



Joseph & 3 others (Representing 312 Individuals Belonging to the RIBE Community) v Ndoro & 7 others (Environment & Land Petition E003 of 2023) [2025] KEELC 4207 (KLR) (28 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4207 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION E003 OF 2023**

EK MAKORI, J

MAY 28, 2025

BETWEEN

**MAXWELL MASAI JOSEPH 1ST PETITIONER
SAMSON CHAI 2ND PETITIONER
JAMES MANGI 3RD PETITIONER
TSUMA CHIVATSI MWAGIRI 4TH PETITIONER
REPRESENTING 312 INDIVIDUALS BELONGING TO THE RIBE
COMMUNITY**

AND

**ALI NDORO 1ST RESPONDENT
LAMECK TSORI 2ND RESPONDENT
JOEL FIKA RIA 3RD RESPONDENT
COUNTY COMMISSIONER OF KILIFI 4TH RESPONDENT
KILIFI COUNTY LAND ADJUDICATION OFFICER 5TH RESPONDENT
COUNTY GOVERNMENT OF KILIFI 6TH RESPONDENT
NATIONAL LAND COMMISSION 7TH RESPONDENT
THE SENIOR REGISTRAR OF TITLES KILIFI 8TH RESPONDENT**



JUDGMENT

1. The petition dated 3 August 2023, based on the legal principles of land rights and governance, seeks the following reliefs:
 - a. A declaration is hereby made that the Nyika Reserve, which has been converted into a Government land scheme, was executed in an unprocedural manner and through a corrupt scheme and ought to be nullified forthwith, thereby rectifying the injustice allegedly faced by the Petitioners.
 - b. All parcels of land acquired and benefited from by the 1st, 2nd, and 3rd Respondents be declared null and void, and all allotments be canceled and returned forthwith to the indigenous community for proper allocation and allotment, emphasizing the urgent need for this action.
 - c. A declaration be made that the evictions carried out in 2021 against the community by the 4th Respondent are declared illegal, and the process of vacant possession be reverted to the Petitioners representing the indigenous local community, underlining the importance of the Petitioners' rights.
 - d. A declaration that the community land measuring one thousand (1000) acres be allocated to the Ribe local community, represented by the Petitioners herein.
 - e. A permanent mandatory injunction restraining all individuals who have forcefully encroached upon the communal land referred to as Nyika Reserve under the guise of being allocated Government land through a corrupt scheme.
 - f. Any other orders that this court deems appropriate and to grant within the circumstances.
 - g. Costs related to the Petition.
2. The petition is based on the facts presented in the body of the petition and the affidavit submitted by Maxwell Maasai Joseph, which was deposed on August 3, 2023, alleging that the 1st, 2nd, and 3rd Respondents have corrupted the operationalization of the settlement scheme by awarding themselves large chunks of land. They have proceeded to trade with the said land to the disadvantage of the local community that is to be settled. A Chief Officer within the Department of Lands and Energy, Moses Gunda, has allocated himself a large portion of the land designated for the locals and erected a fence around it, a situation that raises eyebrows. This is a serious violation of the provisions of Article 10 of *the Constitution* regarding good governance.
3. The 4th, 5th, and 8th Respondents filed their replying affidavit dated October 4, 2023, sworn by John Karanja, the Land Adjudication and Settlement Officer in Kilifi, who avers that the suit parcel is government land and that the NLC, which is the custodian of public land, has reserved it for settlement purposes via letters dated April 16, 2021.
4. Moreover, he contends that, under the prevailing circumstances, the land adjudication process is inapplicable, as the subject land does not qualify as either ancestral or community land. Consequently, it is not classified as trust land. The Department of Land Adjudication and Settlement had initiated the demarcation and surveying of the two parcels; however, this exercise was discontinued upon the revelation that the land is classified as government land and that the requisite reservation had not been established.



5. Following the reservation conducted by the National Land Commission, the department is required to proceed with the finalization of the regularization of squatters residing on the land and other individuals utilizing the property.
6. Community meetings (barazas) were held on November 24, 2020, and May 18, 2022, during which the beneficiaries were informed that the parcels constitute government land and that a settlement program is to be implemented for their resettlement.
7. In April 2022, surveys and demarcations began, and this effort is nearing completion. The goal of the exercise is to secure the settlement of individuals living on the land, as well as those who cultivate the land even though they reside elsewhere.
8. Following the completion of the survey and demarcation, a map will be created to allocate and issue title deeds to the beneficiaries.
9. He asserts that the actions being undertaken constitute resettlement rather than land adjudication.
10. The parties to the petition were instructed to canvass the petition through written submissions. Except for the honorable Attorney General, who represents the 4th, 5th, and 8th Respondents, all other parties have not complied.
11. In consideration of the aforementioned discussion, the matters requiring the court's determination are presented as follows: Whether the Petitioners have articulated their case with the requisite degree of precision; Whether the *Land Adjudication Act* is applicable to the subject land; Whether the actions of the Respondents are lawful; and Whether the Respondents have transgressed the rights of the Petitioners.
12. Mr. Munga, representing the 4th, 5th, and 8th Respondents, with whom I concur, cites relevant judicial authorities for which I am grateful. He asserts that the Respondents argue that the Petitioners have not articulated their case with the necessary precision, as established in the case of *Anarita Karimi Njeru v Republic (1979) eKLR*, wherein the court stated as follows:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with 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.”
13. Furthermore, in the case of *Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others (2013) EKLR*, the court reaffirmed the holding established in the *Anarita Karimi Njeru* case (*supra*) as follows:

“We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru (supra)*. In view of this we find the petition before the High Court did not meet the threshold established in that case. At the very least the 1st Respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the Respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to.....”
14. The Petitioners have not provided a clear demonstration of how the Respondents infringed upon their constitutional rights. Therefore, they have not met the threshold established in the *Anarita Karimi* case (*supra*).



15. The Petitioners assert that the Respondents did not adhere to the mandatory provisions outlined in Sections 25, 27, and 28 of the [Land Adjudication Act](#). Conversely, the Respondents maintain, rightly, that the [Land Adjudication Act](#) is inapplicable to the land subject to the suit, as it does not fall within the scope of the Act. The Act facilitates the determination and recording of rights and interests in community land, along with related and incidental purposes.
16. This was reiterated in the case of *Kitheka Nduvya Mutia and 8 others v Ngeta Stephen Muli* [2019] eKLR, where the court recited the preamble of the [Land Adjudication Act](#) as follows:

“The preamble to the [Land Adjudication Act](#) provides as follows:

“An Act of Parliament to provide for the ascertainment and recording of rights and interests in community land, and for purposes connected therewith and purposes incidental thereto.”
17. The evidence on record indicates that the parcel of land in question, Nyika Reserve, has been identified as Government Land, rather than trust or community land. Article 62 of [the Constitution](#) defines public land to include land which, at the effective date, was unalienated government land as defined by an Act of Parliament in force at that date. Consequently, the adjudication process outlined in the [Land Adjudication Act](#) does not apply to such land. Therefore, the provisions of the [Land Adjudication Act](#) do not apply to the suit land; hence, the Petitioners’ reliance on the Act is misplaced.
18. The actions undertaken by the Respondents are, therefore, lawful and within the parameters of their constitutional and statutory mandates. The Respondents were unable to comply with Sections 25, 27, and 28 of the [Land Adjudication Act](#), as it became evident that the suit property constitutes government land.
19. Contrary to the Petitioners’ assertions that the Respondents are restarting the adjudication process anew, the Respondents are currently engaged in resettling the beneficiaries of the land parcels.
20. The resettlement program is distinct from the adjudication process under the [Land Adjudication Act](#). Section 134 of the [Land Act](#) outlines the establishment of settlement programs. It provides:

“Identification of beneficiaries shall be carried out and verified by a sub-county selection committee appointed by the Cabinet Secretary comprising of the following persons-

 - a. the deputy county commissioner;
 - b. the sub-county administrator;
 - c. a representative of the Commission;
 - d. a national government representative, who shall be the secretary;
 - e. a representative of persons with special needs;
 - f. a representative of women;
 - g. a youth representative; and
 - h. a representative of elders;

Provided that-



- i. the persons appointed under paragraphs (e), (f), (g) and (h) shall be nominated by the area member of the National Assembly; and
 - ii. a Chairperson shall be appointed at the first sitting of the committee from the persons appointed under paragraphs (e), (f), (g) and (h).”
21. Furthermore, Section 134(5) states that:

“The Commission shall reserve public and for the establishment of approved settlement programmes, and where public land is not available, the board of trustees shall purchase or acquire land for such purposes.”
22. Upon thorough planning and surveying, land designated for settlement schemes will be allocated to households in accordance with the national values and governance principles outlined in Article 10 of *the Constitution*, as well as the land policy principles stated in Article 60(1) of *the Constitution* and all other stipulations related to natural justice.
23. In *Republic v Lamu County Commissioner & 2 Others*, 2013 eKLR, the court held that:

“According to the provisions of Section 134 of the *Land Act*, No. 6 of 2012, the National Land Commission is mandated, on behalf of the National and County Government, to implement settlement programmes so as to provide access to land for shelter and livelihood to individuals.

The identification of the beneficiaries of the settlement programmes is supposed to be carried out by a sub-county selection committee which comprises the sub-county administrator, or a representative of the county government, a representative of the Commission, a national government representative, a representative of persons with special needs, a women’s representative and a representative of the youth...”
24. In the case of *Mwene Munda Welfare Association & 8 others*, 2023 eKLR, the court stated that:

“Establishment of settlement schemes as claimed by the petitioners is provided for under Section 134 of the *Land Act*. The said section places a legal obligation on the National Land Commission on behalf of the national and county governments, to implement settlement programmes to provide access to land for shelter and livelihood. The settlement programmes are aimed at providing access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.

Under Subsection (5), the Commission is mandated to reserve public land for the establishment of approved settlement programmes, and where public land is not available purchase private land subject to the Public Procurement and Disposal *Act, 2005 (No. 3 of 2005)* or any other law.”
25. The court additionally articulated the following:

“Under subsection (6) it is provided that upon planning and survey, land in settlement schemes is to be allocated to households in accordance with national values and principles of governance provided in Article 10 and the principles of land policy provided in Article 60(1) of *the Constitution* and any other requirements of natural justice.”



26. The barazas convened on November 24, 2020, and May 18, 2022, and subsequent surveys and demarcation exercises were conducted in accordance with the law to finalize the resettlement process for squatters and other individuals occupying the parcels. Additionally, the appointed committee was meant to facilitate resettlement, not to initiate the adjudication process anew. The Respondents' actions were therefore lawful, transparent, and aimed at fulfilling their constitutional duty to manage public land for the benefit of all.
27. The Petitioners allege violations of their constitutional right to equality, freedom from discrimination, the right to own ancestral land, and the right to fair administrative action as guaranteed by Articles 47 and 63(2)(d)(ii) of *the Constitution*. However, based on the materials presented to this court, there have been no violations of the Petitioners' rights. The Petitioners have not substantiated the claimed violations of these rights as outlined in *the Constitution*.
28. Having established that the suit land is government land which cannot be subject to the land adjudication process, the Petitioners do not hold any proprietary rights over the parcels of land in question and, as such, their right to property has not been violated.
29. The actions of the Respondents have been lawful, reasonable, and procedurally fair. The barazas convened in 2020 and 2022 provided a forum for public participation, ensuring that the affected parties were duly informed regarding the resettlement program. This practice is consistent with the principles of administrative fairness
30. In any event, the impugned exercise relates to the allocation of resources by the executive, an action with which this court cannot interfere unless procedural fairness is compromised. I wish to reiterate what I stated in my ruling dated July 4, 2024, while addressing the issue of whether to grant an injunction or not:

“The Government seeks to allocate its land to the Applicants, and a process has been set in motion in harness. From the materials I have and the averment from the parties, several suits on the same issue have been instituted, which, in my view, will lead to convoluted on otherwise a noble process meant to benefit the Applicants. It is not the province of this Court to allocate resources. It resides with the executive arm of the Government. Angima J. reckoned this in the case of Francis Musyoki Makenzi & 61 others v Director of Lands Adjudication and Settlement & 2 others, Njiru Cimba & 65 others & 26 others (2020) eKLR; where he stated as follows:

“It has been held that where there is competition for allocation of resources which allocation falls within the competence of the executive, the judiciary should not usurp the jurisdiction of the executive and make the allocation itself. In the case of Lucy Mirigo & 550 Others v Minister for Lands & 4 Others [2014] eKLR, the appellants sought orders compelling the Respondents to allocate them a portion of a government forest, whose allocation had allegedly been approved by a former President of the Republic of Kenya. In dismissing the Appellants' claim, the court held, among other things, that;

“In the case of R –v- Lancashire County Council Ex p Gaver (1980) 1 WLR 1024, it was stated that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. We adopt the above dicta in R –v- Lancashire County Council Ex p Gaver (supra) and observe that it is not the duty of the courts to allocate land and decide how national resources are to be allocated between competing claims.”



The application seeks that I halt, by way of a restraining order, a boundary and allocation process commenced by the executive and arrogate myself that duty. The Applicants do not state what happens after the process is stalled. When will the process begin if I were to stop it? Who will undertake it? In my view, the jurisdiction of this Court has been invoked wrongly. The Court is not being told that the officers undertaking the duty have failed to act or have acted beyond their scope to warrant perhaps judicial review orders by issuing an injunction. It will tend to scuttle the process. The application raises integrity issues for the officers who undertake the work. This can be addressed by the several Agencies created by *the Constitution*, not this Court.”

31. In summary, the petition is misguided and is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 28TH DAY OF MAY 2025

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Tindi, for the Applicants

Happy: Court Assistant

In the Absence of:

Mr. Munga for the 4th, 5th and 8th Respondents

