



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v County Government of Trans-Nzoia & another (Environment and Land  
Petition E003 of 2020) [2025] KEELC 5538 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5538 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND PETITION E003 OF 2020**

**CK NZILI, J**

**JULY 23, 2025**

**BETWEEN**

**JOSEPH NDUNGU KAMAU ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF TRANS-NZOIA ..... 1<sup>ST</sup> RESPONDENT**

**MUNICIPAL BOARD OF KITALE (TRANS-NZOIA COUNTY) .... 2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

1. The petitioner came to court through a further amended petition dated 22/11/2021. He seeks:
  - [a] Declaration that the respondents are mandated to undertake functions, including but not limited to upgrading the Namajalala Market.
  - [b] Declaration that the respondents have abdicated their responsibilities as assigned by the Constitution and other Acts of Parliament, thus occasioning the endemic situation in Namanjalala Market, threatening the petitioner and other residents of the Market from the enjoyment of their rights.
  - [c] Declaration that the petitioner, being a ratepayer to the respondents and lawfully owning a parcel of land in Namanjalala Market, has inalienable rights to enjoy the services from the respondents.
  - [d] An order directing the respondents to undertake the following obligations:
    - [i] Streamlining the records of owners of plots in the Market.
    - [ii] Place beacons or identify the plots.
    - [iii] Point out to the identifying owners of the respective plots and their sizes.



- [iv] Provide individual owners with records of their plots through the market officials or committees.
  - [v] Remove any trespassers in the plots identified to give access to the lawful owners.
  - [vi] Place street lighting services in strategic positions for security at night.
  - [vii] Tarmac the roads that surround and serve the Market.
  - [viii] Make provisions for parking spaces.
  - [ix] Build a modern standard ablution block.
- [e] Issuance of upgrading notices or enforcement notices for purposes of upgrading the structures to modern and reasonable standards.
2. The petitioner avers that as a rate payer and owner of a Plot No. 12, Namanjalala Market, who depends on services constitutionally vested with the respondents under Articles 176[2] and 186[1] of the *Constitution* and Section 12 of the *Urban Areas & Centres Act* 2011, he is entitled to the enjoyment of such rights, especially after he has dutifully financially complied with payment of land rates and annual rent. The petitioner specifically avers that he acquired his plot some years back with an intention to develop it.
  3. Unfortunately, the petitioner avers that the respondents have completely neglected the Market and have left it in a dilapidated situation, with non-upgraded structures, wrangles of ownership of plot numbers, encroachment of plots by trespassers, court cases emanating from such ownership wrangles with no clear records on plot owners, plot sizes and beacons on the ground, poor state of fender roads connecting the main road to the market centre and back road, lack of street lighting, lack of a modern ablution block, lack of parking spaces, disinterest in implementing a physical plan or approval of building plans.
  4. Due to the foregoing neglect, the petitioner avers that he has been subjected to debilitation of the Market growth, poor infrastructure, it is a recipe created for failure to streamline the Market, there is no clear mechanism to resolve incessant ownership of plot wrangles or disputes, which cause the situation to turn chaotic and has resulted to inability to use the lawfully acquired property or delayed the development of the suit parcels of land, hence resulting to constructive loss of the property.
  5. The petitioner avers that as a result, his social and economic rights under Articles 43 and 176 of the *Constitution* have been violated and are in danger of further violation, for he is unable to enjoy or make meaningful development of his plot in absence of the neglect or abdication of the constitutional services or obligations of the respondents.
  6. The petitioner avers that the services sought concerning the Market are mandatorily placed on the respondents by the Constitution under Article 186 as read together with Part 2 of the 4<sup>th</sup> Schedule, Sections 3, 4, 17, 45, 46, 47 and 48, *Physical and Land Use Planning Act* 2019, Urban Areas, Sections 16A, 16B, 16C, 16D, *Urban Areas and Cities Act* 2011 and Section 3 of the *County Government Act*.
  7. The petitioner contends that under Articles 1[1] and 2[1], 19, 20, 21, 22, 23, 51 and 60[1] of the *Constitution*, the Constitution is supreme, he is entitled to the enjoyment and protection of those rights where the rights are violated or threatened with breach, the court has to declare and enforce them. In this case the petitioner avers that his rights to sustainable and productive management of the plot are threatened with breach or have been infringed and threatened with breach or have been infringed and more threats are ongoing, yet the respondents have the exclusive mandate to streamline the apparent



- crisis, failure to which there will be no meaningful productive and sustainable developments in the Market, in tandem with security of land rights among them, proper and secure plot records, beacons and security of the same to avoid trespass wrangles.
8. Further, the petitioner avers that the court has jurisdiction under Articles 22[1] and 23[1] and [3] of the Constitution to direct the respondents to comply with and to take seriously the responsibility assigned to them by the Constitution, to upgrade the status of the market to productive and sustainable levels.
  9. The petition is supported by an affidavit of Joseph Ndungu Kamau, sworn on 7/9/2020, a supplementary affidavit sworn on 23/11/2020, a further affidavit sworn on 30/3/2023, witness statements of Joseph Ndungu Kamau, Daniel Kamau, and John Nahashon Wambulwa dated 9/6/2023, a list of documents dated 12/6/2023, and supplementary documents dated 22/7//2024.
  10. The petition is opposed through a response to the petition by an affidavit of Lineka Bwire, sworn on 29/7/2021, a response to the further amended petition sworn by Lineka Bwire, and the 2<sup>nd</sup> respondent's response to the further amended petition sworn by Patrick Mukamo Nyongesa on 13/3/2023.
  11. The 1<sup>st</sup> respondent through its town manager deposes that the respondents Municipal Board is established under Urban Areas and Cities Act 2011 and has been in existence for 4 years, with its responsibility under Section 12 thereof, to administer development on behalf of the County in line with its functions, powers and authority, set out in Section 20[1] of the Act, ranging from planning, execution, implementation, monitoring and evaluation of policies, plans programmes, budget, infrastructure developments.
  12. The respondents depose that Section 21 of the Act confers upon the Municipality Board powers that are not limited to exercise executive authority as delegated by the CECM, provisions of services to the residents, imposition of fees levies and charges, for delivery of services by the municipality or city, promotion of constitutional values of principles, implementation and compliance with polices formulated by both County and National Governments, making of by-laws and ensure public participation of the residents in decision making, its activities and programmes.
  13. The respondents depose that the Board works and coordinates with other bodies and entities, including the parent entity, the physical planning department, public health and by requesting views and inputs from the residents, through a citizen forum as required by Section 22 of the Act, which are then incorporated in the development proposal of a given area.
  14. In this case, the respondents deny that the petitioner has ever approached them or tendered any development proposal for Namanjalala Township to any entity, that is to say, the Department of Physical Planning, the Municipality Board, or the respondents; otherwise, the Namanjalala Market Centre is located within the Kitale Municipality. The respondent deposes that Namanjalala Market Centre is private; hence, the responsibility to develop the market lies with the plot owners.
  15. Further the respondents depose that the town centre was planned in 1997, whereafter its authentic plan was approved in 2009, as per annexure marked LB-1, where it has erected a high mast flood lighting, it undertakes routine road maintenance on all access to remote areas, that it is admitted that plot ownership wrangles or disputes have been there, some which are pending before the court, with some interim orders that the disputes are, on account of ownership, boundaries, encroachment and positioning.
  16. The respondents depose that it is the duty of the individual owners of the plots falling within its area of jurisdiction to develop their plots, in line with the county planning; otherwise, the respondents can only assume the overall control and the management of such plots upon surrender, which has



never happened. The respondents depose that the town centre has a functional and well-managed public toilet, serving the residents. Equally, the respondents depose that the approved plan has a bus park which is adequate for all the vehicles at the moment; otherwise, the respondents have always been executing those mandates as per the law and development plans available, contrary to the unsubstantiated claims of violation of the petitioner's rights.

17. In the 2<sup>nd</sup> respondent's municipal manager's affidavit, he reiterates the affidavit of Lineka Bwire, save to add that the said market arose out of land set aside for Trans Nzoia Investment Company, and was subdivided into public utilities and private plots. Subsequently, it is deposed that the Market was planned, surveyed and successful applicants were awarded temporary occupation letters, whereafter they took possession of their plots through the defunct County Council of Trans Nzoia, some of whom are on the ground, while others are not.
18. The 2<sup>nd</sup> respondent admits that there are pending unresolved plot disputes as per annexure marked LB-3, which have made it difficult to effectively plan for the area, for orders issued bind them. Equally, the 2<sup>nd</sup> respondent attaches photos as annexure LB-4 and 6 to who that there is a functional toilet and temporary unoccupied cubicles for trading.
19. In the further affidavit and witness statement sworn on 20/3/2023 and 9/6/2023, respectively, the petitioner denies that there has been any engagement of the locals by the respondents; otherwise, minutes for the said meetings should have been attached to that effect. Additionally, the petitioner deposes that the respondents should not wait to be reminded, directed, controlled, or controlled on their statutory mandate, as they are supposed to maintain accurate data, are the custodians of the plot or land records and to develop plans as held in *Jamin Kadasia Lubanga v Festo Lukhanyo*, Kitale ELC No. 3 of 2014 and *Ann Kwamboka Ongaro v Peter Weseke Fwamba*.
20. The petitioner deposes that the existing situation of the said development and lack of investments in the Market by the respondents, abdicating their constitutional and statutory obligations, is affecting efficient and effective public utilities. The petitioner deposes that the respondents have failed to provide any updated list of plot owners, allowed trespassers based on wrong allotments or false agreements; 2 cases are pending namely Kitale ELC No. 14 of 2019 and ELC No. 3 of 2014, related to the anomalies on documentation of plot owners, lack of proper planning and poor service delivery.
21. Concerning the witness statement of John Nahashon Wambulwa as the Market chairman, he states that the market remains undeveloped out of laxity and lack of desire on the part of the respondents to see it develop. The petitioner's witness states the respondents have been put into task to update plot ownership records, to avoid the perennial trespass wrangles between plot owners, each claiming to possess different plot ownership numbers, which wrangles could easily be resolved by the respondents once it avails an authentic and updated area list held in their offices.
22. The petition was directed to be canvassed by way of written submissions to be filed by 30/6/2025.

### **Issues for Determination**

23. The petitioner filed a list of 14 issues for the court's determination. Having gone through the pleadings and the submissions, the main issues calling for my determination are:
  1. If the petition is pleaded with precision.
  2. If the petitioner has locus standi to bring the petition.
  3. If the petitioner exhausted any available alternative dispute resolution before moving to court.
  4. If the petition meets the constitutional test and raises constitutional questions or issues.



5. If the petitioner has pleaded and proved breach of his rights as set out in Articles 2, 43, 176, and 186 of the Constitution.
  6. If the petitioner is entitled to the reliefs sought.
- [7] What is the order as to costs?
24. A party seeking constitutional reliefs for an alleged breach of constitutional rights and freedoms must meet the criteria set out under the *Constitution of Kenya [Protection of Right and Fundamental Freedoms [Practice and Procedure Rules]*, 2013, [Mutunga Rules]. The petition must adhere to Form A of the Schedule, disclose the name and address, facts relied upon, constitutional provisions violated, the nature of injury caused to the petitioner or in the public interest, class of person or community, details regarding any civil or criminal cases involving the petitioner, related to the matter in issue, reliefs sought and signature.
  25. A petition must be pleaded with clarity, precision and establish a link between the rights and freedoms of the petitioner alleged to have been breached, the manner of the violation and the evidence sought to be relied upon in support of the petition. In *Koross [Suing as the Administrator of the Estate of the Late Elijah CA Koross] v Barchigei [Sued as the Legal Representative of the Estate of Jonathan Kipkoros Barchigei] & 2 others* [Civil Appeal E089 of 2023] [2025] KECA 1038 [KLR] [5 June 2025] [Judgment], the court cited *Anarita Karimi Njeru v Republic* [1979] eKLR and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013], on the importance of precise claim in due process and substantive justice. The court held that the exercise of jurisdiction by a court rests on precise and factual claims and that the whole function of pleadings, hearings and submissions, is to define issues in litigation and adjudication; otherwise, cases cannot be dealt with justly unless the parties and the court know the issues in controversy.
  26. Looking at the petition, I think it was pleaded with precision and clarity. The respondents were able to appreciate the cause of action as pleaded and were also able to extensively respond to the same by way of a replying affidavit.
  27. The next issue is whether the petitioner has locus standi. The petitioner brings the petition as a plot owner and a rent payer of the plots comprised of Namanjalala Market Centre.
  28. In *Okoiti v Portside Freight Terminal Ltd & 12 Others*, Petition E011 of 2024 [2025] KESA 44 [KLR] [30<sup>th</sup> June 2025] [Judgment], the court held that both Articles 22 and 258 of the *Constitution* grant every person without exception, the right to institute court proceedings, claiming either that some rights or fundamental freedoms has been denied, violated or infringed or are threatened. The court cited *Mumo Matemu v Trusted Society of Human Rights Alliance* [supra], that the *Constitution* enlarged the scope of *locus standi* and that, as per *John Wekesa Khaoya v Attorney General* [2013] eKLR, the enlargement is aimed at ensuring unhindered access to justice, including in matters related to public interest. Nevertheless, the court cited the rider in *Kenya Railways Corporation & 2 others v Okoiti & 3 others* [Petition 13 & 18 [E019] of 2020 [Consolidated]] [2023] KESC 38 [KLR] [16 June 2023] [Judgment], that constitutional petitions in the name of public interest should not be used to advance private or political interests or other considerations through proxies, or where the cause of action is hypothetical, abstract, or amounts to an abuse of the court.
  29. The court emphasized that, a party invoking Articles 22 and 258 of the *Constitution* must show the specific rights alleged to be infringed or threatened, as well as the basis of his or her grievance. The court said that any person acting bona fide, having genuine public interest, can alone have locus standi, so long as it is not for personal gain or private profit or political motive or an oblique consideration.



30. In this petition, the petitioner has defined his specific rights infringed upon both as a recorded plot holder and a rate payer, going by the list of documents dated 12/6/2023, issued by the 1<sup>st</sup> respondent. He fits the description of bringing the petition on his own behalf and that of other plot owners and rent payers who deserve services from the respondents, under Article 176 and Part 11 of the 4<sup>th</sup> Schedule of the *Constitution*.
31. The next issue is whether the petitioner exhausted other available alternative dispute resolution forums before moving to court. The doctrine of exhaustion is based on the philosophy that where a remedy is provided by a statute, a claimant must exhaust those alternative remedies before moving to court unless there are exceptional circumstances. See *William Odhiambo Ramogi & Others v Attorney General & Others* [2020] eKLR, *Geoffrey Muthinja Kibiru & Others v Samuel Munga Henry & Others* [2015] eKLR, *Capital Markets Authority v Ciano & Another* [2023] KECA 581 [KLR] [26<sup>th</sup> May 2023] [Judgment] and *Mui Coal Basin Local Community & Others v P.S. Ministry of Energy & Others* [2015] eKLR.
32. In *Nicholas v Attorney General & Others* [2023] KESC 113 [KLR] [28<sup>th</sup> December 2023] [Judgment], the court observed that the doctrine should not be used to deny claimants seeking constitutional remedies from accessing justice, especially if the alternative forum has no powers to grant constitutional remedies or if it is in the interest of justice or it is inadequate to address the issues raised. The respondents have not mentioned those alternative forums, their efficacy, and adequacy to grant the reliefs sought.
33. As to whether the petition raises constitutional issues, the general rule is that where it is possible to decide any case or dispute without reading the Constitution, then that is the recourse to be followed; otherwise, not every statutory right breach should mean there is a constitutional breach. A constitutional question forces the court to interpret the Constitution rather than a statute. See *Hakizimana Abdoul Abdulkarim v Arrow Motors [EA] Ltd & another* [2017] eKLR. The dispute must also be ripe. The alleged violation must be clear and directly relevant to the matter. It should not be an academic or the most important issue. It must require a constitutional resolution.
34. In *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, the court held that the principle of avoidance was that a court will not determine a constitutional issue when a matter may properly be decided on another basis. The petition herein raises a constitutional issue or whether or not the respondents failure to plan, implement, execute and or enforce, resolve plot ownership and undertake physical land use planning duties on the development of Namanjalala Market amounts to dereliction or abdication of constitutional obligations under Articles 174, 178, 176, 186 and 187 and Part 11 of Schedule 1V of the *Constitution*.
35. In answering the issues set in the list dated 28/1/2023, the court will have to look at the facts relied upon the alleged manner of breach and whether the respondents' action on management and sustainable planning and development of the Market comply or abide with their powers, facts, obligation, duties and responsibilities set out under Article 6 on devolution and access to services, Articles 43, 176, 179[1] and [2] and 186 of the *Constitution*. Constitutional issues or questions include disputes as to whether any law or act, or conduct is inconsistent with the *constitution*.
36. The next issue is whether the petitioner has pleaded and proved abdication of the constitutional and statutory obligations by the respondents, in effecting efficient and effective public utilities by planning, surveying, recording, keeping, registering, beaconing, resolving, implementing, developing plans and providing services, and proving a conducive and home environment for the petitioner to develop his



plot based on laid down county development plans, which are constitutionally vested with the 1<sup>st</sup> respondent to develop, implement, execute, monitor and evaluation.

37. The burden of proof rests with the claimant to prove the existence of those facts to be granted certain rights under Sections 107-118 of the *Evidence Act*. A petitioner, as held in *Christian Juma Wabwire v Attorney General* [2019] eKLR, has to avail tangible evidence other than speculation or imagination.
38. The answers to the issues raised and the evidence must force the court to get answers from the Constitution and not from a statute. See *Peter Okutoyi v Habil Olaka & Others* [2018] eKLR. It is not enough to allege breach. There must be proof of genuine and verifiable breaches of the Constitution. See *National Rainbow Coalition Kenya [NARC Kenya] v Independent Electoral & Boundaries Commission; Tharaka Nithi County Assembly & 5 others [Interested Parties]* [Petition 1 of 2021] [2022] KESC 6 [KLR] [17 February 2022] [Judgment]. There is no dispute that Article 6 of the Constitution guarantees Kenyans reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so, having regard to the nature of the service.
39. Article 10 provides that state organs, state officers, public officers, and all persons must inter alia ensure public participation and sustainable development of principles of governance. Articles 40, 43, and 60 thereof guarantee Kenyans' right to protection and property, economic and social rights, including standard of health, accessible and adequate housing, clean and safe water, equitable, efficient, productive and sustainable management of land use.
40. Article 66 provides that the state may regulate the use of any land or any interest in or right over any land, in the interest of the defendant, public safety, public order, public morality, public health, or land use planning. Articles 186 and 187 set out the functions and powers of the County and National Governments. Part 1 of the 4<sup>th</sup> Schedule sets out the general principles of land planning and the co-ordination of planning by the counties and the function of the national government.
41. Part 11 provides that county transport, including county roads, street lighting, traffic and parking, markets, county planning and development, land surveying and mapping, boundaries and fencing, county public works and services, including water management systems in built-up areas, water and sanitation, as county functions.
42. The petitioner avers that as a plot owner of Block A Plot 12, the rates and rent payer depend on the services of the respondents as stipulated in Articles 176[2] and 186[1] of the *Constitution*, which are delegated to the 2<sup>nd</sup> respondent, under Section 12 of the *Urban Areas and Cities Act*. He blames the respondents for neglecting the Market such that it has no upgraded structures, the plot owners, its size and beacon are not available, there are wrangles of ownership and trespass, access roads are in poor state, there is no street lighting, sanitary services are lacking, there is no public parking and the respondents have no interest in implementing any physical plans for the market.
43. As a consequence, the petitioner avers that the poor infrastructure has impacted the essential development of plots in the market, causing constructive loss to the said properties. The petitioner avers that he has suffered and his social and economic rights have been violated, including consumer rights.
44. Further, the petitioner avers that the respondents are bestowed with functions such as trade development, county transport, county development and planning but instead have failed to do so under Sections 3, 4, 17, 45, 46, 47 and 48 of the *Physical and Land Use Planning Act* 2019, as read together with Sections 2, 10A, 10C and 16D of the *Urban Areas and Cities Act*, as read also together with Section 48[1][e] of the *County Governments Act*.



45. Whereas the respondents admit that they are constitutionally and statutory mandated to undertake the functions and powers set out in the constitution and the cited statutes, the respondents aver that the Market was planned, surveyed and hundreds of the successful applicants awarded temporary occupation letters by the defunct County Council of Trans Nzoia, some of who are on the ground while others are not. The respondents aver that the town was planned and the plan approved in 1997 as per annexure LB-1. The respondents aver that the individual plot owners are the ones to privately develop the plots. The respondents admit that they are offering street lighting, sanitation, round maintenance and temporary cubicle as per annexures marked as LB-2, 3, 4, 5, and 6.
46. Article 126 of the Constitution established the County Governments with the mandate to implement county legislation as well as planning and development within the County. The mandate is exercised through the establishment of offices as provided under Article 179 of the *Constitution*, Section 35 of the *County Government Act* and Sections 14 and 18 of the *Physical and Land Use Planning Act*. Article 176[1] of the *Constitution* is specific that every county shall decentralize its functions and provisions for services to the extent that it is efficient and practicable to do so. Article 184 of the *Constitution* provides for the enactment of the *Urban Areas and Cities Act*, which shall set out the criteria for classifying areas as urban and or cities, the principles of their governance, management and provide for participation of residents in the governance of those classified areas.
47. What the petitioner is complaining about is the failure by the respondents, under the constitutional mandate and obligations set out above, which has breached their right to property development, to provide basic infrastructure and services, like social and economic rights, under Articles 40 and 43 of the *Constitution*. Article 60 [1] of the *Constitution* provides that land in Kenya shall be held and used in a manner that is equitable, efficient, productive, sustainable and in line with the principles of equitable access to land, security of land rights, sustainable and productive management of land resources. Article 60[2] of the *Constitution* stipulates that the principles of land policy under Sub-Article [1] shall be implemented through the National Land Policy, developed and reviewed regularly by the national government.
48. Since land is finite, proper and controlled planning, especially in commercial areas such as urban centres, is key to ensure that land is optimally utilized. The *Physical Land Use and Planning Act* is what the respondents have to be governed by. The Physical Planning Handbook of 2007 has set out the guidelines and the main standards of physical planning as a primary guide on matters relating to physical planning. Similarly, there is *Legal Notice No. 140 of 1998*, National Spatial Plan, *Land Act*, *Land Registration Act*, *County Governments Act*, *Urban Areas and Cities Act*, *National Land Commission Act*, Vision 2030 and the National Land Policy. Above this, Section 17 of the *Physical and Land Use Planning Act* allows counties to develop their County Physical and Land Use Policy, which has to be taken through public participation before it is approved and passed by the County Assembly.
49. Obtaining planning, development plans and related approvals rests with the respondents. Formulation of regulations on land use and planning rests with the respondents. Public participation over land use and planning matters under Section 115 of the *County Governments Act* is mandatory. Section 87 thereof sets the principles of citizens' participation in counties, including timely access to information, data, documents, and other information relevant to policy formulation and implementation. Articles 10 and 174 of the *Constitution* set out the devolution of services, national values and principles of governance, objects of devolution by giving the power of self-governance to the people and enhancing participation of the people in their governance. Article 232 of the *Constitution* gives the people power to get involved in the decision-making process.



50. In *Ndegwa [Suing on behalf of Bar Owners in Nyandarua County] v County Assembly of Nyandarua & Others* [2021] eKLR, the court cited *Doctor of Life International v Speaker of the National Assembly* [CCT12/05] [2006] ZACC 11 and *Republic v IEBC Ex parte Nasa & Others* [2018] eKLR and *Mui Coal Basin v P.S Ministry of Energy* [supra], on principles to be applied on whether or not the requirement of public participation has been met. Other than generalized statements, the respondents have not told this court the status of the infrastructure on physical and land use planning in the county generally and in particular, the Namanjalala Market, after the county took over from the defunct Municipal Council of Kitale.
51. Further, the respondents have not told the court the measures that they have taken to provide accurate data and information on plot owners of the Namanjalala Market, said to be in sorry state and the appropriate measures put in place to update the plot owners records to ensure sanctity of titles or records held by the land registry or by the County Government of Trans Nzoia, who collect land rates and annual rent from the plot owners.
52. The respondents cannot simply throw their hands in the air and pass the blame on plot owners. Rights or duties come with responsibilities. It cannot be that the respondents want to collect land rates and annual rents from the plot owners, yet on the other hand, cannot account for the specific owners of the plots, their sizes, boundaries, and beacons. Equally, it cannot be true from the cited laws that the petitioners would wait indefinitely for the plot owners' records to be up-to-date and access to the information to be availed in the pretext of pending land cases in courts.
53. The buck stops with the respondents to prepare, publicize, and update records for the plot owners for proper physical, land use and planning, as required under the *Access to Information Act*, Sections 17 and 18 of the *Physical Land Use Planning Act*, and Articles 35 and 66[1] of the *Constitution*. The monopoly of regular proprietary rights in land in the interest of land use planning rests with the state under Article 66[1] of the *Constitution*, in the interest of defence, public safety, public order, public morality, public health, or land use planning. So, formulation of such sustainable policies, programmes and efficient land use planning and their implementations is all that the petitioner is asking of the county government; otherwise, his right to enjoyment of property interests is infringed or breached in the absence of proper physical land use and planning.
54. Sustainable development is at the heart of our constitutional framework. Owners of private land are subject to the limitation alluded to above on account of land use planning. The petitioners cannot freely deal with or develop their plots in Namanjalala in the absence of guidelines as required under Article 60 of the *Constitution*. Sectoral laws such as the *Physical Land Use Planning Act*, the Roads and Roads of Access Act, *Public Health Act*, Environmental Management and Coordination Act, *Public Roads and Roads of Access Act*, *Energy Act*, *Water Act*, *County Governments Act*, *Urban Areas and Cities Act*, come in to ensure the principles of the Constitution are adhered to. It is the mandate of the respondents under Section 103 of the *County Governments Act* to ensure harmony between National, County, and Sub-County spatial planning, to facilitate development of a well-balanced system of settlements and productive use of land, water and other resources for the petitioners to benefit from economic rights under Article 43 of the *Constitution*. Urban, municipal and city areas are an integral part of social, economic activities.
55. It is upon the county government under Sections 104-115 of the *County Governments Act* and Section 37 of the *Physical and Land Use and Planning Act*, to coordinate developments within the county through the annual county integrated Development plan, County Sectoral Plans and Spatial Plan in a public participatory manner.



56. Such plans provide the overall physical and land use development framework for the county. They also provide the basis for infrastructure and service delivery, use and management of natural resources and the identification of proper zones for industrial, commercial, residential and social development.
57. The respondents have painted a sorry state of their preparedness for such plans and their implementation. It cannot be heard from the respondents to say that petitioner has not been proactive in the preparation of and participation in county physical and land use development plans, which is mandatory under Sections 40 and 46 of the *Physical and Land Use Planning Act*, as regard local physical and land use development plans over zoning, urban, renewal or re-development, and regulation of land use and development. Section 55 thereof provides for optimal land use. The parameters for development control are set out under Section 55 and the Third Schedule. The factors include location, size of the area, the zoning regulations, surrender of land for public utilities, minimum size of plot and subdivisions.
58. If, then, the respondents have no accurate data and documentation of the plot owners, and or proper plans, how can they say that the petitioner has no cause of action? Given the foregoing, I find that the petitioner has discharged his burden of proof. The court proceeds to grant the following appropriate reliefs:
- [a] Declaration that the respondents are mandated to undertake functions, including but not limited to upgrading the Namajalala Market.
  - [b] Declaration that the respondents have abdicated their responsibilities as assigned by the Constitution and other Acts of Parliament, thus occasioning the endemic situation in Namanjalala Market, thus threatening the petitioner's and other residents of the Market's enjoyment of their rights.
  - [c] Declaration that the petitioner, being a ratepayer to the respondents and lawfully owning a parcel of land in Namanjalala Market, has inalienable rights to enjoy the services from the respondents.
  - [d] An order directing the respondents to undertake the following obligations:
    - [i] Streamline the records of owners of plots in the Market.
    - [ii] Place beacons or identify the plots.
    - [iii] Point out to the identified owners of the respective plots and their sizes.
    - [iv] Provide individual owners with records of their plots through the market officials or committees.
    - [v] Remove any trespassers in the plots identified to give access to the lawful owners.
    - [vi] Place street lighting services in strategic positions for security at night.
    - [vii] Tarmac the roads that surround and serve the market.
    - [viii] Make provisions for parking spaces.
    - [ix] Build a modern standard ablution block.
  - [e] Issuance of upgrading notices or enforcement notices for purposes of upgrading the structures to modern and reasonable standards.



59. The respondents are granted six [6] months from the date hereof, to supply the required data to the petitioner and or meet the declaratory orders; otherwise, the petitioner shall be at liberty to file an appropriate claim for general damages for the breach of his constitutional rights and freedoms.

60. There will be no orders as to costs.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT  
AT KITALE ON THIS 23<sup>RD</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

No appearance.

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

