



Mechumo v National Land Commission & 3 others (Constitutional Petition E003 of 2022) [2025] KEELC 3117 (KLR) (27 March 2025) (Judgment)

Neutral citation: [2025] KEELC 3117 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
CONSTITUTIONAL PETITION E003 OF 2022**

EC CHERONO, J

MARCH 27, 2025

**IN THE MATTER OF ARTICLES 21(1), 22, 23, 159(2)(E)
AND 165(B) OF THE CONSTITUTION OF KENYA 2010.**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE
INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES 2013.**

AND

**IN THE MATTER OF SECTIONS 152, 152E, 152G
TOGETHER WITH SECTIONS 155 OF THE LAND ACT**

AND

IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT

BETWEEN

GEORGE MECHUMO PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

COUNTY GOVERNMENT OF BUNGOMA 2ND RESPONDENT

SEVETH DAY ADVENTIST CHURCH (EAST AFRICA)

LTD 3RD RESPONDENT

CONSTITUENCY DEVELOPMENT FUND (CDF) SIRISIS 4TH RESPONDENT

JUDGMENT

1. The petitioner filed this petition dated 09/05/2022 seeking the following orders;



- a. A declaration that the respondents have violated the right of the congregation of the Anglican Church of Kenya under Article 47 of the Constitution.
 - b. The construction commenced on LR No. North Malakasi/ South Wamono/142 by the 2nd, 3rd and 4th respondents are null and void.
 - c. Any other relief this honourable court may deem fit to grant.
2. The petition was supported by the supporting and further affidavit of George Mechumo sworn on 09/05/2022 and 16/08/2022. It was the petitioner's case that he is the bishop of the Anglican Church of Kenya Bungoma Diocese (hereinafter referred to as 'the church') which congregation is in occupation of Land Parcel LR No. North Malakasi/South Wamono/142 (hereinafter referred to as the 'suit land') since 1952 after which a foundation stone was laid in the year 1969 by the leadership then. That the congregation of the church has been utilizing the suit land since the year 1952 to date.
 3. It was deposed that the Respondents without notice deposited construction materials on the suit land and begun excavating with a view of constructing over the suit land thereby interfering with the quiet occupation of the church. He stated that the suit land is registered in the name of Bungoma County Council on 03/05/1997. That the culmination of the Respondent's actions is to evict the church from the suit land. That the Respondents ought to have complied with Sections 152, 152E, 152G and 155 of the Land Act which are in line with Article 47, 50, 60 and 67 of the Constitution.
 4. The 1st Respondent filed a response to the petition dated 03/02/2025 where it stated that the church has been in occupation of the suit land despite knowing that the same was public land. That the 1st defendant is not engaged in any construction as alleged by the petitioner and that it has not received any request by the County Government of Bungoma (2nd respondent) to issue any eviction notice in respect of the suit land and neither has the petitioner lodged any claim with them. It averred that the petitioner has not demonstrated how the commission has infringed his constitutional rights therefore, no cause of action has been properly raised. Lastly, it was averred that the petition is totally defective and urged that the same be dismissed.
 5. In a ruling delivered on 27/01/2023, the 4th respondent, Constituency Development Fund (CDF) SIRISIA was struck out of the suit.
 6. On 21/01/2025, directions were taken to have this Petition canvassed by way of written submissions.
 7. The petitioner filed submissions dated 03/11/2024 where he reiterated the contents of his supporting and further affidavit as summarized above. It was argued that the actions of the Respondents upset the provisions of Article 47 and 50 of the Constitution on fair administrative action and fair hearing. It was further submitted that the 1st Respondent ought to have issued them with a notice under Section 155(2) of the Land Act and if not so, then notices under Section 152(g) would have been appropriate. Reliance was placed in the case of Bartholomew Dome vs. County Government of Bungoma Petition no.3 of 2017 and ELC Petition No. 5 of 2018, Justice and peace Centre Kitale v. National Land Commission & 3 Others as consolidated with Kitale ELC Petition No, 6 OF 2018 Isaiah Wanyonyi & 42 Others v. National Land Commission & 3 Others and Kitale ELC Petition no.7 of 2018 Transnational Times Sacco LTD v. National Land Commission & 3 Others. The petitioner urged the court to allow the petition as prayed.
 8. The first Respondent filed submissions dated 14/02/2025 and submitted on five issues. The first issue was whether the petitioner has established any right over the suit property; it was submitted that the petitioner has not proved that the continued use of the suit land by the church was with the license of the registered owner i.e Bungoma County Government. They argued that the petitioner cannot claim



the suit land by way of adverse possession since the land is public land. Reliance was placed in the case of Njoki Wainaina alias Mama Kanyonyo v Josphat Thuo & Others & National Land Commission (2019) eKLR.

9. The second issue is whether the national land commission failed to issue eviction notice to the petitioner. It was submitted that they are mandated under Section 152 (c) of the Land Act to issue eviction notice against unlawful occupiers of public land. That in this instance they could not have issued a notice yet they have not received any complaint. Reliance was placed in the case of Kenya Assemblies of God Trustees & Another v Obuya & 5 Others (2024) eKLR.
10. The third issue is whether any of the petitioner's rights have been violated; it was submitted that no evidence has tendered to show that indeed the petitioners rights under the Constitution had been infringed. On the third issue, the 1st Respondent argued that the commission does not do construction on any land and that there was no evidence that they were at all involved in the actions complained of. Lastly, they submitted that the petitioner was not entitled to the orders sought, having not demonstrated any cause of action against them.
11. The 2nd respondent filed its submissions dated 07/02/2025 where it raised three issues. The first issue is Whether the petitioners notice of motion (I believe petition) meets the threshold to trigger this court's jurisdiction to grant the conservatory orders sought. It was submitted that the petitioner had not led evidence to demonstrated the breach of Article 47,50 and 60 of the Constitution as claimed and as such, he was not entitled to the conservatory orders sought. Reliance was placed in Civil Application No. 5 of 2014 Gatiaru Peter Munya v. Dickson Mwenda Kithinji & 2 Others (2014) eKLR. CREAM & 7 Others (201) eKLR. That since the suit land is set apart for public utilities and more so Kapsitet Nursery School, the issuance of the orders sought would deny the public basic social services and education.
12. The second issue discussed was whether the petitioner has proved to the required standard that the 2nd respondent infringed their rights. On this, they answered in the negative and submitted that contrary to the allegations by the petitioner, the 2nd Respondent has not taken part in any of the alleged acts and that the petitioner has not linked them to the actions complained of. Further that the evidence that purports to support the petitioner's allegations to the act complained of are images produced contrary to Section 106B of the Evidence Act. Reliance was placed inter alia in the case of Republic v. Barisa Wayu Matugunda (2011) eKLR. County Assembly of Kisumu 7 2 Others v. Kisumu County Assembly service Board & 6Others (2015) eKLR and Mbui & Another v. Mbui (Environment & Land Case 154 of 2017) [2022] KEELC 2203(KLR.) (27 May 2022 Ruling). The court was urged to dismiss the petition with costs.

Analysis and determination. ___**

13. I have considered the petition herein and the replies thereto, the affidavit evidence, rival submissions and authorities cited as well as the issues drawn by Counsels for determination. It is my view that the issues that commend for determination are as follows;
 - a. Whether the petition meetst the threshold required of a constitutional petition?
 - b. Whether the respondents violated the petitioners' constitutional rights under articles 47 and 50 of the Constitution.
 - c. Who bears the costs.
14. The issues are discussed as hereunder.



15. On the first issue; in *Anarita Karimi Njeru -vs- Attorney General*, (1979) KLR 154 the court of appeal stated as follows:

“We would however again stress that 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 reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”

16. This holding received a further affirmation in the case of *Mumo Matemu -vs- Trusted Society of Human Rights Alliance and others*, Nairobi Civil Appeal No. 290 of 2012 where the court stated as follows:

“We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not conterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point...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 *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.”

17. It is conceded by the petitioner that the suit land is registered in the name of the 2nd respondent. Indeed, the petitioner has annexed to his further supporting affidavit sworn on 16/08/2022 a copy of the Certificate of Search confirming that the suit land has since 03/05/1977 been registered in the name of Bungoma County Council the predecessor of the 2nd Respondent. Therefore, the ownership of the suit land is not really a matter for determination in this Petition. It is clear that what the petitioner is mainly aggrieved with is in respect to the conduct of the Respondents purported violation of Article 47 of the *Constitution*, 2010 which reads in sub-Article (1) that:

Article 47.

Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

18. The Petitioner also cites Article 50(1) of the *Constitution*, 2010 which reads:

Article 50.(1).

Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

19. Sections 152A, B, C, D, E of the *Land Act*, on the other hand deal with prohibition against unlawful occupation of land and provides for the issuance of relevant notices before eviction from public land. Therefore, while the petitioner does not appear to challenge the 2nd Respondent’s title to the suit land,



his main grievance appears to be that the church ought to have been heard and given the necessary notice to vacate.

20. Having regard to the foregoing, this court finds that the petitioner has succeeded in setting out a constitutional claim to some interest in the land in question and this court is of the view that they have pleaded their case with reasonable measure of precision and within the threshold required of a constitutional petition.
21. On the second issue, the main ground relied upon by the petitioner is that the Respondents failed and or neglected to issue the church with the necessary notices to vacate from the suit land which we have in preceding paragraphs stated is a public land. The contention is that the Respondents have deposited construction materials on the suit land and have excavated thereon thus disrupting the use of the said land by the Petitioner. The Respondents on the other hand have distanced themselves from the acts complained of and denied any involvement of the same. They argued that the petitioner has not linked them to the said acts and as such, no cause of action has been established against them.
22. The legal provision for an eviction notice from public land provides that any evictees from public land should be notified in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction. The *Land Act*, 2012(As amended in 2016) provides;
152A. Prohibition of unlawful occupation of land.
A person shall not unlawfully occupy private, community or public land
152B. Evictions to be undertaken in accordance with the Act.
An unlawful occupant of private, community or public land shall be evicted in accordance with this Act.
152C. Eviction Notice to unlawful occupiers of public land.
The National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing, by notice in the Gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.
23. It is not denied that no notice was issued to the petitioners to vacate from the suit land. However, as stated elsewhere in this judgment, the Respondent contend that no notice would have emanated from them since they are not responsible for the acts complained of. The petitioner therefore bore the duty to prove that the acts he complained about were occasioned by the Respondents therefore, a notice as contemplated under Section 152(c) was required.
24. It is trite law that he who alleges must prove. The petitioner's claim ought to be propounded on an evidentiary foundation. In saying so, I rely on the case Leonard Otieno vs. Airtel Kenya Limited (2018) where Mativo J. held that;

“It is fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the proposition he asserts to prove his claim. Decisions on violation of Constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Constitution* an inevitable result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues.



Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.”

25. In support of his claim, the petitioner attached images showing the purported excavation and deposited construction material. The 2nd Respondent asserts that the images are irregularly produced as they contravene the provisions of Section 106B of the *Evidence Act*. Section 106B of the *Evidence Act* provides for the admissibility of electronic records. Section 106 B (4) provides as follows;

“In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following—

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- (c) dealing with any matters to which conditions mentioned in subsection (2) relate; and
- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.”

26. This must be read together with Section 106 B (1) which provides;

“Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as “computer output”) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.”

27. It is obvious from the above provisions that where electronic record which has been printed is to be produced in any proceedings, a certificate identifying the electronic record containing the statement and describing the manner in which it was produced must be prepared and adduced in evidence. The above Section on the production of electronic evidence and the preparation of a certificate is applicable in all proceedings. In the absence of a certificate contemplated under Section 106B (4) (d) of the *Evidence Act*, I find that the purported print outs of the screenshots annexed to the petitioners supporting affidavit are not admissible in evidence.

28. The effect of the above is that there is no evidence of the acts complained of. Even if the court were to consider the said annexures, the petitioner has not linked the Respondents to the actions complained of. The images only depict an excavation and construction material and nothing has therefore been placed before this court to show who caused the excavation and the deposit of the construction material on the suit land. The Respondent’s involvement has not been substantiated by evidence and I agree with the Respondents that the petitioner has not established that the alleged contravention of his constitutional rights have been occasioned by them.



29. The upshot of the forgoing is that the petitioner is not entitled to the reliefs sought for having failed to prove his case against the Respondents to the required standard.
30. Consequently, I find that this petition lacks merit and the same is hereby dismissed with each party to bear their own costs.
31. Orders accordingly.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF MARCH, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of:

1. Mr. Wangila for the 2nd Respondent.
2. Mr. Nyamu for the Petitioner.
3. M/S Kiprotich for the 1st Respondent.
4. Bett –C/A

