



**Kipkeori & 4 others v County Police Commander Nakuru County & 5 others (Constitutional Petition E005 of 2024) [2025] KEELC 756 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 756 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
CONSTITUTIONAL PETITION E005 OF 2024**

**MAO ODENY, J**

**FEBRUARY 24, 2025**

**IN THE MATTER OF ALLEGED INFRINGEMENT OF ARTICLES 2 (1), 2(2), 2(4), 3,10,22,23,27,28,29 (D) AND (F),40, 47,160, 162, 258 AND 259 (1) OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF CONTRAVENTION OF ARTICLE 40 & 244 OF THE CONSTITUTION OF KENYA, 2010. AND IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT. 2015**

**BETWEEN**

**JOHN KIRUI KIPKEORI ..... 1<sup>ST</sup> PETITIONER  
DAVID KIPSANG NGETICH ..... 2<sup>ND</sup> PETITIONER  
ESTHER CHERONO MOSONIK ..... 3<sup>RD</sup> PETITIONER  
BENJAMIN KIPKEMOI KIRUI ..... 4<sup>TH</sup> PETITIONER  
JOSEPH CHERUIYOT KIPNGETICH ..... 5<sup>TH</sup> PETITIONER**

**AND**

**COUNTY POLICE COMMANDER NAKURU COUNTY ..... 1<sup>ST</sup> RESPONDENT  
THE INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT  
THE COUNTY COMMISSIONER, RIFT VALLEY ..... 3<sup>RD</sup> RESPONDENT  
DEPUTY COUNTY COMMISSIONER, MOLO ..... 4<sup>TH</sup> RESPONDENT  
PANTALEO MWAMACHI ..... 5<sup>TH</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. By a Petition dated June 7, 2024, the Petitioners sought the following orders:



1. A declaration that the Respondents are in violation of the Petitioners' constitutional rights under Articles 10, 22, 23, 26, 27, 28, 29 (d) and (f), 40 and 47 of the Constitution of Kenya, 2010. (sic)
  2. An order for payment of Kshs 500,000/= being the compensation for the Petitioner's destroyed residential homes, crops and injuries inflicted on their livestock.
  3. An order of permanent injunction restraining the Respondents either by themselves, their agents, servants, employees and/or persons claiming under them from harassing, threatening, interfering and/or continuing with the quiet and peaceful occupation and use of their respective properties.
  4. An order for costs of this petition.
2. The Petition is supported by the annexed Affidavit sworn on 7<sup>th</sup> June 2024 by John Kirui Kipkeori who deponed that he has the authority of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners to swear the same on their behalf. He further stated that the Petitioners are the registered and absolute owners of parcels of land known as Nakuru/Kapsita/2517, Nakuru/Kapsita/1105, Nakuru/Kapsita/2514 and Nakuru/Kapsita/2390 which were legally allocated to them with valid titles issued by the Government of Kenya between the years 1997, 1999 and 2006.
  3. It was his evidence that they have been in peaceful occupation since 1997 when they were allocated the parcels, constructed their homes and have been cultivating various crops and rearing livestock thereon.
  4. The 1<sup>st</sup> Petitioner went on to depone that in or around March, 2024, the Respondents herein in cahoots with other people held a series of meetings with a view of unlawfully evicting them from their legally owned parcels of land. He deponed that together with his co-petitioners, they approached court in Molo Mc-ELC No E020 of 2024; John Kirui Kipkeori vs Magoma Omoywo, Molo CMC ELC No E021 of 2024; David Kipsang Ngetich vs Mary Ngetich, Molo CMC ELC No E023 of 2024; Benjamin Kipkemoi Kirui vs Caleb Mosse Osoro; Molo -ELC No E022 of 2024; Esther Cheroni Mosonik vs Josiah Nyachoki alias Momanyi and Molo -ELC No E030 of 2024; Joseph Cheruiyot Kipngetich vs Abel Migiro and consequently interim orders issued in favour of some of the Petitioners pending hearing and determination of the suit herein.
  5. It was the Petitioners' evidence that the 1<sup>st</sup>-5<sup>th</sup> Respondents either by themselves, their officers and/or persons claiming under them have been harassing, intimidating and/or threatening them with a view of illegally, fraudulently and unprocedurally evicting them despite being fully aware that there are pending cases in court over the same land parcels. The 1<sup>st</sup> Petitioner deponed that the Respondents through their hired goons in an attempt to evict the Petitioners unlawfully entered their respective properties and began destroying their homesteads hence the need for protection against infringement of their rights as per Article 20, 21, 27 and 23 of the Constitution of Kenya.
  6. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed Grounds of Opposition dated 8<sup>th</sup> July, 2024 and stated that the Petition does not meet the threshold set out in the cases of Anarita Karimi Njeru vs Republic (1979) 1EKLR 154 for having failed to specifically demonstrate with reasonable precision the manner in which the Respondents have violated the Petitioner's constitutional rights. They stated that the Petition is an abuse of the Court process as there are numerous cases filed by the Petitioners touching on the same subject matter before Molo Law Courts and therefore the instant petition is sub-judice.
  7. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents further stated that the orders sought in the Petition are not available under Judicial Review as the underlying dispute herein concerns ownership of land which cannot be addressed through this suit as the Court would require viva voce evidence. They stated that no judicial



review orders have been sought in the Petition despite referring to the Fair Administrative Action Act. They stated that the Respondents are unnecessary parties to this suit and the Petitioners have opted to omit the parties that they have a dispute with.

8. The Respondents also filed a Replying Affidavit dated 9<sup>th</sup> July, 2024 and sworn by Sura Abdi a Police Officer stationed at DCI Molo Office and the Investigating Officer in this case. He deponed that from the findings of the investigations, none of the Petitioners is the registered owner of the suit properties from the records obtained from the Land Registry and as such, the Petitioners do not have the locus to institute this suit.
9. The 1<sup>st</sup> Petitioner filed a Supplementary Affidavit sworn on 17<sup>th</sup> October, 2024 and deponed that neither the Directorate of Criminal Investigation (DCI) nor any officer of the DCI has been sued as a Respondent. Further that the Replying Affidavit dated 9<sup>th</sup> July, 2024 sworn by the said Sura Abdi is incompetent, fatally defective and inadmissible on account of having been sworn by a stranger to the Petition and as such must be struck out together with all annexures thereto.
10. It was the Petitioner's case that the petition does not concern ownership of the parcels of land that are the subject matter of Molo Mc-elc No E020 Of 2024, Molo Mc-elc No E021, Molo Mc Elc 023 Of 2024, Molo Me-elc No E022 Of 2024 And Molo Mc-elc No E030 Of 2024, but unlawful harassment of the Petitioners herein by the Respondents and wanton disobedience of lawful court orders.

### **Petitioners' Submissions**

11. Counsel for the Petitioners filed submissions dated 17<sup>th</sup> October, 2024 and identified the following issues for determination:
  - a. Whether the Respondents' Replying Affidavit dated 9<sup>th</sup> July, 2024 should be struck out for being incompetent?
  - b. Whether the Respondents violated Articles 2 (1), 2 (2), 2 (4), 3, 10, 22, 23, 27, 28, 29 (d) and (f), 40, 47, 160, 162, 258 and 259 (1) of the Constitution of Kenya?
  - c. Whether the Respondents disobeyed lawful court orders thus violating Article 47 of the Constitution (Fair Administrative Action)?
  - d. Whether the Petition meets the threshold for a Constitutional Petition as required by law?
12. On the first issue, counsel submitted that the affidavit sworn by Sura Abdi on 9<sup>th</sup> July, 2024 offends the provisions of Order 19 Rule 3 of the Civil Procedure Rules 2010 and should be struck out.
13. On the second issue, counsel submitted that the Respondents' illegal actions being inter alia disobeying court orders and attempting to evict them despite the existence of ongoing court cases at Molo Chief Magistrates Court amount to gross violation of their rights.
14. Counsel submitted that the Petitioners have proved that they were harassed and their property was destroyed despite the existence of interim orders issued to them by the lower court and relied on the cases of *Mitu-Bell Welfare Society vs Attorney General & 2 others* [2021] eKLR and *Moses P. N Njoroge & Others vs Reverend Musa Njuguna & Another*.
15. On the third issue, counsel submitted that the Petitioners produced a letter dated 29<sup>th</sup> May, 2024 showing the communication to the Nakuru County Police Commander which informed the Respondents of the court orders and establishes a clear violation of Article 47 of the Constitution.
16. According to counsel the destruction of property and the injuries to livestock further support the claim of administrative injustice and impunity by the Respondents and relied on the case of *Kenya Human*



Rights Commission Vs Non- Governmental Organizations Co-ordination Board Constitutional Petition No 169 of 2016.

17. On the fourth issue, counsel submitted that the Petition identifies the Articles of *the Constitution* that have been violated including Articles 2, 3, 10, 22, 23, 26, 27, 28, 40, 47 and 160. Counsel further stated that it also details the factual basis for these violations and sets out clear remedies and orders to cease the unlawful actions done by the Respondents. Counsel relied on the cases of Anarita Karimi Njeru vs Republic (1976-1980) 1KLR 1272 and Trusted Society of Human Rights Alliance vs Attorney General & 2 others [2012] eKLR and urged the court to grant the orders sought in the Petition.

### **Respondents' Submissions**

18. Counsel for the Respondents filed submissions dated 9<sup>th</sup> November, 2024 and identified the following issues for determination:
- a. Whether the matter is sub-judice?
  - b. Whether the Respondents violated the rights of the Petitioners?
  - c. Whether the Petition meets the threshold for a Constitutional Petition?
  - d. Whether the Respondent's affidavit is bad in law?
19. On the first issue, counsel submitted that for the doctrine of sub-judice to apply, the following principles ought to be present: (a) There must exist two or more suits filed consecutively; (b) The matter in issue in the suits or proceedings must be directly and substantially the same; (c) the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title; (d) the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.
20. Counsel submitted that the matter herein revolves around ownership of land and the same is already pending in another court of competent jurisdiction. Further that a determination of the Magistrate's Court cases would leave this court with nothing to determine as it would settle the whole dispute with regard to ownership of the suit properties.
21. Ms. Adomeyon further submitted that the orders sought by the Petitioners are misplaced as the underlying dispute herein concerns ownership of land which cannot be addressed in the petition as the Court would require the presence of other parties not before this court who equally claim ownership and should reject the attempt of being placed in an embarrassing position should it reach a conflicting determination.
22. Counsel relied on Section 6 of the *Civil Procedure Act* and the case of Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) and urged the court to dismiss this Petition.
23. On the second issue, counsel submitted that the Respondents neither evicted the Petitioners nor hired goons to carry out any eviction and relied on the case of Mitu-Bell Welfare Society vs Attorney General & others (2021) eKLR. Counsel further stated that the Respondents contend that they disobeyed court orders, which they had obtained in the Magistrate's Court. The Respondents counsel submitted that the correct remedy for the Petitioners would have been to file contempt proceedings against persons who disobeyed court orders and not a Constitutional Petition seeking declaratory, conservatory and compensation orders against non-parties.



24. On the third issue, counsel submitted that the Petitioners have extensively cited several provisions of *the Constitution*, Acts of Parliament and International Laws in order to convince court that their rights have been violated, which counsel stated that the Petitioners have not met the threshold of petitions as set out in the case of Anarita Karimi Njeru vs Republic (1979) 1EKLR 154.
25. On the fourth issue, counsel submitted that nothing precludes the Respondent from responding to the Petition in the manner that it has and therefore prayed that the said affidavit be deemed as duly filed on behalf of all the Respondents.
26. Ms. Adomeyon relied on the cases of Abdalla Rhoya Hiribae & 3 others vs The Hon Attorney General & 6 others High Court Civil Case No 14 of 2010; Law Society of Kenya vs Betty Sungura Nyabuto & another Petition No 21 of 2010, B.A.O & Another vs The Standard Group Limited & 2 others Petition No 48 of 2011 and Duncan Muriuki Kaguuru & Another vs Baobab Beach Resort & Spa Ltd High Court Petition No 233 of 2012 and submitted that courts held that even individuals can be held liable for violation of fundamental human rights and not just the state. Counsel submitted that the 1<sup>st</sup> to 6<sup>th</sup> Respondents have not in any way violated the rights of the Petitioners as alleged and urged the court to dismiss the Petition with costs.

### **Analysis And Determination**

27. The issues for determination are:
  - a. Whether the petition meets the threshold set out in Anarita Karimi Njeru case.
  - b. Whether the petitioners have demonstrated violation of their constitutional rights.
  - c. Whether the petition is an abuse of the process of the court in view of pending proceedings in Molo Mc-elc No E020 Of 2024, Molo Mc-elc No E021, Molo Mc Elc 023 Of 2024, Molo Me-elc No E022 Of 2024 And Molo Mc-elc No E030 Of 2024
28. The Respondent submitted that petition does not meet the threshold as was set out in the Anarita Karimi Njeru v Republic 1979 eKLR where the court held that:

“We would however, again stress that if a person in seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important that (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.

That based on this holding for petition to meet the constitutional threshold to be entertained by the Constitutional Court it must meet with a reasonable degree of precision the three tier test, that is stating that which one complains of, the provision said to be infringed, the manner in which they are alleged to be infringed.

That although the petitioner has enumerated Articles 28, 31 and 40 of *the Constitution* as the articles that have been infringed, no particulars are pleaded with reasonable clarity on how they have been violated and the extent of the violation. That the petitioner has not demonstrated how the respondent who is not the State has failed to support or infringed such right under Article 40(5) of *the Constitution* of Kenya when the said right is the responsibility of the State.”

29. The Petitioners enumerated several Articles namely 2 (1), 2 (2), 2 (4), 3, 10, 22, 23, 27, 28, 29 (d) and (f), 40, 47, 160, 162, 258 and 259 (1) of *the Constitution* of which they allege to have been violated.



It is not enough to throw in some Articles of the Constitution to show that there has been violation of the said Articles. There has to be precision and linkage to show the violation as alleged and proof of such violation.

30. The petitioners have further listed the particulars of the alleged violations as:
- a. The 1<sup>st</sup>-5<sup>th</sup> Respondents by themselves, their agents, servants and/or agents violated the provisions of Article 162 (2) (b) of the Constitution as read with Section 80 of the Land Registration Act, 2012 by purporting to evict the Petitioners herein.
  - b. To the extent that the Respondent herein seeks to evict the Petitioners from the suit properties during the pendency of the aforementioned court cases thus usurping the powers of the judiciary as provided under Article 160 as read with Article 162 of the Constitution of Kenya, 2010.
  - c. To the extent that the Respondents have blatantly singled out the Petitioners by perpetrating, occasioning and/or hiring goons to forcefully and/or illegally evict Petitioners from their land, the pendency of the suits touching thereon notwithstanding contrary to Articles 27 and 40 of the Constitution of Kenya, 2010.
  - d. To the extent that the Respondent, in abuse of their delegated powers, by themselves, their agents, persons claiming under them and/or authority, have continually destroyed the Petitioners' houses thus rendering them homeless contrary to Articles 28, 40 and 47 of the Constitution, 2010.
  - e. To the extent that the Respondents' agents have subjected the Petitioners and their families to psychological torture and being treated in a cruel, inhuman or degrading manner contrary to Article 29 (d) and (f) of the Constitution.
  - f. To the extent that the Respondent, in abuse of the powers delegated to them under the Constitution has been overseeing and/or supervising the forceful evictions and displacement of the Petitioners from their property without any valid or enforceable court orders.
31. The above is a list which has no particularity and precision of the alleged violations, it looks like a continuation of a list of the Articles that the Petitioners want to rely on in the Petition. It does not show the action or inaction of the Respondents in the violation of the Petitioners' rights. The Respondents were not confronted with the details of what each of them has done or failed to do to enable them respond specifically to each allegation of violation.
32. In the case of *Humphrey Mutegi Burini & 9 Others v Chief of the Kenya Defence Forces & another* [2017] eKLR the court observed as follows:

“In my view, the above are generalized allegations. There are ten petitioners in this petition. It would have been prudent for the petition to contain particulars of the alleged violations subjected upon each petitioner, the loss or damage if any suffered and specify the injuries suffered whether physical or physiological. The petition ought to contain details of the alleged place of arrest for each petitioner, detention, conditions at the place of detention and a chronology of the torture inflicted and if possible the culprits. That way, the Respondents would have been confronted with a specific claim to respond to. To, me, this petition lacks clarity and with tremendous respect discloses extremely poor pleadings and does not conform to the rule 10 (2) cited above. It is difficult for the court to determine the nature and



extent of torture meted on each petitioner and arrive at a fair and reasonable compensation in absence of such clarity and specificity.”

33. I find that the Petitioners have not met the threshold as set out in the Anarita Karimi case.
34. It is also admitted by the Petitioners that there are pending cases before the Molo Magistrates’ Court in Molo Mc-elc No E020 Of 2024, Molo Mc-elc No E021, Molo Mc Elc 023 Of 2024, Molo Me-elc No E022 Of 2024 And Molo Mc-elc No E030 Of 2024 in respect of ownership of the same suit parcels that are the subject matter in this Petition.
35. It is also not in dispute that this petition arises from the orders that were granted in the Molo Magistrates’ Court of which the Petitioners allege that there has been disobedience of the court order. With due respect to counsel for the Petitioners, if a party is served with an order and disobeys the order, do you file a petition or file contempt proceedings to hold the party in contempt of court. I agree with counsel for the Respondent that this is an abuse of court process as this Petition is sub- judice the enumerated cases pending before the Molo Magistrates’ Court.
36. Consequently, I find that the Petitioners have not proved any violation by the respondents hence the Petition is dismissed with each party bearing their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025.**

**M. A. ODENY**

**JUDGE**

