

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELC PETITION NO. E007 OF 2025

**IN THE MATTER OF: ARTICLES 2, 10, 19, 20,22, 23,40,47 AND 165(3)(B) OF
THE CONSITUTION OF KENYA, 2010**

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

AND

**IN THE MATTER OF: THE ALLEGED VIOLATION OF THE PETITIONER’S
RIGHT TO PROPERTY AND FAIR ADMINISTRATIVE ACTION**

AND

**IN THE MATTER OF: THE UNLAWFUL OCCUPATION AND USE OF
PRIVATE LAND BY PUBLIC UTILITY COMPANY**

BETWEEN

CATHERINE GATHIGIA KIRUKI.....

.....PETITIONER

VERSUS

KENYA POWER & LIGHTING

COMPANY PLC.....RESPONDENT

JUDGMENT

1. By a Petition dated 26th September, 2025, the Petitioner sought the following orders:
 - a) *A declaration that the Respondent’s occupation and use of the Petitioner’s land is unlawful and unconstitutional.*
 - b) *A declaration that the Respondent has violated the Petitioner’s rights under Articles 40 and 47 of the Constitution.*

- c) *An order compelling the Respondent to compensate the Petitioner for the use of her land from 2014 to date, at a rate to be determined by this Honourable Court.*
- d) *An order directing the Respondent to formalize its occupation through a lawful wayleave agreement with the Petitioner or vacate her land altogether if formalizing the occupation proves unattainable.*
- e) *General damages for violation of constitutional rights.*
- f) *Costs of this Petition.*

PETITIONER'S CASE

2. The Petition is supported by the annexed Affidavit of Catherine Gathigia Kiruki, the Petitioner, sworn on 26th September, 2025, where she deponed that she is the registered proprietor of land parcel Kenjoketty Settlement Scheme/111 situated in Molo, issued on 27th October 2015.
3. The Petitioner further deponed that sometime around 1994, the Respondent Kenya Power & Lighting Company PLC, unlawfully erected power lines on a parcel of land without her consent, consultation or compensation. She also stated that she has on numerous occasions reached out to the Respondent to compensate her for 11 years, which is the period; the Respondent has been in occupation but to no avail.
4. It was the Petitioner's averment that she has neither been approached by the Respondent to negotiate nor formalize its occupation of the suit land, further, the Respondent has not responded or taken any steps to remedy the situation thus violating her constitutional rights. She added that the

Respondent's conduct amounts to unlawful administrative action trespass and breach of her right to property and fair treatment by a public body.

RESPONDENT'S CASE

5. The Respondent filed a replying affidavit sworn on 7th April, 2026, through Emmanuel Ochieng Ouma, the Respondent's Wayleave Officer, who averred that the subject power line predates the Petitioner's ownership of the land by nearly two decades.
6. The Respondent averred that the power line was constructed in 1994 and officially commissioned on 23rd March, 1997, for the benefit of settlers of Kenjoketty Settlement Scheme.
7. Mr. Ouma deponed that the Respondent applied for the green card which indicated that the Petitioner had acquired possession and ownership of the suit land on 27th October, 2015, eighteen years after the power line had already been constructed and was operational.
8. It was Mr. Ouma's disposition that at the time of construction of the power line in 1994, and commissioning in 1997, land parcel No. Kenjoketty Settlement Scheme/111 did not exist, as it was only created following a subdivision on 18th March, 2015. Further, the Respondent has never received any complaint or demand from KENJOKETTY SETTLEMENT SCHEME save for this petition, which was filed eighteen years (18) years after the power line was constructed.
9. According to the Respondent, the Petitioner acquired the land in 2015, s which was subject to the existing infrastructure hence was subject to the

overriding interests. Further, the Petitioner's claim was procedurally and substantively flawed, as it failed to demonstrate violations of her constitutional rights.

10. He averred that there was concealment of facts by the Petitioner when she failed to state the date, she acquired the land to make the power line's presence appear as a recent trespass. The Respondent stated that the Petitioner had not filed any expert report to contradict the Respondent's findings regarding the location and history of the power line.
11. It was the Respondent's case that the Petitioner was guilty of laches and lack of any grievance against the Respondent, and waited for 18 years after the power line was constructed to file the present Petition. He urged the court to dismiss the Petition with costs, as it is an abuse of the court process.

PETITIONER'S SUBMISSIONS

12. Counsel for the Petitioner filed submissions dated 25th February, 2026, and identified the following issues for determination:
 - a) *Whether the Respondent's occupation and use of the Petitioner's land is unlawful and unconstitutional.*
 - b) *Whether the Respondent has violated the Petitioner's rights under Articles 40 and 47 of the Constitution.*
 - c) *Whether the Petitioner is entitled to compensation for the Respondent's use of land from 2014 to date and to general damages for constitutional violations.*

d) Whether the Respondent should be ordered to formalize its occupation by wayleave or to vacate the land.

13. On the first issue, counsel submitted that the presence of the Respondent on the Petitioner's land for over eleven years without consent or compensation was a violation of the Petitioner's right to property guaranteed under Article 40 of the Constitution. Counsel relied on Article 40 of the Constitution, and submitted that any interference with private property must be lawful and accompanied by compensation.
14. Ms. Jirma submitted that by the Respondent's failure to formalize the wayleave through the procedures set out under the Energy Act, it became a trespasser on the Petitioner's land, and relied on the cases of **Rosewa Agencies Limited V Kenya Power & Lighting Company Limited [2023] KEELC 16289 (KLR)**, **Mwoni & 7 others V Kenya Electricity Transmission Company Ltd [2024] KEELC 929 (KLR)**, and **Njue V Kenya Electricity Transmission Company Limited [2022] KEELC 14430 (KLR)**.
15. On the second issue, as to whether the Respondent violated the Petitioner's rights under Articles 40 and 47, counsel submitted that the Respondent as a public utility, failed in its duty to act fairly and transparently by neglecting to consult or negotiate before installing infrastructure.
16. Counsel further submitted that the Energy and Petroleum Tribunal together with related adjudication bodies have addressed similar disputes and underscored that utilities must follow lawful processes and compensate

land owners where private land is used for public infrastructure, and relied on Article 47 of the constitution and the case of **Cape Suppliers Limited v Kenya Power & Lighting Co. Ltd [2024] KEHC.**

17. On the third issue, as to whether the Petitioner is entitled to compensation and general damages, counsel submitted that the Petitioner sought compensation for the period from 2014 to date, and stated that the Respondent has derived commercial benefit from her land at her expense. Counsel further submitted that the Petitioner is also entitled to market rental value, restitution for unjust enrichment, and damages for loss of use. Counsel relied on the case of Lakeview **Panorama Limited v Kenya Electricity Transmission Company Limited [2025] KELAT 197 (KLR)**, and **Inter-Aero Limited Vs Kenya Power & Company Limited [2018] eKLR.**
18. Ms. Jirma, submitted that the Respondent should be ordered to formalize occupation on fair terms or, vacate the land and urged the court to allow the Petition as prayed.

RESPONDENT'S SUBMISSIONS

19. Counsel for the Respondent filed his submissions dated 7th April, 2026 and identified the following issues for determination:
 - a) *Whether there was trespass on the part of the Respondent?*
 - b) *Whether the Petition offends the principle of drafting Constitutional Petitions?*

- c) *Whether the Respondent has violated the alleged Articles of the Constitution of Kenya, 2010 and other laws?*
- d) *Whether the Petitioner is entitled to the reliefs sought?*

20. On the first issue, as to whether the respondent trespassed on the suit land, counsel submitted that the Petitioner failed to produce any document which demonstrated that she was in possession and ownership of land parcel number Kenjoketty Settlement Scheme/111 or Kenjoketty Settlement Scheme/111 in 2014. Counsel stated that the copy of the title deed for land parcel number KENJOKETTY SETTLEMENT SCHEME/111 produced by the Petitioner was issued on 27th October, 2015, and as indicated in the copy of the green card produced by the Respondent as annexure “EOO-3(b).

21. Mr. Ododa, submitted that prior to 27th October 2015, the suit land was still the property of KENJOKETTY SETTLEMENT SCHEME as shown in the Green Card. Counsel stated that in response to the averments, the Respondent produced the following documents demonstrating that the subject power line was constructed in land parcel No. KENJOKETTY SETTLEMENT SCHEME/111 in 1994 and commissioned in the year 1997:

- i. *A copy of the SK412266 drawing dated July 1994 (annexure “EOO-1”).*
- ii. *A copy of the Commissioning Report dated 23.03.1997 (annexure “EOO-2”).*
- iii. *Survey report (annexure “EOO-4”).*
- iv. *Survey plan (annexure “EOO-5(a)).*

v. *A photo of the pole (annexure “EOO-5(b)”*).

22. According to counsel, the Petitioner was not in possession or ownership of either land parcel prior to 27th October, 2015, as prior to that, the suit parcel was still the property of Kenjoketty Settlement Scheme as shown in the green card.
23. Mr. Ododa relied on the case of **Ramji & 2 others V Kenya Power and Lighting Company [2023] KEELC 407 (KLR)** and **Section 3 of the Trespass Act**, and submitted that the Petitioner having failed to produce any proof of ownership prior to 27th October, 2015 and subsequent trespass, the issue of trespass fails and cited Section 107 of the Evidence Act.
24. Counsel distinguished the two cases cited by the Petitioner, namely the cases of **Rosewa Agencies Limited v Kenya Power & Lighting Company Limited [2023] KEELC 16289 (KLR)**, and **Cape Suppliers Limited v Kenya Power & Lighting Company PLC [2024] KEELC 3462 (KLR)**, and submitted that in the **Rosewa** case, the circumstances are distinct from the petition herein, as the court in paragraph 48 of the judgment established that the defendant constructed high voltage power lines which have remained on the suit land since 2014, to date as evident by the photographs produced as an exhibit. In the instant petition, the petitioner has not produced any document to prove that the respondent trespassed into her land and constructed power lines in 2014.

25. In the second case of **Cape Suppliers** cited by the Petitioner counsel distinguished it by submitting that the court in paragraph 52 of the judgment established that there was no dispute that the plaintiff is the registered owner of LR No. 36/IV/14 (20A) as evidenced by a copy of the Title produced as P. exhibit 1-7 which is an indenture. The court also established that there were 66KV power lines put up by the defendant on the suit property.
26. Counsel submitted that the Petitioner herein did not have any legal right over land parcel number KENJOKETTY SETTLEMENT SCHEME/111 prior to 27th October 2015 when she was issued with a title deed.
27. On the second issue, as to whether the Petition offends the principle of drafting Constitutional Petitions, counsel submitted that the Petitioner has neither provided the particulars of the alleged violation, the infringement against the Respondent nor has the Petitioner indicated the manner in which the Respondent purportedly infringed her rights. Counsel relied on the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and the cases of **Anarita Karimi Njeru V Republic (1979) KLR** and **Matemu V Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**, which laid down the principles and procedures of drafting constitutional Petitions.
28. Mr. Ododa further submitted that the petition is defective as it fails to outline the particulars of the alleged trespass against the Respondent and the manner in which the Respondent has violated or infringed the rights of

the Petitioner or the public. He added that this ought to be a civil matter and not a constitutional petition and relied on the case of **East Africa Pentecostal Churches Registered Trustees & 1754 others V Samwel Muguna Henry & 4 others (2015) eKLR**.

29. On the third issue, as to whether the Respondent has violated the alleged Articles of the Constitution and other laws, counsel submitted that each claim must be matched to a particular Article and must be backed up by evidence. Counsel further submitted that the Petitioner alleged that the Respondent infringed **Articles 2(5) & 6, 10, 40 and 47** of the Constitution. The Petitioner, apart from citing several constitutional provisions has not connected those provisions to any violation of constitutional rights. Further, it is not sufficient for a Petitioner to just quote constitutional provisions and allege violation of the same without stating in what manner the provisions have been violated.
30. Counsel relied on the case of **Dhow House Ltd V Kenya Power and Lighting Company [2022] KEHC 11840 (KLR)**, and submitted that the dispute in this case arising from an alleged trespass could be resolved by invoking the jurisdiction of the Environment and Land Court without resorting to the Constitution.
31. On the final issue, as to whether the Petitioner is entitled to the reliefs sought, counsel submitted that the Petitioner has failed to demonstrate any legal or constitutional basis upon which the reliefs sought in the petition can properly be granted by this Court, and relied on the Supreme

Court case in **Communication Commission of Kenya & 5 Others V Royal Media Services Ltd. & 5 Others (2014) eKLR.**

32. On costs, counsel relied on **Section 27(1) of the Civil Procedure Act Kenya Sugar Board V Ndungu Gathini (2013) eKLR**, and submitted that the Respondent has expended considerable resources in this matter and ought to be awarded costs as a reprieve.

ANALYSIS AND DETERMINATION

33. From the Petition, the response and the submissions, the following issues arise for the court's determination:
- a) *Whether the Petition herein meets the threshold set out in the case of Anarita Karimi Njeru (supra).*
 - b) *Whether the Petitioner's rights under Articles 10, 40, and 47 of the Constitution of Kenya 2010 have been violated.*
 - c) *Whether the Petitioner is entitled to the orders sought.*
 - d) *Which party is entitled to costs?*

34. It is trite, that where a Petitioner claims violation of his or her constitutional rights and seek relief under the constitution, the Petitioner ought to plead with precision the right that he/she alleges to have been violated and how it has been violated as was held in the case of **Anarita Karimi Njeru V Republic (Miscellaneous Criminal Application 4 of 1979) [1979] KEHC 30 (KLR)** where the court stated as follows:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the

Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.

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

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

35. Similarly, in the case of **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others** [2013] eKLR, where the court held as follows:

“It should be noted the case of Anarita Karimi Njeru (supra) has been relied upon from time and time again to demonstrate the threshold of a successful constitutional petition. It should be appreciated the requirements for a successful constitutional petition are simple and are

thus: - the petitioner should set out the constitutional provisions, which he believes have been violated or threatened, and the manner in which the respondent(s) have violated those provisions. It is not enough for the petitioner to just list the constitutional provisions without demonstrating how they were infringed upon...”

36. It is therefore upon every Petitioner who files a constitutional Petition, to set out the constitutional provisions that they claim to have been violated or threatened and the manner in which the Respondent has violated those provisions. Many number of Petitioners fail this test by merely listing the constitutional provisions without linking or demonstrating how the Respondent has infringed the said provisions.
37. Fundamental rights have to be safeguarded as provided for under the Bill of Rights in the Constitution, and the parties accused of such violations also have a right to be informed of the precise nature of the rights which are alleged to have been violated, to enable them to respond accordingly. That is the reason why threshold was set so that parties are not allowed to bring frivolous claims without substantiation in the guise of constitutional Petitions.
38. The Petitioner’s claim is that the Respondent infringed her rights under Articles 10, 40 and 47 of the Constitution of Kenya. The Petitioner listed these Articles but did not go further to precisely state how the Respondent has violated these rights. For example, the Petitioner stated that the Respondent deprived her of the full enjoyment of her right to property,

failed to act fairly, transparently and lawfully occupying private property, and disregarding national values such as accountability and respect for the rule of law. These are general narrations which are neither precise nor capable of attaching any injury to the Petitioner occasioned by the Respondent's action.

39. It is not in dispute that the Petitioner is the registered owner of the suit land, which she acquired on 27th October 2015. It is also not disputed that the Petitioner acquired the suit land after the Respondent had already constructed the power lines in 1994 and commissioned them in 1997. The Petitioner has also not controverted the fact that prior to 27th October 2015, the suit land was still the property of KENJOKETTY SETTLEMENT SCHEME as shown in the Green Card and that the suit land was a result of a subdivision.
40. The Petitioner claimed that the Respondent has not reached out to her to negotiate compensation. The Petitioner further claimed that has been on the land for a period of 11 years, which has been calculated, from the time the Petitioner acquired the land in 2015. The Respondent could not have negotiated with the Petitioner, as she was not an owner in 1994 when the power lines were constructed. The Petitioner's land is a result of a subdivision therefore; it did not exist at the time of the construction of the power lines.
41. The Petitioner has not proved that the power lines were constructed without a valid wayleave or whether the previous owners gave their consent or otherwise for the construction of the power line. It is trite that

he who alleges must prove and the court cannot rely on conjecture to determine a case. The legal burden of proof is provided under **Section 107 of the Evidence Act Cap 80 Laws of Kenya** as follows:

“ Whoever desires any court to give Judgment as to any legal right or liability dependent on the existent of facts which he asserts must proof that those facts exists.”

2) when a person is bound to prove the existence of any fact it is said the burden of proof lies on that person.”

42. The Petitioner failed to prove that the Respondent infringed her rights. In the case of **Disa Enterprises Ltd v Kenya Power & Lighting Co Ltd [2013] KEHC 6279 (KLR)**, the court held as follows:

“It is also admitted by the Petitioner that it has actually not erected any buildings and in any event it could only do so subject to existing electric lines which it admits were erected long before it obtained any proprietary interest to the land. Where then is the trespass, mistake or unlawful action by the Respondent? I see none.”

43. The above case is similar to the Petitioner’s case where the power lines were constructed before the Petitioner acquired the land. In the Disa case, the court found that the Petitioner’s, the Grant had special conditions that the Petitioner would not put up any buildings in such a manner as to interfere with existing electric mains.

44. The upshot is that the Petitioner has failed to prove that the Respondent infringed on her rights, therefore the Petition is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH
DAY OF MAY 2026.**

**M. A. ODENY
JUDGE**