

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC PETITION No. E002 OF 2024

**IN THE MATTER OF ENFORCEMENT OF A BILL RIGHTS
UNDER ARTICLE 42, 60, 62, 67, 69 & 70 OF THE
CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF LAND REGISTRATION ACT 2012

AND

**IN THE MATTER OF ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION ACT**

AND

**IN THE MATTER OF GOVERNMENT LANDS ACT CAP 280
LAWS OF KENYA (REPEALED)**

AND

**IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS
OF KENYA (REPEALED)**

AND

IN THE MATTER OF NATIONAL LAND COMMISSION

AND

**IN THE MATTER OF ILLEGAL ALIENATION OF PUBLIC LAND
*BETWEEN***

MARY CHEMWENO KIPTUIPETITIONER

VERSUS

MARY JEMAIYO CHELIMO.....1ST RESPONDENT

**ISAAC KIPSANG YATOR.....2ND
RESPONDENT**

**LAND REGISTRAR, UASIN GISHU COUNTY.....3RD
RESPONDENT**

AND

**THE NATIONAL LAND COMMISSION.....1ST INTERESTED
PARTY**

NATIONAL ENVIRONMENTAL

JUDGEMENT

1. The Petitioner did file a Petition dated 14.10.2024 (hereinafter referred to as **“the present Petition”**) seeking the following Orders against the 1st to 3rd Defendants herein; -

(a) A declaration be made that the suit lands are public land for purposes of Article 162 of the Constitution.

(b) An order of mandamus be made directing Uasin Gishu County Land Registrar and the National Land Commission to annul and or revoke the grant registered for the parcels UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 & 980 and the said parcels of land be declared public land.

(c)An order of permanent injunction restraining the Respondents, their servants and or agents from entering, occupying or from doing anything that will interfere with and/or violate UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 & 980.

(d) The respondents to pay the costs of the petition to the petitioner and interests thereon.

(e) Any other appropriate relief this honorable court deems just and fit to grant.

2. The facts in support of the prayers sought in the present Petition can be summarized as follows; -

(i) The Petitioner was the registered owner of a property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT

SCHEME/165 which was subsequently sub-divided into LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1374,1375,1376,1377,1378,1379 AND 1380.

- (ii) Within the original property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/165, there was a portion of it that was a water catchment area and/or wetland which had been demarcated separately and registered as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 for the public good.
- (iii) However, despite the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 being public land, the same was unlawfully, illegally and unconstitutionally sub-divided into three sub-divisions namely LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 & 980 (hereinafter referred to as **“the suit properties”**).
- (iv) The Petitioner did plead that the 1st and 2nd Respondents herein are the current registered owners of the suit properties before this Court.
- (v) The Petitioner did further plead that since the 1st and 2nd Respondents herein did procure the illegal and unlawful Certificates of ownership, they have been unable to occupy the suit properties due to its nature and accessibility.
- (vi) The Petitioner did state that as a citizen of this Republic, the Constitution provides that she entitled to a clean and healthy environment under Articles 42, 60, 62, 67, 69 and 70 of the Kenyan Constitution, 2010 and therefore the sub-division of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 which was a water catchment area and/or wetland into the suit

properties did infringe on the rights mentioned herein above and therefore unconstitutional.

(vii) In essence, the Petitioner sought this Court to enforce the Constitutional Rights to a clean and health environment by cancelling the unlawful and illegal Certificates of Ownership to the suit property and present the original property known as LR.NO.UASIN GISHU/KIPKABUS SETTELEMENT SCHEME/832 as a public property for the public good.

3. The present Petition was duly served upon the 1st, 2nd and 3rd Respondents, as well as the 1st and 2nd Interested Parties.
4. The 1st Respondent did oppose the present Petition through a Replying Affidavit dated 29.10.2024.
5. The facts relied upon by the 1st Respondent in opposition of the present Petition were as follows; -
 - (i) The property known as LR.NO. UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/978 was an asset of her deceased husband known as JOSEPH KIPKORIR CHELIMO who got registered as the lawful owner in the 1990s.
 - (ii) Upon demise of the 1st Respondent's husband JOSEPH KIPKORIR CHELIMO, the said property was subject to a succession process and was finally vested in her name.
 - (iii) The 1st Respondent did plead that the Petitioner herein had been interfering with the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978 by hindering the access and/or placing relatives and other persons unknown to her contrary to her ownership rights.

- (iv) Be as it may, the 1st Respondent did deny the allegation that the property known as UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978 had been unlawfully and illegally been hived off from the property known as UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832.
- (v) The 1st Respondent did plead that the actual property which was public property was LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/980 and had been recorded as such in its Register with the County Lands Registry.
- (vi) The 1st Respondent did further plead that the Certificate of Ownership to the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEEMNT SCHEME/978 had been acquired lawfully and legally hence do not form part of any public utility property.
- (vii) The 1st Respondent did further aver that there was no violation of rights that had been occasioned to the Petitioner by the registration of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEEMNT SCHEME/978 in her name and therefore the present Petition was without any legal basis.
6. The 2nd Respondent also did oppose the present Petition by filing a Replying Affidavit dated 29.10.2024.
7. The 2nd Respondent in the Replying Affidavit dated 29.10.2024 did plead the following facts; -
- (i) To begin with, the 2nd Respondent did admit to the registered owner of the property known as LR.NO.UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/979.

- (ii) The 2nd Respondent did deny the allegation by the Petitioner that the property known as LR.NO.UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/979 a wetland and/or water catchment area hence a public property.
- (iii) The 2nd Respondent did aver that upon acquisition of the property known as LR.NO.UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/979, he took possession of the same by using it as an agricultural farm until the year 2016 when the Petitioner did block its access.
- (iv) The 2nd Respondent did further plead that the property known as LR.NO.UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/979 had previously been used as a collateral for a facility issued by the Agricultural Finance Corporation (AFC) hence did not form part of any public land as alleged by the Petitioner.
- (v) The 2nd Respondent did further deny the allegation that the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/979 was a water catchment and/or riparian land illegally hived off from LR.NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832.
- (vi) The 2nd Respondent did plead that the demarcation and subsequent creation of the property known as LR.NO.UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/979 complied of the law and Constitution and therefore his registration was protected under the law.
- (vii) In any event, the 2nd Respondent did aver that the Petitioner herein had not demonstrated any infringement of her ownership rights by the creation of the property known as LR.NO.UASIN GISHU/ KIPKABUS SETTLEMENT SCHEME/979 to warrant the Court's intervention.

- (viii) In conclusion therefore, the 2nd Respondent did plead that the present Petition be dismissed for failure to meet the threshold of a Constitutional Petition.
8. The 3rd Respondent did oppose the present Petition through the Grounds of Opposition dated 10.11.2025.
9. In the Grounds of Opposition dated 10.11.2025, the 3rd Respondent did advance the following grounds; -
- (i) First and foremost, the 3rd Respondent did plead that the Petitioner herein had no locus standi to institute the present Petition in view of the provisions of Article 1, 22, 23 and 258 of the Kenyan Constitution, 2010.
 - (ii) The 3rd Respondent did plead that the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was originally designated as public land within the Kipkabus Settlement Scheme and set aside for public utility purposes specifically for Samabul Cattle Dam.
 - (iii) As such, the subdivision of UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 and allocation of the resultant parcels known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 and 980 to private individuals and/or entitles was not lawful and in accordance to the law.
 - (iv) Save for the prayer for costs the 3rd Respondent does not oppose the other contents of the petition.
10. In addition to the Grounds of Opposition dated 10.11.2025, the 3rd Respondent also did prepare and file a Replying Affidavit dated 27.11.2025 in which it did state as follows; -

- (i) The 3rd Respondent did admit that initially, there was a property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 which did measure 7.5 Hectares.
- (ii) According to the 3rd Defendant, the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was a public plot reserved for public uses including the establishment of a cattle dam.
- (iii) Further to the above, the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was also classified as a wetland and/or a water catchment area and therefore was not available for alienation and/or conversion to private property unless with strict adherence to the law.
- (iv) The 3rd Respondents did plead that there were no approved sub-division schemes or Part Development Plans that did support the conversion of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 to private ownership and the subsequent creation of the suit properties currently before the Court.
- (v) In essence, the 3rd Respondent did state that the suit properties before the Court and registered in the names of the 1st and 2nd Respondents were irregular, unlawful hence null and void and cannot enjoy the protection of Section 26 of the Land Registration Act, No.3 of 2012.
- (vi) Further to the above, the 3rd Respondent did aver that the creation and registration of the suit properties was contrary to Article 62 of the Kenyan Constitution, 2010 as the same were within a water catchment area and/or wetland and any other use would result to an environmental degradation.

(vii) The 3rd Respondent did point out that the suit parcels fall within an ecologically sensitive zone and are protected under Articles 42 and 69 of the Constitution, the Environmental Management and Coordination Act (EMCA), the Physical and Land Use Planning Act, the Land Act and the Land Registration Act.

(viii) The 3rd Respondent therefore did complete its Replying Affidavit by stating that all the Certificate of ownership of the suit properties were not recognized by their offices and should be cancelled and/or revoked forthwith.

11. The Responses filed by the 1st to 3rd Respondents were duly served on the Petitioner herein.
12. However, the Petitioner did not file any Response to the Replying Affidavits filed by the Respondents and instead sought to canvass the present Petition by way of written submissions.
13. The Petitioner herein did file her final submissions dated 18.12.2025 while the 1st and 2nd Respondents did file their joint final submissions on the 15.01.2026.
14. The 3rd Respondent on the other hand did elect not to file any written submissions.
15. The Court has perused the present Petition in detail, the 1st, 2nd and 3rd Respondents responses as well as the submissions of the Parties herein.
16. The issues that arise for determination in the present petition can then be summarized as follows:-

ISSUE NO. 1 - WHETHER THE PETITION MEETS THE LEGAL THRESHOLD FOR A CONSTITUTIONAL PETITION?

ISSUE NO.2-WHETHER THE LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 WAS AVAILABLE FOR ALLOCATION TO THE 1ST AND 2ND RESPONDENTS?

ISSUE NO.3- WHETHER THE PETITIONER'S RIGHTS WERE VIOLATED AS ALLEGED IN THE PRESENT PETITION?

ISSUE NO.4-WHETHER THE PETITIONER IS ENTITLED TO THE ORDERS SOUGHT IN THE PRESENT PETITION?

ISSUE No.5- WHO BEARS THE COSTS OF THE PRESENT PETITION?

17. Having identified the above issues for determination, the same will be discussed as herein-below.

ISSUE NO.1-WHETHER THE PRESENT PETITION MEETS THE LEGALTHRESHOLD FOR A CONSTITUTIONAL PETITION?

18. The first issue for determination is whether the present petition meets the legal threshold for constitutional petitions.

19. The legal threshold for constitutional petitions was set out in the case of **ANARITA KARIMI NJERU-VERSUS-REPUBLIC (1979) eKLR** where 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, 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.”

20. The principle in the above case was reaffirmed by the Court of Appeal in the case of **MUMO MATEMU-VERSUS- TRUSTED SOCIETY (2013) eKLR** where the learned Judges stated as follows:-

“We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st Respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these short comings, it was not enough for the superior Court below to lament that the petition before it was not the “epitome of precise, comprehensive or elegant drafting, without remedy by the 1st respondent.”

21. According to the above authorities, there are three broad ingredients that a Constitutional Petition must entitle which are namely the particulars of the infringement being complained, the particular provisions of the Constitution violated and the remedy to be granted by the Court.
22. These requirements are intended to avoid ambiguity and to enable the Respondents file a response in respect to each of the alleged violations.
23. The 1st and 2nd Respondents plead that the present Petition does not meet the threshold of being a constitutional Petition.

24. However, it is clear from the present Petition that the acts which are being complained by the Petitioner against the 1st and 2nd Respondents is the unlawful and illegal manner in which the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 that was a public property and a water catchment area was allocated to them.
25. The Petitioner is of the view that the unlawful and illegal allocation of the property known as LR.NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 which is a public property and a water catchment area contravenes the provisions of Article 42, 60, 67, 69 and 70 of the Kenyan Constitution, 2010.
26. In essence, the Petitioner herein is seeking for a cancellation of the unlawful and illegal sub-divisions contained in the suit properties and a reversion of the original property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 to preserve the water catchment area and public property so that every citizen around KIPKABUS SETTLEMENT SCHEME can enjoy a clean and healthy environment as provided under the Kenyan Constitution, 2010.
27. She went on to detail the actions of the 1st and 2nd Respondents that she claims are a threat to her rights to enjoy a clean and healthy environment.
28. Based on the above discussion, it is clear that the present Petition meets the threshold of being heard and determined as a Constitution Petition within the law.

ISSUE NO. 2 - WHETHER THE LAND WAS AVAILABLE FOR ALLOCATION TO THE 1ST AND 2ND RESPONDENTS?

29. The second issue is whether the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was

available for sub-divisions and allocation to private persons and/or entities.

30. According to the 3rd Defendant, the original property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was classified as a water catchment area and/or wetland.
31. Based on this classification, Article 62 (1) (g) of the Kenyan Constitution, 2010 did automatically place this property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 within the ambit of public land.
32. According to the records held by the 3rd Respondent, the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 is required to be held by the relevant County Government in trust for the people who resident in the said county.
33. The 1st Respondent in her Replying Affidavit did not demonstrate the procedure used to allocate and alienate the suit property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978 to her deceased husband.
34. The only document that the 1st Respondent did possess was a Certificate of Ownership in her name which had been vested through a succession process.
35. The 2nd Respondent similarly did hold a Certificate of Ownership of the property known as L.R.NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/979.
36. However, the 2nd Respondent also did not have any documentation to verify that the process of acquiring the said Certificate of ownership in relation to the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/979 was legitimate and lawful.

37. Be as it, it is clear from the records presented by the 3rd Respondent that the suit properties were sub-divisions from the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832.
38. Indeed, Section 26(1) of the Land Registration Act, the law provides that: -

“26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

39. But from the above provision, for a title holder to enjoy protection of his title under the said Section 26(1), it must be shown that the land was legally and regularly acquired and thus the title was valid.
40. In order to determine the question whether the titles held by the 1st and 2nd Respondent are valid, it must be demonstrated that they were properly acquired.

41. From the evidence before this court, the 1st and 2nd Respondents got by their titles in the 1990's, during which time, the allocation of public land was done pursuant to the Government Land Act, now repealed.
42. Section 3 of the repealed Government Lands Act, which was the applicable law at the time, provided that the President could, subject to any other law, make grants and dispositions of any estates, interests or rights in or over un-alienated Government land.
43. However, this power related only to un-alienated government land, which under Section 2 of the same repealed Act is defined as:-
- “Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment.”***
44. In its application therefore, Section 3 of the Government Land Act never allowed the allocation of land reserved for public purpose to private individuals either by the President or by the Commissioner for Lands.
45. The property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was public land vested in the County Council of Keiyo Marakwet, for its use to establish the Samabul Cattle Dam, and at no time did the said County Council surrender it to the Government for re-allocation to the Respondents.
46. Evidently, when the suit property was purportedly allocated to the 1st and 2nd Respondents and/or their predecessors in title, it was not available for allocation, and specifically not by the District Land Surveyor, who signed the Mutation Form, as it was alienated Government land reserved for a public utility.

47. The issue of land which has been set aside for public purpose not being available for allocation by the President or the Commissioner of Lands has been up held in numerous decisions.
48. In **REPUBLIC-VERSUS- COMMISSIONER OF LANDS & 4 OTHERS EX-PARTE STEEL LIMITED (2014) eKLR**, the court had this to say:-

“We have already found that as from the time when the disputed property was identified and set aside as a public plot the Commissioner of Lands did not have any power to alienate the specific plot for any other purpose as he purported to do by what he states was a replanning exercise in 1998/1999. After the designation of the disputed plot as an access road the Commissioner of Lands was constituted a trustee in respect of the same on behalf of the public and did not possess any power to alienate it for any other purpose. It would therefore follow that the Commissioner of Lands did not have any power and/or authority to issue a letter of allotment in respect of the disputed property to either the 1st Interested Party or the 2nd Interested Party. The letters of allotment issued to both the 1st and 2nd Interested Parties were thus illegal and unlawful.”

49. In another case of **KENYA ANTI-CORRUPTION COMMISSION-VERSUS- LIMA LIMITED & 2 OTHERS (2019) eKLR**, where the Court stated as follows; -

“The land in dispute was already alienated for public utilities ... and therefore it could not be deemed un-alienated. The 2nd Defendant therefore had no authority in law to make the alienation and therefore no interest could be conferred upon the 1st Defendant.”

50. When the Court of Appeal deliberated on the same issue in the case of **DINA MANAGEMENT LIMITED-VERSUS-COUNTY GOVERNMENT OF MOMBASA & 5 OTHERS (2021) eKLR**, it found that: -

“It is clear to us that the guarantee to protection under Article 40 of the Constitution of Kenya 2010 also existed under section 75 of the repealed Constitution. It is correct to say that the appellant has a right to own property and that it is entitled to its property only to the extent that the said property was acquired and purchased in accordance with the correct procedure and within the framework of the law. In our view, where property is acquired through a procedure against the law, the title cannot qualify for indefeasibility. The land in question was reserved for public use or utility and the access road leading to the said land for entry, use and enjoyment of the original purpose for which the land was created or reserved. Any attempt to deviate or depart from the original purpose, no matter the persons involved and subsequent interests acquired, is defeasible to that extent. In essence, it was not possible or open to any person or entity to alienate it for private use. In our view, the moment a property is reserved for public use, it remains public utility land incapable of giving rise to a private proprietary interest capable of being protected by a court of law.”

51. Based on the determination of the above cited authorities, it is clear in the Court’s mind that once the property known as LR.NO. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was classified as a water catchment and/or wetland specifically meant to be used for the public good, then the same was held by the County Government within which is was located in trust for the residents of the said County and could not be allocated to private use as alleged by the 1st and 2nd Respondents.

52. For this reason, this court finds that alienation of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was contrary to provisions of Article 62 of the Kenyan Constitution, 2010 and therefore unconstitutional.

ISSUE NO. 3 - WHETHER THE PETITIONER'S RIGHTS WERE VIOLATED AS ALLEGED IN THE PRESENT PETITION?

53. The next issue is to determine whether the Petitioner's rights have indeed been violated as alleged in the present petition.

54. The Petitioner's main grievance is that the Respondents have violated her right to a clean and healthy environment, and the right to have the environment protected.

55. This right to a clean and healthy environment is guaranteed under Article 42 of the Constitution which provides that:-

“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.

56. The right to a clean and healthy environment at Article 42 also includes the right to have that environment protected for the benefit of the present and future generations.

57. Article 69 of the Constitution places the duty of protecting the environment on the state, and provides that:-

“ 69. Obligations in respect of the environment

(1) The State shall—

- (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;**
- (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;**
- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;**
- (d) encourage public participation in the management, protection and conservation of the environment;**
- (e) protect genetic resources and biological diversity;**
- (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;**
- (g) eliminate processes and activities that are likely to endanger the environment; and**
- (h) utilise the environment and natural resources for the benefit of the people of Kenya.**

(2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”

58. In this regard, the Petitioner has pleaded that the parcels of land known as UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 & 980 are subdivision of a larger parcel that was known as UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 which is a swamp, wet land and a water catchment area, thus it ought to be protected.
59. The 1st and 2nd Respondents have both produced a Mutation Form dated 29.07.1998 in respect of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832.
60. Based on the Mutation Form dated 29.07.1998 in relation to the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME.832, the same is what was sub-divided into the suit properties herein.
61. The 3rd Defendant on the other hand did state in Paragraph 4 of the Replying Affidavit that the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was a public property classified as a wetland and/or water catchment area.
62. In other words, the 3rd Respondent did plead that the unlawful and illegal sub-division and allocation of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTELEMENT SCHEME/832 to private individuals and/or entitles for their private use was contrary to the user of the same and would constitute and/or result to environmental degradation.
63. Further to the above, the 3rd Respondent did point out that the suit parcels fall within an ecologically sensitive zone and are protected under Articles 42 and 69 of the Constitution, the Environmental Management and Coordination Act (EMCA), the Physical and Land Use Planning Act, the Land Act and the Land Registration Act.

64. Section 12(2)(b) of the Land Act obligates the National Land Commission to ensure that any public land that has been identified for allocation does not fall within public land or falls within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas.
65. Wetlands and water catchment areas are also protected under the Environmental Management and Coordination Act, which at Section 42(1) thereof prevents any person from undertaking activities in relation to rivers, lakes, seas and wet lands without the prior written approval of the National Environmental Management Authority (NEMA).
66. It must also be noted that Article 69(2) places a duty on every person to cooperate with the state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.
67. Based on the facts pleaded by the Petitioner and the 3rd Respondent, it is clear in the mind of this Court that the conversion of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 from a public property to a private property did not follow the procedures under the National Land Commission Act, No.5 of 2012 or the Land Act, No. 6 of 2012.
68. Keeping in mind that the original use of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 was for public use and in fact declared to be a wetland and/or a water catchment area, it is not in doubt that the same was for purposes of ensuring a clear and healthy environment as prescribed under Article 42 of the Kenyan Constitution, 2010.

69. In other words, the actions of unlawfully and/or illegally subdividing the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 for private use was clearly in contravention of the Article 42 of the Kenyan Constitution, 2010 as read with Article 69 and 70 which guarantees the right to be clean and healthy environment.
70. In conclusion, this Court is of the finding that the 1st and 2nd Respondent's ownership of the suit properties are private properties infringes Article 42, 69 and 70 of the Kenyan Constitution, 2010 are alleged by the Petitioner herein.

ISSUE NO. 4 - WHETHER THE PETITIONER IS ENTITLED TO THE ORDERS SOUGHT IN THE PRESENT PETITION?

71. Based on the findings in Issue No. 2 and 3, this Court is of the view that the conversion of the property known as LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 from public land to private land and thereafter the registration of the 1st and 2nd Respondents are the legitimate owners did contravene the provisions of Article 62,42,69 and 70 of the Kenyan Constitution, 2010.
72. In essence, the present Petition is merited and the Petitioner is entitled to the prayers sought therein.

ISSUE NO. 5 - WHO BEARS THE COSTS OF THE PRESENT PETITION?

73. Turning to the issue of costs, the general rule on costs is that they follow the event.
74. The Petitioner has succeeded in prosecuting this Petition, while the 1st and 2nd Respondents have been unsuccessful in defending their titles.

75. As such, the 1st and 2nd Respondents are condemned to pay costs of the present Petition.

CONCLUSION

76. In conclusion therefore, the court makes the following orders in determination of the Petition dated 14.10.2024: -

A. THE PETITION DATED 14.10.2024 BE AND IS HEREBY MERITED.

B. THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/832 IS A PUBLIC PROPERTY AND/OR LAND.

C. THE SUB-DIVISION OF THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/KIPKABUS/832 AND THE CREATION OF THE PROPERTIES KNOWN AS LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 AND 980 AND THE SUBSEQUENT ALLOCATION AND/OR REGISTRATION OF THE 1ST AND 2ND RESPONDENTS HEREIN WAS UNLAWFUL, ILLEGAL AND UNCONSTITUTIONAL.

D. AN ORDER OF MANDAMUS BE AND IS HEREBY ISSUED DIRECTING UASIN GISHU COUNTY LAND REGISTRAR AND THE NATIONAL LAND COMMISSION TO ANNUL AND OR REVOKE THE GRANTS REGISTERED FOR THE PARCELS UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978, 979 & 980 AND THE SAID PARCELS OF LAND ARE ILLEGAL, UNLAWFUL AND UNCONTITUTIONAL.

E. AN ORDER OF MANDAMUS BE AND IS HEREBY ISSUED DIRECTING THE COUNTY LAND REGISTRAR, UASIN GISHU TO RESTORE AND/OR REINSTATE THE REGISTER AND/OR WHITECARD OF THE PROPERTY KNOWN AS LR.NO.UASIN GISHU/KIPKABUS

SETTLEMENT SCHEME/832 AS A PUBLIC PROPERTY AND/OR LAND.

F. AN ORDER OF PERMANENT INJUNCTION BE AND IS HEREBY ISSUED RESTRAINING THE 1ST AND 2ND RESPONDENTS, THEIR SERVANTS AND OR AGENTS FROM ENTERING, SELLING, ALIENATING, PLOUGHING, CONSTRUCTING, ACCESSING FOR PRIVATE USE, OCCUPYING AND/OR DEALING WITH THE UNLAWFUL, ILLEGAL AND UNCONSTITUTIONAL PROPERTIES KNOWN AS LR.NO.UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/978,979 AND 980 HENCEFORTH.

G. THE 1ST AND 2ND RESPONDENTS SHALL PAY THE COSTS OF THE PETITION TO THE PETITIONER AND INTERESTS THEREON.

DATED, SIGNED and DELIVERED in ELDORET this 5TH DAY OF MAY,2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Petitioner: Mr. Chemweno

Counsel for The Respondents: Ms. Cherop for the 1st and 2nd Respondent

Mr. Kwame for the 3rd Respondent

N/A for the 1st and 2nd Interested Party