



**Abdullahi & 6 others v Cabinet Secretary, Ministry of Interior
and National Planning & 3 others (Environment & Land Petition
2A of 2023) [2024] KEELC 7170 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7170 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT & LAND PETITION 2A OF 2023
JM MUTUNGI, J
OCTOBER 31, 2024**

BETWEEN

**FATUMA ABDILLE ABDULLAHI 1ST PETITIONER
BILATHA WARSAME ALI 2ND PETITIONER
MOHAMUD MUHAMED HIRMOGE 3RD PETITIONER
ADAN WARSAME ALI 4TH PETITIONER
DAROT ABDULLAHI GURE 5TH PETITIONER
MOHAMED KEINAN SHURIA 6TH PETITIONER
ASLI ABDILLE ABDULLAHI 7TH PETITIONER**

AND

**CABINET SECRETARY, MINISTRY OF INTERIOR AND NATIONAL
PLANNING 1ST RESPONDENT
GARISSA COUNY COMMISSIONER 2ND RESPONDENT
COUNTY GOVERNMENT OF GARISSA 3RD RESPONDENT
GOVERNOR, GARISSA COUNTY 4TH RESPONDENT**

JUDGMENT

1. The Petitioners instituted the Petition dated 10th July, 2023 claiming they were residents of Burburis Village, Galbet Ward in Garissa County where they owned collectively 41 parcels of land comprising about 4.1 Hectares. It was the Petitioners claim that the Respondents, on or about 8th July, 2023 without any consultation with themselves and without obtaining any approvals and/or providing any



information to the residents entered onto the Petitioners property and commenced the construction of what the Respondents claimed to be a police post. The Petitioners averred that their efforts to resist the intrusion was met with brutal force. The Petitioners contended that the Respondents actions were in violation of Articles 10, 26, 27, 28, 29, 35, 40, 46 and 47 of *the Constitution*.

2. In the premises, the Petitioners in the Petition pray for orders as follows:-
 - a. A declaration that the Petitioners' right to protection of human dignity, and equal treatment before the Law under Article 27 of *the Constitution* has been threatened, denied, infringed, violated.
 - b. A declaration that the Respondents contravened *the Constitution* by irregularly approving development of a Police Post on community land contrary to the laid down procedures under *the Constitution*, the *Community Land Act* and the *National Police Service Act*.
 - c. An order of mandamus compelling the Respondents to comply with the Constitutional transparency and accountability requirement with regard to development on community land.
 - d. The Court be at liberty to exercise its powers under Article 23(3) of *the Constitution* of Kenya and fashion out any other appropriate relief it deems fit.
 - e. Costs of this Petition.
3. The 1st Petitioner, Fatuma Andille abdullahi, swore an Affidavit in support of the application for conservatory orders and the Petition. The Court upon consideration of the Notice of Motion application dated 10th July, 2023 granted a conservatory order and directed that the main Petition be heard on its merits.
4. Before the Petition could be heard the Firm of Salim Mohamed & Associate's Advocates filed a Notice of Motion application dated 22nd April, 2024 for joinder of Mohamud Mohamed Hirmoge & 4 Others as Petitioners to the Petition. This application was not opposed and the Applicants were admitted to join the Petition as Petitioners and the Affidavit they had filed in support of the application was deemed as their Affidavit in support of the Petition. It is appropriate to note that the added Petitioners grounds in support of the Petition were materially similar to those of the initial 1st and 2nd Petitioners.
5. The 3rd and 4th Respondents filed their response to the application and the Petition vide an Affidavit sworn by Khadija Ahmed Mohamed, the County Attorney, Garissa County on 20th March, 2024. The 3rd and 4th Respondents averred that the Petitioners lacked the locus standi to file the Petition as they were not the owners of the subject land. They further averred the Petition raised issues of ownership of the disputed land and that it did not disclose any Constitutional issue and/or violation of any Constitutional right. The 3rd and 4th Respondents contended the Petitioners had not demonstrated they owned the suit land in order for them to have a right to sue.
6. The 3rd and 4th Respondents further contended the Petitioners being not the owners of the disputed land, cannot be entitled to the reliefs they pray for in the Petition. The 3rd and 4th Respondents asserted that the land was unregistered Community land which was vested in the Community and which the County Government held in trust for the Community pending the registration of the same in the name of the Community. They asserted that the land being Community land, they as required under the *Community Land Act*, 2016, engaged the Community to obtain their approval and consent to construct and develop a Police Post on the land in question for the benefit of the community and to serve the members of the Community at large. The 3rd and 4th Respondents aver that the members of the Community gave their approval and consent as per the exhibited minutes of the meeting of the



Community members dated 16th April, 2023 (“KAM-1”). The 3rd and 4th Respondents state that it was pursuant to the approval by the Community members that they commenced the construction of the Police Post. They stated that the Community had way back in 2003 expressed a desire to have a Police Post in the area to serve their needs and hence the commencement of the construction of the Police Post was in fulfilment of a need by the Community and was in public interest.

7. The 3rd and 4th Respondents further contended that the County Government as the custodian on behalf of the Community of all unregistered Community land, has mandate to manage such land for the benefit of the Community which includes providing land for development of public infrastructure as in the present case.
8. The 3rd and 4th Respondents additionally contended that the Petition did not satisfy the threshold of what constitutes a constitutional Petition as established in the Case of Anarita Karimi Njeru –vs- The Attorney General (1979) KLR 154 as it was imprecise and did not specify in what manner the alleged Constitutional rights were violated.
9. The Attorney General at the time of the preparation of this Judgment had not filed any response and/or submissions on behalf of the 1st and 2nd Respondents.
10. The 1st Petitioner in response to the Replying Affidavit filed on behalf of the 3rd and 4th Respondents swore a further Affidavit dated 18th April, 2024. The 1st Petitioner in reply averred that as a Kenyan Citizen he had a right under Article 22 of *the Constitution* to bring the instant Petition on behalf of the Community whose rights were being threatened with violation. The 1st Petitioner affirmed the suit land was indeed unregistered Community land but averred there had been no public participation before the Respondents went ahead to commence constructing the Police Post. Concerning the minutes exhibited by the Respondents purportedly giving approval for the development, the 1st Petitioner averred that the alleged minutes were not authenticated.
11. The Petition was canvassed by way of written submissions. The Petitioners filed two sets of submissions. The 1st and 2nd Petitioners filed their submissions dated 18th April, 2024 through the Firm of Bashir & Associates Advocates while the 3rd to 7th Petitioners (added to the Petition with leave) filed their submissions dated 31st May, 2024 through the Firm of Salim Mohamed & Associates. Both sets of submissions speak to the same issues thus:-
 - i. Whether the Petitioners have locus standi to institute the Petition.
 - ii. Whether the Petitioners are entitled to the orders sought.
12. The Petitioners contend they are residents and members of the Community and have been residing on the suit property from time immemorial and hence have an interest and a right to protest the acts of the Respondents. The Petitioners to support their submissions cite the Case of Alfred Njau & Others –vs- City Council of Nairobi (1982) KAR 229 where the Court stated thus:-

“The term Locus Standi means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”
13. The Petitioners further rely on Article 22 of *the Constitution* to buttress their argument. Article 22 of *the Constitution* provides as follows:-
 22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.



- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
- (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest.
14. The Petitioners thus argue by virtue of Article 22 they have Locus Standi to bring the present Petition on their own behalf and on behalf of the members of their Community. The Petitioners went on to submit that the Respondents had no right to deprive the Petitioners (Community) of their land without following due process. They argued the Respondents acted in violation of Article 40 of *the Constitution* which guarantees protection of property rights. The Petitioners denied the Respondents had involved them before the decision to construct a Police Post at the location was arrived at and hence submitted there was no public participation as envisaged under Article 10 of *the Constitution*. They submitted they were not accorded the opportunity to give their input before the decision to construct the Police Post was taken and that according to them rendered the decision null and void. The Petitioners placed reliance on the following Cases:- North Rift Motor Bike Taxi Association –vs- Uasin Gishu County Government (2014) eKLR, Peter Makau Musyoka & Others –vs- The Award of Mining Concessionary Rights to the Mui Coal Basin Deposits (2015) eKLR; Khelif Khalifa & 2 Others –vs- IEBC (2017) eKLR and Delivery Unit & 3 Others (2017) eKLR:
14. The Petitioners urged the Court to declare that their Constitutional Rights were violated by the Respondents and grant them the orders sought in the Petition.
16. The 3rd and 4th Respondents in their submissions maintained that the Petitioners lacked the Locus Standi to lodge the Petition. They adopted the definition of Locus Standi given by the Court in the Case of Alfred Njau –vs- City Council of Nairobi (1983) KLR 625 where the Court held:-
- “----- Locus Standi, “literally means a place of standing and refers to the right to appear or be heard in Court or other proceeding and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”
17. The 3rd and 4th Respondents submissions in this regard appears to be predicated on the fact that the Petitioners claimed to be owners together with other residents of all the 41 parcels of land that in aggregate measured about 4.1 hectares yet they had not tendered any evidence documentary or otherwise to demonstrate they were indeed the owners of the land. While it is correct that land in the vast former North Eastern Province of Kenya which included Garissa was not titled, it is also correct the County Council within which the land was situated, was the authority that had mandate to allocate land. The Petitioners had not furnished any letter of allotment from any source and therefore their claim to be owners of the suit land was not backed by any evidence.
18. The 3rd and 4th Respondents submitted that the land the subject matter of the suit was Community land as defined under Article 63 of *the Constitution* and the land being unregistered land was held by the County Government in trust on behalf of the Community as provided under Article 63(3) of *the Constitution* of Kenya which provides that:-
- “Any unregistered Community Land shall be held in trust by the County on behalf of the Communities for which it is held.”



19. Section 6(1) of the *Community Land Act*, 2016 restates the above Constitutional provision that all unregistered Community land shall be held by County Governments in trust on behalf of the Communities for which it is held. The 3rd and 4th Respondents submitted that being cognizant of their role and responsibility they sought the Community's approval and consent to construct and develop a Police Post on the area identified and that the Community accorded its approval and consent as the letter dated 24th April, 2021 and attached minutes of the meeting held on 16th April, 2021 attest. The 3rd and 4th Respondents submitted that the Police Post was identified as a necessity by the Community and was for the benefit of the Community as it was intended to serve the Community's needs.
20. The 3rd and 4th Respondents further submitted that the Petition as presented did not satisfy the Constitutional threshold of what constitutes a Constitutional Petition as it was not precise and was not pleaded with requisite reasonable degree of precision as established in the Case of Anarita Karimi Njeru –vs- Republic 1979 KLR 154 where the Court stated thus:-

“We would however again stress that if a person is seeking redress from the High Court or an order which invokes a reference to *the Constitution*, its important if only to ensure Justice is done in his case that he should set out with reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”

21. While owing to the provision of Article 22 and Article 258 of *the Constitution* I would have no difficult in finding that the Petitioners have locus standi to bring the Petition on their own behalf and on behalf of others, I have difficulties in ascertaining that of which the Petitioners complain about and the exact nature of the alleged violations. Under Article 22 (1) and (2), every person has the right to institute Court proceedings claiming the violation of a right or denial of or threatened infringement of a right either for himself and/or on behalf of other persons. Article 22(1) and (2) of *the Constitution* provide as follows:-

- 22 (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own Interest, Court proceedings under clause (1) may be instituted by—
- (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.

Article 258(1) and (2) of *the Constitution* almost repeats the provisions of Article 22(1) and (2) of *the Constitution* and provides:-

258. (1) Every person has the right to institute Court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
- (a) a person acting on behalf of another person who cannot act in their own name;



- (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
22. My interpretation of the above provisions of *the Constitution* is that a Petition hardly ever can be defeated on account of locus standi as the above provisions give any person capacity to institute any form of Petition subject to such party being able to substantiate his/her allegations.
23. The 3rd and 4th Respondents have contended that the Petition as presented lacks substantiation in the sense that it lacks any reasonable precision such that it is not easy to decipher the nature of the alleged violations and the manner in which they have been perpetrated. In particular, the Respondents have contended that the land on which the Police Post was being constructed was community land and the Community for whose benefit the Police Post was being constructed in order to bolster Security in the area had approved and given consent for the Police Post to be constructed. The Petitioners for their part aver that the land in question had been parceled out into 41 plots. It is not clear whether the plots were allocated to individuals or were to remain part of the Community land. If the plots were to be allocated to individuals, there was no evidence of any such allocation adduced by the Petitioners. Without any evidence of allocation, the land being unregistered, remained part of Community land and was consequently held in trust by the Garissa County Government for the benefit of the Community.
24. It is not disputed that the subject land was unregistered Community land. There is evidence that discussions for the establishment of a Police Post in Bulla Medina (the subject area) commenced way back in early 2000 as evidenced by the District Commissioner’s letter dated 17th January, 2003 exhibited as “KAM-7” in the Respondent’s Replying Affidavit. The County Government as the custodian of the Community Land, has mandate to manage and deal with Community Land for the benefit of the Community provided there is consultation and approval by the Community. The Petitioners have argued there was no Community involvement before the Police Post was constructed. The 3rd and 4th Respondents refute that assertion and contend there was appropriate public participation as attested by the meeting of stakeholders held on 16th April, 2021 and the endorsement by the residents as per the annexed list which together the Agenda/Minutes and letter dated 24th April, 2021 are annexed and marked “KAM-1” in the Respondents Replying Affidavit.
25. While I am persuaded, the Petitioners Petition is deficient of clarity in the sense that the Petitioners have not stated and/or made it clear which Constitutional violations have been perpetrated by the Respondents and in what manner, I am satisfied that the County Government of Garissa as custodian of community land acted responsibly as there was an identified need for a Police Post and they involved the Community before starting the construction of the Post.
26. The Police post was for the wider interest of the Community. The Petitioners appear to be driven by what could be narrow private interests where they would rather have the 41 plots shared out to individuals rather than be converted to serve the Community interest by having infrastructure that serve the public developed at the site.
27. The Petition in my view does not constitute a Constitutional Petition as established in the Anarita Karimi Njeru (supra) which was applied by the Court of Appeal in the Case of Mumo Matemu –vs-



Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR where at Paragraph 42 of their Judgment the Court stated:-

“(42) However our analysis cannot end at the level of generality. It was the High Court’s observation that the Petition before it was not the “epitome of precise, comprehensive, or elegant drafting”. Yet the principle in *Anarita Karimi Njeru* (supra) underscores the importance of defining the dispute to be decided by the Court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with the rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under Section 1A and 1B of the *Civil Procedure Act* (Cap 21). Procedure is also a hand maiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the Court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive Justice, as they give fair notice to the other party. The principle in the *Anarita Karimi Njeru* (supra) that established the rule that, requires reasonable precision in framing of issues in Constitutional Petitions is an extension of this principle-----.”

28. The instant Petition failed the test of reasonable precision which rendered it to be incompetent and devoid of any merit. The same is accordingly dismissed with no order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 31ST DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC - JUDGE

