Fresco Bushlands (K) Limited v National Police Service & 4 others (Constitutional Petition 35 of 2019) [2024] KEELC 3494 (KLR) (25 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3494 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

CONSTITUTIONAL PETITION 35 OF 2019

EK MAKORI, J

APRIL 25, 2024

BETWEEN

FRESCO BUSHLANDS (K) LIMITED ..... PETITIONER

AND

THE NATIONAL POLICE SERVICE ..... 1ST RESPONDENT

THE COAST REGION POLICE COMMANDER ..... 2ND RESPONDENT

THE KILIFI COUNTY POLICE COMMANDER ..... 3RD RESPONDENT

THE OFFICER COMMANDING MALINDI POLICE DIVISION .... 4TH RESPONDENT

THE OFFICER COMMANDING MALINDI POLICE STATION .... 5TH RESPONDENT

JUDGMENT

1. The Amended Petition dated 26th October 2022 filed by the Petitioner seeks the following reliefs:

   a. A Declaration that the 1st to 5th Respondents and the officers acting under them have breached, infringed, and/or violated the rights and freedoms of the Petitioner enshrined in *the Constitution* of Kenya, 2010 and that the 2nd Respondent's orders of eviction, displacement, seizure of property/livestock and demolition of structures and houses belonging to the Petitioner, its agents or employees.

   b. An Order quashing the decision communicated by the 2nd Respondent directed the 3rd to 5th Respondents to evict or displace the Petitioner from the property covered by the Lease dated 26/05/2010 or interfering with the rights of the Petitioner therein.

c. An Order for damages and/or compensation for violation/breach of the Petitioner's Constitutional rights and freedom.

d. An Order for compensation for the value of the demolition buildings/houses and animals lost pursuant to their illegal acts valued at Kshs 74, 300,000/-

e. An Order for punitive damages.

f. The costs of the Petition.

2. The Petition is supported by the affidavit sworn by Bare Muhumed, the Operations Manager of the Petitioner herein. The Petition is opposed by the Respondents who relied on the replying affidavits deposed and dated 17th December 2019 by one Vitalis Otieno and 9th May 2023 by one Solomon Oderah Ogola, both working with the National Police Service. In addition, the Respondents also filed Grounds of Opposition dated 3rd May, 2023.

3. The Petitioner through its Operations Manager, Bare Muhumed has deponed in its supporting affidavit that the Respondents communicated to the Petitioner's agents that they would evict the Petitioner from the suit parcel Kilifi LR No. 14248 which the Petitioner claims is a Lessee of 95,000 acres from Agricultural Development Cooperation pursuant to a Lease Agreement dated 26th May 2010 and which is yet to expire which this Court (Olola J.) confirmed in its order issued on16th April 2014. He further alleges that the officers of the Respondents proceeded to demolish the houses and structures without notice to the Petitioners. They were under the command of the 4th and 5th Respondent to move to the said land at a place called Tank M where they threatened and began the process of evicting the Petitioner's agents.

4. The Petitioner alleges that the Respondents also carted away chicken worth Ksh 200,000/- and the houses that were demolished had an estimated value of Ksh 4,000,000/-. In addition, the Petitioner claims that officers under the command of the Respondents invaded the suit property and seized about 774 cows belonging to the Petitioners valued at Ksh 70,000,000/.

5. From the foregoing, the Petitioner states that their constitutional rights have been violated and thus seek the aforementioned reliefs from this Court.

6. The Operations manager, Mr. Bare Muhumed, PW1, adopted his supporting affidavit dated 26th October 2022 and further affidavit dated 16th November 2023 gave oral testimony, and produced documents in support of its case. He testified that the police invaded their premises carted away 774 cows and demolished houses which are valued at around Kshs 4,000,000/. He further testified that he reported the matter to the Mombasa Regional Office, the Kilifi County Commander, and the OCS Malindi Police Station.

7. When cross-examination, PW1 testified that he didn't have any receipts to prove ownership of any of the items claimed or the value thereof. He told the Court that he didn't have any O.B. number from any police station to prove that he reported the matter. He further told the Court that he did not witness the alleged demolitions and carting away of cows as he was not at the suit property and only relied on reports of his agents and employees. In re-examination, PW1 testified that the Police never carried out investigations even after reporting the same. In addition, he testified that the Police remained on the suit property for over three months after invading it.

8. The Respondents called one witness, the immediate former Deputy Sub-County Police Commander, DW1, Solomon Ogola Oderah. He gave oral testimony and adopted the affidavit sworn on 9th May 2023. He testified that the National Police Service works through a command structure which in this

case - the Coast Regional Commander is the officer in charge of the Coast region and would be aware of any operation undertaken within the region. He further testified that he never received and is not aware of any orders to evict the Petitioner or demolish its houses while at Malindi Police Station. It was his testimony that the Petitioner's cows were seized by auctioneers in an ongoing dispute with another party and that the Respondent had nothing to do with the seizure of the livestock or destruction of property.

9. On cross-examination by Mr. Abidha, DW1 testified that the Malindi Deputy Sub-County Commander cannot supervise the Ganze Cub-county. He told the Court that he did not investigate the matter of the auction of the cows on whether it took place.

10. The Court after the testimony of both sides directed that the parties file written submissions.

11. The following issues fall for the determination of this Court:

    i. Whether the Respondents violated the Petitioner's right to property, security, humane treatment, fair administrative action, and equal protection of the law as enshrined under Articles 26, 27, 28, 29, 47, and 50(1) of *the Constitution*.

    ii. Whether the Petitioner is entitled to the various reliefs sought in the Petition.

    iii. Who is to bear the costs of the Petition?

12. Regarding constitutional violations under Articles 27, 47, and 50(1), the Petitioner submitted that it adopts the contents of paragraphs 21 to 28 of the Amended Petition in support of the legal position espoused herein. This Court made a finding on 15TH October 2020 that the Petition raised claims of violations warranting a hearing. Based on which conservatory orders were granted pending the hearing and determination of the Petition. However, the Respondents jointly and severally disregarded the same and proceeded to evict the Petitioner, and carted away its properties and livestock thus occasioning loss and damage.

13. Under Article 40 of *the Constitution*, the Petitioner said that its witness, Mr. Bare Muhumed, who is its operations Manager, stationed at Kulalu Ranch testified in Court, he confirmed that on or about 08th December 2019 the officers under the Command of the Respondents stormed/raided the houses of the Petitioner within Kulalu Ranch, demolished the same and carted away its assets, a flock cattle, and chicken. The said land was under the protection of the Lease dated 26th May 2010. Later in 2022, the officers under the command of the 2nd and 3rd Respondent facilitated the seizure and disappearance of 774 cows belonging to the Petitioner. This was done in blatant disregard of the Court order issued on 15th October 2020.

14. On the other hand, the Respondents failed to call any witness save for the 4th Respondent who called one Solomon Ogola, Deputy OCPD Malindi who served between the years 2022 and 2023. He confirmed that he had not been posted to Malindi when the complaints herein took place and that his seniors did not file any Affidavit notwithstanding that they were present in their various stations at the time of the impugned occurrences as they are the ones who either issued directives or executed the same. He also told the Court that he had no authority to testify on behalf of the 1st, 2nd, and 3rd Respondents. Indeed, he went further and explained that at the time he was swearing Affidavit in 2023, he had been transferred to another station. Consequently, it is submitted that his evidence was secondary and not primary to the facts in issue. The said witness confirmed that Police officers raided/stormed Petitioner's houses, evicted its agents, and camped there for many days. He also accepted that the agents of the Petitioner couldn't recover anything from the houses which were later demolished. From his evidence, it is clear that the activities of the said officers were illegal and disregarded the interim orders issued

by the Court on 11th December 2019 and 15th October 2020. The said witness for the 4th Respondent failed to show any complaint lodged to warrant their raid/storming and wasting of the Petitioner's properties and even evicting its agents. In addition, he confirmed that Ganze Division was outside the jurisdiction of officers from Malindi Sub-County as such he could not dispute the averments relating to their illegal conduct of seizing the Petitioner's animals.

15. The Petitioner further submitted the Lease dated 26th October 2010 did not envisage the intervention of the Police as it created civil rights with internal mechanisms for purposes of enforcement. In addition, the Respondents have not shown any complaint by the lessor or third party against the Petitioner warranting the impugned attacks.

16. It was stated that under Article 40 of *the Constitution* read together with Articles 19 and 20 of *the Constitution* the Petitioner was guaranteed the right to property under the lease without any limitations from the Respondents. Indeed, the Respondents' acts and conduct amounted to unlawful limitation of the Petitioner's rights contrary to Articles 24 and 25 of *the Constitution*.

17. It is also submitted that the state, its organs, and all persons while carrying out evictions, should do so in accordance with provisions of *the Constitution* and the United Nations Guidelines on Evictions as provided for by The United Nations Office of the High Commissioner for Human Rights in General Comment No. 7 "The right to adequate housing (Art.11.1): forced evictions: (20th May 1997) CESCR General comment 7. (General Comments). Unfortunately, the Respondent did not comply with the said guidelines specifically paragraphs *15* and *16* which outline procedures of eviction and considerations to be observed.

18. Regarding the Respondents' annexed documents purportedly obtained from Agricultural Development Corporation and Swift Auctioneers, the same, however, are neither certified by the said agencies/entities nor authenticated in any way. Besides, no one from the said entities was invited to testify as such the said documents must be rejected. On the other hand, the Respondents are confirming that indeed, the Petitioner lost over 774 Cows premised on their unlawful acts/conduct of raiding/storming the Petitioner's property without authorization and in blatant disregard of the existing Court orders.

19. The Petitioner therefore submits that premised on the unlawful and illegal actions of the Respondents it:

    a. Lost use of the area where its agents resided based on the illegal eviction;

    b. Suffered illegal demolition of its properties and carting away of its household goods and brood of chickens;

        a. Lost 774 livestock.

20. Consequently, the Petitioner confirms that the averments regarding the breach of the property right have been proved and seeks the Court to find as much.

21. Under violations of the Petitioner's rights under Articles 27, 47, and 50(1) of *the Constitution* the Petitioner submitted that the Petitioner and its agents had a right to fair administrative action to the extent that the Respondents should have issued a notice indicating intentions to evict it giving reasons for the same, followed by hearing of the Petitioner's position and to offer reasons for the impugned eviction, demolition and seizure of property. Since the said actions were most likely to affect fundamental rights and freedoms, Article 47 enjoined the Respondents to notify and hear the Petitioner and communicate its reasons in writing.

22. Notably, the Petitioner through its advocates raised alarm vide the letter dated 09th December 2019 complaining about the violations. However, the Respondents did not bother even to acknowledge the said demand. This was later aggravated by contumelious disobedience of Court orders by the Respondents. We submit that Sections 4(1), (2), and (3) of the *Fair Administrative Action Act*, 2015 provide clear procedures for administrative actions that are likely to affect rights and freedom and it is evident from this case that the Respondents failed to adhere to the same. In support of the foregoing, the Petitioner cited the decision of the Court of Appeal in the case of Benson Wekesa Milimo v National Land Commission & 2 others [2021] eKLR as reiterated in *Njeri & 8 others v Nyakiongora & 3 others; National Land Commission & another (Interested Parties) (Environment & Land Petition 47 of 2018*) [2022] KEELC 2366 on the need to give notice when any adverse decision is to be made on a person. It is further submitted that the issue of prior notice has been captured in various court decisions including but not limited to the case of the National Land Commission & another (Interested Parties) (Environment & Land Petition 47 of 2018) [2022] KEELC 2366 (KLR) in which the Court found that it was unlawful for eviction to be undertaken without prior adequate notice.

23. The Court is also invited to find and hold that the Respondents breached the provisions of Article 47 read together with Articles 27(1) and 50(1) of *the Constitution* by neither notifying the Petitioner in advance of the impending eviction and subsequent demolition of its structures nor hearing its side of the story. They also failed to give any reasons for the eviction, demolition, carting away, or seizing the Petitioner's properties and 774 cows.

24. The Petitioner asserts that the Respondents failed to comply with the provisions of Article 27(1) of *the Constitution* thus depriving the Petitioner of the right to equal protection under the law to the extent that they did not adhere to any laws or regulations to evict the Petitioner and seize/cart away its properties and animals. Besides, the illegal acts of the Respondents continued in blatant disregard of the Court orders issued on 11th December 2019 and 15th October 2020 thereby clearly manifesting the malice that the Respondents harboured against the Petitioner.

25. On violations of Articles 28 and 29 of *the Constitution*, the Petitioner states that under Article 29 of *the Constitution*, the Petitioner was entitled to the security of its agents and properties. However, the Respondents breached the same by acting illegally in evicting and seizing/carting away the Petitioner's properties. In addition, the Petitioner believed that the Respondent could respect the orders of the Honourable Court which sought to preserve and/or conserve its rights under *the Constitution*. However, the Respondents proceeded to aggravate the injury and/or losses upon the Petitioner while outrightly disregarding the orders aforesaid.

26. That further, because of the Respondents' illegal eviction, demolition, seizure, and carting away of properties of the Petitioner and its agents, the rights under Article 28 of *the Constitution* preventing inhumane treatment were violated thus exposing the Petitioner and its agents of untold emotional and economic losses.

27. That under Articles 238(2), 243, and 244 of *the Constitution* as read together with the provisions of the *National Police Service Act*, the Respondents are jointly and severally (individually and in an official capacity) enjoined to protect rights and exhibit a high level of compliance with *the Constitution* and all laws. As such, their impugned acts and contempt of court orders breached not only the fundamental rights of the Petitioner as outlined above but also violated Articles 238(2), 243, 244, and 245 of *the Constitution* together with the provisions of the *National Police Service Act*.

28. The Attorney General appearing for the Respondents in a rejoinder as to whether there was a violation of the Petitioner's right states that The Petitioner alleged that the 2nd Respondent issued orders of eviction from their land known as Kilifi LR No. 14248 and the officers under the command of the

Respondents proceeded to invade the property and demolish structures as well as seize livestock and other valuable items and thus contravened Articles 27, 28, 29, 40, 47 and 50 of *the Constitution*.

29. The Petitioner alleges that the state infringed on their rights under Article 27. We submit that equality includes the full and equal enjoyment of all rights and fundamental freedom. The import of Article 27 is that human rights and fundamental freedom are guaranteed to all persons by virtue of being human and must be enjoyed without limitation. That is to say that the rights and fundamental freedoms that are guaranteed by *the Constitution* must be enjoyed by all human beings in equal measure and to the fullest extent.

30. The AG avers that from the deponent's affidavit, he failed to demonstrate how the Petitioner has been discriminated against. There is no evidence to indicate that there were any instructions and/or orders for eviction and demolition against the Petitioner and that the said orders were not communicated to the Petitioner to amount to discrimination by the Respondents on any of the grounds provided under Article 27 of *the Constitution*. Further, from the affidavit of Solomon Ogola Oderah, it is evident that there were previously charges against agents of the Petitioner and another company Vital Bio-Energy that led to disputes where offences were committed and this led to complaints and investigations were done before the matters were handed over to the Director of Public Prosecution to prosecute the cases.

31. The AG cites the case of Mohammed Abduba Dida V Debate Media Limited and another [2018] eKLR, the Court of Appeal stated that ordinarily, the burden of demonstrating that a right was infringed would be upon the person alleging such violation, as, that person would be in the better position to prove it. It is for the petitioner to show that, compared to another person, he or she has been denied a benefit or suffered a disadvantage, which are matters that are within the petitioner's knowledge. Once the case is made out, the burden shifts to the other party. More particularly, given the observation that the rights alleged to have been infringed do not fall within the grounds classified by Article 27 (4), more so the reason for the petitioner has to prove that his or her rights have been infringed in respect of the grounds alleged. In other words, the burden of proof was on Dida to show that, on a balance of probabilities, the guidelines violated the prohibition set out in Article 27, the burden did not shift until a case was made. Thus, the Petitioner has failed to prove any of the grounds provided in Article 27(4), the basis for any alleged infringement of the Petitioner's rights under Article 27, and the discrimination, if any, was unfair.

32. The AG states that the Petitioner alleged that the Respondents violated Articles 28 and 29 of *the Constitution*. The Petitioner in the body of the Petition at paragraph *30* stated that it suffered loss of land, property, and livestock and that its agents were subjected to inhumane treatment. However, the Respondents at paragraphs 9, 10, and 13 of Mr. Solomon Ogola Oderah's replying affidavit depose that the actions alleged never took place since no police officer visited the suit property to evict any of the Petitioner's agents or seize property. That in the absence of any evidence of violation of Articles 28 and 29 by the Respondents the allegation of the infringement of the said Articles is devoid of any substance and it must fail.

33. The AG states that the thrust of Article 40 is to protect proprietary rights under the law. Such rights are governed by statutes, and in this case, the Petitioner's title issued is governed by the provisions of the *Land Registration Act* and the *Land Act*. The Petitioner's case is grounded on the fact that they have a lease from Agricultural Development Corporation of 95,000 acres of Kilifi LR No. 14248 that is capable of being protected under Article 40 and that once a title is issued under the Acts, the holder thereof acquires an indefeasible title which cannot be taken away except under *the Constitution* and the law. It is trite law that he who alleges must prove and the Respondents have tendered both oral and documentary evidence to prove that the Petitioner has disputes with another lessee in the area and the lessor over the suit property.

34. From the Petitioner's supporting affidavit, the deponent states in paragraph *2* and from the annexure marked "BM" that the suit property was acquired under a lease agreement dated 26th May, 2010. The Respondents have through the affidavit of Solomon Ogola Oderah vide annexures marked "SOO-1" and "SOO-3" demonstrated that there exists a dispute between the Petitioner who is the lessee and Agricultural Development Corporation the lessor of the suit property. The evidence shows that the dispute relates to the suit property and the action to seize any property was done by the lessor and not the Respondents. Thus, the Respondents have not violated the Petitioner's rights to property protected under Article 40. On violated Article 47 of *the Constitution*. Article 47 The AG submits that the Respondents have in response deposed an affidavit through Solomon Oderah, a Superintendent of Police, who states in paragraph *12* that the court issued conservatory orders against the Respondents and in paragraph *13* that from the date the orders were issued no police officer visited the Petitioner's property. The Petitioner has failed to adduce any evidence of the instructions and/or order by the 2nd Respondent either written or a testimony of any person who was ordered or instructed as such. It, therefore, follows that there was no requirement to give reasons for a non-existent order, the Respondents did not violate Article 47 of *the Constitution*.

35. Section 24 of the *National Police Service Act*, 2011 provides the functions of the Service as follows:

> " The functions of the Kenya Police Service shall be the—
>
> (a) provision of assistance to the public when in need;
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> (b) maintenance of law and order;
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> (c) preservation of peace;
>
> (d) protection of life and property;
>
> (e) investigation of crimes;
>
> (f) collection of criminal intelligence;
>
> (g) prevention and detection of crime;
>
> (h) apprehension of offenders;
>
> (i) enforcement of all laws and regulations with which it is charged; and
>
> (j) performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time."

36. While carrying its mandate, aforesaid, the National Police must do so within the confines and adherence to the Constitutional and legal dictates as held by Mumbi J. in Standard Newspaper Ltd & Another v Attorney General & 4 Other [2013] eKLR:

> " While it is true that police have a duty to prevent commission of crimes, they must, just like everyone else, abide by the law, and there must be due process in everything that they do in exercise of their mandate to prevent the commission of crime. To hold otherwise would be to say that the rules and dictates of democracy are too tedious to observe and an unnecessary inconvenience; and this would result in anarchy and negate the very core principles of our Constitution."

36. Significantly the police have little role when it comes to the enforcement of civil orders. It is limited to the provision of police assistance purely in maintaining law and order as provided under Rule 9 of the Auctioneers Rules:

> " Police assistance
>
> (1) Where an auctioneer has reasonable cause to believe that—
>
> (a) he may have to break the door of any premises where goods may be seized or repossessed; or
>
> (b) he may be subject to resistance or intimidation by the debtor or other person; or
>
> (c) a breach of the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property, the auctioneer shall request for police escort from the nearest police station in order to carry out his duties peacefully."

37. In this matter the Petitioner contends that going against *the Constitution* and the law concerning the mandate of the police, on or about 8th December 2019 the officers under the command of the Respondents stormed/raided the houses of the Petitioner within Kulalu Ranch, demolished the same and carted away its assets, a flock cattle, and chicken. The said land was under the protection of the Lease dated 26th May 2010. Later in 2022, the officers under the command of the 2nd and 3rd Respondent facilitated the seizure and disappearance of 774 cows belonging to the Petitioner. This was done in blatant disregard of the Court order issued on 15th October 2020.

38. This is denied by the respondents who state that the police had no such command to demolish or cart away the Petitioner's property. What existed was a feud between the Petitioner and a 3rd party and auctioneers had been called in and they are the ones who did the acts complained of. The Respondent produced some notices from Swift Auctioneers to prove that. The Petitioner did not call evidence to controvert the allegations that the complaint against the police was misdirected and ought to have been targeted on the 3rd party and the auctioneers, instead, the Petitioner alleged that what was produced by the Respondent was hearsay and that the said 3rd party and the auctioneers were never called.

39. The Petitioner alleges various violations of *the Constitution* ranging from Articles 27, 28, 29, 40, 47 and 50 of *the Constitution*.

40. Under Section 107 of the *Evidence Act*, he who asserts must prove. This is fortified by several judicial precedents on similar subject matters like this one. Whenever one alleges the violation or infringement of a constitutional right, one has to prove the same on the required standard as held in Mohammed Abduba Dida v Debate Media Limited and another [2018] eKLR:

> " ...ordinarily, the burden of demonstrating that a right was infringed would be upon the person alleging such violation, as, that person would be in the better position to prove it. It is for the petitioner to show that, compared to another person, he or she has been denied a benefit or suffered a disadvantage, which are matters within the petitioner's knowledge. Once the case is made out, the burden shifts to the other party. More particularly, in view of the observation that the rights alleged to have been infringed do not fall within the grounds classified by Article 27(4), more so the reason for the petitioner has to prove that his or her

rights have been infringed in respect of the grounds alleged. And this is why the learned Judge stated, and we agree, that……"

41. The stated principle and provision of the *Evidence Act* were also echoed and explained by Makau, J in the case of Christian Juma Wabwire v Attorney General [2019] eKLR as follows:

> "24. I am alive to the fact, that the petitioner in his petition alluded to various constitutional violation, but without having availed tangible evidence of violation of his rights and freedoms, I find the allegation by mere words without any other evidence, the court cannot find that the petitioner has proved violations of his rights and freedoms. The petitioner herein ought to have produced documentary evidence such as medical reports and called witnesses to ensure court considers the same. The courts of law are deaf to speculations and irregularities as it must always base its decision on evidence. I therefore find and hold that the petitioner failed to discharge the burden of proof to the required standard of proof. I find that the petitioner did not give evidence of probative value to enable this court decide the petition in his favour and grant the orders sought."

42. Further in the case of Gitobu Imanyara & 2 others v Attorney General [2016] eKLR, the Court of Appeal held as follows:

> "The appellants in this case did not specifically plead and prove the damages from the losses they allegedly suffered. This could have been done by proof of receipts, bank statements or any invoices to show the liquidated losses incurred as a result of their Constitutional violations. In this case, we find the particulars lacking."

43. In this matter, the petitioner alleges various violations of *the Constitution* Bare Muhumed PWI testified that the 2nd respondent issued orders and or directives that all agents and/or servants of the Petitioners be evicted from Kilifi LR No. 14248, while there existed a valid lease. The orders were adhered to. When questioned whether the orders by the police were in writing or oral, PWI did not elaborate. In this Petition, other than pleading and stating that there existed police orders or directives, the Petitioner did not produce anything to prove the existence of such orders and who among the various ranks of police sued herein issued the same. While under examination, PW1 stated that the information that its police who did evictions and carted away animals, and the Petitioner's property, was information he gathered from the ground. He did not witness it himself. No evidence was led by the Petitioner concerning the identity of the police involved and under whose command and authority they were acting. This left the Petition hanging.

44. The Petitioner carefully evaded the existence of a land feud and various criminal matters between it and Vital Bio-Energy and the Agricultural Finance Corporation, the lessor, and the involvement of Swift auctioneers on the issues raised in this Petition. The Petitioner did not satisfactorily shoulder the burden of proof that the police were involved in the alleged constitutional violations to warrant a rebuttal. More evidence was required as to the manner the police were involved. This then leads to the conclusion that the Petitioner has not proved its case to warrant the issuance of the various declaratory orders sought regarding the alleged breaches and or violations of the right to property under Article 40, right to equal protection of the law under Article 27(1), humane treatment and security under Articles 28 and 29, and fair administrative actions under Article 47 of *the Constitution*.

45. The other heads of damages and reliefs, as pleaded in the Petition, collapse, whereas pleaded were never specifically proved, the Petition having been based on quicksand. Petition dismissed. The petitioner will shoulder the costs.

DATED, SIGNED, AND DELIVERED AT MALINDI THIS 25TH DAY OF APRIL 2024. SINCE THE COURT WAS NOT SITTING, ALL THE PARTIES TO BE SUPPLIED THIS DECISION VIA EMAIL.

E. K. MAKORI

JUDGE