



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wasike & 11 others (Suing as Members of the Matisi Centre Self-help Group)  
v Ministry of Interior and Co-ordination & another (Environment and Land  
Petition 2 of 2020) [2025] KEELC 5552 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5552 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND PETITION 2 OF 2020**

**CK NZILI, J  
JULY 23, 2025**

**BETWEEN**

**WILFRED JUMA WASIKE ..... 1<sup>ST</sup> PETITIONER  
JOSEPH WANJALA KHAEMBA ..... 2<sup>ND</sup> PETITIONER  
JOHN WANYOYI KHISA ..... 3<sup>RD</sup> PETITIONER  
ISAAC WEKESA MAKOKHA ..... 4<sup>TH</sup> PETITIONER  
HARRISON WABWIRE KHISA ..... 5<sup>TH</sup> PETITIONER  
WILLIAM KUNDU AYUMA ..... 6<sup>TH</sup> PETITIONER  
STANLEY SHIKUKU ..... 7<sup>TH</sup> PETITIONER  
PIUS WANYAMA MABONGA ..... 8<sup>TH</sup> PETITIONER  
JOSEPHAT MAKOKHA ..... 9<sup>TH</sup> PETITIONER  
CONSTANT SIMIYU KHAEMBA ..... 10<sup>TH</sup> PETITIONER  
NASHON WANJALA ..... 11<sup>TH</sup> PETITIONER  
PIUS WALUCHO ..... 12<sup>TH</sup> PETITIONER  
SUING AS MEMBERS OF THE MATISI CENTRE SELF-HELP GROUP**

**AND**

**MINISTRY OF INTERIOR AND CO-ORDINATION ..... 1<sup>ST</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**



## JUDGMENT

1. The petitioners came to court through a petition dated 21/7/2020. They prayed for:
  - (a) Declaration that their rights to property and fair administrative action have been violated by the respondents as a result of the illegal trespass to land Parcel No. Kiminini/Kinyoro Block 3/Matisi/561.
  - (b) Declaration that the respondents have illegally and unlawfully invaded L.R. No. Kiminini/Kinyoro Block 3/Matisi/561 and erected a police post thereon.
  - (c) Damages for breach of the right to human dignity, to own property and fair administrative action
  - (d) Eviction of the respondents, their agents, or servants from the subject land.
2. The petitioners bring the petition as members of a Self Help Group commonly known as Matisi Centre Self-Help Group, which was duly registered on 17/9/2003, with the purpose of purchasing properties to use, earn a living and derive income. Among the properties is Kiminini/Kinyoro Block 3/Matisi/561, measuring 0.3399 Ha, from which they have been deriving some income to lead decent lives. It is averred that on or about 2008, violence broke out following the general election wherein the petitioners, moved from their various homes, whereof the 1<sup>st</sup> respondent allowed the police to erect a police post on the plot, then left vacant, to help in quelling the violence that had erupted in the country, without any constitutional or consent being sought to use their property.
3. The petitioners aver that even after the post-election violence was quelled, the 1<sup>st</sup> respondent took no steps to remove the police post that had been erected on their property. The petitioners term the alleged occupation of their property as amounting to trespass and violation of their rights to property, since the respondents, as a state organ, wield a lot of power and have resorted to intimidation to scare them off from demanding their right to property.
4. The petitioners aver that the respondents are vicariously liable for the gross violation of their rights, loss and damage; otherwise, they should be using or earning income from the suit property. The petitioners aver that their property is forcefully occupied by the respondents and converted to public use without any just or prompt compensation, contrary to Articles 23(1), 31, 40(1), 50(1), 62 and 68 of *the Constitution*. The petition is supported by an affidavit sworn by Wilfred Juma Wasike on 24/7/2023, in which he attached the authority to sue, title and demand letter dated 17/5/2018 as annexures marked WJW-1-5, respectively.
5. The petition is opposed vide a response of the respondents dated 25/4/2021. It is averred that Matisi Police Post has been in existence since 2000, and any suggestion of an alleged trespass onto the land in 2007 or 2008 to quell any post-election violence is misplaced. The petition is frivolous, mischievous, scandalous, a grope in the dark, untenable, discloses no cause of action, an abuse of the court process and raises no constitutional question.
6. The respondents aver that the parcel of land on which Matisi Police Post sits is public land, having been properly acquired by way of a gift, has been thereon openly, quietly and uninterrupted for over 20 years.
7. Further, the respondents aver that there was nothing constitutional with the petitioner's case, which is based on trespass, thus private in nature and ought to be pursued through the ordinary civil



proceedings, which cause of action, unfortunately, is statute-based under Section 7 of the *Limitation of Actions Act*.

8. The respondents aver that having uninterruptedly or continuously possessed the suit property for over 20 years, they have acquired title thereto by adverse possession and the petitioners' claim should not succeed. The respondents aver that the petition does not meet the constitutional threshold enunciated in *Anarita Karimi Njeru -vs- Republic* [1976-1980] KLR 1272, to meet the grant of the orders sought. The respondents aver that the wider public right and constitutional requirement for the provision of security and protection of people and property militate against the grant of the order sought.
9. In reply to response to the petition dated 2/9/2025, the petitioners reiterate that the petition discloses a cause of action. The petitioners deny that the Matisi Police Post has been in existence since 2000, sitting on their plot. On the contrary, they aver that the police post was only erected on the suit parcel between 2007 and 2008 during the post-election violence and sits on private land as opposed to public land.
10. The petitioners aver that, since their right to own the property has been violated, they had a right to move this court, which is clothed with jurisdiction to address their grievances in whichever way they choose; otherwise, the claim is not statute barred, for the respondents to purport to claim adverse rights have accrued in their favour, on account of adverse possession.
11. The petitioners aver that the respondents cannot simply take private property and turn it into public property, for the provision of security, based on the alleged wider public right. The petitioners aver that there is a procedure to be followed if the respondents are interested in the suit parcel, but not to take the property by force.
12. In a further replying affidavit of Elizabeth Marube, on behalf of the Inspector General of the Police, the respondents disputed the contents of paragraphs 4 - 16 of the petition. It was deposed that from the available records, the suit parcel, from inception, was public land, having been reserved under the County Council of Kitale for public purposes, as per Minutes dated 2/9/2022, annexed as EM-1.
13. The respondents depose that following the post-election violence of 2007 and 2008; and to address the rampant insecurity within Matisi area, the local community led by the then officials of Matisi Self Help Group, which was the de facto owner of the suit parcel agreed to re-assign the use of the suit land from a market to a police post, which was subsequently gazetted in or about 2008, as per a copy of minutes dated 24/4/2008 attached as EM-2.
14. The respondents depose that in a letter dated 17/5/2022 and a statement dated 17/6/2022, the chief Matisi Location confirmed that the defunct County Council of Kitale in the presence of the officials of the Self Help Group handed over the suit parcel to have a police post, in exchange of another plot at Kwanza Centre as per copies attached as annexure EM-3(a) and (b).
15. It is deposed that the secretary of Matisi Locational Development Committee and another member have both attested to the fact that the land which had been reserved as a market was proposed and unanimously agreed that a police post be built and resources were pooled for that effort, as per annexed statements marked EM-4(a), (b) and (c). Further, the respondents depose that from the foregoing minutes dated 24/4/2008 and the statement from the chief, secretary and member show that none of the members or officials who donated the suit parcel in 2008 is among the petitioners herein, nor is the petitioner herein Matisi Centre Self-Help Group, in anyway related to Matisi Self-Help Group which was the de facto owner of the suit parcel.
16. The respondents depose that the petitioners have camouflaged themselves as officials of Matisi Centre Self-Help Group to purposely attempt to take over public land which they have never owned, thereby attempt to renege for the promises and undertakings by the bona fide officials of Matisi Self-Help



- Group and the defunct County Council of Kitale, to donate the suit parcel, which is public land, to the respondents.
17. It is deposed that when the local community through Matisi Self-Help Group gifted and re-assigned the suit parcel for use as a police post, the petitioners herein were neither members nor officials of Matisi Locational Development Committee, as it was known then and at the material time, Matisi Centre Self-Help Group was non-existent.
  18. Further, the respondents depose that trouble began in 2020, when the petitioners attempted to register another entity known as Matisi Centre Self-Help Group, which had ceased to exist and then purported to convert the suit parcel. The respondents depose that they have since established from the Department of Social Services that Matisi Self-Help Group and Matisi Centre Self-Help Group are different entities, with the former having ceased to exist and that the petitioners were neither officials nor members at the time.
  19. It is deposed that *the Constitution* of Kenya vests upon this court the duty to protect and defend the rule of law and public interest, which militates towards the protection of public property and prudent use of public resources and therefore, it is trite law that the government cannot compensate public land.
  20. The respondents depose that the petitioners have not disclosed to the court how they acquired the interest in the suit parcel, which was and remains a public utility; otherwise, it was acquired contrary to Article 40(6) of *the Constitution* and Section 26(1) of the *Land Registration Act*. Further, it is deposed that the petitioners have not disclosed when and how, if at all, they were using the suit parcel before it was taken over by the respondents, and why it took them over 12 years to institute this suit if they had a legitimate claim to it; hence, they are guilty of laches.
  21. Again, the respondents depose that they could not in any way consult the petitioners before the takeover of the suit parcel, since the petitioners were neither members nor officials of Matisi Self-Help Group. On the contrary, they depose that the bona fide officials and members of Matisi Self-Help Group out of their own volition and public good, saw the need to hand over the land and assisted in the construction of the police post, which takeover was done legitimately, lawfully and in concurrence of the original members of the Matisi Self-Help Group.
  22. It is deposed that while the suit parcel was, at the time of takeover, registered in the name of Matisi Self-Help Group as the de facto owner, the consensus was that the suit parcel had been reserved for public use as a market center, before the exchange and takeover.
  23. Therefore, the respondents deposed that they had neither breached the petitioner's alleged rights and fundamental freedoms, nor had any evidence been tendered to show that the alleged forceful takeover or trespass was intimidating or scary. The respondents contend that vicarious liability was inapplicable. Similarly, the respondents deny that the dispute over ownership of land could be termed as raising a constitutional question or a matter for the court to be seized with jurisdiction to make the declaratory reliefs sought.
  24. Through a further affidavit sworn by Wilfred Juma Wasike dated 3/1/2024, it is deposed that the respondents have no new evidence to show that they have a legal right over title No. Kiminini/Kinyoro Block 3/Matisi/561, which legally belongs to Matisi Centre Self-Help Group and in no way is public land. The petitioner deposes that all the respondents were given the suit parcel, yet it was public land. On what basis did the said owners have the authority to give what belonged to the government? The petitioners depose that annexures marked EM-1 and 2 lack the registration number of the alleged land, which was given to the respondents; otherwise, one could not donate what does not belong to it.



25. Equally, the petitioners depose that annexures marked EM-3(a) and (b) are of no assistance to the respondents, since the letters were not authored by the owners of the property, nor do they quote the property on which a police post was to be erected.
26. The petitioners depose that the suit parcel became registered on 1/10/2003, following due diligence and the requisite fees paid. The petitioners depose that for over 20 years, no one has ever complained that the suit parcel was public land; otherwise, it came in only when they sought to regain possession.
27. The petition was canvassed by way of written submissions. The petitioners rely on written submissions dated 8/4/2025. It is submitted that the petitioners are lawful owners of land known as Kiminini/Kinyoro Block 3/Matisi/561 measuring 0.3399 Ha, according to a title deed issued on 1/10/2003 by the government of Kenya, now occupied by Matisi Police Post, through the request of the 1<sup>st</sup> respondent, to quell the post-election violence that occurred in 2007 and 2008, but have refused to vacate, yet the request was for a temporary purpose.
28. It is submitted that the allegations that the suit parcel was initially public land and has been gazetted as a police post are not substantiated through any valid evidence. Further, the petitioners submit that from the annexed minutes, there is no evidence that the petitioners or any of their members relinquished their right to the suit parcel to become public land. Equally, the petitioners submit that there is no evidence that the respondents, if at all, the suit parcel was initially public land, initiated any procedure to recover the public land, other than now trying to use irregular means to trespass and or grab the land.
29. Additionally, the petitioners submit that there is no evidence that the erection of the police post was undertaken with the consent and or authority in the first instance. Further, the petitioners submit that the continued occupation of the same by the respondents has denied them use, occupation and income, which amounts to a breach of their right to ownership of the property. The petitioners submit that their title deed has not been recalled or cancelled or the property repossessed regularly; otherwise, the occupation by the respondents for 17 years amounts to trespass. The petitioners urge the court to grant them the reliefs sought, guided by James Shikwati Shikuku -vs- County Government of Kakamega & Others ELC Petition No. 8 of 2006 and Mitu-Bell Welfare Society -vs- Kenya Airport Authority & Others Petitioner No. 2 of 2018.
30. The respondents, on the other hand, did not file any written submissions.
31. The court has carefully gone through the pleadings. The issues calling for my determination are the following:
  - (1) If the petitioners have locus standi to file and advance their claim.
  - (2) If the petition meets the constitutional threshold.
  - (3) If the petitioners should have filed an ordinary civil suit.
  - (4) Whether the petitioners have proved breach of their constitutional rights and freedoms.
  - (5) Whether the respondents have a justification to continue occupying the suit parcel.
  - (6) Whether the petitioners are entitled to the reliefs sought.
  - (7) What is the order as to costs?
32. A party seeking constitutional reliefs for alleged breach of constitutional rights and freedoms has to meet the seven steps set out in Rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (Mutunga Rules) 2013, by defining the capacity



- he or she brings the petition, specifying the alleged rights or freedoms breached, violated, or threatened with violation and setting out the facts relied upon. An applicant has, therefore, to show the rights said to have been infringed, the basis of his grievance, the manner and nature of the loss or damage occasioned and the nexus between the acts complained of with the rights. See *Communication Commission of Kenya & Others -vs- Royal Media Services & Another* [2014] eKLR. I think the petitioners have substantially complied with the law. The respondents were able to file comprehensive responses to the petition without seeking for better particulars.
33. The next issue is whether the petition meets the constitutional threshold. The respondents term the petition as an ordinary civil suit for recovery of land, now statute-barred, christened as a constitutional petition. The respondents urge the court to find that it discloses no constitutional question or issues and the court should not entertain it.
  34. In *Coalition for Reforms and Democracy (CORD) & Others -vs- Republic & Others* [2015] eKLR, the court observed that the doctrine of constitutional avoidance requires the court to resolve disputes on a constitutional basis, only when the remedy depends on *the Constitution*. In *Communication Commission of Kenya & Others -vs- Royal Media Services & Another* (supra), the court said that it could not decide a constitutional question if there was also some other basis upon which the case could be disposed of and a litigant had other options to get relief. A constitutional issue is ripe for determination if a constitutional court is the only source a litigant can get a remedy. It is not every statutory breach that must give rise to a constitutional petition.
  35. A constitutional court should not be trivialized by all manner of disputes. See *Gabriel Mutava -vs- M.D Kenya Post Authority*. Equally, in *Nicholas -vs- Attorney General & Others* [2023] KESC 113[KLR] (28<sup>th</sup> February 2023) (Judgment), the court observed that the existence of an alternative dispute mechanism outside court should not be used to muzzle parties alleged breach of their constitutional freedoms and rights, from accessing court especially where the forum may not have capacity to grant reliefs for violation of constitutional rights and freedoms. The respondents have not demonstrated that an alternative forum existed capable of granting the reliefs sought.
  36. The next issue is the capacity to sue. Articles 22(1) and 258 of *the constitution*. In *Okoiti -vs- Portside Freight Terminals Ltd & Others*, Petition E011 of 2024 [2025] KESC 44 [KLR] (3<sup>rd</sup> June 2025) (Judgment), the court observed that Article 22 deals with the enforcement of Bill of Rights under Chapter 1V, while Article 258 is concerned with the enforcement of *the Constitution* and that both provisions grant every person without exceptions, the right to institute proceedings, claims either that some right has been denied, violated or threatened. The court cited *Mumo Matemu -vs- Trusted Society of Human Rights Alliance & Others* [2014] eKLR, that *the Constitution* has enlarged the scope of locus standi in Kenya by empowering every person, whether incorporated or non-incorporated, to move to court.
  37. In *John Wekesa Khaoya -vs- Attorney General*, Petition No. 60 of 2012 [2013], the court held that locus standi, representative or otherwise, has been greatly enhanced, including public interest litigation which allows various issues affecting all spheres of society to be presented for litigation. I think the petitioners have demonstrated locus standi. They are also residents, members of a Self-Help Group which is registered and are also the recognized owners of the suit parcel, under a title deed issued on 1/10/2003.
  38. Therefore, the petitioners are clothed with the capacity to file the petition. As much as the respondents have poured cold water on the authenticity, genuineness and or basis of the certificate of registration, and said that the petitioners have misrepresented themselves as the registered members and persons with capacity to claim the suit parcel, there is no evidence to show that the petitioners have been



- charged and convicted for obtaining the title deed by false pretences and or claimed land that does not belong to them.
39. The next issue is whether the petitioners have proved a breach of their rights. A party that alleges must prove. A constitutional question forces the court to interpret *the Constitution* in order to answer it. The petitioners blame the respondents for invalidating, trespassing, utilizing, remaining, developing and or using the subject suit land without justification. The petitioners term the acts of the respondents as amounting to a breach of their constitutional rights and freedoms to own property and fair administration.
40. In *Suleiman Kasuti Murunga -vs- Independent Electoral and Boundaries Commission & Others* [2018] eKLR, the court said that the burden lies with the petitioner to adduce sufficient evidence to the required standard and to the satisfaction of the court, before the respondent is allowed to rebut that evidence. The petitioners have produced a title deed to the suit parcel issued on 1/10/2003.
41. Section 26 of the *Land Registration Act* provides that a certificate of title is to be taken as prima facie proof that the person cited therein is the absolute owner of the land. A land title may be impeached on account of fraud, misrepresentation, or if it was obtained through corrupt means. The petitioners have produced the title, which the respondents allege was obtained fraudulently for the suit land, which had been reserved as a market. Evidence to impeach a title must meet the standards, on a balance of probabilities as held in *Raila Odinga & Others -vs- Independent Electoral and Boundaries Commission & Others* [2017] eKLR, concerning constitutional petitions.
42. When the root of a title is under challenge, it is not enough to dangle the instrument of title. One has to provide documentation to show that the title was obtained in a procedural, regular, formal and legitimate manner. The petitioners have produced both the certificate of title and a certificate of registration of their organization. None of the documents has been impeached on account of fraud or collusion. The evidential burden was on the respondents to impeach the title held by the petitioners. The annexure relied upon by the respondents has not been authenticated by the Land Surveyor or a Land Registrar. Annexures marked EM-1, 2, 3(a) and (b), 4(a), (b) and (c) were not produced by their makers. The chairman, secretary, treasurer, OCS Matisi and the chiefs were not called to testify or verify the authenticity of the exhibits. He who alleges must prove.
43. Evidence that there were approvals for the buildings and the gazetment of the police post is lacking. Further, evidence that the respondents reported and that the petitioners were investigated and found to have been imposters who were not the genuine officials or members of the Self-Help Group and are out to defraud the government of the land or the genuine owners of the suit land, has not been tendered.
44. Evidence that the respondents engaged the Land Registrar and the National Land Commission to initiate measures to reclaim or regularize the status of the suit land, if at all it was public land, has not been produced before the court. The response to the petition dated 25/4/2021, read together with the replying affidavit of Elizabeth Marube sworn on 20/11/2023, shows that the two are at cross purposes. In the first instance, the first document refers to a gift and also raises a defence of adverse possession, since the claim based on trespass is time-barred. The petitioners have pleaded invasion of the suit land and illegal occupation. Continuous trespass in law has no time limitation.
45. In *Gichuhi -vs- County Government of Kirinyaga & Others* [2024] KEELC 5961 [KLR] (19<sup>th</sup> September 2024) (Judgment), the court held that protection of private property is guaranteed under Article 40(2), (3), (4) and (6) of *the Constitution*; and one should not be deprived of his property except under the law.



46. The court cited *Rutongot Farm Limited -vs- Kenya Forest Service & 3 Others* (2018) eKLR, that once a proprietary interest has been lawfully acquired, the guarantee to protect it is expressed in terms that no person should be arbitrarily deprived of their land. The court awarded Kshs.7,500,000/=, for breach of constitutional rights.
47. The respondents base their justification for staying on the suit land on both gift, public land and adverse possession. There is no cross-petition seeking the suit land. Evidence to sustain or substantiate when the land became public land, when it was gifted and converted to public land and or evidence of adverse possession is lacking. A gift must be perfected. A memorandum in writing to show when the gift or exchange happened is missing. The instrument of or deed of transfer is missing. Evidence of the witnesses, officials of the Self-Help Group who executed the memorandum of sale and the terms and conditions of the same, is missing. *Kagina -vs- Kagina & Another* (2016) eKLR, the court discussed the manner of perfecting gifts for them to be protected in law. The transfer form, application for consent and the consent, all executed in favour of the 2<sup>nd</sup> respondent, are missing. If the suit land was donated to the 2<sup>nd</sup> respondent by the Self-Help Group, there will be a memorandum to that effect.
48. In *Estate of M'Raiji Kithiano (Deceased)* [2006] eKLR, the court observed that if a gift rests merely in promise, whether written or oral or in unfulfilled intent, it is incomplete and imperfect and that a court will not compel the intending donor or those claiming under him to complete and or perfect it unless, where the subsequent, conduct of the donor gives a donee a right to enforce the promise.
49. In *Estate of the late Godwin Manthi Nzioka (Deceased)* [2015] eKLR, the court held that gifts of land must be by way of registered transfer or, if not registered, be in writing or by a declaration of trust in writing. See *Halsbury's Laws of England* 4<sup>th</sup> Edition, Vol. 20(1) paragraph 67.
50. As to adverse possession, the respondents had to prove the ingredients of adverse possession as held in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, *Wambugu -vs- Njuguna* (1983) KLR 173 and *Maweu -vs- Lin Ranching & Farming Corporative Society* (1985) KLR 430. There must be a dispossession of possession. Adverse possession occurs where the intruder moves in and drives out a true owner, with the intention to own to the exclusion of the true owner for a continuous period of 12 years. There must be an entry made, remaining there without the permission of the true owners. The evidence by the petitioners is that the entry was permissive and has remained as such.
51. The respondents have admitted that the suit land is not in their names but in someone else's. No third party has come before this court to claim that the petitioners are not the genuine holders of the title. The respondents knew that the petitioners had been asserting their rights on the land for a long time. It is therefore clear that the petitioners did not abandon the suit land. I find that adverse possession has not been proved to the required standards.
52. The purpose of a constitutional petition is to vindicate the rights that have been infringed. See *James Shakwati Shikuku -vs- County Government of Kakamega* (supra) and *Mitu-Bell Welfare Society -vs- Kenya Airport Authority* (supra).
53. I believe the petitioners are entitled to compensation for their land. Since the police post has been in existence, it is appropriate that the suit land should be valued by the government valuers to know the exact value and for the respondents to formally initiate the process of compensating the petitioners in exchange of transfer documents. Parties are given 3 months to do so; in the absence of which, a valuation report will be produced before the court for final orders.
54. Mention on 8/12/2025. There will be an automatic stay of the judgment until the said date.



**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

Miss Munialo for petitioners present

Odeyo for Chalaka for the Respondent present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

