



**Gichuhi v County Government of Kirinyaga & 2 others (Constitutional Petition 2 of 2017) [2024] KEELC 5961 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5961 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**  
**CONSTITUTIONAL PETITION 2 OF 2017**  
**JM MUTUNGI, J**  
**SEPTEMBER 19, 2024**  
**IN THE MATTER OF CHAPTER FOUR OF THE CONSTITUTION OF KENYA 2010**  
**AND**  
**IN THE MATTER OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER**  
**ARTICLE 22 AND ARTICLE 40 (1) (3) AND (4) OF THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF INFRINGEMENT OF RIGHTS AND FUNDAMENTAL FREEDOM**  
**BETWEEN**  
**GRACE WAMBUI GICHUHI ..... PETITIONER**  
**AND**  
**COUNTY GOVERNMENT OF KIRINYAGA ..... 1<sup>ST</sup> RESPONDENT**  
**DIRECTOR OF PHYSICAL PLANNING ..... 2<sup>ND</sup> RESPONDENT**  
**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner instituted the present suit vide a petition dated 10<sup>th</sup> February 2017, seeking, among other things, the following orders;
  1. General damages (to be assessed by this Honourable Court)
  2. Costs of and incidental to this Petition.
  3. Interest on (a) and (b) above.
2. The Petitioner’s position was that she rightfully owned Plot Number D318 in Sagana, “(hereinafter referred to as the suit property)” having purchased it from Mr. Mohan Singh for KES 470,000 way back



in 1967. She contended that from 2001 to 2014, the respondents unfairly obstructed her access and enjoyment of her property until the Minister of Lands intervened, and directed that she be registered as the property's rightful owner. The Petitioner claims that the respondents' actions breached Article 40(1) of the Kenya Constitution and violated her constitutional rights.

3. In 1991, the Petitioner states she intended to develop the suit property and towards that she states she fulfilled all the pre requisite conditions including the payment of premiums, planning fees, survey fees, land rent, clearance fees, poll rate fees, and service charges to the then County Council of Kirinyaga, which in turn granted her the permission needed to commence development. She asserts she procured construction materials to erect permanent residential rental units after the County Council granted her the authority to carry out the development.
4. In December 2001, the Petitioner avers she encountered a threatening situation with three individuals who demanded she relinquish the ownership documents of the property and stole from her. In February 2002, a further intrusion occurred when two surveyors trespassed onto her property, subdividing it and installing beacons without her consent. The very next day, the Petitioner stated she reported these incidents to the Clerk of the Kirinyaga County Council, only to be informed of an undisclosed party's interest in purchasing her plot. In response to the unauthorized subdivision and the disturbances to her property, the Petitioner engaged the services of the Law Firm J.K Kibicho Advocates in July 2002, to communicate with the Clerk of Sagana Town Council to express her concerns over these illegal activities. The Petitioner further lodged a formal complaint with the Ministry of Lands, highlighting her inability to secure the title documents for her property and the illegal subdivision of her suit property into five plots under PDP No. CKR/222/12/1 by representatives of Sagana Town Council.
5. Subsequently, through its surveyor, the Sagana Town Council purported to allocate to the Petitioner plots marked 'K' and 'L' subdivided from her own plot No. D 318 through PDP No. CKR/222/12/1 that had improperly included the Petitioner's Plot D318 in Sagana. The Petitioner raised her concerns with the Minister for Justice and Constitutional Affairs, who then instructed the County Council of Kirinyaga to investigate and address her complaint. The Petitioner averred that the County Council of Kirinyaga took no action to remedy the position and it was not until the then Minister for Lands intervened after learning of her plight through the media, that she finally receives the certificate of title for her property on 27<sup>th</sup> October, 2014.
6. The Petitioner asserted that she was deprived of the use of her property due to the actions of the 1<sup>st</sup> Respondent's employees, servants, and assigns. This deprivation resulted from the denial of title documents, unauthorized subdivision of the property, and the allocation of her land to others, causing her irreparable loss and damages. She pleaded her loss and damages in paragraph 42 (a) and (h), which inter alia included;
  1. Loss of use of the suit plot.
  2. Financial loss after her building materials became wasted.
  3. Poor health due to depression and mental anguish led to her being admitted to the hospital.
  4. Deprivation of enjoyment and development of the suit plot.
  5. Harassment and un-warranted attacks by gangsters sent to evict her.
6. Water years as the petitioner sought help from various quarters when she could have developed her property.



7. Destruction and vandalism of the petitioner's house, posho mill, and vehicles by unknown persons.
  8. Psychological agony.
7. In the Replying Affidavit filed in response to the Petition by the 2<sup>nd</sup> Respondent, Timothy W. Mwangi, the Deputy Director of Physical Planning, confirmed receipt of the Petitioner's complaint concerning the disputed property. Mr. Mwangi detailed that the complaint prompted the Director of Physical Planning to commission an investigation by the District Physical Planning Office. The investigation's findings, contained in the letter dated 26<sup>th</sup> April, 2012, indicated that the land in question was not registered under the Petitioner's name and that the County Council had previously informed the petitioner that her allocated plots were identified as 'K' and 'L' in Sagana, as per the part development plan referenced CKR/222/99/5. Contrary to the petitioner's claims of making payments for the disputed property, Mr. Mwangi stated that the payments the Petitioner made were associated with parcels 'K' and 'L', not Plot No. D 318 which was in dispute.
  8. The Petitioner expressed dissatisfaction and sought the intervention of the Minister for Lands, who authorised the Director of Physical Planning to prepare a part Development Plan (PDP) to document the Petitioner's Plot No. D318 as originally allocated to her which meant the subdivision created by PDP No. CKR/222/99/5 was revoked, and the petitioner was issued a certificate of title for the property in question. Mr. Mwangi asserted that their initiative and effort resulted in the Petitioner receiving the title to the property, and he denied contributing to any of the losses and damages articulated in the Petitioner's petition.
  9. The 1<sup>st</sup> Respondent initially did not contest the suit. The Petitioner and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents submitted their written submissions, after which a Judgment was entered. The Court dismissed the suit concerning the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. However, the claim against 1<sup>st</sup> Respondent was upheld. The Court vide a Judgment delivered on 14<sup>th</sup> March 2018 by B. N. Olao, J, awarded the Petitioner a sum of Ten Million Kenyan Shillings (Kshs 10,000,000/-) in general damages for violation of her Constitutional Rights and ordered the 1<sup>st</sup> Respondent to pay the Petitioner the costs of the suit together with interest.
  10. The 1<sup>st</sup> Respondent applied to have the Judgment set aside vide an application dated 12<sup>th</sup> June 2018 which application was allowed and the 1<sup>st</sup> Respondent was permitted to file its response to the Petition.
  11. The 1<sup>st</sup> Respondent through Caroline Kinyua, the County Attorney, filed a Replying Affidavit where the 1<sup>st</sup> Respondent affirmed the Petitioner had sent several letters to the then Ministry of Justice and Constitutional Affairs complaining about an intrusion on her property and its unauthorized subdivision. The 1<sup>st</sup> Respondent stated that the Permanent Secretary had been made aware of the Petitioner's grievances and he requested the Town Clerk of Sagana Town Council to provide a detailed report regarding the complaint. The Town Clerk's response to the Permanent Secretary clarified that the contested plot, identified as Plot No. D318 was not registered under the Petitioner's name. Instead, the Petitioner had been allocated plot numbers K and L in Sagana. The 1<sup>st</sup> Respondent stated that the Petitioner had submitted an application for a lease for Plot No. D318 in Sagana and that the application was reviewed under Min. No. WTPM&HC 8/2009 and it was concluded that the Petitioner's legitimate allocations were plot numbers 'K' and 'L', not Plot No. D318 as claimed by the Petitioner.
  12. The 1<sup>st</sup> Respondent contended that the letter dated 26<sup>th</sup> April 2012 from the Director of Physical Planning, affirmed that from the official record the Petitioners plots were recorded as plot numbers K and L Sagana, and not Plot No. D318. The 1<sup>st</sup> Respondent stated that indeed the Petitioner wrote to



the Director of Physical Planning, confirming that Plots K and L rightfully belonged to her, as they had been carved from Plot No. D 318 which was her property which she had been given authority to develop. According to the 1<sup>st</sup> Respondent, the now-defunct Kirinyaga Town Council had originally established Plot D318 but the plot was following the elevation of Sagana to a Town Council status altered to Plot Nos 'K' and 'L' measuring 180ft by 300ft.

13. The 1<sup>st</sup> Respondent further contended that the Petitioner was duly informed of the replacement of her original Plot No. D318 with Plots K and L and was authorized to commence development on these plots. The 1<sup>st</sup> Respondent asserted that Plots 'K' and 'L' were equivalent in size to the suit property, each measuring 180ft by 300ft, and emphasized that this acreage remained consistent even after the title for Plot D318 was finalized. Further, the 1<sup>st</sup> Respondent argued that it had meticulously fulfilled its legal obligations, ensuring the Petitioner's rights were not infringed. The 1<sup>st</sup> Respondent further contended the reliefs sought by the Petitioner could not be justified, as she had failed to show how her rights were infringed upon. The 1<sup>st</sup> Respondent claimed that the Petitioner's claim lacked reasonable precision and did not meet the threshold of a Constitutional Petition. The 1<sup>st</sup> Respondent further averred that the Petitioner had not presented any proof to show that the 1<sup>st</sup> Respondent had evicted her and/or had reallocated her plot to someone else.
14. The Petitioner filed a Supplementary Affidavit dated 13<sup>th</sup> August, 2019 in response to the Replying Affidavit sworn by Carolyne Kinyua the County Attorney, and she reiterated the contents of her Supporting Affidavit. The Petitioner asserted that the 1<sup>st</sup> Respondent had vide the Replying Affidavit misrepresented the facts as contained in the various correspondences that the Petitioner had annexed in support of her Petition. The Petitioner maintained the officers and agents of the 1<sup>st</sup> Respondent had frustrated her efforts to develop her plot No. D318 through interference and unlawful subdivision of the same into several subplots which were given new numbers and allocated other people.
15. The Petitioner insisted that she purchased plot No. D318 from the original allottee, paid premiums, Survey fees, Plan fees, land clearance and poll rate fees to the 1<sup>st</sup> Defendant and it off in preparation for development. She repeated that her development plans were frustrated as the agents of the 1<sup>st</sup> Respondent were constantly harassing her and there was a clear intention to deprive her of her land contrary to the provisions of Article 40 of the Constitution. She maintained that plot 'K' and 'L' which the 1<sup>st</sup> Respondent indicated were the plots I was entitled to were but subdivisions from her plot No. D318 and had been hived off from her plot with the intention of depriving her of part of her land. The Petitioner denied the 1<sup>st</sup> Respondent's assertion that they complied with the directions of the Ministry of Lands to facilitate her to obtain title for her land, stating she had been deprived of her land from February 2002 to 27<sup>th</sup> October, 2014 when she was issued the title following the intervention of the Cabinet Minister for Lands who ordered that the subdivisions of her land be consolidated and she be issued with a title reflecting the land she originally owned.
16. The Petition was heard by way of written Submissions. The Petitioner filed submissions dated 19<sup>th</sup> December 2023 and the 1<sup>st</sup> Respondent filed their written submissions dated 28<sup>th</sup> March 2024.

### **Analysis, evaluation and Determination**

17. I have considered the Petition, the 1<sup>st</sup> Respondent's Replying Affidavit, the evidence adduced and the submissions of the Petitioner, and the 1<sup>st</sup> Respondent. The issues for determination are as follows:
  1. Whether the petition meets the required threshold for a claim of breach of Constitutional rights.
  2. Whether the Petitioner's Constitutional rights and freedoms have been violated.



3. Whether the Petitioner is entitled to the orders sought in Petition dated 10<sup>th</sup> February 2017.  
Whether the petition meets the required threshold for a claim of breach of Constitutional rights.
18. The 1<sup>st</sup> Respondent submitted that the petition should be dismissed, arguing that the Petitioner failed to articulate her claim sufficiently and did not reference the specific provisions of the Constitution and laws purportedly violated and neither did the Petitioner specify in what manner her rights were infringed upon.
19. In the Case of *Musili Mwendwa v Attorney General & 3 others* [2016] eKLR the Court stated thus: -  
“The rule in *Anarita Karimi Njeru vs Republic* (supra) ought not to be applied hook, line, and sinker. It is not about absolute precision. If a party and, a priori, the court can identify the complainants’ case painlessly, then the matter ought to be determined substantively and on its merits.”
20. In the instant Petition, the Petitioner alleged that her property rights under Article 40 of the Constitution were violated by 1<sup>st</sup> Respondent. The Petitioner identified the suit property Plot No. D318 in Sagana as the property she had acquired for valuable consideration from the previous owner as attested by the copy of the sale agreement she exhibited. She outlined the grievances and the acts of the 1<sup>st</sup> Respondent that led to the deprivation of enjoyment and frustration of development of her property over the years.
21. Upon reviewing the Replying Affidavit filed by the 1<sup>st</sup> Respondent, it is clear that the 1<sup>st</sup> Respondent properly understood the Petitioner’s grievance concerning the suit property. The content of the replying affidavit demonstrates a clear grasp of the nature, extent, and specifics of the claim made in the Petition. The detailed response, alongside the annexures included with the Replying Affidavit, supports the position that the Petitioner articulated the claim against the Respondents with reasonable clarity and precision. I am in the premises persuaded that the Petition meets the threshold of precision as articulated and established in the Case of *Anarita karimi Njeru –vs- Republic* (1979) eKLR.

**Whether the Petitioner’s Constitutional rights and freedoms have been violated.**

22. Land ownership and rights are both historical and emotive subjects in Kenya. The right to hold property is a constitutional and human right, and no person should be deprived of his property except in accordance with the provisions of the Constitution or Statute. The condition precedent to taking away anyone’s property is that the authority must ensure compliance with the Constitution and Statutory provisions.
23. The protection of private property is guaranteed under the provisions of Article 40 of the 2010 Constitution. In relevant excerpts, Article 40 (2), (3), (4) and (6) provide as follows:  
“ 40 Parliament shall not enact a law that permits the State or any person:-  
(2) (a) To arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description ....  
(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) ....
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

24. The primary objective of Article 40 of the Constitution is to safeguard lawfully acquired proprietary rights. The Supreme Court in the Case of Rutongot Farm Ltd vs. Kenya Forest Service & 3 others (2018) eKLR, articulated this position thus:

“Once proprietary interest has been lawfully acquired, the guarantee to protect the right to property under Article 40 of the Constitution is expressed in the terms that no person shall be arbitrarily deprived of property. The same guarantee existed in Section 75 of the repealed Constitution.”

25. There is unequivocal acknowledgment that the rightful owner of Plot No. D318 in Sagana was indeed the Petitioner. The sale agreement, executed on August 10, 1967, between the Petitioner and Mr. Mohan Singh stands undisputed. It is equally evident that the Petitioner made consistent payments to the County Government of Kirinyaga (then County Council of Kirinyaga) for Plot No. D318, commencing from 1991, which payments were accepted and receipts issued denoting they were in respect of Plot No. D318 Sagana. Further as per Minute No. WTPH/116/91 dated 16/12/91, the County Council of Kirinyaga affirmed the ownership of Plot No. D318, Sagana, to be that of Grace Wambui. Following this confirmation, the Petitioner received formal authorization, as indicated in the letter dated January 29, 1991, to proceed with development activities on the designated property.

26. However, in a surprising turn of events, the Sagana Town Council, through a letter dated 10/09/2002 titled “Replaced Plot No. D318 Sagana,” granted the Petitioner authorization to develop her now new Plots Nos. ‘K’ and ‘L’. It was not clear how Plot Nos. ‘K’ and ‘L’ came about but it is evident the Petitioner did not accept the new arrangement and she took steps to reclaim her land. She reached out to Hon. Kiraitu Murungi, the Minister for Justice and Constitutional Affairs, detailing her predicament in a letter dated 16/03/2003. Additionally, she communicated with the Assistant Minister for Justice and Constitutional Affairs, expressing her concerns about being subjected to harassment and intimidation aimed at forcing her to surrender the title documents for the disputed property. She further reported encountering two surveyors, dispatched by the Town Clerk, who claimed to have been sent to measure and subdivide the property in question. The Ministry of Justice responded to these concerns by instructing the Permanent Secretary of the Ministry of Local Government to conduct



an investigation into the Petitioner's complaints. The Town Clerk made a response and stated that: "that according to the records held in the office, plot No. D318 is not registered in the name of Grace Wairimu Gichuhi; "that on 10<sup>th</sup> September 2002, Grace Wairimu Gichuhi was notified by the then Town Clerk that her plots were K and L Sagana; that on 12<sup>th</sup> August 2010 the Petitioner applied for lease for Plot No. D318 Sagana which was considered by the Council under Min. No. WTPM&HC 8/2009 which reaffirmed her plots as No. K and L and she was advised accordingly.; and that on 20<sup>th</sup> July 2011, her family wrote to me objecting to the intended sale of plots K and L by Grace W. Gichuhi."

27. The Petitioner once again raised concerns with the Minister for Lands, the Deputy Prime Minister's Office, and the Ministry of Local Government and by a letter dated 11<sup>th</sup> September, 2012, the Ministry of Land instructed the District Physical Planning Officer to develop a part Development Plan specifically for the Petitioner concerning Plot D. 318 Sagana. This directive also included instructions to disregard the subdivisions established by PDP No. CKR/222/99/5.
28. The 1<sup>st</sup> Respondent's in its assertion that Plots 'K' and 'L' Sagana were the new plot numbers assigned to Plot No. D318 Sagana does not explain how Plot No. D318 got to be replanned or subdivided to create the new plots without the Petitioner as the owner of Plot No. D318 being involved. If any replanning was required, the Petitioner who stood to be affected ought to have been given notification and/or involved. To the extent that the Petitioner was not involved and/or consulted before any alterations and/or changes affecting her plot No. D318 were effected, that constituted a violation of her rights under Article 47 of the Constitution. Article 47 (1) and (2) of the Constitution provides as follows:-

47.

- (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 likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

There is no doubt that the Petitioner lawfully acquired Plot No. D318 Sagana on 10<sup>th</sup> August, 1967 as per the sale agreement exhibited by the Petitioner. The County Council of Kirinyaga, the predecessor of the 1<sup>st</sup> Respondent acknowledged the Petitioner as the owner of plot D318. The County Council as per the extract of the Minute of Kirinyaga Special Works, Town Planning Markets and Housing Committee Meeting of 19<sup>th</sup> June 1991 confirmed and accepted Grace Wambui (the Petitioner) as the owner of Plot No. D318 Sagana. The same County Council had earlier vide a letter dated 29<sup>th</sup> January 1991 addressed to the Petitioner and signed by the Clerk to the Council authorised the Petitioner to develop Plot No. D318 Sagana and on the basis of that authorisation the Petitioner gathered building/ construction materials including building stones on site but her efforts and attempts to develop her plot were frustrated and thwarted by the actions of the 1<sup>st</sup> Respondent's servants and/or agents who interfered and caused the subdivision of the Petitioner's said plot.

29. It was obviously incorrect for the 1<sup>st</sup> Respondent to claim that there were no records of the Petitioner to indicate she was the registered owner of Plot No. D318 Sagana when clearly, there was a minute confirming her as the owner and also there was a formal letter from the County Council authorising her to commence the development of the Plot. It is apparent that there must have been a concerted effort by either officials of the defunct County Council or other persons with the tacit support of officials from the defunct Council to grab Plot No. D318 Sagana and/or portions of the same. When the Petitioner protested and raised complaints with the Ministry of Lands the then Minister, Hon



Charity Ngilu instructed that the matter be investigated and the Director of Physical Planning vide a report to the Minister dated 13<sup>th</sup> July, 2012 confirmed that indeed over 50% of the Petitioner's plot was lost through what was in effect an unlawful subdivision of Plot No. D318 Sagana. He further affirmed that the Petitioner, Grace Wambui W. Gichuhi was allocated Plot No. D318. The Director of Physical Planning in the same report recommended the cancellation of what he described as fraudulent allocations resulting from the unlawful subdivision of the Petitioner's Plot No. D318.

30. Subsequently following the intervention of the Cabinet Secretary, Ministry of Lands the PDP No. CKR/222/99/5 that supposedly was used to subdivide Plot No. D318 was annulled and a fresh PDP No. CKR/222/12/01 was prepared which restored the Petitioner's Plot No. D318 Sagana as it originally existed and in respect of which the Petitioner was issued with a Title Deed. In the premises it is indisputable that the 1<sup>st</sup> Respondent through its servants and agents for whatever reason arbitrarily set out to deprive the Petitioner of her property and in the process frustrated her efforts to develop her property as she wished. It is not difficult to guess why the County Officials and/or agents were determined to frustrate the Petitioner, who was an elderly person. Plot No. D318 was sizeable measuring about 2 Acres and within the Sagana Township and therefore an easy target for grabbing. It is no wonder it was subdivided and the Petitioner allocated two (2) subplots 'K' and 'L' out of her own plot while it was not indicated who are the other beneficiaries were. It was only because of her persistence and resilience in her protestation that the Petitioner was able to recover her original plot.
31. I am persuaded that the Petitioner's Constitutional Rights were trodden upon and violated by the 1<sup>st</sup> Respondent as there can be no explanation for their conduct of denying her the right to utilise and develop her property. The Plot Nos. 'K' and 'L' that the 1<sup>st</sup> Respondent were ascribing to the Petitioner were their own creation as clearly the Petitioner's plot was No. D318 Sagana. They harassed the Petitioner and frustrated her efforts to develop the plot perhaps hoping she would yield to the pressure being asserted on her and accept the alternative plots 'K' and 'L'. She refused to give in and fortunately her obstinacy yielded fruits for her as she ultimately got a title for her entire plot.
32. The Petitioner was treated unfairly by the 1<sup>st</sup> Respondent's officials and/or agents and would be entitled to compensation. Under Article 23(3)(e) of the Constitution the Court has jurisdiction to order compensation where there has been violation of a Constitution Right. In the circumstances of this case, the Petitioner would be entitled to compensation. Clearly the Petitioner had been deprived of her property and was intimidated, harassed and was prevented from carrying out developments on her own property.
33. While the Petition is made against the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, I find no culpability on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. If anything the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents through the Director of Physical Planning and the Cabinet Secretary, Ministry of Lands and Housing were instrumental in the Petitioner getting back her land. They were blameless and the Petition as against them must fail.
34. Although the Petitioner under paragraph 42 of the Petition claimed damages under various heads, the Petitioner did not give any specificity and/or quantification. Some of the damages claimed would qualify to be classified as special damages and the law requires such to be not only specifically pleaded but also proved. The special damages were not specifically pleaded and consequently were not proved. No damages are awardable under this head.
35. I have however held and found that the Petitioner's Constitutional Rights were violated and I dare say in a high handed and callous manner and hence deserving compensation. There was no reason to treat the Petitioner in the manner she was treated by the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent's agents were obstinate and determined to deprive the Petitioner of her property and in the process they frustrated her desire to develop her property.



36. I am conscious that there can be no mathematical assessment for compensation for constitutional violations and there cannot be an exact quantification of compensation for such violations. The Court in making an assessment should however consider the nature of the violations, the circumstances and the duration when the violations occurred. In the instant case the Petitioner had a run-in with the 1<sup>st</sup> Respondent's agents over a period spanning over 10 years before she was finally issued title to her plot. What however, does not appear to be well explained is why, if the Petitioner was given authority to develop the Plot No. D318 in January 1991, it took her so long to commence the development as the issue of "the grabbing of her plot" appears to have come to light in 2002 when she apparently was given authority to develop Plot 'K' and 'L' vide a letter dated 10<sup>th</sup> September, 2002.
37. Be it as it maybe, and doing the best I could give the attendant circumstances in this matter I award the Petitioner Kshs 7,500,000/- as compensation for violation of her Constitutional rights which I consider would be adequate compensation for the violations the Petitioner suffered.
38. In the final analysis, I hold and find the Petitioner's Petition well founded and I enter Judgment in her favour and make the following final orders;
1. That the 1<sup>st</sup> Respondent violated the Petitioner's Constitutional rights under Articles 40 and 47 of the Constitution.
  2. The Petitioner is awarded the sum of Seven Million Five Hundred Thousand Kenya Shillings (Kshs, 7,500,000/-) as general damages as compensation against the 1<sup>st</sup> Respondent for violation of her Constitutional rights.
  3. The Petition against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is dismissed.
  4. The Petitioner is awarded the costs of the Petition as against the 1<sup>st</sup> Respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

