



REPUBLIC OF KENYA



KENYA LAW
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**Muriuki & 5 others v China Wu Yi Company Limited & another (Constitutional
Petition 1 of 2022) [2024] KEELC 7350 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7350 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

CONSTITUTIONAL PETITION 1 OF 2022

JM MUTUNGI, J

NOVEMBER 7, 2024

**IN THE MATTER OF CONSTITUTIONAL PETITION BROUGHT
PURSUANT TO ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 40, 47, 48, 64,
66, 70, 162(2), 258 AND 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF CONSTITUTIONAL PETITION BROUGHT PURSUANT
TO SECTION 68, 69, 78, 86, 91, 92, 101, 108, 109, 111, 124, 140, 141, 142, 144
OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT.**

AND

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
OF PETITIONERS AS ENSHRINED AND PROTECTED UNDER ARTICLES 10, 42, 47, AND
69 OF THE CONSTITUTION OF KENYA AND SECTIONS 140 141, 142, 143, AND 144 OF
THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT RESPECTIVELY.**

BETWEEN

PETER CHOMBA MURIUKI 1ST PETITIONER
**PETER CHOMBA MURIUKI (SUING ON BEHALF OF AND AS NEXT FRIEND
OF ZAVIER MBONGO) 2ND PETITIONER**
**PETER CHOMBA MURIUKI (SUING ON BEHALF OF AND AS NEXT FRIEND
OF PRINCESS WANGITHI) 3RD PETITIONER**
**PETER CHOMBA MURIUKI (SUING ON BEHALF OF AND AS NEXT FRIEND
OF FAVOUR WAMUYU) 4TH PETITIONER**
**PETER CHOMBA MURIUKI (SUING ON BEHALF OF AND AS NEXT FRIEND
OF SHANDRA NJOKI) 5TH PETITIONER**
ANN NJOKI 6TH PETITIONER



AND

CHINA WU YI COMPANY LIMITED 1ST RESPONDENT
KENYA NATIONAL HIGHWAY AUTHORITY (KENHA) 2ND RESPONDENT

JUDGMENT

1. The Petitioners filed a petition dated 12th April 2022 seeking the following orders;
 - a. A declaration that the Respondents have violated the Petitioners' constitutional rights as prospected under Articles 10, 42, 47, and 69(1) of *the Constitution*.
 - b. A declaration that the Respondents' acts were ultra-vires and unconstitutional and aggravated the violation of the Petitioners' rights as protected under Articles 2, 3, 10, 19, 20, 21, 22, 23, 40, 47, 48, 64, 66, 70, 162(2), 258 and 259 of *the Constitution* of Kenya.
 - c. General and aggregated damages for violation of the Petitioners' constitutional rights as protected under Articles 29(d), 40(d), and 47 of *the Constitution*.
 - d. An order of permanent injunction restraining the Respondents by themselves, their agents, employees, and/or servants from carrying out activities that adversely affect our clients' health and properties.
 - e. Costs and interests accrued from the Petition.

The Petitioners Case

2. The Petition is based on the grounds presented in support of the petition and the Supporting Affidavit sworn on 12th April 2022, by Peter Chomba Muriuki, with the authority of the 6th Petitioner. He clarified that the 6th Petitioner is his wife, while the 2nd, 3rd, and 4th Petitioners are their children, and the 5th Petitioner is their granddaughter, with the 2nd to 5th Petitioners being minors.
3. The Petitioner asserted that he is the registered proprietor of L.R. Kiine/Kibingoti/Ngunguine/5040, which serves as their matrimonial home. He averred that they not only reside but also engage in farming activities that provide for their livelihood.
4. He expressed concerns regarding the construction of the Sagana-Marua dual carriage highway by the Respondents. He stated that neither he nor his family members were involved in any public participation processes, despite being directly impacted by the project. Additionally, he stated that they were unaware of any Environmental Impact Assessment (EIA) that may have been conducted. The quarry operator, he argued, failed to identify potential environmental impacts associated with the project, assess their significance, consider alternative plans and sites, propose mitigation measures for significant negative impacts, generate baseline data for monitoring and evaluating implemented mitigation measures throughout the project cycle, and inform on the impact of alternatives.
5. The Petitioner expressed concerns regarding the lack of consultation and inadequate information throughout the project cycle, including planning, implementation, decommissioning, materials selection, waste disposal, and the anticipated economic and social benefits. They noted that this lack of transparency has led to several adverse effects from the quarrying activities, including: *Environmental Degradation*: The quarrying operations have significantly compromised the natural environment. The clearing of vegetation has not only led to open depressions susceptible to soil erosion but has



also created ponds during the rainy season that disrupt natural drainage patterns.*Health Hazards from Blasting***: The powerful blasting operations pose serious health risks to the Petitioner and local residents. Each blast sends fragments of stone and quarry chippings weighing up to 2 kilograms into the air, occasionally landing on roofs and fields. The vibrations from these blasts have caused deep cracks in housing structures, raising concerns about potential collapses. Additionally, the loud blasts and tremors have adversely affected livestock, leading to miscarriages among some animals.*Soil Compaction***: The movement of heavy machinery during construction has led to soil compaction, which has negatively impacted agricultural productivity.*Soil Erosion***: Exposed ground surfaces are increasingly prone to erosion from wind and water, exacerbating land degradation and threatening local ecosystems.*Impact on Flora and Fauna***: The removal of vegetation has disrupted local flora and fauna, adversely affecting biodiversity in the area.*Air Quality Issues***: Dust and exhaust emissions from the site and passing vehicles have deteriorated air quality, creating a more hazardous environment for residents.*Noise Pollution***: The noise generated during excavation work is not only damaging to hearing but has also caused significant distress, forcing the Petitioner to relocate their family for safety.*Occupational Health Risks***: There are growing concerns about respiratory health issues among children in the community due to the ongoing activities associated with the quarry.

6. The Petitioner claimed that the first Respondent had established a construction site near his home, where rock blasting generates significant noise, dust, stones, and debris in the air. Additionally, tar effluent has been seeping into his land. He stated that he submitted a grievance registration and resolution form to the Respondent on 20th June 2021. Despite that, the Petitioners averred the 1st Respondent continued to pollute the environment, even after a demand notice and a notice of intention to sue were issued on 23rd November 2021.

The Respondents Case

7. The 2nd Respondent filed a Replying Affidavit sworn on 30th May 2022, by Adams Muriithi, an assistant director of Environmental Safeguards at the 2nd Respondent's office. He stated that the 2nd Respondent engaged the 1st Respondent to undertake the contract for dualling the Sagana-Marua Road (A2) Project, whose purpose is to enhance inter-regional and domestic trade, as well as improve the well-being of the communities served by the road, including the Petitioner's community.
8. The 2nd Respondent argued that the Petitioners do not have a valid case against it for several reasons; the contract permitted the 2nd Respondent to delegate construction responsibilities to the 1st Respondent under the Employer-Contractor relationship; the 2nd Respondent was not liable for the direct losses suffered by the Petitioners due to the contractor's actions; the 1st Respondent was required to maintain a Contractor's All Risk Insurance Cover to adequately cover the project sum; and the Petitioners failed to formally report any losses to either the 1st or 2nd Respondents to allow for necessary action.
9. The 2nd Respondent noted that the Petitioners failed to issue the mandatory one-month notice to the Director General of the 2nd Respondent prior to filing this suit, as stipulated under Section 67(a) of the Roads Act, 2007. Consequently, the 2nd Respondent prayed for the dismissal of the suit on the grounds that it was statutorily time-barred and constituted a violation of legal requirements. Furthermore, it was asserted that the Petitioners have not demonstrated an infringement of their constitutional rights. The 2nd Respondent argued that the Petitioners' claim for compensation was flawed, as the special damages sought have not been specifically and adequately substantiated. There was no loss assessor appointed to determine any alleged loss.
10. Further, the 2nd Respondent stated that the Respondents possess a valid Environmental Impact Assessment (EIA) License issued by the National Environment Management Authority (NEMA).



NEMA, in accordance with its mandate under the Environmental Management and Coordination Act (EMCA), routinely checks compliance levels for ongoing projects and has reported no complaints from the Petitioners. Furthermore, NEMA did not identify any discrepancies regarding the project in question.

11. The 1st Respondent filed a Replying Affidavit sworn on 6th May 2023, by Richard Araka, an environmentalist associated with the 1st Respondent. He highlighted that prior to the commencement of the 1st Respondent's construction activities in 2020, necessary EIA licenses were obtained from NEMA and other governmental bodies. The 1st Respondent stated that it has taken proactive measures to ensure that construction activities are carried out with minimal disruption to the neighboring environment and the livelihoods of local residents. The 1st Respondent further indicated it had been regularly engaging experts to monitor the construction activities and had been in consultative engagement with the neighbours on its activities and had not received any complaints from them.
12. The 1st Respondent indicated that it conducted a comprehensive environmental impact assessment in November 2020 for its proposed construction activities in Kibingoti. This involved extensive public participation, where community members were educated about the planned activities at the construction site and the steps being taken to ensure environmental protection. On 24th June 2021, the 1st Respondent received an environmental impact assessment license from the National Environment Management Authority. The 1st Respondent stated it continued to engage with the public regarding its construction activities, establishing a protocol for community members to report any grievances to the area Chief and ensuring that evaluations of the property are conducted and necessary actions are taken.
13. The 1st Respondent further explained that its construction operations are situated on a sizable, well-fenced piece of land, designed to minimize disruption. The distance between the construction site and neighbouring homes was substantial, making it unlikely that they would experience dust, noise, or flying debris, contrary to the claims made by the Petitioners. Further, the 1st Respondent stated that it has been diligent in conducting annual environmental audits, incorporating feedback from public participation. It was the 1st Respondent's position that the report assessing the impact of its activities on air quality and noise levels, completed in September 2021, confirmed that the noise, vibrations, and dust emissions were all within the limits set by the Environmental Management and Coordination (Air Quality) Regulations.
14. The 1st Respondent further stated that in order to ensure responsible management of resources, the 1st Respondent engaged a hydrogeologist to evaluate soil and water flow, receive guidance on the safest methods for drilling boreholes to avoid disrupting soil compaction and groundwater flow. It also stated that an annual environmental audit conducted in March 2022 reaffirmed that the 1st Respondent had fully complied with all relevant environmental regulatory requirements and had also been licensed in line with the Ministry of Petroleum and Mining to conduct their construction activities.

Submissions, Analysis And Determination

15. On 5th March 2024, the Court directed that the petition be argued through written submissions. The Petitioners submitted their written submissions dated 24th April 2024, asserting that the petition was filed under Article 22(1) of *the Constitution* of Kenya, thus establishing their locus standing in the matter.
16. The Petitioners contended that the Respondents had both a constitutional and statutory obligation to involve them in the public participation process and ensure they had a fair opportunity to voice their concerns. They stated that the absence of any notification indicating how the Respondents engaged



with the public or how participants for the meeting were selected was a clear indication that there was no appropriate public participation.

17. Regarding the public participation conducted by the 1st Respondent, the Petitioners highlighted that the meeting on 5th November 2020 occurred during a nationwide lockdown due to the COVID-19 pandemic. They argued that the minutes of this meeting did not capture any opinions or suggestions from attendees, and the attendance list lacked a date and did not include a verified representative from the 1st Respondent to explain the project to the public. Furthermore, the Petitioners challenged the legitimacy of the questionnaires presented, pointing out that the handwriting on them appeared suspiciously similar, suggesting they were filled out by the same individual.
18. Additionally, the Petitioners questioned the authenticity of the letter dated 11th November 2020, which was said to be a license from NEMA, stating that there was no sworn affidavit to confirm its origin. The Petitioners argued that simply attaching this letter did not constitute valid evidence of compliance. They further noted that the 1st Respondent failed to provide the EIA annual reports for 2021 and 2022, despite responding to the petition on 6th May 2023.
19. The Petitioners asserted that there was no evidence demonstrating that the mitigation measures outlined in the EIA report were implemented. They claimed the 1st Respondent did not adequately explain their waste disposal practices, asserting that waste was improperly disposed of, even on their property. The Petitioners maintained that the suit land belonged to them, supporting their claim with photographs taken from their residence.
20. The 1st Respondent filed its written submissions dated 16th July 2024 and argued that, upon a cursory examination of the Petitioners' petition and supporting affidavit, no title deed was provided to establish ownership of the suit land, identified as Kiine/Kibingoti/Ngunguine/5040. Instead, the annexed title deed related to a different parcel, Kiine/Kibingoti/Ngunguine/5010. The Respondent contended that the Petitioner cannot claim an infringement of rights or livelihood without evidence proving residence or ownership of the suit land, or its proximity to the quarry.
21. The 1st Respondent further asserted that the Petitioners could not validly claim that air pollution had seriously affected their health and that they were all undergoing asthma treatment. The 1st Respondent observed that the medical evidence presented includes only an immunization health card for the polio vaccine. Furthermore, the validity of the photographs depicting a quarry and a house was challenged.
22. Additionally, the 1st Respondent stated that the grievance registration form did not bear their stamp, which would establish its receipt. They submitted that no expert reports, such as an inspection report of the house or an estimated bill of quantities, had been availed to substantiate the alleged damage. The 1st Respondent contended the Petitioners had not specified any losses incurred. In conclusion, the 1st Respondent argued that the Petitioners have not proven their case and, consequently were not entitled to the reliefs sought.
23. I have reviewed the petition, the response thereof and the parties submissions and the issues that arise for determination are as follows:-
 - a. Whether the Petitioners are the registered proprietors of the suit property Kiine/Kibingoti/Ngunguine/5040 and if they occupy the same?.
 - b. Whether the Respondent conducted proper public participation in regard to the project in issue.
 - c. Whether fundamental rights of the Petitioners were infringed by the Respondents.



Whether the Petitioners are the registered proprietors of the suit property and if they occupy the land.

24. Under Section 26 of the [Land Registration Act](#), a certificate of title serves as conclusive evidence of ownership. The section provides:

“(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land following a transfer or transmission by the proprietor, shall be accepted by all Courts as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner of the land, subject to any encumbrances, easements, restrictions, and conditions specified or endorsed on the certificate. The title of that proprietor may only be challenged on the following grounds:

- (a) Fraud or misrepresentation in which the person is proved to be a party; or
- (b) If the certificate of title was acquired illegally, unprocedurally, or through corrupt means.”

25. Additionally, Section 24(a) of the [Land Registration Act](#) states:

“(a) The registration of a person as the proprietor of land shall confer upon that person absolute ownership of the land, along with all associated rights and privileges.”

26. This principle was reaffirmed in the Case of Dr. [Joseph Arap Ngok vs. Justice Moiwo Ole Keiwa & 5 Others \(Civil Appeal No. CA 60 of 1997\)](#), where the Court of Appeal noted:

“Section 23(1) of the Act provides absolute and indefeasible title to the owner of the property. The title can only be challenged on the grounds of fraud or misrepresentation to which the owner is proved to be a party. The sanctity of title conferred upon the title holder under the Act is paramount. This legal framework takes precedence over any other alleged equitable rights of title. Essentially, the Act is designed to uphold the sanctity of title; otherwise, the entire registration process would be undermined of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy”.

27. As observed possession of a certificate of title following registration is deemed as definitive proof of ownership. The Petitioner, in both the petition and accompanying submissions, claimed to be the registered proprietor of the property described as KIINE/KIBINGOTI/NGUGUINE/5040. However, the Petitioners only annexed copy of the title for Kiine/Kibingoti/Ngunguine/5010 which was registered in the 1st Petitioner’s and that raises questions whether the violations alleged related to land Parcel Kiine/Kibingoti/Ngunguine/5010 or 5040.

28. In this context, the Court is unable to determine which land, whether Kiine/Kibingoti/Ngunguine/5010 or 5040, relates to the Petitioners and under which they assert their claim. It is not clear whether land parcel Kiine/Kibingoti/Ngunguine/5010 and 5040 are contiguous or how they are related. Both in the demand letter and the Petition the land referred to is parcel Kiine/Kibingoti/Ngunguine/5040 yet the certificate of search dated 3rd February 2022 and copy of title dated 21st March, 2021 indicate Peter Chomba Muriuki is registered owner of land parcel Kiine/Kibingoti/Ngunguine/5010. No ownership documents for land parcel Kiine/Kibingoti/Ngunguine/5040 were furnished by the Petitioners and it is not possible to ascertain the ownership of the same.



Whether the Respondent conducted proper public participation in regard to the project in issue.

29. The Petitioners contended that the Respondents failed to ensure meaningful public participation was undertaken or carried out. In response, the 1st Respondent asserted that adequate public participation was conducted, and the Constitutional requirements were met and satisfied.
30. Article 10(2)(a) of *the Constitution* emphasizes public participation as a fundamental national value and principle of governance that is binding on all state organs and public officials. Additionally, Article 69(1)(d) mandates the State to promote public involvement in the management, protection, and conservation of the environment.
31. Principle 10 of the Rio Declaration on Environment and Development (1992) further reinforces this notion by stating:
- “Environmental issues are best addressed with the active involvement of all concerned citizens at relevant levels. At the national level, every individual should have appropriate access to environmental information held by public authorities—including data on hazardous materials and activities in their communities—and be afforded the opportunity to engage in the decision-making process.”
32. In the Case of Mui Coal Basin Local Community & 15 Others vs. Permanent Secretary Ministry of Energy and 17 Others [2015] eKLR, the Court outlined the fundamental elements necessary for sufficient public participation as follows: “From our analysis of the case law, international law and comparative law, we find that public participation in the area of environmental governance as implicated in this case, at a minimum, entails the following elements or principles:
- a. First, it is incumbent upon the government agency or public official involved to fashion a program of public participation that accords with the nature of the subject matter. It is the government agency or Public Official who is to craft the modalities of public participation, but in so doing, the government agency or Public Official must take into account both the quantity and quality of the governed to participate in their own governance. Yet the government agency enjoys some considerable measure of discretion in fashioning those modalities.
 - b. Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness. A variety of mechanisms may be used to achieve public participation. Sachs J. of the South African Constitutional Court stated this principle quite concisely thus:
“The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day, a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case. (Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others 2006 (2) SA 311 (CC))”.
 - c) Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information. See Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya (JR Misc. App. No. 374 of 2012). In relevant portion, the Court stated:



“Participation of the people necessarily requires that the information be availed to the members of the public whenever public policy decisions are intended and the public be afforded a forum in which they can adequately ventilate them.”

In the instant case, environmental information sharing depends on availability of information. Hence, public participation is on-going obligation on the state through the processes of Environmental Impact Assessment – as we will point out below.

- c. Fourth, public participation does not dictate that everyone must give their views on an issue of environmental governance. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, especially in environmental governance matters must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.
 - d. Fifth, the right of public participation does not guarantee that each individual’s views will be taken as controlling; the right is one to represent one’s views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme. The government agency or Public Official cannot merely be going through the motions or engaging in democratic theatre so as to tick the Constitutional Box.
 - f) Sixthly, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand.”
33. I can do no better in the exposition of the Law in regard to what the parameters in public participation must entail. I reiterate the position taken by the Learned Judges in the above case and only add that public participation will be held to be sufficient, if it is demonstrated that:-
- i) That the public was afforded an opportunity to air and give their views and there was no restriction to who could give such views;
 - ii) That the views were noted and given consideration before the final decision was made;
 - iii) That there is presently no substantive law that prescribes the procedure of undertaking public participation and/or what constitutes sufficient public participation.
34. It however must be noted that it does not mean every view from the public expressed must be accepted and implemented. It is sufficient that the views are given and those that can be implemented are taken into account during the implementation of the project.
35. The South African Constitutional Court in the Case of Poverty Alleviation Network & Others v President of the Republic of South Africa & 19 others, CCT 86/08 [2010] ZACC 5 discussed the importance of public participation and stated as follows: -

“...engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, public participation is integral to its legitimacy. When



a decision is made without consulting the public the result can never be an informed decision”.

36. On the threshold of public participation, the Court of Appeal in *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* [2018] eKLR referred to *Independent Electoral and Boundaries Commission (IEBC) vs. National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR stated as follows: -
- “the mechanism used to facilitate public participation namely, through meetings, press conferences, briefing of members of public, structured questionnaires as well as a department dedicated to receiving concerns on the project, was adequate in the circumstances.
37. The 1st Respondent has argued that it had been in ongoing communication with its neighbors regarding its activities and had not received any complaints from them. In November 2020, the 1st Respondent conducted an environmental impact assessment (EIA) for its proposed construction activities in Kibingoti. The assessment included significant public participation, wherein community members were informed about the construction site activities and the measures the Respondent would implement to ensure protection of the surrounding environment.
38. The Environmental Impact Assessment Report submitted by the 1st Respondent indicated that while there was a plan for consultative public participation, the process was challenged by the global pandemic caused by COVID-19, which led to a ban on public gatherings. Consequently, a small public consultation meeting was held in compliance with the Ministry of Health guidelines which were issued then. During this meeting, the EIA team provided a brief presentation on the proposed project and invited comments from the Community members present.
39. The 1st Respondent attached copies of filled questionnaires from stakeholders who did not oppose the proposed project, along with the attendance list for the engagement. Additionally, the minutes from a meeting held on 16th November, 2020, were included. In contrast, the Petitioners contended that the Respondents did not provide any notice detailing how they invited the public or stakeholders to the meeting, nor did they specify the criteria used to select attendees. They argued that the 6th November 2020 meeting occurred during a nationwide lockdown due to COVID-19. The Petitioners contended the minutes of the meeting failed to record any opinions or suggestions from attendees, and the attendance list was undated. No identifiable representative from the 1st Respondent was noted as having explained the project to the public. The Petitioners disputed the validity of the questionnaires, claiming that the handwriting appeared similar despite being filled out by different individuals. The Petitioners thus argued this put to question the validity of the public participation exercise and was an indication of there having been no public participation.
40. Considering the circumstances that existed during the period the Country was under lockdown owing to the Covid-19 pandemic, I am persuaded that the Respondents engaged in public participation in a manner that reflected the prevailing conditions at the time. The Petitioners have not substantiated their claims regarding the questionnaires containing similar handwriting, and it would be improper for the Court to reach a conclusion that the questionnaires were without credible evidence. There was no such evidence and, it is my determination that there was ample and adequate public participation carried out taking into account the prevailing circumstances.



Whether fundamental rights of the Petitioners were infringed by the Respondents.

41. The petition asserts that the Petitioners' constitutional rights have been infringed by the Respondents. In their petition, the Petitioners reference the following Articles of *the Constitution* as having been violated: 10, 42, 47, 69(1), 2, 3, 19, 20, 21, 22, 23, 40, 48, 64, 66, 70, 162(2), 258 and 259. The Petitioners also cite Sections 140, 141, 142, 143 and 144 of the *Environmental Management and Co-ordination Act* (EMCA) as being violated.
42. In the landmark Case of Anarita Karimi Njeru v. Republic (1979) eKLR, the Court emphasized the importance of clarity in constitutional claims, stating:
- “If a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that which he complains, the provision said to be infringed, and the manner in which they are alleged to be infringed.”
43. This underscores the necessity for the Petitioners to clearly identify the specific rights and provisions that have been violated or were under threat of being violated, along with the details of how they have been violated or infringed. The Petitioners allegations of violation of their rights were generalized and lacked precision and did not satisfy the threshold of what constitutes a Constitutional violation as established in the Anarita Karimi Case (supra).
44. Section 107 of the *Evidence Act*, Chapter 80 Laws of Kenya states as follows:
- 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
45. The Court of appeal in the case Mbuthia Macharia v Annah Mutua & Another [2017] eKLR discussed the burden of proof and stated thus:
- (16) “The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced.
46. The Halsbury’s Laws of England, 4th Edition, describes legal burden thus:
- “The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case.....”
47. The Petitioners were responsible for proving the alleged violations. To satisfy this burden, they provided several pieces of evidence, including photographs of quarry activities, cracks in house walls, a cliff, dust clouds, a copy of a health card, and a demand letter dated 23rd November, 2021. However, upon analyzing the photographs, I find no nexus with the Petitioners claims and are unconvincing. They lack authentication as required under the *evidence Act* and do not clearly establish a connection to the project in question or specify the distance from which they were taken in relation to the suit land. Moreover, the health report submitted added little value to the Petition, as it consisted solely of an immunization card that did not correlate with the respiratory illness claimed by the Petitioners. The Petitioners did not adduce any expert evidence in regard to their claims against the Respondents



and the allegation relating to environmental harm remained unsubstantiated and therefore not proved. The Petition in my view lacked substantiation and must fail.

48. It is my finding that the Petition is devoid of any merit and the same is ordered dismissed with no orders as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 7TH DAY OF NOVEMBER 2024.

J. M. MUTUNGI

ELC - JUDGE

