



Abdi & 14 others v County Government of Lamu & 2 others; Mokowe Kibokoni Ranch (Interested Party) (Environment & Land Petition 20 of 2022) [2024] KEELC 4356 (KLR) (28 May 2024) (Judgment)

Neutral citation: [2024] KEELC 4356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 20 OF 2022**

FM NJOROGE, J

MAY 28, 2024

BETWEEN

ALINUR MOHAMED ABDI & 14 OTHERS PETITIONER

AND

THE COUNTY GOVERNMENT OF LAMU 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

THE REGISTRAR OF TITLES, MINISTRY OF LANDS AND PHYSICAL PLANNING 3RD RESPONDENT

AND

MOKOWE KIBOKONI RANCH INTERESTED PARTY

JUDGMENT

1. Through a Petition dated 23rd June 2022, the Petitioners described themselves as the occupiers of some 1500 acres of land comprised in L.R No. 29256, Hindi Location within Lamu County and measuring approximately 2,722.6 Hectares, registered in the name of the Interested Party. The Petitioners averred that they have occupied the suit property for a period over 25 years and that they commenced the process of seeking allocation and registration in the year 2008. That their efforts have however proven futile despite several follow ups with the relevant offices of the Respondents. The Petition is anchored on Articles 10, 20 (2), (3) & (4), 21 (1), 23, 24, 24 (2) (b), 43, 47, 165 (6) & 258 of *the Constitution*. The Petitioners seek the following reliefs: -
 - a. A declaration that the Respondents are enjoined by *the Constitution* to adopt the path that most fosters enjoyment of fundamental freedoms and rights when applying the law.



- b. A declaration that the Respondents acted contrary to Articles 10,24 and 40 of *the Constitution* in failing to issue the title to the Petitioners.
 - c. A declaration that the 2nd Respondent failed to comply with the provisions of Regulation 9 of the Land (Allocation of public land) Regulations, 2017 in failing and/or delaying to implement the report recommending for allocation of the land to the petitioners.
 - d. A declaration that the respondents violated the petitioners' right to administrative action that is fair, lawful, reasonable and expeditious.
 - e. A declaration that the respondents violated the legitimate interests of the petitioners for the registration of title, community, and the land upon complying with the requisite legal provisions.
 - f. An order of mandamus be and is hereby issued directing the respondents to comply with the report dated 10th November 2014 and resolutions of the County Land Management Board of 30th July 2015 concerning the Parcel L.R. No. 29256 (erroneously recorded as 26756) namely:
 - g. Resurvey of the entire parcel L.R No. 29256 Lamu.
 - h. Subdivision and distribution of the parcel as follows: 3500 acres to Mokowe Kibukoni Ranch; 1500 acres to squatters/petitioners; 1500 acres to Lamu County Government for conservation of Kibokoni lake.
 - i. That the orders under (f) above be complied within ninety (90) days of this court's orders.
 - j. A permanent injunction restraining the respondents from redistributing, allocating and issuing of titles to any party outside this suit or in any other way interfering with the petitioners' quiet possessions, and enjoyment of the 1500 acres of land as recommended in the report done by the 2nd Respondent which form part of the entire parcel of land L.R No. 29256 Lamu.
 - k. Such other orders as this honourable court shall deem just.
2. The Petition is supported by an affidavit sworn on 23rd June 2022 by Alinur Mohamed Abdi, the 1st Petitioner herein. In the supporting affidavit, the 1st Petitioner annexed copies of the certificate of title of the suit property, certificate of postal search and letter of allotment dated 12th April 2012 all indicating that the interested party is the registered owner. He also attached photographs of developments allegedly made by the Petitioners on the suit property. The 1st Petitioner deposed that the suit property was registered as government land under the Government Lands Act (now repealed) and that through letters dated 15th September 2008 and 8th October 2008, the Petitioners sought to have the portion of the suit property they occupied be allocated to them. The former was addressed to the Commissioner of Lands and the latter to the District Commissioner, District Officer, District Physical Planner, District Land Registrar, District Surveyor and the Clerk, Lamu County Council. The Petitioners again reached out to the respective public officials through a letter dated 16th February 2022 however no response or action was forthcoming. Instead, so the 1st Petitioner averred, the Respondents have continued to allocate other parcels of land within the same area to third parties, neglecting the Petitioners' plea.
 3. The 1st Respondent further deposed that following some media outcry and the President's directives in the year 2014, the 2nd Respondent conducted investigations on the allocation of large parcels of land as ranches within Lamu County with a view of ascertaining the legality or otherwise. Resultantly, the 2nd Respondent published the Lamu Report dated 10th November 2014. One of the findings in the said



- report was that the suit property was irregularly issued to the interested party. The report also issued recommendations that the title be regularized, the Lamu County Government and the 2nd Respondent do urgently consider the squatters in the suit property and resolve the dispute therein, and that the County Government do conserve Kibokoni Lake.
4. The Lamu report was consequently adopted in the County Land Management Board meeting held on 30th July 2015 by the 1st and 2nd Respondents. The board recommended a resurvey and subdivision of the suit property into three portions- 3800 acres to be given to the interested party; 1500 acres to squatters, the petitioners herein; and 1500 acres to be reserved by the County Government for conservation of Kibokoni Lake. He annexed a copy of those resolutions. The Petitioners' grievance as stated by the 1st Petitioner, is that the Respondents have failed to comply with the aforementioned resolutions and they have held stakeholder engagements to the exclusion of the Petitioners in gross violation of the Petitioners' constitutional rights to property and fair administrative action.
 5. The 2nd Respondent opposed the Petition. It filed a replying affidavit sworn on 21st October 2022 by Brian Ikol, its director legal affairs and dispute resolution. Mr. Ikol admitted that indeed the 2nd Respondent conducted the investigations in 2014 and made the recommendations stated in the supporting affidavit. He stated that the process of resurveying and subdividing which is a prerequisite for allocation of land does not fall within the mandate of the 2nd Respondent but the 1st Respondent. He added that in any case, the 2nd Respondent is not in a position to issue any directive regarding the suit property since its mandate to review grants and dispositions has since lapsed.
 6. On behalf of the 3rd Respondent, the Attorney General's office filed a replying affidavit sworn on 31st January 2024 by Jay Makorani, a land administration officer stationed at Mokowe, Lamu. According to him, the suit property no longer exists as it underwent a change of user and was subdivided in 2021. Mr. Makorani deposed that as the secretary of the Land Control Board, he received an application on 22nd April 2021 seeking consent to change use and subdivide the suit property. The application was approved by the board on 28th April 2021 and a consent, which he annexed therein, issued. Subsequently, his office received form PPA2 being an approval under the [Physical and Land Use Planning Act](#) together with a newspaper advertisement, letters from the County Planner, the County Surveyor and the NLC coordinator stationed in Lamu.
 7. Mr. Makorani continued to state that on 23rd April 2021, he compiled a ground report addressed to the National Director of Land Administration recommending the approval. The interested party then presented the aforementioned documents to the National Director of Land Administration in Nairobi for scrutiny. The Director in turn issued a provisional approval which he also annexed therein. Upon issuance of the provisional approval to the Director of Surveys for amendment of the Registry Index Map, and upon the interested party complying with all the conditions set therein, the lease documents for the subplots were processed and forwarded to the Lamu Land Registrar for registration and issuance of titles.
 8. According to Mr. Makorani, the suit property was private land and the 3rd Respondent and Director of Land Administration acted within the law in the aforementioned process. He added that there was no restriction that would have stopped the two offices from conducting their duties.
 9. The Interested Party equally opposed the Petition. It filed a replying affidavit sworn on 28th February 2023 by Ahmed Abdillahi Hassan, who described himself as the executive officer of Kibokoni Ranch Cooperative Society, formerly Mokowe Kibokoni Ranch Limited. He deposed that the suit property had no PDP before allocation and that allocation to the Interested party was lawfully done in full compliance of the law. According to Mr. Ahmed, the Petitioners do not occupy the suit property. To support this, he annexed a copy of letter dated 15th September 2008 written by the Assistant Chief



Hindi/Magogoni area stating that the Petitioners' land measuring approximately 1500 acres is located somewhere else identified as Amu Ranch; and in another letter dated 16th February 2022 that the Petitioners' land is adjacent to the suit property herein.

10. The deponent added that the 2nd Respondent did not recommend revocation of the Interested Party's title but only gave conditions for regularizing the title. Consequently, the interested party wrote to the Lamu County Government a letter dated 8th October 2018 requesting for re-establishment of boundaries. He stated that the interested party also subdivided the suit property and gave individual titles to its members. According to him, the Petitioners have never been squatters on the suit property and that their claim is in respect to another property as seen in the minutes dated 30th July 2015.
11. The Petition was canvassed by way of written submissions. Notably, the 2nd and 3rd Respondents did not file any submissions.

Petitioners' Submissions

12. In their submissions filed on 8th February 2023 by the firm of Kiptiness & Odhiambo Associates LLP, counsel identified six issues for determination. Firstly, whether the petition meets the threshold of a constitutional petition set out in the case of Anarita Karimi Njeru v Republic [1979] eKLR; Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR and Serah Mweru Muhu v Commissioner of Lands & 2 others [2014] eKLR. To counsel, the Petitioners have set out precisely their right under Article 40 of *the Constitution* by demonstrating that their proprietary right to the suit property was conclusively determined in the Lamu report, and that the Respondents have declined to comply with the recommendations in the Lamu report. To that extent, so counsel deposed, the Respondents have failed to adhere to Article 10 of *the Constitution* which underscores the values and principles of governance that bind all public officers, the respondents herein included.
13. Secondly, on whether the Petitioners have acquired an interest in the suit property which ought to be registered, counsel urged the court to consider the history of the suit property and the recommendations done by the 2nd Respondent in the Lamu report in compliance with Section 14 (6) of the *National Land Commission Act*. To counsel, the 2nd Respondent's actions were a clear and unequivocal endorsement of the existence of squatters on the suit property hence deserving of the 1500 acres from the suit property. Counsel relied on the case of Limbani Dispensary Project v Abdulrahman Mohamed Abdi [2021] eKLR. It was counsel's argument that based on the foregoing, the Respondents were bound to regularize the title to the suit property and urgently consider the rights of the Petitioners. Counsel added that having failed to do so, and having in mind that the 2nd Respondent's recommendations have never been impeached or challenged, the court should grant the order of mandamus sought as provided under Section 13 (7) of the ELC Act.
14. Thirdly, on whether the Respondents violated the Petitioners' rights under Articles 40 and 47 of *the Constitution*, counsel reproduced Article 40 and 65 of *the Constitution*. He submitted that having established their proprietary rights over the suit property and the Respondents' failure to comply with the recommendations of the Lamu report, the Petitioners were entitled to protection and that court ought to uphold and respect *the Constitution* as was held in Keroche Breweries Limited & 6 others v AG & 10 others [2016] eKLR.
15. In reference to Article 47 on the right to fair administrative action, counsel was guided by the case of Judicial Service Commission v Mbalu Mutava & another [2014] eKLR. He submitted that the Respondents' actions amount to impunity for leaving the Petitioners' application for allocation pending for a period over 13 years while dealing with other applications within the same area. He added



that the Respondents also failed to give adequate notice to the Petitioners of their intended decision, contrary to Section 4(3) of the Fair Administrative Act.

16. Fourthly, counsel submitted on whether failure of the 3rd Respondent to allocate the 1500 acres assigned to the petitioners violated their legitimate expectation. To this extent, counsel cited that the case of Communications Commission of Kenya & 5 others v Royal Media Services & 5 others SC 2014; Sirikwa Squatters Group v Commissioner of Lands & 9 others [2017] eKLR; and an excerpt from De Smith, Woolf & Jowell Judicial Review of Administrative Action, 6th Ed, Sweet & Maxwell, pg 609. He argued that from the actions of the 2nd Respondent and following the resolutions of the County Land Management Board, the Petitioners had legitimate expectation which was breached by the Registrar when he failed to issue titles in the Petitioners' favour.
17. It was therefore counsel's submission that the Petitioners are entitled to the reliefs sought and that costs should follow the event in line with Section 27 of the *Civil Procedure Act*.

1st Respondent's Submissions

18. The 1st Respondent relied on the submissions filed on 2nd October 2023 by the Director of Legal Affairs, Lamu County, Advocate Swaleh Kulthum Harith. According to Mr. Swaleh, three issues arise for determination. Firstly, whether the Petitioners are entitled to be allocated 1500 acres of land in the suit property; secondly, whether the 1st Respondent has violated the Petitioners' right to acquire and own land as provided under Article 40 of *the Constitution*; and lastly, whether the Petitioners are entitled to the reliefs sought.
19. In relation to the first issue, counsel submitted that at page 2 of the Lamu report, "irregularly acquired titles" are described as those titles that were procured in compliance with the Constitutional and statutory requirements but which are marred by certain administrative anomalies that do not go to the root of the title. This provision, he argued, is in line with Section 14 (6) of the *National Land Commission Act* which provides for regularization or correction of an irregularity in titles. To Mr. Swaleh, the recommendation in the Lamu report did not impose any obligation on the registered proprietor to settle the squatters therein. He added that the Petitioners herein have neither been identified as squatters. To him, the interested party's title was regularized as recommended thereby making their title a good title to be protected under Article 40 of *the Constitution*.
20. According to Mr. Swaleh, the alleged minutes dated 30th July 2015 do not provide any detailed information that formed the basis of the resolution, and the same are of no evidential value to the Petitioners' case for lack of a chairman's confirmation signature, and that the property referred therein is different from the suit property herein. Further, counsel argued that the board had no powers to make such recommendations and if it did, it acted ultra vires its mandate as provided under Section 9 (a) of the then *National Land Commission Act*.
21. Mr. Swaleh highlighted that from the pleadings and documents attached by the Petitioners, the land they claim is not the suit property herein but as is indicated in their advocates' letter dated 16th February 2022, is the land adjacent to the suit property and located behind Amu Ranch. Counsel added that in any event, the suit property was allocated to the interested party in the year 2012 long before the 1st Respondent became operational, and it cannot be said that it fraudulently allocated land. To Mr. Swaleh, the Petitioners are therefore not entitled to the 1500 acres sought in their petition.
22. In relation to the second issue, counsel submitted that by virtue of Article 62 (2) of *the Constitution*, the 1st Respondent does not have the mandate to interfere with ownership of private land as alleged by



the Petitioners and the reliefs sought by the Petitioners are illegal and in violation of Article 40 of the Constitution. In the ultimate, counsel argued that the Petitioners are not deserving of the reliefs sought.

Interested Party's Submissions

23. In their submissions filed on 3rd August 2023 by the firm of Messrs. A.O. Hamza & Company Advocates, five main issues for determination were identified. Firstly, whether the petition, supporting affidavit and annexures thereto are properly on record. Counsel submitted that the Petitioners' supporting affidavit is not commissioned, stamped and dated thus does not qualify as an affidavit under section 4 (1), 5 and 8 of the Oaths and Statutory Declarations Act. In addition, so he submitted, the annexures do not conform with Rules 9 and 10 of the Oaths and Statutory Declaration Rules. To him, the supporting affidavit and annexures thereto are irredeemably defective and ought to be expunged from the record. For that proposition, counsel relied on the cases of Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR; Mary Wanjiru Kanyua v Muchai Ng'ang'a [2004] eKLR; Weetabix Limited v Healthy U Two Thousand Limited [2006] eKLR. He added that the same could not be cured or alleviated by Article 159 (2) (d) of the Constitution of Sections 1A, 1B and 3A of the Civil Procedure Act as was explained by the Court of Appeal in Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others [2013] eKLR and Salome Namukasa v Yosefu Bukya [1966] EA 433. In the circumstances, counsel submitted, the petition offends the rules of evidence provided under Section 109 and 112 of the Evidence Act and ought to be dismissed.
24. Secondly, counsel submitted on whether the 1st Petitioner had authority to appear, plead or act on behalf of the other Petitioners. He averred that by dint of Order 1 rule 13 (1) & (2) of the Civil Procedure Rules, the 1st Petitioner lacked authority to swear the supporting affidavit on behalf of the other petitioners, as such it should be construed that the petition was filed by the other petitioners in their individual capacities in line with Order 1 rule 8. To counsel, that could not be remedied at this stage as it would amount to miscarriage of justice and a breach of Articles 50 (2) (e), 159 (2) (a), (b), & (c) and 160 (1) of the Constitution of Kenya. Counsel relied on the cases of Hezekia Kipkorir Maritim & 10 others v Philip Kipkoech Tenai & 2 others [2016] eKLR; and Chalicha Farmers Co-operative Society Limited v George Odhiambo & 9 others [1987] eKLR.
25. Thirdly, on whether the Petitioners have an interest in the Interested Party's property and whether their rights were violated. In relation to this issue, counsel submitted that section 107, 109 and 112 of the Evidence Act, places a burden on the Petitioners to prove their claim, which they have failed. Firstly, because the photographs relied upon do not match the Petitioners' allegation of being in occupation for over two decades; that the Petitioners' transient nomadic activities do not sufficiently demonstrate occupation of the suit property; and lastly because the Petitioners documents refer to a different property not the suit property. Therefore, having failed to prove ownership or occupation, violation of their alleged right under Article 40 has not been proved.
26. Further, counsel argued that sufficient notice was given as seen in the Lamu report for any concerned parties to appear before the 2nd Respondent to offer information during the investigations. That the Petitioners did not demonstrate that they complied with that notice, therefore there was no breach of Article 47 as alleged. Counsel submitted that having then failed to establish proprietary interests over the suit property, none of the Petitioners' rights can be said to have been violated. Counsel relied on the case of Samwel Ambasa & 3 others v Stella Ingasia [2022] eKLR.
27. Fourthly, counsel submitted on whether the interested party was the legal owner of the suit property. He reiterated the contents of the replying affidavit. He submitted that the Interested Party had always been in continued use and occupation of the suit property long before the Petitioners' claim to have entered the suit property; that the Petitioners have failed to demonstrate the irregularity in the



interested party's title to the suit property to show the irregular allocation. Similarly, he relied on the case of Samwel Ambasa & 3 others v Stella Ingasia [supra] to buttress this point.

28. The fifth issue was whether the suit is proper before this court. Counsel argued that having established that the suit property number no longer exists, the present petition is improper before this court. He added that the Petition does not meet the threshold for a constitutional petition as was established in the case of Anarita Karimi Njeru v Republic [supra]. According to counsel, the Petitioners could have filed a complaint with the Land Disputes Tribunal or the National Land Commission or even a normal civil suit. This, he argued, was because a constitutional petition was not the proper forum for determining serious and disputed questions of facts. Counsel further relied on the case of Gabriel Mutava & 2 other v Managing Director Kenya Ports Authority & another [2016] eKLR and Edward Karanja Chogo & 2 others v County Government of Kakamega [2018] eKLR. He urged the court to dismiss the Petition as was in the case of Adala v Anjere [1988] eKLR.
29. It was counsel's submission that the Petitioners are therefore not entitled to the reliefs sought, and the same should be dismissed with costs to the interested party.
30. Having considered that Petition, supporting affidavit, replying affidavits, submissions and authorities presented by parties herein, I find that the following issues arise for determination: -
 - a. Whether the petition, supporting affidavit and annexures thereto are properly on record;
 - b. Whether the 1st petitioner had authority to plead or act on behalf of the other petitioners;
 - c. Whether the petition meets the threshold of a constitutional petition and whether it is merited.

ANALYSIS AND DETERMINATION

31. Regarding the first and second issue above, counsel for the interested party was of the view that petition and supporting affidavit are not properly on record because one, the supporting affidavit was neither dated nor commissioned; and two the 1st Petitioner had no written authority to plead on behalf of the other Petitioners. I have carefully perused the supporting affidavit and annexures thereto; it is clear that counsel was misguided. The supporting affidavit is dated 23rd June 2022, commissioned by one Jacinta Beatrice Nduta and signed by both the deponent and the commissioner of oaths. Further, the 1st Respondent annexed as AMA-1 his authority to plead on behalf of the other Petitioners. It follows therefore that the preliminary issues raised by counsel for the interested party in their submissions, lack any factual basis.
32. It is a well settled principle that the Petitioner in such a constitutional petition ought to demonstrate with some degree of precision, the right they allege has been violated, the manner it has been violated and the relief they seek for that violation (See Anarita Karimi Njeru v Republic [1979] KLR 154 and *Trusted Society of Human Rights Alliance v Attorney General and Others Petition No.229 of 2012*).
33. In the present Petition, the rights said to be violated are those under Article 40 and 47 of *the Constitution* of Kenya, 2010. Article 40 reads:

“Protection of right to property

1. Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - a. of any description; and
 - b. in any part of Kenya.



2. Parliament shall not enact a law that permits the State or any person—
 - a. to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - b. to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
3. The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

34. Article 47 reads as follows:

1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - b. promote efficient administration.

35. The Petitioners are challenging the Interested Party’s title. Their grievance is that the suit property was irregularly allocated to the Interested Party. The basis for this allegation was the 2nd Respondent’s investigations and the Lamu report dated 10th November 2014. A perusal of the said report reveals that with regard to the suit property herein, the 2nd Respondent recommended that the interested



party's title be regularized, that the County government and the NLC urgently consider the squatters therein and resolve the dispute with farmers and that the county government to conserve Kibokoni lake. Paragraph 5 of the report also explains that "...where the commission (2nd Respondent) finds that the title was irregularly acquired, it shall take appropriate steps to correct the irregularity... irregularly acquired titles are those titles that were procured in compliance with the constitutional and statutory requirements...but which in process, were marred by certain administrative anomalies that do not go to the root of the title."

36. In my view, the Lamu report does nothing good for the Petitioners' case as far as the legality of the Interested Party's title is concerned. The Petitioners admitted that they were the squatters referred to in the Lamu report and that following the meeting of the Lamu County Land Management Board held on 30th July 2015, they were entitled to 1500 acres out of the suit property. To this extent, it was then incumbent for the Petitioners to first demonstrate to this court that they are indeed in occupation of the suit property in line with the law of evidence that he who alleges must prove. Section 107, 108 and 109 of the *Evidence Act* provide as follows:

“ 107. Burden of proof.

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

37. In *Julius Lekakeny ole Sunkuli v Gideon Sitelu Konchellah & 2 others* [2018] eKLR the Court of Appeal upheld the position that a petitioner should be under obligation to discharge the initial burden of proof before the respondents are invited to bear the evidential burden, and that the threshold of proof should be in principle, above the balance of probabilities, though not as high as beyond reasonable doubt.

38. The Petitioners relied on some copies of photographs the contents of which are some trees and what appears to be two water wells. The said photographs however do not show any sign of human occupation or developments to prove occupation. They equally attached copies of letters signed by the senior assistant chief, Hindi Magogoni Sub-location on 15th September 2008 (AMA-4); and another by the senior chief, Hindi Magogoni location on 8th October 2008 (AMA-5). In the two letters, the 1st and 5th Petitioners together with their extended families are said to have been in occupation of some approximate 1500 acres located behind Amu ranch, Hindi location in Lamu District. The Petitioners did not go beyond this to demonstrate that the said 1500 acres behind Amu ranch refer to land comprised in the suit property herein. Interestingly also, it is questionable how the said chiefs and Petitioners arrived at that conclusion on acreage occupied by the Petitioners without any official survey.

39. For the foregoing reasons, I am not satisfied that the Petitioners have established any interest over the suit property to warrant any protection or to conclude that their constitutional rights were violated. They have failed to satisfactorily demonstrate the manner in which their rights under Article 40 and 47 have been infringed. They have indeed failed the test in the *Anarita Karimi* case [supra].



40. The outcome is that the Petition dated 23rd June 2022 lacks merit and it is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 28TH DAY OF MAY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

