



**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

(Coram: Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

PETITION NO. E023 OF 2025

– BETWEEN –

KENYA RAILWAYS CORPORATION APPELLANT

– AND –

FATUMA KHAMIS BILAL.....1ST RESPONDENT

RASHID SADI KEMIS.....2ND RESPONDENT

KADMALA AHMED..... 3RD RESPONDENT

RUKIA KHAMIS.....4TH RESPONDENT

NOOR RAJAB.....5TH RESPONDENT

MICHAEL ODHIAMBO (on their own behalf and
on behalf of 3,500 co-residents of Kibos Settlement located
in Kisumu facing evictions) **6TH RESPONDENT**

**THE CABINET SECRETARY FOR TRANSPORT,
INFRASTRUCTURE, HOUSING AND
URBAN DEVELOPMENT..... 7TH RESPONDENT**
CABINET SECRETARY FOR LANDS.....8TH RESPONDENT

**CABINET SECRETARY MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT.....9TH RESPONDENT**
THE NATIONAL LAND COMMISSION.....10TH RESPONDENT
THE COUNTY GOVERNMENT OF KISUMU.....11TH RESPONDENT
THE HON. ATTORNEY GENERAL.....12TH RESPONDENT
**LEGAL ADVICE CENTRE (TRADING AS
KITUO CHA SHERIA).....13TH RESPONDENT**
KISUMU MUSLIM ASSOCIATION.....14TH RESPONDENT
**KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS.....15TH RESPONDENT**

*(Being an appeal from the judgment and orders of the Court of Appeal at
Kisumu (**Makhandia, Omondi & Kimaru, JJ. A**) delivered on 21st March,
2025 in Civil Appeal No. E206 of 2021)*

Representation:

Mr. Ouma for the Appellant
(TripleOKLaw LLP)

Mr. Mauwa for the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents
(Mauwa & Co. Associates)

No appearance for the 7th, 8th, 9th, 10th, 11th, 12th and 14th Respondents

Mr. Nyamori for the 13th Respondent
(Joshua Odhiambo Nyamori & Associates Advocates)

Mr. Odongo for the 15th Respondent
(Odongo Awino & Company Advocates)

JUDGMENT OF THE COURT

A. INTRODUCTION

[1] Before this Court is a Petition of Appeal dated 2nd May, 2025, and filed on 5th May, 2025, brought pursuant to Article 163(4)(a) of the Constitution, Section 3 of the Supreme Court Act, and Rule 38(2) of the Supreme Court Rules. The appellant seeks to set aside the Judgment of the Court of Appeal (*Makhandia, Omondi & Kimaru, JJ. A*) dated 21st March, 2025 in *Civil Appeal No. E206 of 2021*, which upheld the decision of the Environment and Land Court delivered on 27th August, 2021 in *Constitutional Petition No. 1 of 2020 as consolidated with Constitutional Petition No. E004 of 2021*.

B. FACTUAL BACKGROUND

[2] The dispute concerns the occupation and ownership of Kibos Township Crown Land No. 655 (hereinafter referred to as “***the suit property***”) by members of the Nubian Community. It traces its origins to 1937, when the colonial administration relocated approximately fifty-three (53) Nubian families from Old Kisumu (now Kisumu International Airport) to the suit property.

[3] In 2012, the Government of Kenya, through the Ministry of Lands and pursuant to the Physical Planning Act (Cap. 286) (now repealed), formally recognized the settlement and prepared Development Plans for the area. A notice of completion of the Development Plans was published on 23rd October, 2012, inviting objections within sixty (60) days. Notably, no objections were lodged. Subsequently, on 13th February, 2015, the Director of Physical Planning published a notice in the *Daily Nation* announcing the formalization of the Kibos Informal Settlement Upgrading Scheme, a process intended to facilitate the issuance of letters of allotment and, ultimately, a community land title deed.

[4] However, on 9th March, 2020, the appellant issued eviction notices requiring members of the Nubian Community to vacate the suit property within seven days and subsequently evicted them on or about 5th February, 2021. Aggrieved by the eviction, the 1st to 6th respondents instituted two constitutional petitions before the Environment and Land Court, which were later consolidated, seeking, *inter alia*, declaratory and consequential reliefs.

C. LITIGATION HISTORY

i. *Proceedings at the Environment and Land Court*

[5] The 1st to 6th respondents, acting on their own behalf and on behalf of 3,500 members of the Nubian community, instituted two constitutional petitions before the Environment and Land Court at Kisumu, namely *Petition No. 1 of 2020* and *Petition No. E004 of 2021*, against the appellant and the 7th to 12th respondents. The two petitions were subsequently consolidated by an order of the court issued on 17th March, 2021.

[6] In the consolidated petitions, the 1st to 6th respondents contended that, pursuant to Sections 5 and 51 of the Crown Lands Ordinance, 1915 (now repealed), the colonial administration issued licences to Nubian households in 1938, conferring rights of occupation and cultivation over the suit property. They maintained that they had remained in open, continuous and uninterrupted occupation thereof and that the Government subsequently recognized the settlement through the preparation of Development Plans in 2012 under the Physical Planning Act (*supra*) and the formalization of the Kibos Informal Settlement Upgrading Scheme in 2015.

[7] The respondents further averred that, notwithstanding their longstanding occupation, the appellant issued a seven-day eviction notice on 9th March, 2020 and subsequently evicted them during the night of 5th February, 2021 and into the morning of 6th February 2021. They contended that the eviction was unlawful and

in violation of the Constitution and the Land Act, specifically infringing their rights to human dignity, property and fair administrative action, and sought the following reliefs:

- a. *A declaration that any forcible, violent, and brutal eviction through the demolition of homes of the 1st to 6th respondents and any other residents of the Kibos Informal Settlement without according them alternative shelter and/or accommodation leaving them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental right to life guaranteed by Article 26 (1) and (3) of the Constitution of Kenya, 2010 and Article 11 of the ICESCR.*
- b. *A declaration that any forcible, violent and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement, without according them alternative shelter and/or accommodation leaving them to live in the open exposed to the elements and vagaries of nature by the respondents is unconstitutional contravening the national values and principles of governance that include human dignity, equity, social justice and the need to protect the marginalized as enshrined in Article 10 (2) of the Constitution of Kenya, 2010.*
- c. *A declaration that any forcible, violent and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement, without any warning, Court Orders, any or reasonable notice in writing or availing them information regarding the evictions and without according them alternative shelter and/or accommodation and leaving them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights to inherent human dignity and the security of the person guaranteed by Articles 28 and 29 (c), (d) and (f) of the Constitution of Kenya, 2010.*

- d. *A declaration that any forcible, violent, and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement, without warning, any or reasonable notice in writing or availing them information regarding the evictions is a violation of their fundamental right of access to information guaranteed by Article 35 (1) of the Constitution of Kenya 2010;*
- e. *A declaration that any forcible, violent and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement, and the destruction of the building materials and their household goods in the process, without Court order/s and without according them an opportunity to salvage any of their belongings is a violation of their fundamental right to protection of property guaranteed by Article 40 (1), (3) and (4) as read with Article 21 (3) of the Constitution of Kenya.*
- f. *A declaration that any forcible, violent and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement, without according them alternative shelter and or accommodation and leaving them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights to accessible and adequate housing, reasonable standards of sanitation, health care services, freedom from hunger and the right to clean and safe water in adequate quantities guaranteed by Article 43 (1) read with Articles 20 (5) and 21 (1), (2) and (3) of the Constitution of Kenya 2010.*
- g. *A declaration that any violent and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement, without any Court order(s) warning, any reasonable notice in writing or availing them information and reasons regarding the demolitions and evictions is a violation of their fundamental right to fair administrative action guaranteed by Article 47 of the Constitution of Kenya 2010.*

- h. A declaration that any forcible, violent and brutal eviction through demolition of homes of the 1st to 6th respondents and other residents of the Kibos Informal Settlement without according them alternative shelter and/or accommodation and leaving them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights to physical and mental health, and the fundamental right to physical and moral health of the family under Articles 16 and 18 of the ACHPR read with Article 2 (6) of the Constitution of Kenya 2010.*
- i. A declaration that any forcible, violent and brutal eviction through demolition of homes of the 1st to 6th respondents without according their children alternative shelter and/or accommodation and leaving the children to live in the open exposed to the elements and vagaries of nature is a violation of the fundamental rights of children to basic nutrition, shelter and healthcare and protection from abuse, neglect and all forms of violence and inhuman treatment and to basic education guaranteed by Article 53 (1) (b), (c), (d) and (2) read together with Article 21 (3) of the Constitution of Kenya 2010 and Article 28 of the ACHPR read with Article 2 (6) of the Constitution of Kenya 2010.*
- j. A declaration that any forcible, violent, and brutal eviction through the demolition of homes of the elderly persons among the 1st to 6th respondents without according them alternative shelter and/or accommodation rendering them to live in the open exposed to the elements and vagaries of nature is a violation of the fundamental rights of the elderly persons to the pursuit or personal development, to live in dignity, respect and freedom from abuse and to receive reasonable care and assistance from the state guaranteed by Article 57 (b), (c) and (d) as read with Article 21 (3) of the Constitution of Kenya 2010.*
- k. An order that the appellant and the 7th, 8th, 9th, 10th and 11th respondents bear the 1st to 6th respondents' costs of this litigation while the Interested Parties each bear their own costs.*

- l. A structural interdict or continuing mandamus under Article 23 of the Constitution of Kenya 2010, directing the appellant and the 7th to 11th respondents to file affidavits in court, within a period determined by the court, indicating their status of compliance with the orders issued in this petition.*
- m. Any other relief and orders that the court may deem just.*

[8] In response, the appellant filed an Answer to Petition and a Cross-Petition, both dated 23rd April, 2021, contending that the suit property formed part of the Kibos Railway Station reserve and vested in it pursuant to Legal Notice No. 24 of 1986, which revoked and replaced the Vesting of Land Regulations, 1963 (L.N. 440 of 1963). It maintained that the suit property had been surveyed, demarcated and reserved for railway operations and, as such, did not constitute unalienated government land capable of allocation. Consequently, the appellant asserted that the respondents could not acquire any proprietary rights or interests therein and denied having alienated, transferred, surrendered or otherwise disposed of the suit property, or any part of its operational land at Kibos, to the respondents or any other person.

[9] As regards the impugned eviction, the appellant asserted that the respondents and approximately 3,500 members of the Nubian Community, had been afforded adequate notice to vacate the railway reserve through public notices published in the Kenya Gazette and national newspapers, specifically, notices issued on 20th March 2018, 27th September 2019, 30th September 2019 and 9th August 2020. It further contended that the respondents only lodged the petition after the demolition of their structures had been carried out and were therefore guilty of laches and undeserving of equitable relief.

[10] In support of its cross-petition, the appellant relied on Deed Plan No. 424626, Survey Plan No. 612/125, Railway Reserve Layout Drawing No. 2206/1, and aerial

imagery to demonstrate that the suit property lay within the operational area of Kibos Railway Station. It sought the following reliefs:

- a. *An order for dismissal and/or striking out of the main petition with costs to the appellant.*
- b. *A declaration that the appellant is the rightful owner of the suit property.*
- c. *A declaration that the acquisition of the suit property by the 1st to 6th respondents is illegal, null and void.*
- d. *An order compelling the 11th respondent to cancel the certificate of lease and/or ownership documents, if any, held by the 1st to 6th respondents and a further order directing the 11th respondent, to rectify the register accordingly and thereafter register the appellant as the proprietor.*
- e. *A declaration that the occupation of the suit property by the 1st to 6th respondents is illegal and an order for eviction against the said respondents.*
- f. *A permanent injunction to restrain the 1st to 6th respondents, their agents and/or servants from interfering in any way with the appellant's use and occupation of the suit property, transferring, selling, encumbering and/or any other way dealing with the suit property.*
- g. *Costs of the cross petition.*

[11] The 13th respondent, Legal Advice Center (Kituo Cha Sheria), through an affidavit sworn by Dr. Annette Mbogo on 7th May, 2021, supported the 1st to 6th respondents' claim, asserting that the Nubian Community had been relocated to and settled on the suit property by the colonial government and that the suit property was distinct from the railway reserve.

[12] In a judgment delivered on 27th August, 2021, the Environment and Land Court (*Ombwayo, J.*), having conducted a site visit, found that the residents, including the 1st to 6th respondents, had occupied the suit property for an extended period of time, as evidenced by the presence of permanent structures, public

amenities and other infrastructure. The court held that the Nubian Community had been lawfully settled on the suit property by the colonial administration in 1937 pursuant to licences issued under the Crown Lands Ordinance, 1915 (supra), which conferred protectable interests therein. It further found that the suit property had been alienated prior to the issuance of Legal Notice No. 440 of 1963 and therefore did not constitute unalienated land capable of vesting in the appellant.

[13] The trial court further held that the 1st to 6th respondents were not unlawful occupiers and that their eviction and the demolition of their homes and other structures amounted to an unlawful deprivation of property, contrary to Article 40 of the Constitution. It also found that the destruction of houses, schools, mosques, hospitals and other amenities violated their socio-economic rights under Article 43 of the Constitution. Ultimately, the trial court held that the eviction was undertaken in contravention of Sections 152B and 152C of the Land Act, 2012 and in disregard of subsisting conservatory orders, rendering it unlawful, irregular and procedurally unfair. It consequently found that the respondents' right to fair administrative action under Article 47 of the Constitution had been violated, granted the reliefs sought, and directed that a claim for compensation be pursued through a separate civil suit.

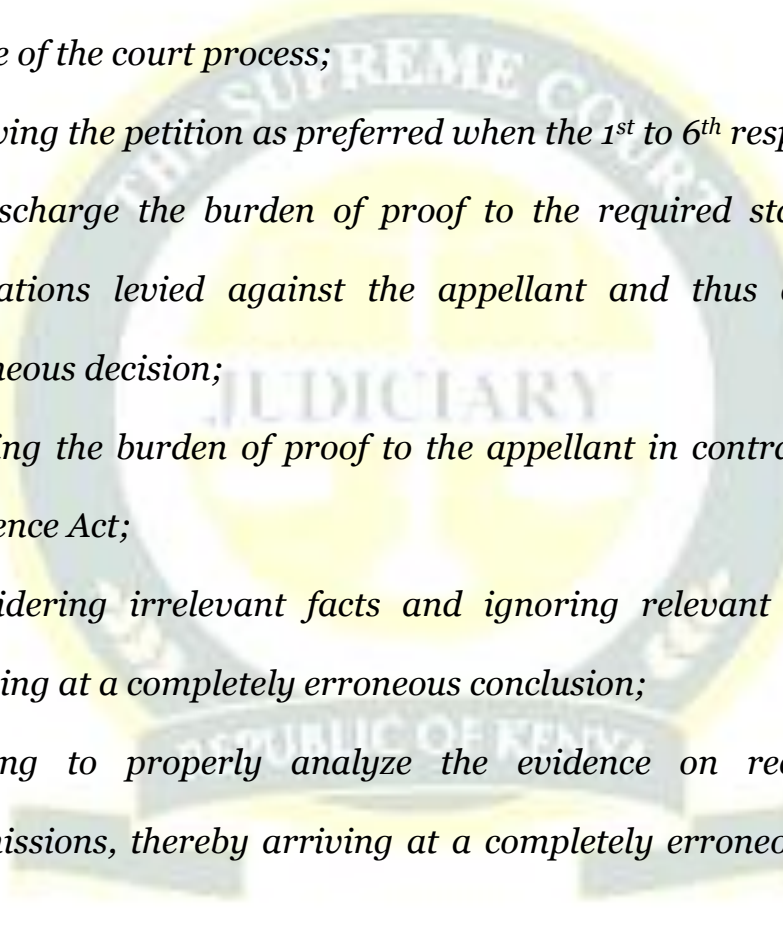
ii. Proceedings at the Court of Appeal

[14] Aggrieved by the decision of the Environment and Land Court, the appellant filed **Civil Appeal No. E206 of 2021** premised on thirteen (13) grounds, *inter alia*, that the learned Judge erred in fact and law by:

- a) Finding that the 1st to 6th respondents still maintain a license in respect of the suit property and thus retain rights protected under Article 40 of*

the Constitution when a license does not confer ownership rights in favor of a licensee;

- b) Finding that the 1st to 6th respondents still maintain a license in respect of the suit property and thus retain rights protected under Article 40 of the Constitution when they failed to demonstrate that they have and continue to pay rent as stipulated in the terms of the license;*
- c) Finding that the suit property was alienated land by virtue of the 1st to 6th respondents holding valid licenses, as a license cannot be said to amount to a lease to which rights that accrue can be assigned or a letter of allotment within the meaning of the Government Lands Act;*
- d) Finding that the suit property was Crown land that was alienated by the Governor in 1937 and thus never became part of the land vested in the Corporation when it is clear from the vesting orders, including Legal Notice No. 440 of 1963 and the maps that the suit property was alienated property vested in the Corporation;*
- e) Finding that the 1st to 6th respondents' right to fair administrative action was infringed as the eviction was carried out without reasonable notice;*
- f) Finding that the evictions were undertaken in contravention of a court order without ascertaining itself of the fact that the 1st to 6th respondents had failed to demonstrate that they had served the orders of interim relief upon the appellant;*

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- g) Finding that the 1st to 6th respondents ought to file a separate civil suit for compensation as the damages incurred cannot be ascertained in such a petition in utter violation of the provisions of Article 23(3) of the Constitution;*
- h) Directing a separate civil suit for compensation for damages to be preferred, as such a suit would be res judicata thus amounting to an abuse of the court process;*
- i) Allowing the petition as preferred when the 1st to 6th respondents failed to discharge the burden of proof to the required standard on the allegations levied against the appellant and thus arrived at an erroneous decision;*
- j) Shifting the burden of proof to the appellant in contravention of the Evidence Act;*
- k) Considering irrelevant facts and ignoring relevant facts, thereby arriving at a completely erroneous conclusion;*
- l) Failing to properly analyze the evidence on record and the submissions, thereby arriving at a completely erroneous conclusion;*
and
- m) Making findings that are insupportable in law.*

[15] The appellant sought the following reliefs:

- i. The appeal be allowed.*

- ii. *The judgment in Kisumu ELC Petition No. E001 of 2020 as consolidated with Petition No. E004 of 2021 be set aside.*
- iii. *Judgment be entered in favour of the appellant by dismissing the petition and allowing the cross-petition as preferred.*
- iv. *The appellant be awarded costs of this appeal and in the superior court.*

[16] In response, the 1st to 6th respondents opposed the appeal by way of written submissions dated 21st June 2024. They maintained that the impugned eviction was unlawful, having been undertaken in contravention of Kenya's international obligations and the mandatory safeguards prescribed under Sections 152B, 152C and 152G of the Land Act, as read with Regulations 63, 67 and 68 of the Land Regulations. They contended, in particular, that the National Land Commission (the 10th respondent) did not issue the requisite eviction notice; the eviction was carried out at approximately 3.00 a.m. during the COVID-19 curfew; and it was undertaken in disregard of a subsisting conservatory court order.

[17] The 1st to 6th respondents further submitted that their continuous occupation of the suit property since 1937 entitled them to constitutional protection, and that their eviction infringed their rights to property and accessible and adequate housing under Articles 40 and 43 of the Constitution respectively, as affirmed in ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** [2021] KESC 34 (KLR).

[18] The respondents further contended that the appellant had failed to establish a lawful root of title, maintaining that the suit property was never validly vested in it. Relying on ***Benja Properties Limited Vs Syedna Mohammed Burhannudin Sahed & 4 others*** [2015] KECA 457 (KLR), they urged that land validly allocated by the Government ceases to be available for subsequent allocation or alienation by the Commissioner of Lands or the President. They maintained that their subsequent suit for compensation is not barred by the

doctrine of *res judicata*, as it raises issues distinct from those determined in the consolidated petitions.

[19] The 13th respondent, the Legal Advice Centre t/a Kituo Cha Sheria, confined its submissions dated 26th June 2024, to the issue of ownership of the suit property. It submitted that the Crown Lands Ordinances of 1902 and 1915 (now repealed) empowered the Governor to alienate Crown land and, following negotiations with the Nubian Community, part of Kibos Township was lawfully allocated to Nubian families displaced from Old Kisumu. It contended that the allocation conferred perpetual rights of occupation and cultivation upon the licensees and their heirs, who had remained in open, continuous and uninterrupted occupation of the suit property for decades. It further argued that the appeal was incompetent and a nullity *ab initio* for non-compliance with Order 9 Rules 5 and/or 9 of the Civil Procedure Rules and ought to be struck out or, in the alternative, dismissed with costs.

[20] In a judgment delivered on 21st March 2025, the Court of Appeal (*Makhandia, Omondi & Kimaru, JJ. A*) affirmed the judgment of the Environment and Land Court, and dismissed the appeal, with costs to the 1st to 6th and 13th respondents. The appellate court framed two principal issues for determination, *to wit: whether the respondents' rights were violated and whether the manner of the demolition and/or eviction of the respondents by the appellant was justified.*

[21] On the *first* issue, the Court of Appeal affirmed the Environment and Land Court's finding that the respondents' constitutional rights, particularly the right to accessible and adequate housing under Article 43(1)(b) of the Constitution, had been violated. It held that the eviction was undertaken without compliance with the applicable constitutional and statutory safeguards, including the requirements of fair administrative action, adequate notice and respect for human dignity, thereby violating Articles 40, 43 and 47 of the Constitution, as well as applicable

rules of international law, Treaties and Conventions forming part of Kenyan law under Articles 2(5) and (6) of the Constitution.

[22] On the *second* issue, the Court of Appeal held that the eviction was undertaken in contravention of Sections 152C and 152G of the Land Act. It found that the 10th respondent had not issued the requisite notice under Section 152C and that the mandatory procedural safeguards governing evictions under Section 152G had not been complied with. Consequently, the respondents were denied adequate notice and subjected to an eviction conducted in a manner inconsistent with the Constitution and the law. The appellate court was satisfied that the trial court properly evaluated all the relevant evidence and affirmed its finding that the 1st to 6th respondents possessed a protectable interest in the suit property, arising from the long-term licences granted to their forefathers in 1937.

iii. Proceedings at the Supreme Court

[23] Undeterred, the appellant has now filed the instant appeal under Article 163(4) (a) of the Constitution, Section 3 of the Supreme Court Act and Rule 38 (2)(a) of the Supreme Court Rules. The appeal is challenging the decision of the Court of Appeal on grounds that the appellate court:

- i. *Erred in law in affirming the trial court's finding that the colonial-era Temporary Occupation Licenses issued to the Nubian Families on 30th March, 1938 conferred upon them proprietary rights enforceable under Articles 40, 60, and 62 of the Constitution of Kenya;*
- ii. *Failed to consider that the suit property formed part of the property legally vested in the appellant herein vide Legal Notices No. 440/1963 and No. 24/1986, formed part of the critical national infrastructure (the Kenya-Uganda Railway reserve) and was not available for alienation to any third party including the Nubian families;*

- iii. *Erred in affirming the trial court's decision that the appellant violated the 1st to 6th respondents' property rights decreed and protected under Article 40 of the Constitution;*
- iv. *Erred in endorsing the 1st to 6th respondent's claims of historical occupation without requiring formal documentation, setting a dangerous precedent that undermines Kenya's formal land tenure system, contrary to Articles 60(1)(b), 62 (1)(b) and 66 of the Constitution;*
- v. *Erred in affirming the trial court's decision that the appellant violated the 1st to 6th respondents' socio-economic and cultural rights decreed and protected under Article 43(1) of the Constitution;*
- vi. *Erred in affirming the trial court's decision that the appellant violated the 1st to 6th respondents' right to housing decreed and protected under Article 43(1) (b) of the Constitution;*
- vii. *Failed to appreciate that the appellant duly complied with the Constitutional and statutory requirements under Section 152B of the Land Act by issuing multiple public eviction notices, thereby disregarding the appellant's evidence of compliances with due process;*
- viii. *Erred by shifting the burden of proof onto the appellant contrary to Sections 107 to 109 of the Evidence Act;*
- ix. *Abdicated its constitutional duty by failing to determine all questions put before it for determination; and*
- x. *Violated the appellant's right to a fair trial, fair hearing and fair administrative action under Articles 25 (c), 50 and 47 of the Constitution by failing to thoroughly re-evaluate, reassess and reanalyze the evidence on record and independently make findings as required of a first appellate court.*

[24] Consequently, the appellant seeks the following reliefs:

- i. *That this petition of appeal be allowed;*

- ii. *The judgment and order of the Court of Appeal (**Makhandia, Omondi & Kimaru JJ. A**) delivered on 21st March 2025 in Civil Appeal No. E206 of 2021, Kenya Railways Corporation Vs Fatuma Khamis Bilal & 14 others, be set aside;*
- iii. *The Judgment and decree of the Environment and Land Court at Kisumu (**Ombwayo. J**) delivered on 27th August, 2021 in ELC Petition No. 1 of 2020 consolidated with ELC Petition No. E004 of 2021 be set aside and the consolidated petitions be dismissed;*
- iv. *The appellant's cross petition dated 23rd April, 2021 be allowed; and*
- v. *The costs of this petition, the Appeal before the Court of Appeal and/or the consolidated petitions and the cross petition before the ELC Court be awarded to the appellant herein.*

[25] In opposing the appeal, the 1st to 6th respondents filed Grounds of Opposition dated 18th February, 2026 on 22nd April, 2026. They contend that the suit property was lawfully allocated to the Nubian Community by the colonial administration and that the community acquired enforceable rights through the 1938 licence agreement and its continuous occupation of the land until the impugned eviction in February 2021. They maintain that the suit property is distinct from the Railway Reserve and, having been lawfully alienated, did not vest in the appellant or its predecessor. They further contend that the eviction was unlawful, having been carried out in contravention of Section 152B of the Land Act and in disregard of a subsisting conservatory order. Lastly, they aver that the Court of Appeal determined all the issues in dispute and that the present appeal is incompetent, misconceived and an abuse of the court process, warranting its dismissal with costs.

[26] The 13th respondent, opposed the appeal via its Response dated 23rd February 2026 and filed on 22nd April 2026. It contends that the 1st to 6th respondents and their predecessors acquired lawful and constitutionally protected rights over the suit property through licences issued by the colonial administration in 1938 and

continuous occupation spanning over eight decades. It is contended that the suit property had been lawfully alienated to the Nubian community, was not part of the Railway Reserve, and could not therefore have vested in the appellant without a lawful process of compulsory acquisition. It further argues that the appellant's claim is defeated by delay, laches and estoppel, having failed, together with its predecessors, to assert any proprietary interest in the suit property for approximately eighty-four years, despite being aware of the settlement.

[27] The 13th respondent further contends that the demolitions and eviction violated the respondents' rights under Articles 40, 43 and 60 of the Constitution and Kenya's obligations under international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, ILO Convention No. 169, and the Fourth Geneva Convention, which protect the rights to property, housing and food, and prohibit arbitrary displacement and forced evictions.

[28] It further argues that the appeal is contrary to public interest and the national values enshrined in Article 10 of the Constitution, as its success would adversely affect a long-established community comprising thousands of residents. Lastly, it raises a preliminary objection to the appeal for non-compliance with Order 9 Rules 5 and 9 of the Civil Procedure Rules and urges that it be dismissed with costs.

[29] The 15th respondent equally opposed the appeal through its Grounds of Opposition dated 2nd March, 2026 and filed on 6th March 2026. At the outset, it contends that the petition is fatally defective and constitutes an abuse of the court process. It maintains that both the Environment and Land Court and the Court of Appeal correctly found that the eviction was carried out forcefully, violently and at night, when the residents were most vulnerable, notwithstanding a subsisting conservatory court order, and the nationwide COVID-19 curfew. It argues that

such eviction left over 3,500 members of the Nubian Community exposed to, *inter alia*, the COVID-19 virus and harsh weather conditions, thereby violating their rights to health and accessible and adequate housing under Article 43 of the Constitution.

[30] The 15th respondent further contends that the eviction was a coordinated and militarised operation involving the disconnection of electricity to the suit property by the Kenya Power and Lighting Company, the deployment of armed police officers who dispersed residents with tear gas, and the use of excavators to demolish homes. It states that the operation resulted in the death of a child and constituted a gross and disproportionate violation of the right to life under Article 26 of the Constitution.

[31] It further argues that the eviction was carried out in contravention of Section 152G of the Land Laws (Amendment) Act, 2016, and without adequate notice, contrary to the requirements of fair administrative action under Article 47 of the Constitution. It is urged that the demolition of homes, schools and places of worship violated the respondents' rights to human dignity and accessible and adequate housing under Articles 28 and 43 of the Constitution, respectively, and that the right to shelter is not contingent upon ownership or title.

[32] Ultimately, the 15th respondent avers that the Court of Appeal correctly found the evictions to be unlawful and that the appellant has failed to demonstrate any error of law or principle warranting this Court's interference with the concurrent findings of the superior courts below. It accordingly urges the Court to dismiss the petition with costs.

[33] In rejoinder, the appellant filed a Replying Affidavit sworn by Geoffrey Wekesa on 9th March, 2026. It asserts that the Governor's power to alienate Crown land was subject to existing reservations and interests. Relying on the 1925 Gazette Notice, which excluded Kibos and Kibigori Township Reserves from the Central Kavirondo Native Reserve, the appellant contends that the suit property had been

reserved for railway purposes and was therefore unavailable for allocation. It maintains that the Temporary Occupation Licences issued to the Nubian Community did not alter the suit property's status or confer proprietary rights and, consequently, its purported allocation was void *ab initio* and incapable of protection under Article 40(6) of the Constitution.

[34] The appellant reiterates that the respondents acquired no enforceable rights through their occupation of the suit property between 1937 and 2020. It urges that prolonged occupation of public land, absent a lawful allocation and compliance with its terms, does not confer proprietary rights, further asserting that the 1938 licences issued to the Nubian Community expressly excluded any right of occupancy, pre-emption or acquisition by prescription.

[35] As regards the eviction, the appellant denies having been served with any court order restraining the eviction of the Nubian Community, including the 1st to 6th respondents, from the suit property. It challenges the 15th respondent's allegation that a child died during the eviction as unsubstantiated, contending that the issue has been raised for the first time before this Court. It further avers that the public notices issued between 2018 and 2020 requiring residents to verify whether they had encroached on the railway corridor substantially complied with the notice requirements under Section 152C of the Land Act.

[36] The appellant further contends that the socio-economic rights guaranteed under Article 43 of the Constitution are subject to progressive realisation and do not entitle individuals to occupy land reserved for public infrastructure. It argues that it is lawfully exercising its statutory right of appeal, in the interest of the public, and urges this Court to find that the petition raises substantial questions of law and to grant the reliefs sought.

D. THE PARTIES' SUBMISSIONS

i. Appellant's submissions

[37] The appellant's submissions are dated 11th March 2026 and were filed on 12th March 2026. It condensed its grounds of appeal into six issues which are argued under the following five headings: On *whether the appellant violated the 1st to 6th respondents' right to property under Articles 40, 60, and 62 of the Constitution of Kenya*, the appellant's challenge is threefold.

[38] First, the appellant submits that the constitutional protection accorded to property under Article 40 does not extend to property unlawfully acquired by virtue of Article 40(6). It argues that the 1st to 6th respondents' occupation of the suit property was founded solely on Temporary Occupation Licences issued by the colonial administration in 1938, which conferred no proprietary interest capable of protection under Article 40 of the Constitution, and cites, *inter alia*, **Thomas Vs Sorrell** (1637) EWHC (KB) J85, **Faraj Maharus Vs J.B. Martin Glass Industries & 3 others** [2005] KECA 303 (KLR), **Blue Quadrant Hospitality Limited Vs Nairobi City County & Another** [2023] KEELC 18412 (KLR), **Runda Coffee Estate Ltd. Vs Ujagar Singh** [1966] EA 564, and **Waweru & 4 others Vs City Council of Nairobi & 2 others** [2012] KEHC 5667 (KLR), in support thereof. It further relies on this Court's decision in **Dina Management Ltd. Vs County Government of Mombasa & 5 others** [2023] KESC 30 (KLR), to underscore that constitutional protection is only available in respect of legally recognizable proprietary interests and does not extend to interests that are unlawfully acquired.

[39] Secondly, the appellant contends that, even if the licences were valid, the 1st to 6th respondents had failed to prove that they were successors to the original licensees or that they had complied with the terms of the licences, including payment of rent upon attaining taxable age. It relies on **Mombasa Technical**

Training Institute Vs Agnes Nyevu Charo & 108 others [2014] KECA 138 (KLR), to argue that prolonged unlawful occupation of government land cannot found proprietary rights or a legitimate expectation for allocation.

[40] Finally, the appellant argues that the suit property formed part of the Kibos Railway Station Reserve and had vested in it by the operation of the Kenya Railways (Vesting Land) Order 1986 contained in Legal Notice No. 24 of 1986 which replaced and revoked Vesting of Land Regulations 1963 (L/N440/1963) and created an exclusive proprietary interest thereon in favour of the appellant's predecessor, the East African Railways Corporation. It is submitted that the suit property constituted public land reserved for a public purpose and could not lawfully be alienated to private individuals. It relies on ***Katangi Developers Limited Vs Attorney General & Another*** [2021] KEELC 4341 (KLR), ***Dina Management Ltd. Vs County Government of Mombasa & 5 others*** (supra), ***Torino Enterprises Ltd. Vs Attorney General*** [2023] KESC 79 (KLR), and ***Kiluwa Limited & Another Vs Business Liaison Company Limited & 3 others*** [2021] KESC 37 (KLR), to assert that land reserved for public use cannot be alienated, except in strict compliance with legal procedures.

[41] In that regard, the appellant submits that the Court of Appeal departed from binding Supreme Court precedent on the protection of public land, contrary to Article 163(7) of the Constitution. It relies on this Court's decision in ***Law Society of Kenya Vs Attorney General & Another*** [2019] KESC 16 (KLR), where the binding nature of Supreme Court decisions upon all other courts was reaffirmed. Consequently, the appellant has urged the Court to find that no violation of the 1st to 6th respondents' right to property was established before the superior courts below.

[42] On *whether the appellant violated the respondents' socio-economic rights and whether it complied with the statutory requirements governing evictions*, the

appellant submits that the Court of Appeal erred in finding that the respondents' rights under Articles 43 and 47 of the Constitution had been violated and in concluding that the eviction exercise was undertaken without due process. It contends that persons occupying public land may enjoy protection of housing rights but do not thereby acquire ownership rights over the land, citing ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 2 others*** (supra), in support thereof.

[43] The appellant submits that it complied with Sections 152B and 152F of the Land Act and the principles enunciated in ***Musembi & 13 others Vs Moi Educational Centre Co. Ltd & 3 others*** [2021] KESC 50 (KLR), by issuing public notices between March 2018 and August 2020 warning against encroachment on railway reserves and notifying the public of the intended demolition of illegal structures. The appellant avers that the notices, published in newspapers of nationwide circulation, identified the Nakuru–Kisumu Railway Reserve, invited affected persons to verify boundaries, and afforded the respondents ample opportunity to seek clarification, challenge the notices, or vacate the suit property. It is therefore argued that the respondents' failure to apply to court for a relief under Section 152F of the Land Act, undermined any claim of procedural unfairness.

[44] On *whether the Court of Appeal improperly shifted the burden of proof to the appellant*, the appellant submits that the Court of Appeal misapplied Sections 107, 108 and 109 of the Evidence Act, by requiring the appellant to disprove the respondents' case. It contends that the respondents bore the legal burden of proving their lawful occupation of the suit property, their entitlement under the alleged licences, compliance with the licence conditions, and the alleged violation of their constitutional rights. To that end, it submits that the respondents failed to establish that: they were descendants of the original licensees; the licence conditions had been complied with; and the suit property lay outside the railway reserve. It relies on this Court's decision in ***Muriithi (Representative of the***

Estate of Mwangi Stephen Muriithi) Vs Janmohamed SC (Executrix of the Estate of Daniel Arap Moi) & Another [2023] KESC 61 (KLR), to urge that a party alleging a constitutional violation bears the burden of proving the factual basis for such claim.

[45] On *whether the Court of Appeal failed to determine all the issues raised before it*, the appellant faults the Court of Appeal for failing to address the question of *res judicata*, specifically, the propriety of the Environment and Land Court directing the respondents to file a separate suit for compensation. The appellant argues that Article 23(3) of the Constitution empowers a court hearing a constitutional petition to grant appropriate reliefs, including compensation, as sought in the consolidated petitions. It relies on ***Musembi & 13 others Vs Moi Educational Centre Co. Ltd & 3 others*** (supra), to urge that a court determining a constitutional petition should award appropriate relief upon finding a violation, rather than require fresh proceedings, and on ***Mutai & 9 others Vs Attorney General*** [2019] KECA 125 (KLR), to submit that nominal damages may be awarded where the evidence does not justify a substantial award.

[46] The appellant further submits that the direction to institute a separate suit offended the doctrine of *res judicata* under Section 7 of the Civil Procedure Act, citing ***John Florence Maritime Services Ltd. & Another Vs Cabinet Secretary for Transport and Infrastructure & 3 others*** [2021] KESC 39 (KLR), ***Independent Electoral and Boundaries Commission Vs Kiai & 5 others*** [2017] KECA 477 (KLR), and ***In the Matter of K & A Self Selection Stores***, Winding Up Cause No. 57 of 2001, to emphasize that parties are precluded from re-litigating matters that were, or ought to have been, determined in earlier proceedings.

[47] On *whether the Court of Appeal failed to discharge its duty as a first appellate court*, the appellant relies on Article 164(3) of the Constitution, Sections 3 and 3B of the Appellate Jurisdiction Act, and Section 16 of the Environment and

Land Court Act, to argue that, instead of independently re-evaluating the evidence, the appellate court merely adopted the findings of the Environment and Land Court without adequately considering the documentary evidence concerning the ownership and status of the suit property, *inter alia*, survey plans, vesting orders, historical correspondence and eviction notices.

[48] It cites *Fanikiwa Limited & 3 others Vs. Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR) and *Janmohammed (SC) Vs District Land Registrar Uasin Gishu & 4 others* [2024] KESC 39 (KLR), to highlight the significance of the duty of a first appellate court to undertake a comprehensive re-evaluation of the record, particularly in disputes concerning title to land. It is contended that the Court of Appeal's failure to discharge its appellate mandate resulted in material factual and legal errors, thereby violating the appellant's rights under Articles 25(c), 47 and 50 of the Constitution and occasioning a miscarriage of justice, warranting this Court's intervention.

ii. 1st to 6th Respondents' submissions

[49] The 1st to 6th respondents filed submissions dated 23rd March 2025 [*sic*] on 22nd April 2026. On *whether the appellant violated the 1st to 6th respondents' right to property under Articles 40, 60 and 62 of the Constitution*, the 1st to 6th respondents submit that they acquired protectable interests in the suit property through licences lawfully issued under the Crown Lands Ordinance, 1915 [*supra*], and that the government subsequently recognized and formalized the settlement through the preparation of Development Plans in 2012. They contend that they and their predecessors had occupied the suit property openly and continuously for over eight decades and that it neither forms part of the Kenya–Uganda Railway Reserve nor vests in the appellant. Accordingly, they maintain that the appellant had no lawful basis to evict them or interfere with their occupation.

[50] The respondents submit that their longstanding and lawful occupation gives rise to constitutionally protected interests under Articles 40 and 60 of the Constitution, including a legitimate expectation to continue occupying the suit property. They rely on ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** [supra], to submit that, although occupation of public land does not confer title, prolonged occupation may give rise to constitutionally protectable rights to housing.

[51] On *whether the appellant violated the 1st to 6th respondents' socio-economic and cultural rights including the right to housing decreed and protected under Article 43 of the Constitution*, the 1st to 6th respondents submit that the demolition of their homes, schools, mosques, health facilities and other social amenities infringed that right. They further invoke Articles 21(1) and (2) of the Constitution, to assert that the State bears a constitutional obligation to respect, protect, promote and fulfil socio-economic rights and to adopt legislative and policy measures for their progressive realization.

[52] The 1st to 6th respondents argue that the colonial allocation of the suit property and its subsequent recognition by the government constitute part of the progressive realization of the respondents' right to housing. Reliance is placed on this Court's decision in ***In the Matter of the Principle of Gender Representation in the National Assembly and the Senate*** [2012] KESC 5 (KLR) to submit that progressive realization denotes the gradual attainment of socio-economic rights through deliberate State action. Citing ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** [supra], they submit that the right to housing over public land crystallizes through prolonged occupation, notwithstanding the absence of legal title, and that courts are empowered under Article 23(3) of the Constitution to issue appropriate remedies, including compensation, adequate notice before eviction, humane conditions during eviction and alternative settlement where appropriate.

[53] On *whether the Court of Appeal erred in failing to appreciate that the appellant duly complied with the constitutional and statutory requirements under Section 152B of the Land Act by issuing multiple public eviction notices, thereby disregarding the appellant's evidence of compliance with due process*, the 1st to 6th respondents submit that the demolition and eviction were unlawful, having been undertaken during the subsistence of a conservatory order and in contravention of the mandatory safeguards prescribed under Sections 152B, 152C and 152G of the Land Act and Regulations 63, 67, 68 and 69 of the Land Regulations, 2017. They contend that the appellant failed to, *inter alia*, issue the requisite notice through the National Land Commission, comply with the prescribed eviction procedures, protect vulnerable persons and property, respect human dignity, and conduct the eviction within the prescribed hours.

[54] The 1st to 6th respondents further invoke Articles 2(5) and 2(6) of the Constitution, to argue that the impugned eviction was inconsistent with Kenya's international human rights obligations under the *UN Basic Principles and Guidelines on Development-Based Evictions*, *CESCR General Comment No. 4* and *General Comment No. 7*, which require adequate notice, consultation and procedural safeguards in cases of forced eviction. They also rely on ***Onjuro & others Vs Attorney General & 5 others*** [2015] KEHC 6868 (KLR), to urge that evictions must be preceded by genuine consultation, adequate notice, humane conditions, legal assistance where necessary, and protection of vulnerable persons.

[55] On *the burden of proof*, the 1st to 6th respondents submit that the Court of Appeal correctly applied Sections 107, 108 and 109 of the Evidence Act. They contend that each party bears the burden of proving the facts upon which its case is founded and rely on ***Ignatius Makau Mutisya Vs Reuben Musyoki Muli*** [2015] KECA 612 (KLR), ***Miller Vs Minister of Pensions*** [1947] 2 All ER 372, ***Rhesa Shipping Co SA Vs Edmunds*** [1985] 1 WLR 948, ***Kiambu County Tenants Welfare Association Vs Attorney General & Another*** [2017] KEHC 8869 (KLR) and ***Britestone Pte Ltd Vs Smith & Associates***

Far East Ltd [2007] 4 SLR 855, for the settled principles governing the burden and standard of proof in civil proceedings. They maintain that they discharged the requisite evidential burden, whereas the appellant failed to rebut the evidence adduced.

iii. 13th Respondent's submissions

[56] The 13th respondent filed submissions dated 24th March 2026 on 23rd April 2026, identifying the following five issues for determination: whether the petition properly invokes this Court's jurisdiction under Article 163(4)(a) of the Constitution; whether the Court of Appeal erred in law in affirming that the Kibos Nubian community had constitutionally protectable rights and interests in the suit property; whether the Court of Appeal erred in law in affirming that the demolition and eviction violated Articles 40, 43 and 47 of the Constitution and the Land Act; whether the Court of Appeal failed in its duty as a first appellate court; and whether the appellant's arguments on burden of proof and separate compensation have merit.

[57] On the question of *jurisdiction*, the 13th respondent submits that the petition does not properly invoke this Court's appellate jurisdiction under Article 163(4)(a) of the Constitution, as it raises factual and evidentiary issues disguised as constitutional questions. Relying on ***Nduttu & 6000 others Vs Kenya Breweries Ltd & Another*** [2012] KESC 9 (KLR), the 13th respondent submits that an appeal lies under Article 163(4)(a) only where the interpretation or application of the Constitution formed the basis of the decision of the Court of Appeal. It therefore contends that the petition is incompetent and ought to be dismissed.

[58] On *whether the Court of Appeal correctly held that the Kibos Nubian community possess constitutionally protectable rights and interests over the suit property*, the 13th respondent submits that the 1st to 6th respondents acquired constitutionally protected interests under Article 40 of the Constitution through

licences lawfully issued under the Crown Lands regime. It contends that the colonial administration lawfully settled the Nubian Community at Kibos in 1938, recognized succession by heirs, and that successive governments continued to acknowledge and regularize the settlement. It further submits that the appellant's own evidence confirms the existence of the licences and the historical settlement, thereby undermining its assertion that the respondents are mere trespassers. It notes that the appellant's reliance on ***Dina Management Ltd. Vs County Government of Mombasa & 5 others***, together with ***Kiluwa*** and ***Torino*** [supra], is misplaced, as the suit properties therein were found to have been unlawfully acquired.

[59] On *whether the demolition and eviction complied with the Constitution and the Land Act*, the 13th respondent submits that, even if the suit property constituted public land, the eviction was unlawful for non-compliance with the mandatory safeguards under Sections 152B, 152C and 152G of the Land Act. It contends that Section 152C vests the mandate to issue eviction notices in the National Land Commission and requires publication in the *Gazette* and a newspaper of nationwide circulation, broadcast in the appropriate local language where necessary, and a minimum notice period of three months, none of which was satisfied by the notices relied upon by the appellant; and that the appellant cannot rely on Section 152F of the Land Act to cure its non-compliance with the mandatory notice requirements under Section 152C. Consequently, it is submitted that the eviction violated Articles 40, 43 and 47 of the Constitution. It cites ***Musembi & 13 others Vs Moi Educational Centre Co. Ltd & 3 others*** [supra], to urge that evictions must, *inter alia*, respect human dignity, protect vulnerable persons, and afford occupants an opportunity to salvage their property.

[60] The 13th respondent maintains that the appellant's contention that the absence of title extinguishes all constitutional protection is contrary to established jurisprudence. In that regard, it cites this Court's decisions in ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** [supra] and ***Musembi &***

13 others Vs Moi Educational Centre Co. Ltd. & 3 others [supra], where the Court affirmed that occupants of public land may acquire constitutionally protectable housing rights notwithstanding the absence of legal title, and that courts are empowered under Article 23(3) of the Constitution to grant effective remedies, including compensation, adequate notice, humane eviction procedures and alternative settlement where appropriate.

[61] *On whether the Court of Appeal discharged its duty as a first appellate court,* the 13th respondent submits that the Court of Appeal properly discharged its mandate by independently re-evaluating the evidence, identifying the issues for determination, and applying the constitutional and statutory framework governing property rights, socio-economic rights and evictions. It is contended that the appellant's dissatisfaction is directed at the outcome rather than the appellate process and therefore establishes no basis for this Court's intervention.

[62] *On whether the appellant's arguments on burden of proof and challenge to the respondents' pending claim for compensation are merited,* the 13th respondent rejects the appellant's contention that the Court of Appeal shifted the burden of proof. It is submitted that the 1st to 6th respondents discharged their evidential burden by producing historical records, colonial correspondence, licences, official maps and evidence of uninterrupted possession and occupation of the suit property and state recognition. Once that *prima facie* case was established, the evidential burden shifted to the appellant to demonstrate lawful extinguishment of those interests and compliance with the statutory eviction process, which it failed to do. It is therefore contended that the Court of Appeal merely evaluated the evidence before it and correctly concluded that the appellant's case did not rebut the evidence adduced by the 1st to 6th respondents.

[63] The 13th respondent submits that the appellant's challenge to the respondents' pending claim for compensation is incapable of sustaining the Petition. It is argued that any dispute concerning the assessment of compensation

is severable from the findings on liability and does not undermine the conclusions that the 1st to 6th respondents possessed constitutionally protected interests over the suit property and were subjected to an unlawful eviction. It relies on ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** [supra], where this Court recognized that compensation and other appropriate remedies may issue under Article 23(3), depending on the circumstances. Moreover, the 13th respondent contends that the appellant's reliance on the doctrine of *res judicata* is misguided since proceedings for the quantification of compensation do not amount to a re-litigation of liability. Consequently, it urges the Court to affirm the judgment of the Court of Appeal delivered on 21st March 2025 and dismiss the petition with costs.

iv. 15th Respondent's submissions

[64] The 15th respondent's submissions dated 24th March 2026 and filed on 27th March 2026, similarly opposes the petition and urges the Court to uphold the concurrent findings of the Environment and Land Court and the Court of Appeal that the eviction and demolition were unlawful, unconstitutional and in violation of the 1st to 6th respondents' fundamental rights. It identifies the following six issues for determination: whether the 1st to 6th respondents' right to adequate housing under Article 43 (1) (b) was violated; whether the appellant complied with Sections 152 to 155 of the Land Act, 2012 and other land laws; whether compliance with the Eviction and Resettlement Guidelines, 2009 and UN standards was mandatory; whether the eviction process contravened principles in ***Moi Educational Centre Co. Ltd. Vs Musembi*** (Court of Appeal) and ***Mitu-Bell Welfare Society Vs Kenya Airports Authority*** (Supreme Court); whether the petition raises any substantial questions of law; and what is the appropriate relief in the circumstance?

[65] On the alleged violation of the 1st to 6th respondents' constitutional rights, the 15th respondent submits that the demolition of over 3,500 homes on 5th

February 2021 violated the respondents' socio-economic rights, particularly the right to accessible and adequate housing under Article 43(1)(b) of the Constitution. It contends that the eviction, having been carried out at night without notice, consultation, resettlement or alternative accommodation, infringed the rights to life, human dignity, property, access to information and fair administrative action under Articles 26, 28, 35, 40 and 47 of the Constitution, contrary to the State's obligations under Articles 20 (5) and 21.

[66] On *non-compliance with the Land Act and conservatory orders*, the 15th respondent submits that the appellant failed to comply with the mandatory safeguards governing evictions under the Land Act, including the requirements of adequate notice, due process and humane execution of evictions. It further contends that the demolition was carried out in deliberate disobedience of the conservatory orders issued by the Environment and Land Court on 13th March 2020, in blatant disregard of the rule of law and the authority of the court.

[67] On *failure to comply with the Eviction and Resettlement Guidelines, 2009 and UN standards*, the 15th respondent submits that, as a public body, the appellant was bound to conduct the eviction in accordance with the Guidelines, which prohibit night evictions and require respect for human dignity and procedural fairness. It further contends that Kenya is bound by the *United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement* and *General Comment No. 7 of the UN Committee on Economic, Social and Cultural Rights* through Article 2(6) of the Constitution, both of which require adequate notice, prohibit arbitrary and night evictions, mandate observance of due process, and, where necessary, the provision of alternative accommodation. It therefore submits that the demolition, carried out at night during the COVID-19 curfew, violated both the Constitution and the domestic and international standards.

[68] On *whether the eviction process contravened settled jurisprudence*, the 15th respondent submits that the superior courts below correctly applied the law governing forced evictions. It relies on ***Moi Education Centre Co Ltd. Vs Musembi & 16 others*** [2017] KECA 107 (KLR), where the Court of Appeal held that even a registered proprietor must conduct evictions lawfully and in accordance with due process. It further relies on ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** [supra], where this Court affirmed that evictions implicate fundamental rights and must comply with constitutional and statutory safeguards. Accordingly, it contends that the appellant seeks to relitigate principles that are long settled by the courts.

[69] The 15th respondent further relies on ***Ayuma & 11 others (Suing on their own Behalf and on Behalf of Muthurwa Residents) Vs Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 2 others; Kothari (Interested Party)*** [2013] KEHC 6003 (KLR), where the High Court held that evictions undertaken without consultation, adequate notice or alternative accommodation violate Articles 28, 43 and 47 of the Constitution. It contends that the present appeal involves the same appellant and the same community as in ***Ayuma*** [supra], and demonstrates a repeated disregard of constitutional standards governing evictions. It also cites ***Onjuro & others Vs Attorney General & 5 others*** [supra], to urge that evictions must be preceded by adequate notice, meaningful consultation and fair administrative action.

[70] The 15th respondent further relies on persuasive comparative authorities, *inter alia*, ***Government of the Republic of South Africa Vs Grootboom*** 2001 (1) SA 46 (CC), ***Port Elizabeth Municipality Vs Various Occupiers*** 2005 (1) SA 217 (CC), ***Occupiers of 51 Olivia Road Vs City of Johannesburg*** CT 24/07 [2008] ZACC 1, ***City of Johannesburg Metropolitan Municipality Vs Blue Moonlight Properties*** CCT 37/11 [2011] ZACC 33, ***Residents of Joe Slovo Community Vs Thubelisha Homes*** (CCT 22/08) [2009] ZACC 16, ***Muhindo James & others Vs***

Attorney General [2019] UGHC 1, and ***Olga Tellis Vs Bombay Municipal Corporation*** (1986) AIR 180, to reiterate that forced evictions must be procedurally fair, preceded by meaningful engagement, adequate notice and consultation, accompanied by alternative accommodation where necessary, and implemented in a manner that safeguards dignity, livelihood and the rights of vulnerable persons.

[71] On *whether the petition raises any substantial questions of law*, the 15th respondent submits that it discloses no issue warranting this Court's intervention and is an abuse of the appellate process.

[72] Ultimately, the 15th respondent submits that the appellant has failed to demonstrate any error in the concurrent findings of the Environment and Land Court and the Court of Appeal or to raise any issue warranting this Court's intervention. It therefore urges the Court to affirm the judgments of the superior courts below and dismiss the Petition with costs.

[73] Notably, the 7th, 8th, 9th, 10th, 11th, 12th and 14th respondents did not oppose the appeal or file submissions, despite having been duly served, as evidenced by the Affidavit of Service sworn by the appellant's counsel on 30th May 2025 and electronically filed on 16th June 2026.

E. ISSUES FOR DETERMINATION

[74] Having carefully considered the grounds of appeal, the submissions of the parties, the authorities cited in support thereof, and the resultant judgment of the Court of Appeal; we find that the following issues fall for determination:

- i. *Whether this Court has jurisdiction to hear and determine the appeal herein.*
- ii. *Whether the appellant violated the 1st to 6th respondents' rights under Articles 40, 43, and 60 of the Constitution.*

- iii. *Whether the 1st to 6th respondents' claim for compensation is barred by the doctrine of res judicata.*
- iv. *Who bears the costs of this appeal?*

F. ANALYSIS AND DETERMINATION

i. On Jurisdiction

[75] The 13th respondent submits that, notwithstanding the appellant's reliance on various constitutional provisions, the appeal raises no issue of constitutional interpretation or application that formed the basis of the Court of Appeal's determination. As such, in its view, this Court's jurisdiction has not been properly invoked, thus rendering the appeal herein incompetent. The threshold for invoking this Court's jurisdiction pursuant to the provisions of Article 163 (4) (a) of the Constitution is well settled through the guiding principles established by the Court in a number of decisions. For purposes of determining this issue, we shall only advert to our pronouncement in ***Nduttu & 6000 others Vs Kenya Breweries Ltd & Another*** [2012] KESC 9 (KLR), in which it was determined that:

“[28] The appeal must originate from a court of appeal case where issues of contestation revolved around the interpretation or application of the Constitution. In other words, an Appellant must be challenging the interpretation or application of the Constitution which the Court of Appeal used to dispose of the matter in that forum. Such a party must be faulting the Court of Appeal on the basis of such interpretation...”

[76] It is not in doubt that the respondents initiated their claim at the Environment and Land Court, through a constitutional petition in which they sought various declaratory reliefs on grounds that, their constitutional rights

had been violated by the appellant. In granting the reliefs, the trial court not only interpreted, but applied the Constitution to remedy what it had found as a clear breach of their rights by the appellant. Aggrieved, the appellant challenged the trial court's judgment, faulting its interpretation and application of the Constitution in the manner and tenor of the principles enunciated by this Court in ***Nduttu*** [supra]. Not having succeeded at the Court of Appeal, the appellant has moved to the Supreme Court sustaining the same challenge it mounted at the appellate court. It is therefore baffling, that the respondents, the initiators of the constitutional petition, the beneficiaries of the two superior court's interpretation and application of the Constitution, can now turn around and argue that the appellant has improperly invoked the jurisdiction of this Court. That this Court has jurisdiction to hear and determine the appeal is therefore, not an issue to belabour.

ii. Whether the appellant violated the 1st to 6th respondents' rights under Articles 40, 43, and 60 of the Constitution

[77] The appellant's challenge is threefold. First, it submits that the protection accorded to property under Article 40 of the Constitution is subject to the limitation in Article 40(6), which excludes property found to have been unlawfully acquired. In that regard, it submits that the Court must first determine whether the 1st to 6th respondents acquired a proprietary interest in the suit property capable of protection under Article 40 of the Constitution. In support of its argument, the appellant cites our decision in ***Dina Management Ltd Vs County Government of Mombasa & 5 others*** [supra] .

[78] The appellant further submits that the 1st to 6th respondents occupied the suit property as licensees and, as such, acquired no proprietary interest therein. It contends that a licence merely confers permission to occupy land and does not vest any proprietary or ownership rights capable of protection under Article

40 of the Constitution. It relies on ***Thomas Vs Sorrell*** (1637) EWHC (KB) J85, where Vaughan CJ held that:

“A dispensation or licence properly passeth no interest, nor alters or transfers property in any thing, but only makes an action lawful, which without it had been unlawful...”

[79] The appellant also relies on the decision of the Court of Appeal in ***Faraj Maharus Vs J.B. Martin Glass Industries & 3 others*** [2005] KECA 303 (KLR), wherein the court held that:

“... a Temporary Occupation Licence to occupy Government Land is not sufficient to create or transfer title to the grantee or his personal representative...”

[80] Secondly, the appellant submits that the licences were liable to forfeiture upon default in the payment of rent. It contends that the 1st to 6th respondents failed to establish that they were the lawful successors to the original licensees or that the conditions of the licences, including payment of rent, had been complied with. In support, the appellant cites the Court of Appeal’s decision in ***Mombasa Technical Training Institute Vs Agnes Nyevu Charo & 108 others*** [2014] KECA 138 (KLR), where it was determined that:

“... the respondents were (if at all) on the suit property illegally. In our view if their occupation was in contravention of the law, no rights can flow from an illegal occupation to warrant a legitimate expectation as their occupation (if any) was illegal. Thus, the position is distinguishable from The Council of Civil Union v. Minister for Civil Service (supra) as the respondents were not permitted to enjoy the benefit which they claim

and hence had no legitimate expectation. Regardless of the length of time the respondents remained on the suit property, their status remained that of illegal squatters...

... To create a precedent that a legitimate expectation for allocation of Government land can arise out of an occupation declared illegal by statute would be opening a Pandora's Box which would compound the problem of land by encouraging squatter invasion of Government land. Further it would be tantamount to introducing the doctrine of adverse possession in Government land. This would be inimical to the public policy of maintaining law and order..."

[81] Lastly, the appellant contends that the Court of Appeal failed to appreciate that the suit property had irrevocably vested in the appellant by operation of the Kenya Railways (Vesting of Land) Order, 1986 (Legal Notice No. 24 of 1986), which revoked the Vesting of Land Regulations, 1963 (Legal Notice No. 440 of 1963). It submits that, as land reserved for a public purpose, the suit property could not be lawfully alienated except in strict compliance with the applicable legal framework, as held in ***Dina Management Limited Vs County Government of Mombasa & 5 others*** [supra]. The appellant also cites ***Torino Enterprises Ltd Vs Attorney General*** [2023] KESC 79 (KLR), to further assert that land reserved for public use cannot be alienated without strict compliance with legal procedures. The appellant further submits that the colonial administration could not lawfully alienate the suit property without the consent of the General Manager of the railway administration, a proposition advanced by the Interested Party in ***Katangi Developers Limited Vs Attorney General & Another*** [2021] KEELC 4341 (KLR).

[82] Ultimately, the appellant contends that the Court of Appeal departed from binding Supreme Court precedent, particularly ***Dina Management Limited Vs County Government of Mombasa*** [supra] and ***Kiluwa Limited & Another Vs Business Liaison Company Limited & 3 others*** [supra], contrary to the doctrine of *stare decisis*. It relies on ***Law Society of Kenya Vs Attorney General & Another*** [2019] KESC 16 (KLR), in which this Court reaffirmed the hierarchical nature of the judicial system and the binding effect of its decisions on all other courts.

[83] In response, the 1st to 6th, 13th and 15th respondents submit that the former came into occupation of the suit property through the licences that had been granted to their ancestors by the colonial government under the Crown Lands Ordinance of 1915. The said licenses were formalized by the Government in 2012 through the drawing of relevant Part Development Plans. The respondents submit that, having been in long occupation, and established homes and other institutions thereon, they had acquired constitutionally protectable rights of housing/shelter within the meaning of Articles 40, 43, and 60 of the Constitution. The respondents rely on this Court's decisions in ***Mitu-Bell Welfare Society Vs Kenya Airports Authority & 3 others*** (supra) and ***Musembi & 13 others Vs Moi Educational Centre Co. Ltd & 3 others*** ,(supra) among others. The detailed responses by the respondents are documented in the foregoing paragraphs 25 to 32 and 49 to 72 of this Judgment.

[84] The Court of Appeal in confirming the findings of the Environment and Land Court, held that the respondents' constitutional rights, particularly the right to accessible and adequate housing under Article 43(1)(b) of the Constitution, had been violated. It held that the eviction was undertaken without compliance with the applicable constitutional and statutory safeguards, including the requirements of fair administrative action, adequate notice and respect for human dignity, thereby violating Articles 40, 43 and 47 of the Constitution, as well as applicable

rules of international law, Treaties and Conventions forming part of Kenyan law under Articles 2(5) and (6) of the Constitution.

[85] The appellant has predicated its appeal, on the proprietary nature of a “licence” as opposed to “title” to land. Its main argument being that, the respondents having been mere licensees, did not acquire any proprietary interests worthy of protection under Article 40 of the Constitution. It has therefore placed heavy reliance on this Court’s decisions in ***Dina, Torino, and Kiluwa*** [supra]. The appellant insists that Article 40 of the Constitution does not protect unlawfully acquired property. The respondents counter this argument by contending that having been in long occupation of the suit property, they had acquired constitutionally protectable rights to housing.

[86] At the outset, we must emphasize that what is at stake in this appeal, is not the nature or validity of title to the suit property or whether the 1st to 6th respondents or their ancestral kin had acquired the same legally. This therefore discounts the decisions by this Court in ***Dina, Torino, and Kiluwa*** [supra] which have been heavily relied upon by the appellant. The real issue is whether, by evicting the 1st to 6th respondents in the manner that it did, the details of which are recounted on the record, the appellant violated their constitutional rights.

[87] What we are dealing with here, is an occupation of public land by a whole community, on the basis of a licence granted to them by the then colonial government. A licence that was never extinguished by state action of succeeding governments. This was no ordinary or private licence granted over private land, but one extended to a whole community. Thus, from generation to generation, the Nubian people had realized their humanity on this land. They had established homes, built schools, health facilities, and other amenities. Then one early morning, under cover of darkness, the entire community, men, women, and children were uprooted from the land, call it eviction, by the appellant. In ***Mitu-Bell*** [supra], this Court rendered itself thus:

“152. The right to housing over public land crystallizes by virtue of a long period of occupation by people who have established homes and raised families on the land. This right derives from the principle of equitable access to land under Article 60(1)(a) of the Constitution. Faced with an eviction on grounds of public interest, such potential evictees have a right to petition the court for protection. The protection, need not necessarily be in the form of an order restraining the State agency from evicting the occupants, given the fact that, the eviction may be entirely justifiable in the public interest. But, under Article 23(3) of the Constitution, the court may craft orders aimed at protecting that right, such as compensation, the requirement of adequate notice before eviction, the observance of humane conditions during eviction (UN Guidelines), the provision of alternative land for settlement, etc.”

“153. The right to housing in its base form (shelter) need not be predicated upon “title to land”. Indeed, it is the inability of many citizens to acquire private title to land, that condemns them to the indignity of “informal settlement”. Where the Government fails to provide accessible and adequate housing to all the people, the very least it must do, is to protect the rights and dignity of those in the informal settlements. The courts are there to ensure that such protection is realized, otherwise these citizens, must forever, wander the corners of their country, in the grim reality of “the wretched of the earth.”

[88] This principle was reiterated by the Court in *Musembi* [supra] in which, we elaborated the steps that must be taken to ensure that, any eviction is conducted humanely and in accordance with the law. The 1st to 6th respondents fall squarely within the circumstances envisaged by the Court in *Mitu-Bell* [supra], with the consequence that, just as the Court of Appeal, and the Trial Court, we find that they had acquired constitutionally protectable rights under Articles 40, 43, and 60 of the Constitution. Both superior courts determined that these rights were violated by the appellant through an eviction that did not conform with the Constitution, the Land Act, and the relevant UN Guidelines. We find no basis to interfere with the Appellate Court's findings to this effect.

iii. Whether the 1st to 6th respondents' claim for compensation is barred by the doctrine of res judicata.

[89] From the record of appeal before us, and as submitted by the appellant, it is apparent that the Court of Appeal did not address this issue. The failure or omission by the Appellate Court to determine this issue in our view, does not affect the substantive appeal before us. This being the case, and in keeping with the practice of this Court, we shall say no more on the same.

G. CONCLUSION AND FINAL DISPOSITION

[90] In agreement with the Court of Appeal, we hold that on the basis of the reasons foregoing, the 1st to 6th respondents had acquired constitutionally protectable proprietary rights under Articles 40, 43 and 60 of the Constitution. By the same token, we further hold that, the rights of the respondents were violated by the appellant, through their eviction in contravention of constitutional, statutory, and international safeguards. The long and short of this determination, is that the appeal before us stands to be dismissed, and we do accordingly dismiss it.

H. ORDERS

- i. The Appeal dated 2nd May, 2025 and filed on 5th May, 2025 is hereby dismissed.*
- ii. The Judgment of the Court of Appeal dated 21st March, 2025 is hereby confirmed.*
- iii. The Costs of this Appeal shall be borne by the appellant.*
- iv. The sum of Kshs. 6,000.00 deposited as security be refunded to the appellant.*

It is so ordered.

DATED and DELIVERED at NAIROBI this 23rd Day of October, 2026.

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA