

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC PETITION NO. 2 OF 2024**

**IN THE MATTER OF THE CONTRAVENTION OF**  
**ARTICLES 2, 10, 19, 20, 21, 22, 28, 31, 40, 47, 62,**  
**68, 169, 165(3), 238, 245, AND 259 OF THE**  
**CONSTITUTION**

**AND**

**IN THE MATTER OF VIOLATION OF THE RIGHT OF**  
**EQUALITY BEFORE THE LAW AND EQUAL**  
**PROTECTION AND BENEFIT OF THE LAW AND ALL**  
**ATTENDANTS' RIGHTS AND DENIAL OF THE RIGHT**  
**TO FAIR ADMINISTRATIVE ACTION**

**BETWEEN**

**MARY NALIKA WANJALA-----1<sup>ST</sup>**  
**PETITIONER**  
**VIOLET NASIMIYU WANJALA-----2<sup>ND</sup>**  
**PETITIONER**  
**JENNIFER NAFULA KILWAKE-----3<sup>RD</sup>**  
**PETITIONER**  
**TOBIAS SIMIYU WABOMBA-----4<sup>TH</sup>**  
**PETITIONER**  
**DAVID KILWAKE JUMA-----5<sup>TH</sup>**  
**PETITIONER**  
**PETER WAMALWA KIBELESI-----**  
**6<sup>TH</sup> PETITIONER**  
**BEATRICE NABUTUTU ELIMA-----7<sup>TH</sup>**  
**PETITIONER**  
**JACKSON WAFULA WAMALWA-----8<sup>TH</sup>**  
**PETITIONER**

**BOAZ MATERE WANAMBUKO-----9<sup>TH</sup>**  
**PETITIONER**  
**EVERLYNE NAKHUMICHA KILWAKE-----10<sup>TH</sup>**  
**PETITIONER**

**VERSUS**

**JOHN KETER-----**  
**1<sup>ST</sup> RESPONDENT**  
**DAVISON WANGILA KHAEMBA-----2<sup>ND</sup>**  
**RESPONDENT**  
**THE SETTLEMENT FUND TRUSTEES-----3<sup>RD</sup>**  
**RESPONDENT**  
**THE ATTORNEY GENERAL-----3<sup>RD</sup>**  
**DEFENDANT**

**JUDGMENT**

1. What is before the court is a constitutional petition dated **22/2/2024**. The petitioners describe themselves as occupants and possessors of different portions of **Plot No. 177, Maridadi Settlement Scheme**, the suit land, measuring approximately **22 Ha**, which had initially been allocated to the late Dr. Koech, with the knowledge of the respondents.
2. The petitioners aver that upon the death of the initial allottee, his wife, Hellen Chebet Koech, acknowledged their occupation and agreed to give each one of them a quarter an acre of the suit land.

3. The petitioners aver that on **16/10/2020**, a ground and record status report over the subject property was made and sent to the relevant authorities confirming their occupation of the suit land. The petitioners aver that to their surprise, the 3<sup>rd</sup> respondent, with the full knowledge of the 4<sup>th</sup> respondent, sold the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> respondents under the head “outright purchaser payment”, without putting into consideration that the petitioners were in occupation.
4. The petitioners aver that after the ground and status report, the respondents were well aware of their occupation of the suit land, and without consulting or even settling them on an alternative land, they went ahead to sell the property to the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The petitioners aver that the 3<sup>rd</sup> respondent, being an all-state organ and who ought to consider how its citizens live, was now violating their rights to own property and live a decent life.
5. Further, the petitioners aver that the respondents' acts are inconsistent with **Articles 2(1), 3(1), 10(1), 19(3), 20(1), 27(1), 28, 31, 40(1), 47(1), 50(1), 62, and 68** of the Constitution, as regard the duty of the state and every state organ to observe,

respect, protect, promote, and fulfil the bill of rights; right of equality before the law, and equal protection and benefit of law, right to human dignity, right to privacy, right to own property, right to fair administrative action and right to fair hearing.

6. The petitioners aver that the court should, by dint of **Article 23(1)** of the Constitution, grant them the following reliefs:

(a) **Declaration that the petitioners' rights to property and to fair administrative action have been violated, transgressed by the respondents, by virtue of allocating and selling the property they occupy to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.**

(b) **Declaration that the outright purchase of the suit land by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the sale by the 3<sup>rd</sup> and 4<sup>th</sup> respondents is illegal and violates the petitioners' fundamental rights to own property.**

(c) **Declaration that the petitioners have a right to own the suit land by virtue of their long occupation.**

(d) **Declaration that the sale of the land to the 1<sup>st</sup> and 2<sup>nd</sup> respondents by the 3<sup>rd</sup> and 4<sup>th</sup> respondents be declared null and void for violating the petitioners' right to own the property.**

7. The petition is supported by an affidavit sworn by Jennifer Nafula Kilwake on **22/7/2024**, in which she

attaches an authority to plead duly signed by all the petitioners, a notice dated **27/11/2012**, to vacate the suit land, copy of the receipt dated **18/6/2021** for the outright purchase money of **Kshs.46,350/=**, paid by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and a copy of the official search marked as annexure **JNK-(1)-(5)**, respectively.

- 8.** The 1<sup>st</sup> and 2<sup>nd</sup> respondents opposed the petition with a response dated **17/4/2024**. They deny that the petitioners have been in occupation of the suit land from as early as **1986** or thereabouts, or have, out of the alleged long occupation, acquired any proprietary interests therein, from one Hellen Chebet Koech.
- 9.** The 1<sup>st</sup> and 2<sup>nd</sup> respondents maintain that they are in possession of the suit land, utilizing it to the exclusion of the petitioners. The 1<sup>st</sup> and 2<sup>nd</sup> respondents deny that the acts of acquiring the land from the 3<sup>rd</sup> and 4<sup>th</sup> respondents suggest any illegality was committed.
- 10.** The 1<sup>st</sup> and 2<sup>nd</sup> respondents maintain that they legally acquired an interest in the suit land, after applying and complying with all conditions set by the 3<sup>rd</sup> respondent, and insist that at all material times, the said acts were in line with the Constitution, to be said

to have violated the petitioners' fundamental rights and freedoms.

- 11.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents opposed the petition through a replying affidavit sworn by Nyanga C.A. on **28/2/2025**. The County Land Adjudication and Settlement Officer, on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> respondents, avers that from the records held by her office, plot **177** measuring **22 Ha**, was originally allocated to Dr. Richard Kipngeno Koech, on **3/3/1984**, and was charged a sum of **Kshs. 61,020/=**, to be paid in **56** half-yearly instalments at **Kshs. 2,380/=**, as per a copy of the charge attached as **NCA-(1)**.
- 12.** The deponent states that the allottee paid a **10%** deposit on **13/5/1987**, failed to take possession of the suit land or pay any other instalment, which was in breach of the charge. The deponent states that her office visited the suit land on **4/4/2019**, and later on **13/10/2024**, to establish the whereabouts of the allottee, in vain, and found on the suit land several other people, developing portions of it through cultivation of food crops, planting trees, and settlement as per the attached report dated **16/10/2020** marked **NCA-(2)**.

- 13.** The deponent states that one of the terms of the charge was that the chargee ought not transfer, lease, or otherwise part with the possession of the suit land or any part thereof, without prior consent of the Settlement Fund Trustees, and in this case, there was a breach because her office had not issued consent for third parties to possess the suit land.
- 14.** Further, the deponent states that her office recommendation to the Director of Settlement was that the plot should be reallocated for the sake of recovering the Settlement Fund Trustees' loan and ten acres thereof, which is next to River Sabwani, which is prone to flooding, be set aside as riparian land.
- 15.** The deponent states that the 2<sup>nd</sup> respondent, who was settled on the suit land, applied for reallocation as per annexure marked **NCA-(3)**, and the plot was re-visited on **19/12/2019** and **13/10/2020**, and her office arrived at the same recommendation as stated above, as per reports annexed as **NCA-(4)**.
- 16.** The deponent states that out of the **15** petitioners, only three, namely Mary Naliaka Wanjala, Violet Nasimiyu, and Edwin Wanjala, were found in occupation as per their reports, and therefore, the

rest are not and have never been on the suit land or hold any agreement with the Settlement Fund Trustees.

- 17.** The deponent states that the Settlement Fund Trustees still owns suit land as per official search attached as **NCA-(5)**, and that it has already been agreed that the ownership will only be transferred after a mutation, where those who were found in occupation will acquire portions, as they were already utilizing it at the time of the visit.
- 18.** The deponent denied that the petitioners' fundamental rights have been violated, since only three out of the fifteen are genuine, and her office has assured them that they will acquire the portions they are utilizing, even though they never requested allocation.
- 19.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents aver that they are strangers to the contents of paragraph 7 of the petition, on any arrangement made between the petitioners and Dr. Koech, though it should be noted that the chargee was precluded by the charge from parting with the possession of the suit land. The 3<sup>rd</sup> and 4<sup>th</sup> respondents deny that the petitioners, save for the three alluded to above, had any right to

institute these proceedings, since they were not found on the suit land during the site visits.

**20.** Through a further affidavit sworn on **17/3/2025**, the petitioners aver that after the initial allottee was allocated the suit land, and since he was not a resident of Trans Nzoia County, he allowed them to occupy the suit land because they were landless. The petitioners insist that even if the initial allottee had not repaid the loan, there is a procedure for sending a default or repossession notice, which appears not to have been followed, or if it was followed, has not been tendered as evidence in court.

**21.** The petitioners depose that, in the absence of following the law, it is questionable how the suit land was repossessed and sold to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, while the record shows that it is only the 2<sup>nd</sup> respondent who applied for it. The petitioners aver that the respondents are being economical with the truth, that only three petitioners were found on the suit land, yet by a letter dated **16/10/2020**, attached as **JNR-(1)**, signed by C.A. Nyanga, it shows more than 3 people.

**22.** The petitioners depose that if the 3<sup>rd</sup> and 4<sup>th</sup> respondents were acting in good faith, they should

have allowed all the petitioners to purchase the suit land instead of selectively allowing only the 1<sup>st</sup> and 2<sup>nd</sup> respondents to do so. The petitioners aver that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have not shown the criteria used to allocate the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> respondents only, yet the rest of the petitioners, who are landless, have been on the land since **1986**, and like any other Kenyan, have a right to own land.

**23.** Following directions to hear the petition through *viva voce* evidence, parties complied and filed witness statements, documents, and some relied on their affidavits.

**24. Jennifer Nafula Kilwake**, testified as **PW1**. She adopted her supporting affidavit, sworn on **22/2/2024** and **17/3/2025**, as her evidence-in-chief on behalf of the petitioners. Further, PW1 produced an authority to plead dated **22/2/2024** as **P. Exhibit No. (1)**, demand letter dated **27/11/2022** as **P. Exhibit No. (2)**, receipt issued on **18/6/2021** as **P. Exhibit No. (3)**, a certificate of official search for title No. **Trans Nzoia/Maridadi/177** issued on **10/7/2023**, as **P. Exhibit No. (4)**, and letter dated **16/10/2020** as **P. Exhibit No. (5)**.

- 25.** PW1 said that she has been a squatter on the suit land since **1996**, alongside the 2<sup>nd</sup> respondent, after Hellen Koech, the wife of the initial allottee, permitted them to occupy it. PW1 said that just like the 1<sup>st</sup> and 2<sup>nd</sup> respondents, they should have been granted a priority to acquire the suit land, since they are landless.
- 26.** Further, PW1 said that from **P. Exhibit No. (5)**, it is clear that she has been on the suit land alongside the rest of the petitioners, as of the visit by the 3<sup>rd</sup> respondent on **13/10/2020**. PW1 said that **P. Exhibit No. (5)** was a recommendation that they be allocated the suit land. PW1 disputed the contents of the letter dated **6/5/2020** by the 3<sup>rd</sup> respondent, for omitting vital information about their occupation.
- 27.** PW1 said that the rights and interests of the occupants of the suit land ought to be protected by the respondents. PW1 admitted that the 3<sup>rd</sup> respondent did not ratify her group's arrangement with the initial allottee. PW1 said that his team was aware that the suit land belonged to the government, but omitted to follow up on the procedures set out to protect their possessory rights or interests, or

establish if the initial allottee had repaid the Settlement Fund Trustees' loan.

- 28.** According to PW1, the 4<sup>th</sup> - 12<sup>th</sup> petitioners are occupants of the suit land, though their names are missing in **P. Exhibit No. (5)**. PW1 said that it was not possible to visit the Settlement Fund Trustees' offices without the presence of the initial allottee to regularize their occupation on the suit land.
- 29.** Equally, PW1 said that apart from the site visits, they did not engage the Settlement Fund Trustees before the reallocation took place, to express willingness to clear the outstanding loan, which unfortunately was not within their knowledge that Dr. Koech had run into loan arrears. PW1, however, insisted that reallocation took place while the 3<sup>rd</sup> and 4<sup>th</sup> respondents were privy to their occupation interests.
- 30. Davidson W. Khaemba** testified as **DW1**. He relied on a witness statement dated **2/2/2026** as his evidence-in-chief and produced an application letter dated **20/3/2020** as **D. Exhibit. No. (1)**, letter of offer dated **6/5/2021** as **D. Exhibit No. (2)**, payment receipts dated **8/6/2021** and **18/6/2021** as **D.Exhibit No. 3(a)** and **(b)**, and a loan statement

for the period **15/9/2021 to 21/6/2022** as **D. Exhibit No. (4)**.

- 31.** DW1 said that he made an entry into the suit land in **1987**, whose initial allottee was Dr. Koech. DW1 confirmed that the suit land is currently occupied by squatters like himself, alongside some of the petitioners, who have developments therein, as per the ground and status report produced as **P. Exhibit No. (5)**.
- 32.** DW1 said that the 1<sup>st</sup> respondent's name, although in occupation, was not captured in the ground and status report. DW1 admitted that **D. Exhibit No. (1)** is silent on whether the suit land was vacant or not. DW1 said that he knew that some of the petitioners were already in occupation of the suit land for which he applied for allocation.
- 33.** Asked why he did not disclose to the occupants when he was applying for allocation, DW1 said that he had no answer. DW1 said that he was not at liberty to know where the occupants should go after yielding possession to him. DW1 said that he had yet to obtain a letter of allotment for the suit land.
- 34.** DW1 said that he has not filed a cross-petition to have the petitioners evicted from the suit land. DW1

said that the petitioners had the option to apply for allocation of the suit land, which they did not exercise. DW1 admitted that he is willing to have only the 1<sup>st</sup> and 2<sup>nd</sup> petitioners hived off the portion under their occupation out of his share; otherwise, the rest of the 4<sup>th</sup> - 14<sup>th</sup> petitioners are strangers.

- 35. John Keter** testified as **DW2**. He relied on a witness statement dated **2/2/2026** as his evidence-in-chief and associated himself with the evidence of DW1, as they were jointly issued with a letter of offer and paid for the suit land as per **D. Exhibit No. (1) -(4)**. DW2 confirmed that he used to reside on the suit land from **1992**, where he had erected a semi-permanent structure, before floods washed it away.
- 36.** DW2 said that the only reason his name is missing on **P. Exhibit No. (5)** is because he was absent on the day of the site visit. DW2 said that several squatters visit the suit land to till, except when it is flooded during the rainy season. DW2 admitted that in their joint application for the suit land, they omitted to disclose that it was already occupied by other squatters, whose entry was through the initial allottee.

- 37. Christentia Atieno** testified as **DW3**. She relied on a replying affidavit dated **28/2/2025** as her evidence-in-chief. DW3 produced a copy of the charge dated **3/2/1984** in respect of the plot as **D. Exhibit No. (5)**, copy of ground report dated **16/10/2020**, as **D. Exhibit No. (6)**, a copy of an application for plot by the 2<sup>nd</sup> respondent dated **24/5/2019**, as **D. Exhibit No. (7)**, ground report dated **7/1/2020**, as **D. Exhibit No. (8)**, and a copy of the search certificate as **D. Exhibit No. (9)**.
- 38.** DW3 said that after the initial allottee defaulted on repaying the loan, the suit land was repossessed and re-allocated to the 1<sup>st</sup> and 2<sup>nd</sup> respondents. DW3 confirmed that, although three petitioners, namely the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup>, were found on the suit land as per the ground and status reports, they failed to apply for the allocation of the suit land.
- 39.** DW3 confirmed that the suit land, from **1994** to date, belongs to the Settlement Fund Trustees, as per the official search certificate. DW3 said that the 3<sup>rd</sup> respondent was not aware that the initial allottee had passed on. DW3 said that during the site visits, the squatters were encouraged to apply for the allocation of the suit land, but only the 1<sup>st</sup> and 2<sup>nd</sup> respondents

expressed interest. DW3 could not tell when the squatters moved in.

- 40.** Further, DW3 admitted that she had no records showing that the initial allottee was notified of any default or breach of the charge, or the notice to repossess the suit land on account of breach of the charge conditions. DW3 confirmed that **P. Exhibit No. (5)** captures a total of eight people who were found squatting or cultivating the suit land during the site visits.
- 41.** DW3 said that the area chief was aware of the site visit notice, a copy of which was not before the court. DW3 confirmed that they found the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> petitioners on the ground, who also gave out other names of the persons (squatters) absent during the visits. DW3 admitted that she made a recommendation for the resettling of those squatters on the suit land, which recommendation was not binding on the allocating authority.
- 42.** Again, DW3 said that she was not aware of **P. Exhibit No. (2)**. DW3 said that she still stood by her recommendation that those petitioners on the ground ought to be considered for the portions they

have been utilizing, even though they did not make a formal application as previously advised by her team.

- 43.** The petitioners rely on written submissions dated **7/4/2026**. They submit that they have been in long possession and occupation of the suit land, which constitutes a protectable interest under **Article 40** of the Constitution.
- 44.** The petitioners submit that the 3<sup>rd</sup> and 4<sup>th</sup> respondents, being state organs, are bound by **Articles 2** and **10** of the Constitution, which require all state organs to uphold constitutional values, including the rule of law, human dignity, and protection of human rights. They submit that the action of the 3<sup>rd</sup> and 4<sup>th</sup> respondents selling the property to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without notice or consultation with the petitioners is a clear violation of the Constitution.
- 45.** Reliance is placed on **Mitu-Bell Welfare Society -vs- Kenya Airports Authority & 2 others [2021] KESC 34 (KLR) and Judicial Service Commission -vs- Mutava & another (20151 KECA 741 (KLR), Ayuma & 11 others (Suing on their own Behalf and on Behalf of Muthurwa Residents) -vs- Registered Trustees of the Kenya Railways**

**Staff Retirement Benefits Scheme & 2 others;  
Kothari (Interested Party) [2013] KEHC 6003  
(KLR), Republic District Land Registrar Meru  
Central District Ex-Parte Nelly G. Solomon &  
another 120161 KEHC 5064 (KLR).**

- 46.** The 1<sup>st</sup> and 2<sup>nd</sup> respondents rely on written submissions date **17/4/2026**. They submit that the petition is fatally defective for want of precision in pleadings and the alleged violation of constitutional rights. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that the petitioners have not clearly stated which right the 1<sup>st</sup> and 2<sup>nd</sup> respondents have violated, and neither have they demonstrated how the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents amount to a violation of such rights, nor have they provided particulars linking the alleged breach to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
- 47.** Further, the 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that the petitioners have not demonstrated that the said first allottee complied with the terms of the offer and settlement of the loan. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that rights under **Articles 40** and **43** of the Constitution are not absolute, since **Article 24(1)** of the Constitution limits rights, and therefore the petitioners cannot invoke constitutional protection.

48. Reliance is placed on **Mumo Matemtu -vs- Trusted Society of Human Rights Alliance and others( 2013) eKLR, John Kamunya & Another -vs- John Nginyi Muchiri & 3 others (2013), Tonui -vs- Wekesa& 5 others (Environment & Land case 23 of 2018) [2023] KEELC 15953(KLR)(8 March 2023) (Judgment).**
49. On the other hand, the 3<sup>rd</sup> and 4<sup>th</sup> respondents rely on written submissions dated **13/4/2026**. They submit that the original allottee of the suit land did not perfect the charge and therefore did not acquire any proprietary interests over it, thus it reverted to the issuing authority.
50. Reliance is placed on **Section 134 and 135(3)** of the Land Act, **2012**, and submit that the petitioners are neither squatters, nor were they displaced by any project, nor forced to move into the suit property because of displacement from any conflict. Therefore, equitable and beneficial interests over the suit land cannot accrue when the petitioners have failed to demonstrate necessity.
51. The 3<sup>rd</sup> and 4<sup>th</sup> respondents submit that the 3<sup>rd</sup> respondent informed the court that the petitioners who were in physical occupation of the suit land were

advised to apply for allocation, but either ignored or refused to do so, even during the pendency of this suit. Reliance is placed on **Mitubell Welfare Society -vs- The Kenya Airports Authority** (*supra*).

52. The issues calling for my determination are:

- i. ***If the petitioners' rights were violated by the 3<sup>rd</sup> and 4<sup>th</sup> respondents in allocating the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> respondents to their exclusion, yet they have been found in occupation by the 3<sup>rd</sup> and 4<sup>th</sup> respondents during the ground and status visits.***
- ii. ***If the petitioners are entitled to the reliefs sought.***

53. A squatter, as per *Black's Law Dictionary 8<sup>th</sup> Edition* page 1439, is defined as a person who settles on a property without any legal claim. Settlement refers to actual physical possession and occupation of the land.

54. In **Fanikiwa -vs- Sirikwa Squatters Petition No. 32 (E036) and 35(E038) and Petition No. 36 (E039) of 2022**, the court said that without evidence of possession and occupation, Sirikwa's claim could not be supported or seek compensation.

55. In this suit, the petitioners have relied on documents showing that they were on the suit land by the time

the 3<sup>rd</sup> and 4<sup>th</sup> respondents visited the land to look for the initial allottee, who had defaulted or breached **D. Exhibit No. (1)**.

- 56.** DW1 in her replying affidavit testified and exhibits produced before the court confirmed that they found some squatters on the suit land, as captured in the ground and status reports, when they recommended that it be re-allocated to recover the loan.
- 57.** DW1 says that she encouraged the petitioners to apply for the allocation of the suit land, but unfortunately, only the 1<sup>st</sup> and 2<sup>nd</sup> respondents did. The bone of contention in this petition is that only the 1<sup>st</sup> and 2<sup>nd</sup> respondents have been allocated the land, contrary to the assurance by the 3<sup>rd</sup> respondent through **P. Exhibit No. (5)** and how the 1<sup>st</sup> and 2<sup>nd</sup> respondents have threatened to evict the petitioners from the suit land despite their long occupation or possession as squatters.
- 58.** The petitioners urge the court to find that the rights or interests of landless or deserving Kenyan have been infringed, violated, and interfered with. The petitioners urge the court to find that the 3<sup>rd</sup> and 4<sup>th</sup> respondents breached their expectation to be

resettled on the suit land, since their rights on the land were evident.

- 59.** The principle of legitimate expectation to be allocated land was discussed in **Fanikiwa -vs- Sirikwa** (*supra*). The court held:

*“The principle of legitimate expectation imposes a duty to act fairly and to honour reasonable expectation raised by the conduct of a public authority. If a public body has raised expectations that it will in the future undertake a certain course of action, then it should ordinarily fulfil those expectations. This is important for the promotion of certainty and consistency in public administration.”*

- 60.** For an individual to invoke the principle of legitimate expectation, an expectation must have been induced by some conduct of the public authority. The principle extends to any individual who is in a situation in which it appears that the administrator’s conduct has led him to entertain certain expectations.

- 61.** The court cited **Kenya Revenue Authority -vs- Export Trading Co. Ltd [2022] KESC 31**, that legitimate expectation may take various forms, including an expectation to succeed in a request placed before the decision maker, or being accorded a fair hearing before a decision is made.

62. The court cited **Communication Commission of Kenya & Others -vs- Royal Media Services Ltd [2014] eKLR**, that there must be an express, clear, and an unambiguous promise given by a public authority, expectation must be reasonable, the representation must be competent and lawful for the decision maker to make and that there cannot be a legitimate expectation against clear provisions of the law or the Constitution.
63. In the **Fanikiwa** (supra), Sirikwa had applied for allocation of the land belonging to Lonrho Agribusiness, which the President wrote the words (approved), which various government officers sought to give effect to the President's endorsement of the allocation to Sirikwa members. The question was whether this gave rise to an enforceable legitimate expectation.
64. The court said that in determining whether a legitimate expectation has been established, primacy must always be given to the requirement of legality, which flows from the constitutional principle and value of the rule of law under **Article 10(2)(a)** of the Constitution, that legality dictates that an action can only be undertaken if authorised by the law.

- 65.** The court said that a representation, promise, practice, conduct, or action outside the prescription of the law or undertaken by a person or entity without competent authority is illegal and cannot give rise to a legitimate expectation.
- 66.** In a constitutional petition, the burden, as was held in **Leonard Otieno -vs- Airtel (K) Ltd [2018] eKR**, is on the petitioners to establish sufficient facts to justify a finding that their rights were violated. The petitioners have invoked **Articles 40 and 47** of the Constitution.
- 67.** In **Benson Wekesa Milimo -vs- National Land Commission & Others [2021] eKLR**, the court held that the right to fair administrative action includes an administrative action that is lawful, reasonable, and procedurally fair, and includes also the right to have a prior adequate notice of the nature and the reason for the proposed administrative action, and an opportunity to be heard.
- 68.** An administrative action is defined under **Section 2** of the Fair Administrative Action Act to include powers, functions, and duties exercised by

authorities that affect the rights or interests of any person to whom such action relates.

- 69.** A decision arrived at without affording a party a fair opportunity to be heard cannot be allowed to stand as held in **Evan Thiga Gaturu & Another -vs- Naiposha Co. Ltd & Others [2017] eKLR.**
- 70.** Both the petitioners and the respondents agree that some of the petitioners were on the suit land as squatters after the initial allottee passed on or breached the terms and conditions of the charge.
- 71.** DW1 confirmed these facts both in their testimony and in their documentation. DW1 and DW2 say that when they applied for allocation, they withheld disclosing the status of some of the petitioners who were co-squatters on the suit land since **1987** or thereabout.
- 72.** In **Florence Wairimu Mbugua -vs- Triple Eight Properties Ltd & Others Civil Appeal No. 612 of 2019,** a decision delivered on, the court held that upon expiry of a lease, the land reverts to the government, extinguishing proprietary rights, and that allocation of such land must strictly comply with the statutory procedures under Government Land Act (repealed), and that former leaseholders have no

automatic right to renewal, but may be accorded priority consideration.

- 73.** The court clarified that legitimate expectation in the circumstances can only be invoked if there is a clear response by a public body, where there was a formal application for renewal. The court said that in the absence of an application, no enforceable expectation existed and that the principle could not arise from mere hope or occupation.
- 74.** In **Sehmi & another -vs- Tarabana Company Ltd & 5 others [2026] KESC 15 (KLR)**, one of the issues was also the doctrine of legitimate expectation renewal and lease over public land. The court reaffirmed **Communication Commission of Kenya & Others -vs- Royal Media Services Ltd** (*supra*), elements of legitimate expectation and held that where a lease over public land provides for a renewal or extension option, the lessee must proceed to take the action specified for renewal or extension of the lease, failure of which the land reverts to the government by effluxion of time, and if he does so, the National Land Commission should consider the application and furnish him with a feedback.

- 75.** The court held that the first proprietors had a legitimate interest that their lease would be extended and that the fact that a PDP had been prepared with a view to activating the lease extension processes, met the requirement for legitimate expectation for the extension of the lease.
- 76.** Relying on the pre-emptive right under **Section 13** of the Land Act, the court said that there was no guarantee that the National Land Commission would give priority in case the land was to be re-allocated. The court said that silence or inaction by authorities on a lease renewal application did not amount automatically to approval, or preserve, or extension of the lease for one to continue legal ownership beyond expiry.
- 77.** It is not in dispute that the late Dr. Koech was allocated land by the 3<sup>rd</sup> respondent, who is said to have breached the terms and conditions of the charge, leading to a site visit by DW3 on the land in **2019** and **2020**, who found the 1<sup>st</sup> and 2<sup>nd</sup> respondents, among the petitioners, and to use her words, “encouraged” them to apply for the land.
- 78.** According to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, although their recommendation as per **P. Exhibit No. (5)**

was for all squatters to be considered in the reallocation, only the 1<sup>st</sup> and 2<sup>nd</sup> respondents applied and were issued with a letter of offer, which they have now accepted and await a letter of allotment.

- 79.** Failure to demonstrate lawful repossession or cancellation of the original charge before re-allocation to the 1<sup>st</sup> and 2<sup>nd</sup> respondents was discussed in **M'Mugwika M'Rugongo -vs- Settlement Fund Trustees [2022] eKLR**. The court held that the failure to produce repossession notices, cancellation documents, or control land board approvals rendered the Settlement Fund Trustees' action procedurally invalid.
- 80.** The interest of the Settlement Fund Trustees is that of a chargee as held in **Boniface Oredo vs Wabomba Mukile Civil Appeal No 170 of 1989 (unreported)**. In **Botwa Farm Co. Ltd -vs- Settlement Fund Trustees Civil Appeal No. 100 of 2015**, there was a purported repossession of the suit land and subdivision to non-members of the appellant company. The trial Court dismissed the claim by the appellant, saying the re-allocation, repossession, and cancellation were out of a default and breach of the terms and conditions of allocation,

after only paying a **10%** deposit. The Court of Appeal agreed with the trial court that the burden of proof was on the appellant to call sufficient evidence to prove the facts upon which its right to the land.

- 81.** DW3 has admitted in her replying affidavit and in her testimony the existence of the report dated **7/10/2020** and **16/10/2020**, capturing nine families whom she found on the land, allocated to Dr. Koech. The recommendation was to reallocate the land. **D. Exhibit No. (1)** was made by the 2<sup>nd</sup> respondent, saying “we squatters living on the land had requested re-allocation as per ground and status records attached, which had recommended the reallocation, and were advised to apply for the land.”
- 82. D. Exhibit No. (2)** refers to the said application made on behalf of the squatters. There is no rival and evidence that the 1<sup>st</sup> respondent made another individual application for the suit land. Assuming the intention was to allocate him the whole **22 Ha** single-handedly, then it would not be possible for the official receipts of payment of **Kshs.90,000/=** and **Kshs. 46,450/=** dated **8/6/2021** and **18/6/2021**, to be made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

- 83.** Equally, it would not be possible for the loan statement to reflect the names of the two. What baffles this court is that **D. Exhibit No. (1)**, though written in its wording on behalf of the squatters, lacks the signature part showing who signed for and on behalf of the squatters. The ground reports do not speak of the two allottees as the only squatters.
- 84.** DW1 and DW2 were cross-examined on why they failed to disclose to the petitioners that they were making the application or why they failed to disclose to the allocating authority that the suit land they were seeking allocation of was occupied by third parties.
- 85.** DW3, when asked by this court, said that hers were mere recommendations to the allocating authority. DW3, however, assured the court that despite the letter of offer by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the suit land will still have its rights or interests protected.
- 86.** The Bill of Rights, which the petitioners aver has been infringed, applies to all laws and binds all state organs and all persons, including the 3<sup>rd</sup> and 4<sup>th</sup> respondents, as they undertake their duties under **Articles 60** and **62** of the Constitution. Equity and freedom from discrimination are in opportunities, on

race, sex, gender, marital status, ethnicity, or origin, age, are outlawed by **Article 27** of the Constitution. Right to privacy includes the right not to have possession of land seized.

- 87.** Access to information is a right under **Article 35**, freedom of residence is critical, and so is the right to property, including its deprivation.
- 88.** The report by the 3<sup>rd</sup> and 4<sup>th</sup> respondents shows that the petitioners, just like the 2<sup>nd</sup> respondent, have houses and developments on the suit land. The right to housing under **Article 43(1)** of the Constitution, if threatened with eviction on public land, was reaffirmed in **Mitu Bell Welfare Society** (*supra*).
- 89.** Procedural fairness under **Article 47** of the Constitution is mandatory, as held in **Magare Gikenyi -vs- County Government of Nakuru & Others SCOK Petition No. E098 of 2023.**
- 90.** Lack of notice and right to be heard cannot be bypassed in the allocation of the suit land, especially when the 3<sup>rd</sup> and 4<sup>th</sup> respondents knew that the petitioners were and have been in occupation of the suit land and would be aggrieved or affected by an allocation to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, oblivious of their possessory rights or interests. By-passing the

petitioners violates the principles of fair administrative action and the values of public service enshrined in the Constitution.

- 91.** In **Isaac Aluoch Polo Aluochier -vs- The Senate & Others Petition No. E014 of 2025**, the court held that the evidential burden is an obligation to show, if called upon, to do so that there is sufficient evidence to raise an issue to the existence or non-existence of a fact in issue.
- 92.** The petitioners have shown before this court that their interests on the suit land were confirmed by the DW3, who prepared a report recommending their names for re-allocation of the plot. A legitimate expectation was therefore created on their part. The justification for allowing the 1<sup>st</sup> and 2<sup>nd</sup> respondents alone, yet the application for allocation was made on behalf of all the squatters' names captured in the ground and status reports, cannot be justified by the respondents.
- 93.** The evidential burden shifted, as per **Raila Odinga & Others -vs- IEBC [2017] eKLR**, to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, as to why they are discriminating against the petitioners in the allocation, subjecting them to being evicted or rendered homeless.

- 94.** In *Kithaka -vs- Wangari & Others Civil Appeal No. 155 of 2020 [2026] KECA 255 KLR (13<sup>th</sup> February 2026) (Judgment)*, the appellant had filed a petition for declaration that his property rights, access to justice, fair trial and fair administrative action were violated, a declaration that the decision of the Land Disputes Tribunal and its appeal were unconstitutional, null, and void. The 1<sup>st</sup> respondent had argued that the suit property belonged to the National Irrigation Board, hence the appellant and she were mere licensees, with no right to evict anyone.
- 95.** The trial court dismissed the petition for *res judicata*. At issue on appeal was the failure to uphold the appellant's tenancy rights as protected under **Article 40** of the Constitution, since the appellant was alleging that he had a statutory licence under the Irrigation Act. The court cited *Megarry's Manual of the Law of Real Property, 6<sup>th</sup> Edition, 1982, page 370*, that a licence is a permission given by the occupier of land, which, without creating any interest in land, allows a licensee to do acts that would otherwise be trespass.

- 96.** The court said that the National Irrigation Board under the Irrigation Act was responsible for the development and control of national irrigation schemes and had powers to coordinate and plan settlement on national irrigation schemes, including to licence one to reside, carry on business, or occupy any part of the irrigation scheme, on such terms and period, in the rice holding building, including a licensee in the event of death nominating in writing a successor.
- 97.** The court said that under **Article 40** of the Constitution, protection of property or right or interest extends to property of any description. The trial court held that our constitution is transformative and rooted in the quest for social justice. **Article 40** of the Constitution should be interpreted broadly. The court said that a licensee of a rice-holding irrigation scheme in Mwea, in terms of the Irrigation Act, enjoys the same constitutional protection as the property owner in Muthaiga, so long as he observes the terms of the statute for which the licence was issued.
- 98.** I think the petitioners have demonstrated that the entry into the land was out of the license or

permission of the initial allottee, now deceased. After the deceased passed on, they continued being there alongside the 1<sup>st</sup> and 2<sup>nd</sup> respondents as squatters. To allocate the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> respondents and not the rest of the squatters would amount to discrimination and be against equal protection before the law.

**99.** The court finds the petition proved to the required standard. The court holds that the application dated **20/3/2020** by the 1<sup>st</sup> respondent was made on behalf of all the squatters captured in the ground status report. The allocating authority must consider the names therein.

**100.** The court finds that the petition is merited and issues the following orders.

**a) A declaration be, and is hereby issued that the petitioners' rights to property and to fair administrative action have been violated and transgressed by the respondents, by virtue of allocating and selling Plot No. 177 Maridadi Settlement Scheme, which they are in occupation of, to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.**

- b)A declaration be, and is hereby issued that the outright purchase of Plot No. 177 Maridadi Settlement Scheme, by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the sale by the 3<sup>rd</sup> and 4<sup>th</sup> respondents, is illegal and violates the petitioners' fundamental rights to own property.**
- c)A declaration be, and is hereby issued that the petitioners have a right to be considered as potential allotees of Plot No. 177 Maridadi Settlement Scheme, just like the 1<sup>st</sup> and 2<sup>nd</sup> respondents, by virtue of their long occupation.**
- d)A declaration be, and is hereby issued that the sale of Plot No. 177 Maridadi Settlement Scheme to the 1<sup>st</sup> and 2<sup>nd</sup> respondents by the 3<sup>rd</sup> and 4<sup>th</sup> respondents is null and void, and was subject to the overriding interests of the petitioners.**
- e)The petitioners are directed to submit a formal application for allocation of Plot No. 177 Maridadi Settlement Scheme, with the 3<sup>rd</sup> respondent for its consideration alongside the 1<sup>st</sup> and 2<sup>nd</sup> respondents,**

**within 3 months from the date hereof, and  
in line with the law.**

**f) Costs of the petition of the petitioners.**

**101.** Orders accordingly.

**Judgment dated, signed, and delivered** via  
**Microsoft Teams/Open Court** at **Kitale** on this **6<sup>th</sup>**  
day of **May 2026**.

**In the presence of:**

Court Assistant - Dennis

Mr. Serebe for the 1<sup>st</sup> and 2<sup>nd</sup> respondents present

Miss Wanyonyi for Munialo for the petitioners present

Lotir for the 3<sup>rd</sup> and 4<sup>th</sup> respondents present



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**