5th,6th and 7th Respondents the sum of Kenya Shillings Eight Hundred and Eighty-three Thousand (Kshs 883,9000.00) being the professional fees paid by the Petitioner for the valuation of the suit property.

f. General Damages for Trespass.

g. That an order be issued directed to the 8th Respondent through the Police County Commander, Nyandarua County to enforce the eviction orders against the 1st, 2nd and 3rd Respondents and all other Internally Displaced Persons settled on the suit property.

h. Costs of the Petition.

i. Interest on d, e, f and h above at commercial rates.

j. Such other Order (s) as this Honourable Court shall deem just.

(AND/OR IN THE alternative to prayers c, f & g above, and without prejudice to the foregoing,

k. That an order be issued for compensation by the 1st, 2nd,3rd,4th,5th,6th,7th and 8th Respondents, jointly and severally being payment of the full, just and current market value at the time of the delivery of Judgment to be assessed and/or worked out.

l. That an order be issued for Compensation to the Petitioner by the 1st,2nd,3rd,4th,5th,6th,7th and 8th Respondents for loss of user

and/or income from 2009 to 19th June, 2024 amounting to Kenya shillings (Sixty six Million, seven hundred and seventy thousand (Ksh 66,770,000/-) plus additional compensation for loss of user and/or income at the rate of Kshs 10,000 per Acre (approximately 521.65 Acres) from June 2024 until compensation in full.

m. That an order be issued for compensation to the Petitioner by the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents the sum of Kenya Shillings Eight Hundred and Eighty-three Thousand (Kshs 883,9000.00) being the professional fees paid by the Petitioner for the valuation of the suit property.

n. General Damages for Trespass.

o. Interest on (k), (l), (m) and (n) above at commercial rates.

p. Such other order(s) as this Honourable Court shall deem just.

In the Affidavit in support of the said Petition sworn on 10/2/2025 by one Waithera Muhu, a Director of the Petitioner, the latter depones that the late James Muhu Kanyari was the original proprietor of L.R. No. 5605, L.R. No. 208753 measuring 583 Acres under a leasehold Title for 99 years from 1/11/1911 to 31/10/2010. The late Kanyari died intestate with clear instructions that the suit property be registered in the name of the Petitioners on which he had made substantial developments. He also farmed wheat, barley among other crops thereon as well as Dairy farming on the entire land.

On 14/10/2009, the Government through the Ministry of Lands invited submissions from the members of the general public on expression of interest for sale of arable land to the Government to

fulfill its instructions of creating a land bank for public projects investments and human Settlement. The Petitioner made an offer to sell the said land (586 Acres) to the Government vide a letter dated 7/9/2009 for Kshs 300,000 per Acre to which the Government vide a letter dated 14/10/2009 issued a Notification of award to buy 583 Acres with a counter-offer of Kshs 120,000/- per Acre.

On 12/11/2009 the Government offer was accepted by the Petitioners and in November 2009 174 internally displaced families settled on part of the land and started cultivating the entire land. With time more families kept settling on the land. Subsequently, the Government assured the Petitioner of an amicable solution to the influx of the internally displaced families which created a legitimate expectation to the Petitioner that the Government was keen on acquiring the land which expectation was actualized by the Settlement Fund Trustees (the 4th Respondent) vide a letter dated 4/2/2011 and on 7/4/2011 the said 4th Respondent offered to buy the land at Kshs 170,000/= per Acre making it a total of Kshs 88,740,000/=. The Petitioner rejected this and gave her purchase price as Kshs. 200,000/=. But unfortunately the lease of the land expired on 31/10/2010. The counter-offer of Kshs 200,000/- was accepted by the Government on 3/2/2012 and which the Petitioner assented to on 7/2/2012.

The ELC Court in Nyahururu ELC Case No. E003 of 2021 gave an Injunction against internally displaced persons who had occupied the land, sub-divided it amongst themselves and restrained them from entering, remaining in possession and from erecting structures which order was disobeyed and/or disregarded which state obtains to date

thereby denying the Petitioners access to the suit property and she continues to suffer irreparable loss and damages and has continued to so suffer since 2009 where total loss has been Kshs. 66,770,000/=as at the time of filing this Petition .

These acts of commission and omission by the Respondents have occasioned the Petitioners violation of the protection of her right to own property against Article 40 (1), (2), (3), (4) and (6) of the Constitution of Kenya. This deprivation of the Petitioner's right to own, occupy and use her property and have the property protected from arbitrary deprivation was arbitrary, illegal, unconstitutional and a violation of Article 40 of the Constitution.

As a result of these forth and back movements, the land has appreciated and continues to appreciate with time. The Petitioner has as a result been subjected to indignity, inequity, injustice and gross violation of her constitutional rights besides being deprived of what legally belongs to her. The land was eventually given as a leasehold for a term of 99 years to the petitioner from 1/11/2010. The certificate of Title was given on 28/5/2019.

These facts are duplicated almost word for word in the Petitioner's witness statement of even date by the same deponent, Waithera Muhu and the documents therein are the same attachments to Waithera Muhu's Supporting Affidavit mentioned above. The list of Documents is of the same date.

In the Replying Affidavit sworn on 3/7/2023 by Evans Karanja Njuguna, the 1st Respondent before the Petition was amended on 10/2/2025 on behalf of his co-respondents the Deponent depones

that the Petitioner can neither crawl, jump nor walk, that the Petitioner appears not to be sure of exactly what she wants. Whether she wants the purchase price of the subject suit property or she wants an eviction order to issue, that no valuation report has been tabled before the Court, no draft sale agreement has been shown, the valuer has not produced his practicing certificate and that the petitioner, being a company has no constitutional rights. Mr. Njuguna further depones that the Petitioner ought to pursue Nyahururu ELC case No. E003 of 2021 to its logical conclusion, file contempt proceedings for the failure by the Respondents to obey the Orders of the Court in the said earlier suit, withdraw the suit before instituting this Petition or institute criminal charges of forcible detainer against the Respondents.

He further depones that since the IDPs entered the suit land on the directions of the state and the state has failed to compensate the Petitioner they ought not to be enjoined in the suit but she should look for better ways of recovering her compensation from the state.

A Notice of Preliminary Objection dated 3/7/2023 on behalf of the Respondents on the ground of duplicity of suits in light of Nyahururu ELC No. E003 OF 2022 seems to have been abandoned. But I will come back to this later in this Judgment.

It is also important to note that the above response was filed after all the Respondents were granted 14 days to file and serve a Response to the Petition on 20/2//2023, more than 4 months after the deadline given by the Court had expired.

On 30/2/2023 the Honourable Attorney General filed a Response dated 24/2/2023 in which he denied that there were any infringement, violation or denial of the rights and freedoms contained in the Constitution by the Government to the Petitioners. The Response denied that there have been negotiations over the suit property and compensation of the Petitioners and also that the suit property has appreciated in nature since the IDPs were settled thereon to which averments they, the 4th, 5th, 6th, 7th and 8th Respondents claim they are strangers to. The above Respondents also deny that the Petitioner suffered General Damages and/or Special Damages as a result of the constitutional rights violated and also denied any knowledge of the particulars of loss under paragraph 37 of the Amended Petition. The 4th, 5th, 6th, 7th and 8th Respondents prayed that the Petition be dismissed with costs.

I allowed the parties to file submissions but only the Petitioner did. I will first deal with the issue as to whether this Petition is *Res judicata*. I expected the Petitioner to address this issue first in her submissions which if the Court found in the affirmative, there would be no need to go to the substantive Petition.

In Nyahururu ELC case No. E003 of 2021 that the 1st to 3rd Respondents referred to but without attaching copies of the pleadings in their Replying Affidavit save an Order thereof was produced by the Petitioner as an attachment to her Petition, the Petitioner had sued 174 as Defendants. The Order restrained the said Defendants from forcefully taking possession, trespassing, subdividing, interfering with and/or dealing with the suit property L.R. No. 5605/5. L.R Statement No. 208753 situate in Ol-kalou Nyandarua

Country in any manner whatsoever pending the hearing and determination of the suit. The order was given on 15/2/2021 and issued by the Court on 16/2/2021. This confirmed the Orders of 25/1/2021 issued on 28/1/2021 issuing the same orders on an interim basis pending the hearing of the Application inter-partes on 15/2/2021 when Counsel for the Defendants failed to turn up in Court.

I have not been favoured with the Pleadings in Nyahururu ELC Case No. E003 of 2021 which Counsel for the 1st, 2nd and 3rd Respondents claim is ELC Case No. 503 of 2022. If the latter in the correct citation, then I have not come across such a suit in any of the attachments or documents produced in this Petition. It was upon the proprietor of the Notice of Preliminary Objection to bring to the Court the material to be compared with this petition to urge the Court that the same is *Res-judicata*. It was not the duty of the Court to travel to the Nyahururu ELC Court Registry to find out whether there was ever such a case. Secondly, if ever there was such a case for any subsequent case to be found Res judicata under section 7 of the Civil Procedure Act, the previous case must have been heard and finally decided the issue in the subsequent suit. And in fact, this appears to be the case from paragraph 13 of the 1st Respondent's Replying Affidavit where he says that the Petitioner ought to have pursued Nyahururu ELC No. E003 of 2021 to its conclusion or to withdraw the said suit before filing this Petition. There being nothing to show the nature of that case, the matter should rest at that.

As shown under section 134 of the Land Act, the Government under the Settlement Fund Trustees has an obligation to settle *inter alia*

displaced people such as the internally displaced persons represented in this Petition. The 4th Respondent was therefore on course by negotiating with the Petitioner the sale of the suit land but the Respondents were so slow such that the value and price of the land kept going up and appreciating and the Petitioner kept suffering by being kept off the land by the people who settled on the land with the subsequent blessings and encouragement from the 4th and 6th Respondents.

The Petitioner has shown by attaching a copy of the Certificate of Title Deed issued on 28/5/2019 that the parcel of land L.R No. 5605/3 I.R No. 208753 as delineated on land survey plan No. 317870 belongs to her as a leasehold for a term of 99 years from 1/11/2010. The same is 211.11 Hectares. For the avoidance of doubt its location is shown on the map attached to the Certificate of Title. The Ministry of Lands (7th Respondent) put a Notice of Expression of Interest for sale of arable land of not less than 100 Acres in the "Daily Nation" of Wednesday 14/10/2009 inviting anybody who had such land to submit his interest to the Ministry. The Petitioner expressed interest vide letter dated 7/9/2009 and gave a number of parcels of land, 8 in number including L.R No. 5605 (the suit land). On 14/10/2009 the Ministry of Lands (4th Respondent) wrote to the Petitioner giving her the offer to purchase 583 out of 586 Acres on the suit land. The letter was signed by none other than the Commissioner of Lands, Mr. Zablon A. Mabea and the letter was copied to both the Minister and Permanent Secretary as they then were referred to. The Petitioner accepted the offer on 12/11/2009 for Kshs 120,000/= per Acre totaling to Kshs 70,000,000/=.

On 14/10/2010 the District Land Officer Nyandarua/Samburu District wrote to Joseph Kangare Muhu for the Petitioner Communicating the approval of the sub-division of the land into 3 portions A 211.4 Ha, B 12.14 Ha and C 12.23 Ha. Documents were exchanged.

On 7/4/2011 the 4th Respondent wrote to the Petitioner informing the latter that the land had been valued at Kshs 170,000/= per Acre. This was the Government valuation. The Petitioner on 15/4/2010 made a counter offer of Kshs 200,000/= per Acre. In the meantime, the lease expired but the same was extended for a term of 99 years from 1/11/2010 through the Court process at Nairobi Petition No. 43 of 2012 between Serah Muera Muhu and Commissioner of Lands, Attorney General and the National Land Commission. Negotiations on the price took quite some time as shown in the correspondences dated 16/11/2011, 26/1/2012, 3/2/2012 and the price was settled at Kshs. 200,000/= per Acre on 7/2/2012 by which time 174 IDPs had settled on the land.

I have considered the Respondents' evidence in their Responses and the same are just mere denials devoid of substance.

I have carefully considered the pleadings, the evidence adduced together with the copies of documents produced in Court, the submissions by respective counsel, the cited authorities and the law before writing this Judgment

This Constitutional Petition cites contraventions of several Constitutional Rights and Freedoms under Articles 10, 19, 20(1)

(2)&3, 21(1),22,23,24(1),(2)&(3),27(1)&(2),40(1),(2),(3),
(4)&(6),47,48,50(1),60(1)(b),64,67(1),(2)(e)&(3),73 and 258 of the
Constitution of Kenya, 2010 and violation of Articles10,27, 40(1),(2),
(3),(4)&(6),47,48,67(2)(e),73,156 and 245 of the Constitution of
Kenya, 2010.

In order to receive the legal relief afforded by a constitutional
Petition, it is trite law that anyone seeking Declarations from the
Court that their rights have been infringed must specifically state
which rights have been infringed and how they have been infringed.
In the case of: **Anarita Karimi Njeru v Republic [1979] eKLR**_the
Court held that:

*“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 of
Kenya, 2010, 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.”*

The Petitioner has clearly listed violations of his rights under Article
40 with a reasonable degree of precision.

Chapter 4 of *the Constitution* of Kenya contains the Bill of Rights,
which is a collection of fundamental rights and freedoms sought to
be protected including the right to life (Article 26), human dignity
(Article 28), freedom of movement and residence (Article 39), right
to property (Article 40), fair administrative action (Article 47), access
to justice (Article 48) and fair hearing (Article 50). The Bill of rights is

to be applied so as to develop the law where there is a gap in giving effect to a right or fundamental freedom as per Article 20 (3) (b). These rights are however not absolute, but subject to limitations in so far as such limitations are reasonable and justifiable taking into account the factors set out in Article 24 including the nature, importance, purpose and extent of the right vis a vis the limitations as well as prejudice to the rights and freedoms of others. The Constitution further dictates in Article 24 (2) that any statute limiting a right or fundamental freedom should be clear about the right or freedom being curtailed and specifically express such intention as well as the nature and extent of the limitation for it to be valid. The the Constitution has a list of rights and freedoms which may not be limited notwithstanding any provisions of the Constitution. These absolute rights are set out in Article 25. The right to property is not one of them. This then leaves the protection of the right to property within the precincts of allowable limitations by the statute.

Article 40 of the Constitution of Kenya, 2010 protects the right to property, guaranteeing every person's right to acquire, own, and dispose of property of any description, either individually or in association with others. It strictly prohibits arbitrary deprivation of property, requiring that any acquisition by the State be for public interest and accompanied by prompt, fair compensation.

Article 40 of the Constitution of Kenya, 2010 reads 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.

And Article 65 of the Constitution of Kenya, 2010 to which this Article is subject provides:

65. Landholding by non-citizens

- (1 A person who is not a citizen may hold land on the basis of
) leasehold tenure only, and any such lease, however granted, shall not exceed ninety-nine years.
- (2 If a provision of any agreement, deed, conveyance or
) document of whatever nature purports to confer on a person who is not a citizen an interest in land greater than a ninety-nine-year lease, the provision shall be regarded as conferring on the person a ninety-nine-year leasehold interest, and no more.
- (3 For purposes of this Article—
) (a a body corporate shall be regarded as a citizen only if
) the body corporate is wholly owned by one or more citizens; and
) (b property held in trust shall be regarded as being held by
) a citizen only if all of the beneficial interest of the trust is held by persons who are citizens.
- (4 Parliament may enact legislation to make further provision
) for the operation of this Article

It is not in dispute that the Petitioner holds a registered leasehold Title to the suit property and whether therefore her shareholders and/or Directors are non-citizens is quite immaterial and irrelevant in this Petition. Further, paragraph 12 of the 1st, 2nd and 3rd Respondents' Replying Affidavit fails in view of Article 65 sub-article 3 above:

For purposes of this Article—

- (a) a body corporate shall be regarded as a citizen only if the body corporate is wholly owned by one or more citizens.

In *King'ori v Karanja & another* (Civil Appeal 171 of 2018) [2026] KECA 480 (KLR) (6 March 2026) the Court of Appeal held that:
“.....we begin by appreciating the principle enunciated by this Court in its decision in *Chief Land Registrar & 4 others - vs- Nathan Tirop Koech & 4 others* [2018] eKLR where the Court

observed that:

“.....Land ownership and land rights is both a historical and emotive subject in Kenya. A right to hold property is a constitutional right as well as a human right and no person can be deprived of his property except in accordance with the provisions of the Constitution or Statute. The condition precedent to taking away anyone's property is that the authority must ensure compliance with the Constitution and Statutory provisions.

The Court went on to observe that:

“.....This, among other judicial decisions, underscores the

sanctity of Title to immovable property subject, however, to the provision of Article 40(6) of the Constitution, section 23 of the Registration of Titles Act (now Repealed), and section 26 of the Land Registration Act, 2012.....”

The sanctity of Title to property under Article 40 of the Constitution was enunciated in the Supreme Court Decision in *Rutongot Farm Ltd -vs- Kenya Forest Service & 3 others* [2018] eKLR, where the Court held that:

“..... once proprietary interest has been lawfully acquired, the guarantee to protection of the right to property under Article 40 of the Constitution is then expressed in the terms that no person shall be arbitrarily deprived of property.”

In the case of State of Haryana v Mukesh Kumar & others, Petition For Special Leave to Appeal (Civil) No.28034 of 2011 in which Bhandari, J . had the following to say on the right to property:

“.....The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter...etc. But now human rights are gaining a multi-faceted dimension. Right to property is also considered very much a part of the new dimension.....”

Article 68 of *the Constitution* of Kenya, envisages that Parliament will revise and rationalise existing land laws by enacting legislation “to provide for any other matter necessary to give effect to the provisions” relating to land, guided by the principles of equitable access to land and security of land rights in terms of Article 60. The registration of a person as the proprietor of land vests in that person the absolute ownership of the land, only subject to overriding interests enumerated under Section 28.

It is a criminal offence under Section 155 for a person to unlawfully occupy a public land. Secondly in terms of Section 107, the Government can compulsorily acquire private land and compensate the paper owner. Why should a stranger be permitted to invade private land regardless of the law of Trespass specifically Section 3 of the *Trespass Act*.

There must be reasonable compensation of the paper owner for loss of his land to the fellow citizens. Section 135 (3) (b) of the *Land*

Act makes provision for a fund to be used in purchasing private land to settle such class of people.

In *Re Luscher & Deputy Minister, Revenue Canada, Customs & Excise*, 17 D.L.R (4TH) 503, the Canadian Federal Court of Appeal stated thus:

“.....One of the first characteristics of a reasonable limit prescribed by law is that it should be expressed in terms sufficiently clear to permit a determination of where and what the limit is. A limit which is vague, ambiguous, uncertain, or subject to discretionary determination is, by that fact alone, an unreasonable limit. If a citizen cannot know with tolerable certainty the extent to which the exercise of a guaranteed freedom may be restrained, he is likely to be deterred from conduct which is, in fact, lawful and not prohibited. Uncertainty and vagueness are constitutional vices when they are used to restrain constitutionally protected rights and freedoms. While there can never be absolute certainty, a limitation of a guaranteed right must be such as to allow a very high degree of predictability of the legal consequences.....”

The Petitioner is comprised of citizens of Kenya who are and have been entitled to the enjoyment of all the human rights which are enshrined in the current constitution, especially those which protect them from deprivation of private property without compensation - Article 40

Part IX of the Land Act provides for the establishment of settlement schemes to facilitate access to land, shelter and livelihood: It also provides for settlement programs to provide for access to land to squatters, displaced persons, to establish land settlement schemes to be applied in the provision of access to land for displaced persons and squatters.

Section 134 of the Land Act places a legal obligation on the National Land Commission on behalf of the National and County governments, to implement settlement programmes to provide access to land for shelter and livelihood. The settlement programmes are aimed at providing access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.

Under Section 134 (5), the Commission is mandated to reserve public land for the establishment of approved settlement programmes, and where public land is not available purchase private land subject to the Public Procurement and Disposal Act, 2005 (No. 3 of 2005) or any other law.

Under Section 134 (6) it is provided that upon planning and survey, land in settlement schemes is to be allocated to households in accordance with national values and principles of governance provided there is observance of Article 10 and the principles of land policy provided in Article 60(1) of the Constitution and any other requirements of natural justice.

Article 259 of the Constitution provides that:

(1) This Constitution shall be interpreted in a manner that

—

(a) promotes its purposes, values and principles;

(b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;

(c) permits the development of the law; and

(d) contributes to good governance.

Having said so, this Court finds that the Petitioner has proved his case on a balance of probabilities that his right of protection of right to property under Article 40(3) of the Constitution of Kenya, 2010 was infringed upon.

On Trespass, Section 3 (1) of the Trespass Act, Cap 294 provides that:

"Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

Thus, Trespass is an intrusion by a person into the land of another who is in possession and ownership and as E. Obaga J. held in the case of **Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR:**

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff’s property immediately after the trespass or the costs of restoration, whichever is less See Hostler - VS - Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).

In the case of **Willesden Investments Limited vs. Kenya Hotel properties limited NBI H.C.C. NO. 367 of 2000**), the court stated that;

“There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that Kshs. 10 000 000 is a reasonable award for general damages”.

I find that there is no reason to deny the Petitioner Prayer No. (n) in the Amended Petition dated 10/2/2025. But the same are payable against the 4th, 5th, 6th and 7th Respondents who encouraged the 174 IDPs who invaded the Petitioner’s land while negotiations for its sale were going on. I will award the Petitioner the sum of Kshs. 50,000,000/= General Damages for Trespass against the 4th, 5th, 6th and 7th Respondents jointly and severally.

Looking at the other prayers made by the Petitioner, it is not in dispute that the Petitioner is the registered proprietor of L.R No. 5605/3 L.R No. 208755 in Ol-kalou, Nyandarua County. It would therefore be unnecessary to issue a Declaration for what is obvious.

As for (b) the Court is persuaded that the forceful entry and occupation of the suit land i.e. No. 5605/3 L.R No. 208, 753 in Olkalou without the consent of the Petitioner by the 1st, 2nd and 3rd Respondents and others with the connivance of the 4th, 5th, 6th 7th and 8th Respondent violated and/or infringed on the Petitioner's right to own property guaranteed under Article 10 as read together with Articles 10,27,48,67,73,156,245 and 258 of the Constitution of Kenya, 2010 and as a result of the said violations and infringements, the Petitioner is entitled to an award of Special and General Damages.

(c) It would be double tragedy for the Court to issue an eviction order against the IDPs settled on the suit land without the consent of the Petitioners as a major prayer before the other prayers fail. These are people who were misled by the 4th, 5th,6th and 7th Respondents. Double tragedy because they are still nursing severe wounds having been chased away from their previous homes and where they lost their land and possessions. Some of them even lost their loved ones. However, should the 4th, 5th, 6th and 7th Respondents fail to comply with the prayers issued hereinafter, the same shall automatically issue and be executable in which case Prayer No. (g) will become executable and enforceable. These IDPs did not settle on the suit land on their own. They were led to believe the land had been bought for them by the 4th, 5th, 6th and 7th Respondents. This was therefore their legitimate expectations. I will also not order any costs against them.

As to the alternative prayers, the Court has observed the prolonged forth and back crawling negotiations which could have been avoided

by the Respondents. This had the effect of the land appreciating in value and the value given by Lloyd Masika of Kshs 435,000,000/= for the 521.65 Acres is not unreasonable since the market value for the area prayed for as an alternative way of assessing the value of the land as at the time of the delivery of this Judgment ranges from Kshs 1,000,000/= to Kshs 1,4000,000/= per Acre.

The Court therefore awards Judgment to the Petitioner against the 4th, 5th, 6th and 7th Respondents jointly and severally for: -

- a. Special Damages of Kshs 505,883,000/= made up as follows: -
 - i. Compensation being payment of the full and just value of the suit property amounting to Kshs 435,000,000/=.
 - ii. Loss of user and/or income from 2009 to 19/6/2024 of Kshs. 60,000,000/=.
 - iii. Kshs. 10,000,000 for loss of user from June, 2024 to the date of this Judgment.
 - iv. Kshs. 883,000 being preferential fees for the valuer Lloyd Masika Ltd.
- b. Kshs. 50,000,000/= General Damages for Trespass.
- c. Interest on (a) above at Court Rates from the date of filing suit till payment in full.
- d. Interest on (b) above at Court rates from the date of Judgment till payment in full.
- e. Should the 4th, 5th, 6th and 7th Respondents fail to comply with the prayers issued hereinbefore i.e. prayer numbers (a), (b), (c)

and (d) above, an eviction order against the IDPs settled on the suit land shall immediately issue and the same shall automatically be executable in which case Prayer No. (g) will apply i.e. an order be issued directed to the 8th Respondent through the Police County Commander, Nyandarua County to enforce the eviction orders against the 1st, 2nd and 3rd Respondents and all other Internally Displaced Persons settled on the suit property.

f. Costs of the suit to the Petitioner.

Judgment read and delivered in Nyandarua this 9th Day of April 2026.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Mr. Kaharifor the Petitioner.

Ms. Murigu.....for the Respondent.