



**Commission for Human Rights and Justice v Director Land  
Administration & 9 others (Environment & Land Petition E008 of 2023)  
[2024] KEELC 14079 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14079 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND PETITION E008 OF 2023  
EK MAKORI, J  
DECEMBER 19, 2024**

**BETWEEN**

**COMMISSION FOR HUMAN RIGHTS AND JUSTICE ..... PETITIONER**

**AND**

**THE DIRECTOR LAND ADMINISTRATION ..... 1<sup>ST</sup> RESPONDENT**  
**THE COUNTY LAND REGISTRAR KILIFI ..... 2<sup>ND</sup> RESPONDENT**  
**THE CABINET SECRETARY MINISTRY OF LAND AND HOUSING ..... 3<sup>RD</sup> RESPONDENT**  
**THE HONOURABLE ATTORNEY ..... 4<sup>TH</sup> RESPONDENT**  
**WYCLIFFE TEMBE MWANGOME ..... 5<sup>TH</sup> RESPONDENT**  
**NGUMBAO KUNGU IHA ..... 6<sup>TH</sup> RESPONDENT**  
**JOSEPH KARISA FONDO ..... 7<sup>TH</sup> RESPONDENT**  
**ESTHER KACHE MAYELE ..... 8<sup>TH</sup> RESPONDENT**  
**GEOFFREY KAMAU NGOIYA ..... 9<sup>TH</sup> RESPONDENT**  
**BAMBANI KILIO COMMUNITY CBO ..... 10<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner has filed this petition seeking the following reliefs:
  - a. A declaration that the Respondents’ actions have jointly and severally infringed on the Members of the Bambani Community as enshrined under Article 40 of *the Constitution*, a clear violation of their rights and a cause for concern.



- b. An order directing the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to cancel the grant and recall certificate of title for cancellation by the 2<sup>nd</sup> Respondent and the land Register be rectified.
  - c. An order cancelling all subleases, transfers, and dispositions already entered into by the 5<sup>th</sup> to 9<sup>th</sup> Respondents with third parties and the same be declared null and void alienation by violating the express provisions of the lease.
  - d. The costs of this petition be provided.
2. None of the Respondents entered appearance.
  3. The petition was canvassed through written submissions.
  4. After carefully analyzing the materials and submissions, I framed the issues to determine whether the current petition meets the threshold for bringing constitutional petitions generally, whether the Bambani Community's rights to own property under Article 40 of *the Constitution* have been violated, whether the reliefs sought are sustainable, and who will bear the costs of the petition.
  5. Sometimes, on the 22<sup>nd</sup> of April 2016, the 10<sup>th</sup> Respondent was registered as a Community-Based Organisation to champion land rights and seek resolution for historical land injustices. Under its watch, the 1st, 2nd, and 3rd Respondents did accede to their requests. They reverted several parcels of land around the Takaungu and Kikambala areas into community land under the trusteeship of the County Government of Kilifi.
  6. The Petitioner avers that in 2020, the 2nd Respondent carried out a verification process to identify the beneficiaries of the land that the 3rd Respondent had granted the 10<sup>th</sup> Respondent. For the land situate at Kikambala and Takaungu area, a certificate of Title CR NO. 79015 LR NO.663/W/MN measuring 325.9 Hectares was issued and registered in the names of the 5th to 9th Respondents, who have since subdivided the same and intend to sell it to other members of society other than the intended members—the Bambani Kilio Community, potentially causing harm to the community.
  7. The Petitioner avers that the registration of the land in the names of the 5<sup>th</sup> to the 9<sup>th</sup> Respondent by the 1<sup>st</sup> and 3<sup>rd</sup> Respondent violated the rights of the 10<sup>th</sup> Respondent to own property and hence the prayers sought in the current petition.
  8. Ms. Amugune, learned counsel for the Petitioner, has cited the decision in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR to support the assertion that the title held by the 5th to the 9th Respondents is illegally in their hands and should revert to the 10th Respondents, who are the rightful beneficiaries.
  9. Counsel proceeds to cite the decision in *Kenya Anti-corruption Commission v Online Enterprise Limited & 4 others* [2019] eKLR, highlighting that the Court can rectify the title if an error is noted under Section 80 of the *Land Registration Act*.
  10. I have considered the petition which is ostensibly brought for and on behalf of the 10th Respondents, who are said to have been entitled to the suit property as beneficiaries. Instead, the land was registered in the names of the 5th to 9th Respondents, who are now on a selling spree to other parties who were never the intended beneficiaries.
  11. What is curious about this petition is that while contending to vouch for the 10th Respondent, the petitioner names the 10<sup>th</sup> Respondent as an adversary! If you propagate a matter for the benefit of another, do you sue them as Defendants or Respondents?



12. In the petition, I did not see any consent granted by the 10<sup>th</sup> Respondent(sic) authorizing the Petitioner to sue on their behalf.
13. Besides, when I looked at the petition, I realized that other than citing various constitutional provisions said to have been infringed, the Petitioner's allegations of fraud perpetrated by the 5<sup>th</sup> to 9<sup>th</sup> Respondents can quickly be redressed by the 10<sup>th</sup> Respondents, who have been deprived of the land, and not through a constitutional petition.
14. See, for example, Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others Pet. 14A, 14B & 14C of 2014 of [2014] eKLR, where the court observed:  

[105]. We shall now turn to the Constitutional Avoidance Doctrine. The doctrine is at times referred to as the Constitutional Avoidance Rule. Black's Law Dictionary, 10<sup>th</sup> Edition, page 377, defines it as:

“The doctrine that a case should not be resolved by deciding a constitutional question if it can be resolved in some other fashion.”

[106]. The doctrine interrogates whether there are other ways of resolving a dispute outside a constitutional petition. The Supreme Court in Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others Pet. 14A, 14B & 14C of 2014 of [2014] eKLR held:

[256]. The principle of avoidance entails that a Court will not determine a constitutional issue when a matter may properly be decided on another basis.”
15. As I have said, the 10<sup>th</sup> Respondent, if genuinely deprived of the suit property by the 5<sup>th</sup> to 9<sup>th</sup> Respondents, can approach this Court via a plaint and get the desired remedy.
16. This petition then fails the Anarita Karimi Njeru test and is hereby dismissed with no order as to costs since no contestation against it was mounted.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Ojwang, for the 1<sup>st</sup> to 4<sup>th</sup> Respondents

Ms. Kimani, for the 5<sup>th</sup> to 9<sup>th</sup> Respondents

Happy: Court Assistant

In the Absence of:

Ms. Amugune, for the Petitioners

