



REPUBLIC OF KENYA



**KENYA LAW**  
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**Haji & 6 others v Cabinet Secretary, Ministry of Tourism and  
Wildlife & 8 others (Environment and Land Constitutional Petition  
E003 of 2024) [2025] KEELC 1239 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1239 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT GARISSA**

**ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E003 OF 2024**

**JM MUTUNGI, J**

**MARCH 13, 2025**

**IN THE MATTER OF VIOLATION AND INFRINGEMENT OF  
CONSTITUTIONAL RIGHTS AND FUNDAMENTAL FREEDOMS**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA ART.  
1(1),2,3,4(B) ART. 2(1), ART. 3(1), ART. 10(1)(2), ART. 22(2)(A),  
ART. 23, ART. 35, ART. 40, ART. 42, ART. 47(2)(3), ART. 63, ART. 69,  
ART. 70, ART. 159(2)(D), ART. 162(2)(B), AND ART. 258(2)(A)**

**AND**

**IN THE MATTER OF ARTICLE 40(3), 42, 63, 69, 70 OF THE  
CONSTITUTION OF KENYA ON DEPRIVATION OF PROPERTY AND  
ENVIRONMENT**

**AND**

**IN THE MATTER OF THE COMMUNITY LAND ACT**

**AND**

**IN THE MATTER OF THE WILDLIFE CONSERVATION AND  
MANAGEMENT ACT, 2013**

**AND**

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND  
COORDINATION ACT**

**AND**

**IN THE MATTER OF SABULI WILDLIFE CONSERVANCY**



**BETWEEN**

AHMED DIIS HAJI ..... 1<sup>ST</sup> PETITIONER  
DAHABA YUSSUF FARAH ..... 2<sup>ND</sup> PETITIONER  
SAHAL MOGOW MOHAMED ..... 3<sup>RD</sup> PETITIONER  
MOHAMED IBRAHIM HUSSEIN ..... 4<sup>TH</sup> PETITIONER  
ABDIRASHID ADAN HUSSEIN ..... 5<sup>TH</sup> PETITIONER  
ABDI MOHAMED ABDI ..... 6<sup>TH</sup> PETITIONER  
ABDIKADIR DUBO MOHAMED ..... 7<sup>TH</sup> PETITIONER

**AND**

CABINET SECRETARY, MINISTRY OF TOURISM AND  
WILDLIFE ..... 1<sup>ST</sup> RESPONDENT  
PRINCIPAL SECRETARY, STATE DEPARTMENT OF WILDLIFE .... 2<sup>ND</sup>  
RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
KENYA WILDLIFE SERVICE ..... 4<sup>TH</sup> RESPONDENT  
SABULI WILDLIFE CONSERVANCY ..... 5<sup>TH</sup> RESPONDENT  
WAJIR COUNTY GOVERNMENT ..... 6<sup>TH</sup> RESPONDENT  
MOHAMUD ALI ..... 7<sup>TH</sup> RESPONDENT  
MOHAMED HUSSEIN YUSSUF ..... 8<sup>TH</sup> RESPONDENT  
NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY .... 9<sup>TH</sup>  
RESPONDENT

**JUDGMENT**

1. The Petitioners instituted their Petition dated 26<sup>th</sup> February 2024 through the Firm of Ndegwa & Ndegwa Advocates praying for the following orders:
  1. A declaration that the 5<sup>th</sup> and 6<sup>th</sup> Respondents did not comply with the Constitutional and statutory requirements while registering the 5<sup>th</sup> Respondent and is thus operating illegally.
  2. An order of Certiorari to remove to this honourable court to quash the registration of the 5<sup>th</sup> Respondent as a wildlife conservancy existing in Wajir South Constituency within Wajir County.
  3. An order of Certiorari to remove to this honourable court to quash the decision of the 1<sup>st</sup> and 4<sup>th</sup> Respondents approving the wildlife manager of the 5<sup>th</sup> Respondent as a wildlife conservancy existing in Wajir South Constituency within Wajir County.



4. An order of Prohibition against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents herein by themselves, their agents, and personal assigns prohibiting the registration of any Wildlife Conservancies and Wildlife Managers in Wajir South Constituency within Wajir County until such a time the community land is registered as community land within the [Community Land Act](#).
  5. An order of Mandamus to remove to this honourable court compelling the 6<sup>th</sup> Respondent to reinstate the land which is occupied by the 5<sup>th</sup> Respondent unregistered community land held in trust by the 6<sup>th</sup> Respondent for the communities in Wajir South.
  6. An order of Mandamus to remove to this honourable court compelling the 6<sup>th</sup> Respondent to initiate the process of registration of unregistered community land in Wajir South constituency in Wajir County over the next one hundred and twenty (120) days from the date of Judgment.
  7. An order of Mandamus to remove to this honourable court compelling the 6<sup>th</sup> Respondent to declare any monies paid to it as compensation for any acquisition of any unregistered Community land.
  8. Costs of this application be provided for.
2. The Petitioners' case is anchored on the grounds outlined in the Petition, which are further elaborated in the Affidavit dated 20<sup>th</sup> February 2024 sworn by the Petitioners. The Petitioners assert that they are the elected members of the County Assembly of Wajir, representing Habaswein, Ibrahim Ure, Burder, Diif, Dadajabulla, Benane, and Laghbogoi South Wards within Wajir South. They contend that the registration of the 5<sup>th</sup> Respondent was carried out without adequate community engagement, sensitization, inclusivity, and public participation. They emphasize that the pastoral communities highly value their grazing fields, and the conversion of these fields for private conservancy purposes has unintentionally created discord among the communities. The Petitioners further claim that the registration of the 5<sup>th</sup> Respondent did not take into account critical factors, such as environmental impact assessments, land tenure issues, clear community engagement, benefit-sharing, and defined community roles. They argue that the registration and allocation of land to the 5<sup>th</sup> Respondent pose a direct threat to the social fabric of the affected communities, as this will likely result in the displacement of these communities.
  3. The Petitioners aver that conflicts have arisen in the Kalalut area of the Dilmanyale location in Habaswein Ward, resulting in over twenty individuals sustaining injuries due to competition for grazing fields between the Local Community and the 5<sup>th</sup> Respondent. They assert that they have previously submitted written Memorandum to the Principal Secretary Ministry of Interior and National Administration seeking a resolution to this matter. The Petitioners claim that the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents violated constitutional provisions by failing to involve the people of Wajir South through public participation, thereby denying them the opportunity to be heard. They argue that the actions of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents amounted to the arbitrary deprivation of the people of Wajir South's rights to property. According to the Petitioners, these actions have led to the deprivation of grazing fields to the members of the community.
  4. The Petitioners contend that the registration and allocation of land to the 5<sup>th</sup> Respondent, which is now privately owned, posed a direct threat to the social fabric of the affected communities, as it will lead to displacement under the guise of wildlife conservation. They argue that the 5<sup>th</sup> and 7<sup>th</sup> Respondents have taken over two-thirds of the land mass in Wajir South Constituency and have declared it a protected area, thereby restricting local communities from accessing their communal land. This, they argued, violated Article 63 of the [Constitution](#) and Section 6 of the [Community](#)



Land Act. Additionally, the Petitioners assert that the 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents violated Section 57A (3) of the Environmental Management and Coordination Act by failing to prepare a Strategic Environmental Assessment Report. They further allege violations of Section 58 of the same Act, citing the endangerment of animal species, flora and fauna and the commercial exploitation of natural resources without submitting the required project report to the relevant authority.

5. The Petitioners further alleged that the Respondents violated Sections 3, 39, 40(1)(2), and 41 of the Wildlife Conservation and Management Act of 2013 by establishing the 5<sup>th</sup> Respondent as a Conservancy without ensuring that it had land set aside for conservation. The Petitioners also argue that the 7<sup>th</sup> Respondent was registered as a Wildlife Manager without due consideration of whether the 5<sup>th</sup> Respondent qualified as a legitimate wildlife conservancy and that Community Wildlife Associations have not been established to facilitate conflict resolution and cooperation.
6. In response to the Petition, the 5<sup>th</sup> and 7<sup>th</sup> Respondents filed their Replying Affidavit, sworn on 28<sup>th</sup> May 2024 by the 7<sup>th</sup> Respondent, who served as the Chairman of the 5<sup>th</sup> Respondent. In the response the 7<sup>th</sup> Respondent explained that the 5<sup>th</sup> Respondent is a Community Wildlife Conservancy established in 2012 by the residents of Bananey Ward in Wajir County. He stated it was not owned by any individual landowner or group of private landowners; rather, it was owned and managed by Community members on their communal land. He further explained that the community registered the 5<sup>th</sup> Respondent in 2018 as a Community-Based Organization (CBO) under the Community Groups Registration Act and the membership in the CBO was open to all adults residing in Bananey Ward, and it currently comprised 33 members who elect their officials from among themselves every five years. He stated that the 5<sup>th</sup> Respondent has undertaken various compliance processes over the past few years to facilitate its eventual registration and gazettelement as a Wildlife Conservancy. In 2018, the 5<sup>th</sup> Respondent informed the County Government of Wajir about the community's desire to establish a Community Wildlife Conservancy on their land and requested support for this initiative. He stated that the County Government expressed its approval and support for the establishment of the conservancy. In 2012, the 5<sup>th</sup> Respondent further communicated with the Kenya Wildlife Service (KWS) its intention to create a Community Wildlife Conservancy. In response, KWS sent its Environmental Impact Assessment team in 2018 to conduct a preliminary assessment of the proposed conservancy. KWS thereafter expressed support for the initiative and issued the recommendations and conditions that the conservancy and other stakeholders must fulfill before formal registration and gazettelement of the conservancy.
7. Additionally, the 7<sup>th</sup> Respondent stated that the Cabinet Secretary responsible for wildlife also expressed support for the conservancy and urged that the appropriate procedures be undertaken to have the conservancy properly registered and gazetted. The 7<sup>th</sup> Respondent noted that the conservancy had collaborated with the National Government, which had supported the conservancy's various activities, particularly in drought mitigation. The Chairman of the 5<sup>th</sup> Respondent added that the County Government of Wajir had contributed by donating funds for the construction of water pans within the conservancy, which benefited the community and their livestock and the wildlife. The Chairman (7<sup>th</sup> Respondent) further stated that the 5<sup>th</sup> Respondent had completed the preparation of its first Wildlife Conservancy Management Plan for consideration by KWS and other lead agencies, and this process was ongoing. He stated that the process involved community members; but averred that the Petitioners had never participated in any of the discussions nor raised any concerns.
8. The 7<sup>th</sup> Respondent stated that the land occupied by the conservancy was community land held in trust for the Community by the County Government. He averred that the Petitioners' allegation that the 5<sup>th</sup> Respondent had taken over the land and converted the same for private use was not correct.



- He pointed out that the Petitioners had failed to provide any documents showing that the County Government had transferred, leased, or mortgaged the land to the 5<sup>th</sup> Respondent for private use. He stated that the Petitioners did not present any evidence demonstrating that the conservation efforts by the 5<sup>th</sup> Respondent have disrupted peace and harmonious coexistence among Community members or caused any harm to wildlife.
9. The 5<sup>th</sup> and 7<sup>th</sup> Respondents contended that the petition was largely politically motivated and represented an attempt to extort the 5<sup>th</sup> Respondent into engaging in corrupt practices. They noted that the MCA for Bananey Ward, where the conservancy is located, had distanced herself from the petition. The 7<sup>th</sup> Respondent further stated that since his election, the 1<sup>st</sup> Petitioner had persistently attempted to meddle in the affairs of the conservancy for his own financial and political gain. He stated for instance in January 2024, when the conservancy received a grant from the National Government for the construction of a water pan, the 1<sup>st</sup> Petitioner reportedly approached the 5<sup>th</sup> Respondent and insisted that he should be awarded the construction contract. When the 5<sup>th</sup> Respondent declined, the 1<sup>st</sup> Petitioner began making threats, declaring that he would do whatever it took to have the conservancy disbanded. Subsequently, the 1<sup>st</sup> Petitioner mobilized his colleagues in the County Assembly to undermine the conservancy. The 1<sup>st</sup> Petitioner further initiated Petitions to the National Government, falsely alleging that the Conservancy was causing insecurity in the area.
  10. The 4<sup>th</sup> Respondent filed a Replying Affidavit sworn by Dr. Margaret Mosse on 18<sup>th</sup> April 2024. Dr. Mosse, the Chief Licensing Officer for the 4<sup>th</sup> Respondent, stated that individuals or communities who own land that is home to wildlife may establish a Wildlife Conservancy, individually or collectively. She further explained that the 4<sup>th</sup> Respondent had not received any application from the 7<sup>th</sup> Respondent for the 5<sup>th</sup> Respondent's establishment, registration, or operation, meaning it was not recognized as one of the registered wildlife conservancies in Kenya. Dr. Mosse averred that the Petitioners had not demonstrated how the 4<sup>th</sup> Respondent had infringed upon, violated, or threatened to violate their Constitutional rights and asserted that the Petition did not disclose a reasonable cause of action against the 4<sup>th</sup> Respondent.
  11. The 6<sup>th</sup> Respondent filed a response dated 3<sup>rd</sup> August 2024, indicating that it had reliable information that the 5<sup>th</sup> Respondent had not as yet been registered by the Kenya Wildlife Service (KWS) as a conservancy, and that the registration process was currently under review. The County Government (6<sup>th</sup> Respondent) further stated that members of the public were being involved and there was community participation as required by law. The 6<sup>th</sup> Respondent clarified that a comprehensive environmental impact assessment was conducted before the registration process commenced. The County Government further pointed out that no evidence was provided to support the claim that community land had been transferred to private entities, and no documentation was availed to demonstrate that community land had been alienated to private entities and/or to any third parties as alleged by the Petitioners.
  12. The 8<sup>th</sup> Respondent filed a Replying Affidavit sworn on 28<sup>th</sup> May 2024, in which he fully supported the Affidavits provided by the 5<sup>th</sup> and 7<sup>th</sup> Respondent. The 8<sup>th</sup> Respondent further associated himself with the contents of the Affidavit sworn by Dr. Margaret Mosse on behalf of the 4<sup>th</sup> Respondent and urged the Court to prioritize public interest in the preservation and conservation of the environment. He prayed for the dismissal of the Petition for being incompetent and misconceived.
  13. The 2<sup>nd</sup> Petitioner filed her Affidavit on 2<sup>nd</sup> July 2024, and dissociated herself from the Petition. She stated that she was the Member of the County Assembly (MCA) for Bananey Ward, where the Sabuli Wildlife Conservancy is located. She asserted that she did not consent to being named as a Petitioner in



this matter and was included without her permission or knowledge. The 2<sup>nd</sup> Petitioner expressed her support for the conservation efforts led by the 5<sup>th</sup> Respondent. She emphasized that the Community in Bananey who she represented fully support the 5<sup>th</sup> Respondent's work, which involves establishing a Community Wildlife Conservancy on land owned by the members of Bananey Ward. She confirmed that the Community land had neither been disposed of nor transferred to any third party.

14. The Petition was canvassed by way of written submissions. The Petitioners submissions were dated 30<sup>th</sup> September 2024. The 6<sup>th</sup> Respondents submissions were dated 25<sup>th</sup> October 2024 and those of the 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents are also dated 25<sup>th</sup> October 2024. The 4<sup>th</sup> Respondent filed submissions dated 18<sup>th</sup> November 2024.

### **Submissions by the Petitioners**

15. The Petitioners in their submissions dated 30<sup>th</sup> September 2024, submitted that the registration of conservancies in Wajir South had adversely affected human activities, leading to persistent conflicts over resources, primarily pasture and water. They submitted that this was driven by the pastoral lifestyle of the local communities. They contended that the registration of the 5<sup>th</sup> Respondent as a Conservancy in 2018 should have involved comprehensive community engagement, awareness-raising, inclusivity, and public participation to address community concerns effectively.
16. The Petitioners submitted that the 5<sup>th</sup> Respondent had taken over community land in Wajir South for Wildlife Conservation purposes, which had led to Local Communities losing access to grazing fields previously available to them. The Petitioners contended owing to lack of Community involvement conflicts had already occurred in the Kalalut area, Dilmanyale location in Habaswein ward, where over twenty individuals sustained injuries due to competition for grazing resources. The Petitioners argued that the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents were in violation of Article 10 of the Constitution of Kenya, as they failed to involve the people of Wajir South through public participation when applying for or approving the appointment of the 7<sup>th</sup> Respondent as the Wildlife Manager of the 5<sup>th</sup> Respondent. According to the Petitioners, this had caused conflict over natural resources in the area where the conservancy is located.
17. The Petitioners additionally asserted that the right to life includes the right to live with dignity and the right to livelihood, emphasizing that no person can sustain life without the means to earn a living. They claimed that the Respondents violated the Petitioners' right to livelihood by not providing a reasonable opportunity to be heard, which they described as illegal, arbitrary, and unjust. The Petitioners further argued that the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents violated Article 47 of the Constitution of Kenya by failing to give the people of Wajir South an opportunity to be heard when approving the 7<sup>th</sup> Respondent as the Wildlife Manager. They further contended that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents have violated Article 40 of the Constitution by facilitating the arbitrary deprivation of the Petitioners' property rights by the 5<sup>th</sup> Respondent, without providing adequate compensation or conducting an environmental impact assessment on the management of flora and fauna in Wajir County, as well as the coexistence with local Communities.
18. Additionally, the Petitioners assert that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents violated Articles 42 and 69(1)(d) of the Constitution by allowing the establishment of the 5<sup>th</sup> Respondent under the management of the 7<sup>th</sup> Respondent without conducting public participation in the management, protection, and conservation of the environment. The Petitioners cite the following cases in support of their submissions the South African Constitutional Court case, Poverty Alleviation Network & Others v. President of the Republic of South Africa & 19 Others, CCT 86/08 (2010) ZACC 5, and Constitutional Petition Nos. 305 of 2012, 34 of 2013, and 12 of 2014 (previously Nairobi



Constitutional Petition 43 of 2014), Mui Coal Basin Local Community & 15 Others v. Permanent Secretary Ministry of Energy & 17 Others (2015) eKLR.

19. The 6<sup>th</sup> Respondent filed its submissions on 25<sup>th</sup> October 2024, highlighting two main issues: the competence of the Petitioner's Petition and whether the 6<sup>th</sup> Respondent had violated the Petitioner's Constitutional rights. Regarding the first issue, the 6<sup>th</sup> Respondent argued that the Petitioners had not clearly articulated how its rights were violated. It contended that the Petitioner failed to demonstrate to the Court how the 6<sup>th</sup> Respondent violated Article 40 of the Constitution of Kenya or failed to ensure public participation. The 6<sup>th</sup> Respondent placed reliance on the cases of Anarita Karimi Njeru versus The Republic of Kenya (1976-1980) and Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others, eKLR.
20. On the issue of whether it had violated the Petitioner's rights, the 6<sup>th</sup> Respondent noted that the Petitioner's complaints revolved around the alleged registration of the 5<sup>th</sup> Respondent and violations of the Constitution of Kenya, the Community Land Act, the Environmental Management and Coordination Act, and the Wildlife Conservation and Management Act of 2013. The 6<sup>th</sup> Respondent argued that despite the claims that the Petitioner's rights had been violated, there was a failure on the Petitioners' part to specify the alleged arbitrary deprivation of property rights or the broader violation of Constitutional rights. The 6<sup>th</sup> Respondent emphasized that the 1<sup>st</sup> prayer in the petition could not be granted because the registration of the 5<sup>th</sup> Respondent had not yet occurred. Consequently, the 6<sup>th</sup> Respondent asserted that the petition was prematurely brought before the Court.
21. Further, the 6<sup>th</sup> Respondent submitted that the Petitioners had failed to furnish any documentation to confirm the registration of the 5<sup>th</sup> Respondent as a conservancy by the 4<sup>th</sup> Respondent and as Courts do not issue orders in vain, the Petitioners would not be entitled to the orders they seek. In support of this submission they relied on the case of Republic versus Mwangi S. Kimenyi Ex-Parte Kenya Institute for Public Policy and Research Analysis (KIPPRA), (2013) KECA 373 (KLR) where the Court stated:

“The Learned Judge, in his Judgment, was correct in stating that the court cannot act in vain against a non-existent decision. There was no decision or letter dated 24<sup>th</sup> August 2005 that could be called upon and removed into the High Court to be quashed. This being so, the Learned Judge erred in quashing the alleged decision of 24<sup>th</sup> August 2004 when that decision is non-existent. Further, the Learned Judge erred in issuing orders to quash the letter of 16<sup>th</sup> December 2004 when the court had not determined whether the decision made on 3<sup>rd</sup> December 2004 existed. A Court of Law should not engage in speculation. The decision to be quashed must first be ascertained and confirmed to be in existence. This is the rationale for calling and removing into Court a decision to be quashed. We hold that the Learned Judge erred, and it was not appropriate to issue the Judicial Review orders in this matter...”
22. The 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents filed their written submissions dated 25<sup>th</sup> October 2024. They argued that the Subuli Wildlife Conservancy is a Community Wildlife Conservancy that was established in 2012. They stated that it is owned and managed by the members of the Sabuli Division, Wajir South Community, and is located on their community land. They asserted that these members owned the 5<sup>th</sup> Respondent through a registered Community Based Organization (CBO).
23. Counsel for the 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondent contended that prayers (a), (b), and (c) of the Petitioners' Petition should be dismissed because the 5<sup>th</sup> Respondent had not yet been formally registered as a wildlife conservancy in Kenya. To support this claim, Counsel stated that the Petitioners had failed to provide a copy of the alleged registration certificate or approval.



24. Counsel further argued that the assertion that the 6<sup>th</sup> Respondent had transferred the community land to the 5<sup>th</sup> Respondent should equally fail, as the Petitioners had not provided evidence to substantiate the claim.
25. Counsel further submitted that the Petitioners' Petition did not meet the threshold established in the case of *Anarita Karimi Njeru v. The Republic (Supra)*, as the Petitioners failed to provide any evidence or specifics regarding the alleged violations and the manner of infringement. He asserted that the 5<sup>th</sup> Respondent had not yet been registered and there was no basis for the Petitioners to make the allegations of violation of their Constitution Rights against it. Counsel further argued that the Petitioners' petition was politically motivated and aimed at extorting financial gain from the 5<sup>th</sup> Respondent and that would amount to engaging in corruption.
26. In conclusion, Counsel asserted that the Petitioners failed to demonstrate on a balance of probabilities that the 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents violated their constitutional rights. They urged the Court to dismiss the petition and award costs to them.
27. The 4<sup>th</sup> Respondent filed its written submissions on 18<sup>th</sup> April, 2024. Counsel for the 4<sup>th</sup> Respondent argued that the Petitioner had not adduced any evidence to demonstrate that the 5<sup>th</sup> and 7<sup>th</sup> Respondents were registered as a conservancy and a Wildlife Manager, respectively. Counsel noted that since the 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents had confirmed they had not registered the 5<sup>th</sup> Respondent as a wildlife conservancy, the claimed infringement of the Petitioner's rights was too remote to be considered a violation. The 4<sup>th</sup> Respondent placed reliance on the case of *Samson Rosana Ondigi vs. Council of Masinde Muliro University of Science and Technology (2019) eKLR*, which cited the case of *Martin Nyaga Wambora vs. Speaker of the County Assembly of Embu & 3 Others (2014) eKLR*, in support of their position that the Petitioners had not demonstrated prima facie case to warrant grant of the reliefs they sought. In the case the Court stated:-

“In determining whether or not to grant conservatory orders, the Courts have established several principles. The first is that...[an Applicant] must demonstrate that he has a prima facie case with a likelihood of success and that unless the Court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the *Constitution*.

To those erudite words I would only highlight the importance of demonstration of 'real danger'. The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial action or redress by the Court. Thus an allegedly threatened violation that is remote and unlikely will not attract the Court's attention.”

28. Counsel concluded that the Petitioners did not precisely demonstrate how their rights had been violated and urged the Court to dismiss the Petition with costs.

### **Analysis, evaluation and Determination**

29. I have reviewed the pleadings and considered the parties' submissions. The main issues for determination in the Petition are:
  1. Whether the 5<sup>th</sup> Respondent had been registered as a Wildlife conservancy and, if so, whether it should be deregistered, due to the community not having been properly consulted or involved through appropriate public participation?.



2. Whether the operationalization of the 5<sup>th</sup> Respondent as Community Wildlife conservancy violated the community's land rights?
3. Whether the petitioners have substantiated their claims in respect of violation of rights under the Constitution?
4. What orders should the Court make?

#### **Whether the 5<sup>th</sup> Respondent is registered as a Wildlife conservancy?**

30. The Petitioners primarily seek the deregistration of the 5<sup>th</sup> Respondent and the return of the unregistered Community Land that it occupies to the County Government. On their part the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents contended that the 5<sup>th</sup> Respondent had not been registered as a Wildlife Conservancy and argued that the orders sought by the Petitioners Specifically under prayers 1, 2, and 3 —could not be granted, as the 5<sup>th</sup> Respondent had not been registered. They asserted, however, that the registration process was currently underway. This assertion had not been rebutted by the Petitioners.
31. The Petitioners have furnished no evidence to demonstrate that the 4<sup>th</sup> Respondent has registered the 5<sup>th</sup> Respondent as a Wildlife Conservancy and issued a certificate and permit to the 5<sup>th</sup> Respondent to operate and run a Wildlife Conservancy in accordance with the provisions of the Wildlife Conservation and Management Act, 2013. Section 39 of the Act provides as follows:-

“ Any persons or Community who own land on which Wildlife inhabits may individually or collectively establish a Wildlife Conservancy or Sanctuary in accordance with the provisions of this Act.”

Section 44 of the Act outlines how Wildlife conservancies are to be managed and I reproduce the same hereunder to provide context:-

44.

- (1) Every national park, marine protected area, wildlife conservancy and sanctuary shall be managed in accordance with a management plan that complies with the requirements prescribed by the Fifth Schedule.
- (2) In preparing and adopting a management plan, the Service shall consult with the county wildlife conservation committee. In the case of protected areas, the formulation and implementation of management plans shall involve the participation of neighbouring communities.
- (3) The Cabinet Secretary shall, by notice in the Gazette, publish the approved management plans in respect of national parks, marine protected areas, wildlife conservancies and sanctuaries;
- (4) No development will be approved in the absence of management plans approved in subsection (3).
- (5) The Cabinet Secretary shall, initiate public consultation for purposes formulating managing plan guidelines.



32. It is evident from the above provisions that there is an elaborate process established under the Act that any person desirous of establishing a Wildlife Conservancy has to go through. The process entails wide consultations and public participation which culminates with the Cabinet Secretary gazetting and publishing the approved management plans in regard to National Parks, Marine protected areas, Wildlife conservancies and Sanctuaries.
33. The 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents have contended they are presently engaged in the process of complying with the stringent requirements under Section 44 of the *Wildlife Conservation and Management Act*, 2013. The 4<sup>th</sup> Respondent and the 6<sup>th</sup> Respondent confirm that to be the status. There is clear evidence that consultations have been ongoing and the Community has been involved.
34. To demonstrate that the registration process was ongoing, the 5<sup>th</sup> and 7<sup>th</sup> Respondents have exhibited various documents: a certificate of registration for the community-based organization (CBO), minutes from a board meeting, a membership certificate from the Kenya Wildlife Conservancies Association, a concept note, a letter of recommendation from Wajir County, and a development plan.
35. None of the attached documents indicate that the 5<sup>th</sup> Respondent was registered as a wildlife conservancy. The 5<sup>th</sup> and 7<sup>th</sup> Respondents have acknowledged this and the 4<sup>th</sup> Respondent has confirmed that it has not registered the 5<sup>th</sup> Respondent as a Wildlife Conservancy though the application for registration was under review and the appropriate process would be complied with. Given these facts, it follows that Prayers 1, 2, and 3 of the Petition cannot be granted, as they relate to the registration of the 5<sup>th</sup> Respondent as a Wildlife Conservancy by the 4<sup>th</sup> Respondent, which the Court determines has not happened.

**Whether the operationalization of the 5<sup>th</sup> Respondent has led to the arbitrary deprivation of the Wajir South Community's Rights.**

36. The Petitioners have in the petition alleged that the registration of Conservancies in Wajir South have impacted human activities adversely and that there have been conflicts mainly driven by competition for resources. In particular, the Petitioners have contended that the operations of the 5<sup>th</sup> Respondent did not take cognizance that the communities were pastoralists and they placed immense value on their grazing fields and appreciation of the same for private conservancy purposes was bound to cause discord amongst the communities.
37. As earlier noted under Section 39 of the *Wildlife Conservation and Management Act*, 2013 or Community, who own land on which wildlife inhabit may establish a wildlife conservancy in accordance with provisions of the Act. The land on which the 5<sup>th</sup> Respondent is operating is community land within the meaning of Article 63(1) and (3) of the *Constitution* which provides:-
  - 63 (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.
  - (2) .....
  - (3) Any unregistered community land shall be held in trusts by County Governments on behalf of the communities for which is held.
  - (4) .....
  - (4) .....



38. The Community Land Act, 2016 Under Section 4 provides that community land shall vest in the Community and Section 6(1) of the Act reiterates Article 63(3) of the Constitution and provides as follows:-

6(1) County Governments shall hold in trust all unregistered Community land on behalf of the communities for which it is held.

Section 6(8) of the Community Land Act prohibits County Governments from disposing of any land held on behalf of the Community and it provides:-

6(8) A County Government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding trust on behalf of the Communities for which it is held.

39. The 6<sup>th</sup> Respondent, the County Government of Wajir denied it had disposed the community land to any private entity but admitted the process of registration of the 5<sup>th</sup> Respondent as a Community Wildlife Conservancy was ongoing and that the members of the public were being involved as required under the Law. The 6<sup>th</sup> Respondent confirmed that before the registration of the 5<sup>th</sup> Respondent as a Wildlife Conservancy was kick started, a comprehensive Environmental Impact Assessment was conducted to ascertain the environmental impacts of the proposed Conservancy.

40. The Petitioners have neither furnished any evidence to demonstrate the 6<sup>th</sup> Respondent has unlawfully disposed the Community land contrary to the provisions of the Law nor have they adduced any evidence to demonstrate that indeed the 4<sup>th</sup> Respondent had registered the 5<sup>th</sup> Respondent contrary to the provisions of the law. The Petitioners had the burden of proving the violations that they complained of on a balance of probabilities. They definitely fell short of doing that as they merely made generalized allegations that were unsupported by any evidence.

Mativo J (as he then was) in the Case of Leonard Otieno Vs Airtel Kenya Ltd(2018) eKLR had as follows:-

65. It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions in violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do would trivialize the Constitution and inevitably result in ill conceived opinions. The presentation of clear evidence in support of Constitutional rights is not a mere technicality; rather, this essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypothesis.

41. In contrast to what the Petitioners allege in support of the Petition the 5<sup>th</sup> and 7<sup>th</sup> Respondents have adduced proof that the 5<sup>th</sup> Respondent was but a Community Based Wildlife Conservancy yet to be accorded registration by the 4<sup>th</sup> Respondent. The 5<sup>th</sup> and 7<sup>th</sup> Respondents have demonstrated the 5<sup>th</sup> Respondent started operations in 2012 as a Community Based Organization(CBO) and have now sought registration as a Wildlife Conservancy and Management and that their application is under review to confirm compliance with the applicable laws provided they can satisfy the conditionalities. The Wildlife Conservation and Management Act, 2013. Under Section 39 allows registration of Community Wildlife Conservancies. The 4<sup>th</sup> and 6<sup>th</sup> Respondents affirms the Community members were being involved in the registration process.

42. On appraisal of the petition it is apparent the County Government who are the custodians of the Community land as trustees support the establishment of the Community Wildlife Conservancy. The Deputy Governor vide a letter dated 30<sup>th</sup> September 2018 supported the establishment of the



Conservancy. The CEC –Environment Climate Change, Energy and Natural Resources, in his letter dated 23<sup>rd</sup> February 2023 endorsed the establishment of the Conservancy. It is of note that the Petition was instituted by elected members of the Wajir County Assembly and the 2<sup>nd</sup> Petitioner, Dahaba Yusuf Farah, herself an elected member and in whose ward the conservancy is located withdrew her name as a Petitioner stating she was improperly included as a Petitioner by the 1<sup>st</sup> Petitioner. She stated she strongly supported the establishment of the conservancy which she said was of great benefit to the Community. Given the circumstances other factors rather than the alleged violations cannot be ruled out in the institution of the Petition.

43. Be it as it may be, the Petition failed the precision test as established in *Anarita Karimi Njeru Vs The Republic (1976-1980) KLR 1272* and later restated by the Court of Appeal in the case of *Mumo Matemu Vs Trusted Society of Human Rights Alliance and 5 others (2013) eKLR*. In the *Karimi Njeru* case the Judges stated:-

“We would however, again stress that if a person is seeking redress from the High Court on a matter which involves reference to the *Constitution*, it is important (if only to ensure Justice is done to his case) that he should set out with a reasonable degree of precision, that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

44. In the *Mumo Matemu* case the Court stated:-

“It is our finding that the Petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the Petition and Supporting Affidavit, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of the *Constitution* of Kenya and the *Ethics and Anti-Corruption Commission Act, 2011*. Accordingly the Petition did not meet the standard enunciated in the *Anadila Karime Njeru* case( *supra*).

45. The Petitioners have in the petition set out various provisions of law alleging violations of the same but there is no clarity as to the alleged violations. The Petition was premised on the fact that the 5<sup>th</sup> Respondent was a registered Wildlife Conservancy, a fact that was not proved.
46. The Court in the premises finds and holds that the Petition lacks any merit and the same is ordered dismissed.
47. The parties shall bear their own costs of the Petition.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

