



**Bett & 21 others v Cabinet Secretary, Ministry of Land, Housing & Urban
Development & 8 others (Environment and Land Constitutional Petition
E010 of 2024) [2025] KEELC 2963 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2963 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E010 OF 2024

LN GACHERU, J

MARCH 25, 2025

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

**IN THE MATTER OF THE ALLEGED INFRINGEMENT OF THE PROVISIONS
OF ARTICLE (1), 1(3), 2(1), 2(2), 2(4), 3(1), 10, 28, 35(1), 40, 47, 48, 62(2), 63(1), (3)
AND (4), 66,67,69, 232(1), 258 , AND 259(1) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATER OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF THE FOREST CONSERVATION & MANAGEMENT ACT, 2016

AND

IN THE MATTER OF WILDLIFE CONSERVATION & MANAGEMENT, 2013

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

ERIC KIPLANGAT ARAP BETT 1ST PETITIONER
TIMKOLOLE SLUNYE 2ND PETITIONER
SITONIK LANGAT 3RD PETITIONER
SAMWEL KPNEGO KONES 4TH PETITIONER
PETER KIPLANGAT CHEBOR 5TH PETITIONER
HASSAN KAUSAI OLE SEN 6TH PETITIONER



JULIUS SULUNYE	7 TH PETITIONER
PAUL KIPROTICH MARITIM	8 TH PETITIONER
SAMWEL KIPKEMOI LANGAT	9 TH PETITIONER
DAVID KIMUTAI KOECH	10 TH PETITIONER
JOEL KIPSIGEI MUTAI	11 TH PETITIONER
STANLEY NANKARA SULUNYE	12 TH PETITIONER
JOSEPH CHELULE BUSIENEI	13 TH PETITIONER
JONATHAN LANGAT	14 TH PETITIONER
JOSEPH NG'ETICH	15 TH PETITIONER
JOSEPH KIPRONO MWEI	16 TH PETITIONER
KIPRONO ARAP MABENGO	17 TH PETITIONER
JULIUS KIBET ARAP ROTICH	18 TH PETITIONER
CHEPKWONY HENRY CHELOGOI	19 TH PETITIONER
WILLIAM KIROGU SEGERGER	20 TH PETITIONER
SAMWEL KIPROTICH KOECH	21 ST PETITIONER
RICHARD CHEPKWONY KORGOREN	22 ND PETITIONER

AND

CABINET SECRETARY, MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT	1 ST RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT	2 ND RESPONDENT
CABINET SECRETARY, FOR ENVIRONMENT, CLIMATE CHANGE AND FORESTRY	3 RD RESPONDENT
DIRECTOR OF SURVEY, SURVEYS KENYA	4 TH RESPONDENT
INSPECTOR GENERAL OF POLICE	5 TH RESPONDENT
THE NATIONAL LAND COMMISSION	6 TH RESPONDENT
KENYA WATER TOWER AGENCY	7 TH RESPONDENT
NYAYO TEA ZONES DEVELOPMENT CORPORATION	8 TH RESPONDENT
THE ATTORNEY GENERAL	9 TH RESPONDENT

RULING

1. The Notice of Motion Application for determination is dated 26th November 2024, wherein the Petitioners/Applicants have sought for the following orders: -



- a. Spent.
 - b. That this Honourable Court be pleased to certify the petition herein as one raising substantial questions of law and constitutional rights, specifically Articles 10, 27, 28, 40, 43, 47, 48, 67 and 69 and be referred to the Honourable Chief Justice for empanelling of a bench made up of three or more uneven number of Judges to hear and determine this Petition.
 - c. That this court gives certain directions as it may deem just and fit
2. The said application is premised on various grounds set out thereon and on the Supporting Affidavit annexed to the Petition. In their grounds in support of the Application, the Petitioners/Applicants have averred that they are the registered owners of all that parcels of land within Cis-Mara/Koben/34, Cis-Mara/Ololulunga/110, Cis-Mara/Ololulunga/115, Ilmotiok Registration section/375, Osupuko Ololulunga adjudication Section –Map sheet 2, 3, 4 and 5 and Narok District Osupuko Ololulunga Adjudication Section map sheet A part 132/III, 146/I, and 131/IV and measuring approximately 20,000 hectares, and they are vested with absolute ownership together with all rights and privileges appurtenant thereto by virtue of Section 24(a) of the Land Registration Act, and Article 40 of the Constitution; Further, the applicants averred that; -
1. The petitioners’ land had been clearly earmarked for grazing, farming and settlement by the government and it allocated the said land through the former group ranches; Reyio Group Ranch, Enakishomi Group Ranch, Sisiyan Group Ranch, Nkoroni Group Ranch, Enosokon Group Ranch and CCM Group Ranch formed and registered under the now repealed Land (Group Representatives Act, 1968 and comprising of over 15,000 members. The ranches held the said land in trust of their members;
 2. To mark the borders of the Petitioners land, the government through the 8th Respondent created a clear cutline marked by Tea bushes stretching to 24 kilometres in length and 200 meters width, separating the Petitioners’ land and that forming Mau Narok and Maasai Mau.
 3. That the survey map (Registry Index Map 9RIMs) for the exercised are delineating the settlement area established the settlement boundaries where the Petitioners had for several years lived, resided, cultivated and had constructed schools and dispensaries within the settlement zones, about 15 other schools were constructed by the government.
 4. The petitioners’ children schooled from the built schools and benefitted from the public utilities constructed by the government including police stations and market places.
 5. That the petitioners group ranches were dissolved between the years 1990-1995. The Ministry of Lands gave consent for the dissolution of the ranches and for subdivision of the ranches into equal individual holdings to be allocated to 15,000 registered members. From then on, the Petitioners who are also the ranches officials remained in office for the sole aim and purpose of overseeing the sub-division of the ranch to the members.
 6. That the process of issuance of individual titles to over 15000 families/members of the ranches was backed by the 1st and 4th Respondents who mapped out the settlement zone guided by existing clear cut line and boundary marked by the Tea bushes, placing beacons between the ranches.
 7. That the beacons and cutline placed by the 1st, 4th and 8th Respondents clearly marked the Petitioners private property where individual titles were issued and the Forest area under the control of the 7th and 8th Respondents.



8. That the Petitioners are not occupiers of any forest block, Mau Narok or Maasai Mau as they are behind a clear cutline established by Tea Zones managed by the 8th Respondents and beacons placed by the 1st and 4th Respondents.
9. That the petitioners have continued to honour the settlement boundary and did not encroach on any forest area (Mau Narok and Maasai Mau, as they were issued with individual titles by the government from the year 1998).
10. That the petitioners and over 15,000 individual owners (members of the ranches) had acquired the suit properties lawfully and were issued with valid titles which were indefeasible by the government.
11. That the titles which had been obtained illegally and un-procedurally within the said ranches were less than 500 titles and have since been cancelled. The cancelled titles do not affect the petitioners and over 12,000 families whose titles remain valid and unchallenged and are protected by the constitution and land laws of Kenya to date.
12. That the 2nd, 3rd, and 5th Respondents in seeking to forcefully and violently evict the Petitioners and over 15,000 families of their land with valid titles from the government through the office of the 1st and 4th Respondents, were seeking to deprive a rightful owner of his property in contravention of Articles 10, 40 and 47 of the Constitution of Kenya.
13. That the Petitioners were in the year 2020, forcefully evicted from their private property in guise of removing persons the Respondents claimed had encroached onto forest land. The exercise championed and coordinated by the 2nd, 3rd and 5th Respondents and a Multi-agency team of officers led by Kenya Forest services which rendered the Petitioners squatters within the neighbouring trading centres and have continued to suffer historical land injustice which the Respondents have failed to redress.
14. That the targeted persons are those who have titles legally issued by the government through the ministry of land, the office of the 1st Respondent herein and the titles have never been declared invalid and/or cancelled by the court, they hold over 14,000 valid titles. Some of the titles were issued before caveat was placed in the year 2012.
15. That the Petitioners had been designated for settlement way back in 1990 to 1995 the boundary of the forest a land and settlement area had been established and a survey map had been prepared wit; Cis-Mara/Koben/34, Cis-Mara/Ololulunga/110, Cis-Mara/Ololulunga/115, Ilmotiok Registration section/375, Osupuko Ololulunga adjudication Section –Map sheet 2, 3, 4 and 5 and Narok District Osupuko Ololulunga Adjudication Section map sheet A part 132/III, 146/I, and 131/IV.
16. That the Respondent atrocities extended to persons who were not occupiers of the forest and without any right and in utter disrespect of property rights provided for by the Constitution of Kenya, illegally and with impunity, commenced forceful eviction and alienation of the Petitioners of Individual property within Cis-Mara/Koben/34, Cis-Mara/Ololulunga/110, Cis-Mara/Ololulunga/115, Ilmotiok Registration section/375, Osupuko Ololulunga adjudication Section –Map sheet 2, 3, 4 and 5 and Narok District Osupuko Ololulunga Adjudication Section map sheet A part 132/III, 146/I, and 131/IV.
17. That the respondents acting ultra-vires, outside their mandate and without any justifiable excuse, continue to interfere with the Petitioners private property as they are driven by ill



intentions and have taken advantage of the operation of forest conservation to forcefully evict and displace the petitioners.

18. That cruelty of effected evictions upon rightful owners of properties within Cis-Mara/Koben/34, Cis-Mara/Ololulunga/110, Cis-Mara/Ololulunga/115, Ilmotiok Registration section/375, Osupuko Ololulunga adjudication Section –Map sheet 2, 3, 4 and 5 and Narok District Osupuko Ololulunga Adjudication Section map sheet A part 132/III, 146/I, and 131/IV was without any regard to their constitutional right to human dignity, inhuman treatment, equality and freedom from torture and degrading treatment as provided by *the constitution*.
19. That the effected evictions were in further violation of United Nations Guidelines on steps that ought to be taken in effecting evictions where large number of people stood to be affected with; notice and/or eviction order was issued to the Petitioners prior to the eviction, no alternative land provided and the evictees resolved to live under trees against the provisions of Section 152G of the *Land Act* on mandatory procedures during eviction. The petitioners will be seeking compensation for illegal and forceful eviction.
20. That failure of the Respondents to inform the Petitioners of the would-be eviction and subsequently issue them with a notice was in contrast to the provisions of Article 35, 40(3), 65 and 47 of *the Constitution* of Kenya.
21. That the on-going evictions are ill advised and run counter to the obligations that Respondents have; to secure the rights of its citizens under the African Charter on Human and People's Rights, which is applicable by virtue of Article 2(6) of *the Constitution* of Kenya.
22. That the Respondents are essentially acquiring the property of the Petitioners compulsorily in complete disregard of the constitutionally laid down process and procedures required for compulsory acquisition of land.
23. That despite clear procedural safeguards under Section 152G of the *Land Act*, 2012-eviction continue to occur under unclear circumstances, without due process, and with the absence of appropriate measures to mitigate the suffering among the affected Petitioners.
24. That the Respondents in abuse of power have caused wanton destruction of private property and the Petitioners will be seeking for compensation for the said destruction of property.
25. That the evictees some of whom are senior citizens, women and children were forced to erect temporary flimsy dwelling structures in random small empty spaces where they have been living as squatters completely exposed to the elements of the weather and health risks.
26. That the evictions have led to loss of lives of the elderly and children of tender years who could not withstand the harsh weather conditions, psychological torture and frustration from being evicted from their only known homes and land they had invested on.
27. That illegal and unlawful eviction exercise involves the uprooting, movement and displacement of people who have legally been in occupation and possession of their private property.
28. That the eviction of the nature undertaken by the Respondents did not just violate the right to housing, but also violated the Petitioners' rights guaranteed under Articles 28, 29, 43, 53 and 57 of *the Constitution*.
29. That the forced evictions were undertaken by torching of houses, mass eviction of elderly person and children, demolition of houses and business structures and other possessions



belonging to the Petitioners, arrest and detention in Narok Police Station and thereafter released without being charged.

30. That the titles in possession of Petitioners have been disregarded by the Respondents in clear case of demonstration of lawlessness and collapse of the edifice of constitutionalism in the country.
3. The application is opposed by the 8th Respondent- Nyayo Tea Zone Development Corporation on the following grounds: -
 - a. That the Petition is bad in law, an abuse of the court process and a waste of precious judicial time.
 - b. That the Petition does not disclose a reasonable cause of action as against the 8th Respondent
 - c. That the Petition is as such vexatious, frivolous and scandalous.
 - d. That the Petition does not meet the threshold for granting of the orders sought.
 - e. That the Petition be dismissed with costs to the 8th Respondent.
4. The instant application was canvassed by way of written submissions, wherein the Petitioners/ Applicants filed their written submissions dated 4th February, 2025 through Kipkoech Terer & Associates, and urged the court to allow their application by referring the matter to the Hon. Chief Justice for empanelment which will ensure that justice is served with the thoroughness and robust reflection warranted.
5. In their submissions the Petitioners/Applicants argued that the Petition herein raises substantial question of law to warrant reference to the Chief Justice for empanelment. They relied on the case of *Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione* [2013]eKLR, where the Supreme Court of Kenya held: -
 - “(i) for a case to be certified as one involving a substantial point of law, the intending applicant must satisfy the Court that the issue to be canvassed is one the determination of which affects the parties and transcends the circumstances of the particular case and has a significant bearing on the public interest;
 - (ii) The applicant must show that there is a state of uncertainty in the law;
 - (iii) The matter to be certified must fall within the terms of Article 165(3) (b) or (d) of *the Constitution*;
 - (iv) The Applicant has an obligation to identify and concisely set out the specific substantial question or questions of law which he or she attributes to the matter for which the certification is sought”
6. It was their further submissions that the instant petition raises substantial question of law concerning the acquisition of the suit property by the Respondents and the procedural irregularities on the eviction of the Petitioners/ Applicants.
7. Further they contended that the Petition raises questions of general public importance, as it directly affects the wellbeing of the society and promotes public interest. They also argued that the Petitioners/ Applicants own the parcels of land that are targeted, and the said parcels of land are occupied by 15,000



families for decades, and their title deeds have not been cancelled, and therefore their eviction affects the present and future generation.

8. It was the Petitioners'/ Applicants' further submissions that the Petition herein raises substantial questions of law particularly due to the sheer number of Petitioners, and the constitutional rights that hang in the balance. The court was urged to exercise its discretion and declare the Petition as one raising substantial question of law, thus justifying a referral to the Hon. Chief Justice for empanelment.
9. On whether the Petition discloses a reasonable cause of action as against the 8th Respondent, it was inextricable as the dispute pertains to the determination of boundaries between the Petitioners/ Applicants properties and that of the 8th Respondent. Further that the 3rd, 7th and 8th Respondents are statutory mandated under the *Forest Conservation and Management Act* 2016 to manage and conserve Gazetted Forests, and it is with this statutory mandate that the 8th Respondent facilitated and perpetuated the unlawful eviction of the Petitioners/Applicants from their respective parcels of land.
10. On whether the Petition is frivolous, vexatious and an abuse of the courts process, the Petitioners/ Applicants relied on the case of D.T. Dobie & Co. Ltd vs Joseph Mbaria Muchina & another, wherein the court stated that a suit should not be summarily dismissed unless it is so hopeless, that no cause of action exists and cannot be remedied by amendment.
11. Ultimately the Petitioners/Applicants submitted that the issue raised involve significant constitutional principles, including right to property and the proper procedure for eviction. Further that given the complexity and public importance of these matters, it is important that they be determined by an uneven panel of Judges as envisaged by *the Constitution*.
12. The 8th Respondent filed its submissions dated 10th February, 2025 through Kiunga Kingirwa & Co. advocates, and submitted on various issues. On whether the Petition has met the threshold for it to be referred to the Chief Justice for empanelment as per the provisions of Article 165(4) of *the Constitution* of Kenya 2010, the 8th Respondent submitted that this Petition has not met the threshold to be referred to the Chief Justice for empanelment, and it relied on the case of Okiya Omtatah Okoiti & another vs Anne Waiguru, Cabinet Secretary Devolution and Planning & 3 others [2017]eKLR, wherein the Court adopted with modification the principles established by the Supreme Court in Hermanns Phillipus Steyn vs Giovanna Grechi– Ruscone[2013]eKLR, where the court held; -
 - “(i) for a case to be certified as one involving a substantial point of law, the intending applicant must satisfy the Court that the issue to be canvassed is one the determination of which affects the parties and transcends the circumstances of the particular case and has a significant bearing on the public interest;
 - (ii) The applicant must show that there is a state of uncertainty in the law;
 - (iii) The matter to be certified must fall within the terms of Article 165(3) (b) or (d) of *the Constitution*;
 - (iv) The Applicant has an obligation to identify and concisely set out the specific substantial question or questions of law which he or she attributes to the matter for which the certification is sought.” (emphasis ours)
13. It was its further submissions that the issue raised in this Petition are not complex or uncertain, and the said issues can be resolved by a single judge, as there is no state of uncertainty in the law that requires the intervention of an empanelled bench.



14. Further it was submitted that the Petitioners/Applicants have failed to concisely set out the specific substantial question of law that would warrant the empanelment of a bench by the Chief Justice. Reliance was placed in the case of *Harrison Kinyanjui vs AG & another* [2012]eKLR, where the court held;

“.....giving meaning to ‘substantial question’ must take into account the provisions of *the Constitution* as a whole and the need to dispense justice without delay, particularly given specific fact situation. In other words, each case must be considered on its merits by the judge certifying the matter. It must also be remembered that each High Court Judge, has authority under Article 165 of *the Constitution*, to determine any matter that is within the jurisdiction of the High Court. Further, and notwithstanding the provisions of Article 165(4), the decision of a three Judge bench is of equal force to that of a single Judge exercising the same jurisdiction. A single Judge deciding a matter is not obliged to follow a decision of the court delivered by three Judges.”

15. It was also submitted that the issues raised by the Petitioners/Applicants are broad and general lacking the specificity required to warrant reference to the Chief Justice for empanelment under Article 165(4) of *the Constitution*. The 8th Respondent argued that the Petitioners/Applicants have failed to demonstrate how the resolution of these issues would transcend the particular circumstances of this case, and have a significant bearing on the public interest.

16. Reliance was also placed in the case of *Philomena Mbeti Mwilu vs Director of Public Prosecution, Director of Criminal Investigation, Chief Magistrate Court (Anti-corruption) Nairobi Attorney General & Stanley Muluvi Kiima* [2018] KEHC 3432 (KLR) where the court held;

“ Although the present petition can be heard by a single Judge of this court and also being fully aware that a bench would sometimes require resources both personnel and financial as well as more time to resolve a petition that if it were heard by a single Judge, the present petition is the kind of petition that this court should exercise its discretion in favour of an expanded bench due to its public importance and significance in our constitutional democracy. The issues sought to be decided are not mere questions of law, they are substantial questions of law and their resolution will have a material bearing...”

17. Further, reliance was placed in the case of *Magare Gikenye J Benjamin vs Salaries and Remuneration Commission & 146 others; Sanate & 9 others (interested parties)* [2021]eKLR where the court held;

“By taking into account the nature of, and, the circumstances in the Petition alongside the principles in *Okiya Omtatah Okoiti & another vs Anne Waiguru* case (supra), I do not find any difficulty in arriving at the finding that the request fails the test for certification as raising substantial questions of law under Article 165(4) of *the Constitution* so as to call for an expanded bench of this court. Whereas on one hand the issues raised in the Petition are weighty and of immense public interest, on the other hand, the issues are not complex and/or uncertain. In fact, if anything, the Petition ought to be urgently heard and determined on account of the public interest it has generated.” (Emphasis ours)

18. Further, it was the 8th Respondent’s submissions that the issues raised by the Petitioners/Applicants are weighty, but they are in no way complex or uncertain to warrant the formation of a bench to listen and determine the matter. Therefore, it was argued that one Judge is competent to listen and determine this Petition within the ambits of Article 165 of *the Constitution*.



19. The 8th Respondent ultimately submitted that the instant application fails to meet the legal threshold for certification under Article 165(4) of the Constitution, and urged the court to dismiss the instant application with costs.
20. The above being the prayers sought, the argument for and against the said application which the court has carefully considered, the grounds in opposition to the same, and the pleadings in general the court find as follows;
21. The general rule in determining whether to set up a bench or not was laid down by the Court of Appeal in Peter Nganga Muiruri vs. Credit Bank Limited & Another Civil Appeal No. 203 of 2006, wherein the Court held that any single Judge of the High Court in this country has the jurisdiction and power to handle a constitutional question. Therefore, the decision whether or not to certify a matter as raising a substantial question of law is an exercise of judicial discretion as opposed to a right. However, like all discretion, that power must be exercised judicially and judiciously and not on caprice, whim, likes or dislikes.
22. Article 165(4) of the Constitution provides for the constitution of a bench of more than one Judge to hear and determines a matter. It provides as follows; -
- “(4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.”
23. In the case of Harrison Kinyanjui vs Attorney General as cited by the 8th Respondent, the court held that the decision of a bench of Judge is a good as that one of a single Judge. However, in the same case, the court stated that in considering whether to refer a case for constitution of a bench or not, each case must be considered on its own merit. The court held as follows;
- “.....the meaning of substantial question must take into account the provisions of the Constitution as a whole and the need to dispense justice without delay given specific fact situation..... Each case must be considered on its own merit by the Judge certifying the matter.”
24. It is clear from the submissions of both parties herein that the main consideration on whether to certify a matter for a bench of uneven number of Judges or not is whether the suit raises substantial question of law requiring empanelling of such uneven number of Judges to hear the matter. The question that this court poses is what is substantial question of law? In the case of Community Advocacy Awareness Trust & Others vs. The Attorney General & Others High Court Petition No. 243 of 2011, the Court held:
- “The Constitution of Kenya does not define, ‘substantial question of law.’ It is left to the individual judge to satisfy himself or herself that the matter is substantial to the extent that it warrants reference to the Chief Justice to appoint an uneven number of judges not being less than three to determine the matter.”
25. Further, in the case of Chunilah vs Mehta vs Century Spinning & Manufacturing Co. AIR 1962 SC 1314(The Supreme Court of (India), the Court held as follows; -
- “A substantial question of Law is one which is of general public importance or which directly substantially affects the rights of the parties and which have not been finally settled by the



Supreme Court, the privy council or the Federal court on which is not free from difficulty or which calls for discussion of alternatives views.”

26. This Court also refers to the case of National Super Alliance (NASA) vs the IEBC H.C Pet No.328/2019, where the Court considered the holding in Chunilal case (above), and offered the following guidance in determining whether a matter raises a substantial question of law or not for purposes of Article 165(4) of *the Constitution*. The court held as follows on the guideline;

- i. Whether directly or indirectly it affects substantial right of the parties.
- ii. Whether the question is of general public importance.
- iii. Whether it is an open question. In the sense that the issue has not been settled by pronouncement of the Supreme Court or the highest court of the land or
- iv. The issue is not free from difficulty or
- v. It calls for a discussion for alternative view.

27. In the same case, the Court further held as follows: -

“the court may also consider whether the matter is moot in the sense that the matter raises a novel point; whether the matter is complex; whether the matter is by its nature require substantial amount of time to be disposed off; the effect of the prayers sought in the petition, and the level of public interest generated by the petition.....The list cannot be exhaustive and courts are at liberty to expand the grounds as occasions demands..”

28. The above are the guidelines that will guide the court in determining the instant application. The Petitioners/Applicants have alleged in this Petition that their constitutional rights have been infringed and /or violated since they have been evicted from their parcels of land, which parcels of land have title deeds, which titles were issued by the government, and the said titles have not been cancelled.

29. Further the Petition involves a huge number of people, who have alleged that they have been illegally evicted from their parcels of land, and indeed the Petition herein involves right of general public. The determination of the issues raised in the Petition will have an effect of either restoring the Petitioners/Applicants back to the disputed parcels of land, and/or confirming their eviction. Therefore, the determination of the Petition herein, will affect the present and future generation, and it is therefore clear that the Petition herein touches on the rights of about 15,000 families, and thus the rights of general public and the future generation.

30. Consequently, this court finds and holds that the Petition herein involves a substantial question of law and qualifies for a bench. In the case of Amos Kiumo & others vs Cabinet Secretary Internal & Coordination of National Government & others [2013] eKLR, the Court held; -

“The substantial question of law is a question to be determined in the circumstances of the case. Substantial issue of law is not necessarily a weight one or that raises a novel issue of law or fact or one that is complex. Many provisions of our constitution are; and bring forth novel issues yet it is not every day that we shall call upon the Chief Justice to empanel a bench of not less than 3 Judges. Public interest may be considered, but, it is not necessarily a decisive factor. It is the nature of Petition. The court ought to take account of other provisions of *the Constitution*... the empanelling should be the exceptional rather than a rule. A higher burden is on the party who applies to court to certify the matter for reference to the Chief Justice.”



31. The court has taken into account the allegations and averments made in the Petition, and there is a question of whether the area in dispute is a forest land, and whether the Petitioners have been illegally evicted from their legally acquired land parcels, and which eviction has allegedly affected about 15,000 families. Apart from the issues raised in the Petition being weighty, they also affect substantial rights of the parties, (Petitioners) and have also raised a question of general public importance.
32. This court will borrow the holding of the superior court in the case of Philomena Mbete Mwilu (Supra), where the court held;
- “the present petition is the kind of petition that this court should exercise its discretion in favour of an expanded bench due to its public importance and significance in our constitutional democracy. The issues sought to be decided are not mere questions of law, they are substantial questions of law and their resolution will have a material bearing...”
33. Equally in this Petition, the issues raised therein are not mere questions of law, they are substantial questions of law, and the determination of the said issues will have a far-reaching effect on a huge population or group of people allegedly amounting to about 15,00 families, and thus this Petition is weighty and is also a matter of public interest.
34. Having considered everything in totality and the issues raised by the parties herein, and having found and held that the Petition herein is of great public importance, and of great public interest, the issues are weighty and require substantial amount of time to conduct the trial, this court finds that it deserve constitution of a bench of uneven number of judges to hear and determine the same.
35. This court having analysed the issues as above, it is satisfied that the issues raised in the Petition herein raise substantial questions of law as contemplated under Article 165(4) as read with clause (3)(b) or (d) of Article 165 of *the Constitution* as to justify the empanelling of a bench of uneven number of Judges of this Court of not less than three, assigned by the Chief Justice. The court so certify, and accordingly, it directs that this Petition be transmitted to the Hon. the Chief Justice forthwith, for the purposes of the empanelling of that bench.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 25TH DAY OF MARCH, 2025

L. Gacheru

Judge

25/3/2025

Delivered online in the presence of

Meyoki – Court Assistant

Mr. Kipkoech for the Petitioners/Applicants

Mr. Kiunga for the 8th Respondent

N/A for the other Respondents.

L. Gacheru

Judge

25/3/2025

