



REPUBLIC OF KENYA



**Kenduiwo & 8 others v National Land Commission & 5 others (Constitutional  
Petition 15 of 2019) [2025] KEELC 5308 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5308 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
CONSTITUTIONAL PETITION 15 OF 2019**

**MN KULLOW, J**

**JULY 14, 2025**

**IN THE MATTER OF ARTICLES 10, 20, 21(1), 40(1), 40(3),  
40(4), 47, 50(1), 60, 64, 68, 232(1) & 232(2) OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 14 AND 15(2)(D) AND (3)(E)  
OF THE NATIONAL LAND COMMISSION ACT, 2012**

**AND**

**IN THE MATTER OF SECTIONS 27(A) AND 28(A) OF THE  
REGISTERED LAND ACT (CAP. 300) (REPEALED)**

**AND**

**IN THE MATTER OF SECTION 4 OF THE FAIR  
ADMINISTRATIVE ACTION ACT, 2015**

**BETWEEN**

**KIPTESOT ARAP KENDUIYWO ..... 1<sup>ST</sup> PETITIONER**  
**MUSIEE ARAP KELONG ..... 2<sup>ND</sup> PETITIONER**  
**CHEPNGETICH BOROR ..... 3<sup>RD</sup> PETITIONER**  
**KIPTANGUS ARAP MASITID ..... 4<sup>TH</sup> PETITIONER**  
**GRACE CHEPKOECH KENDUIWA ..... 5<sup>TH</sup> PETITIONER**  
**KIPKELONG ARAP CHEPKULUL ..... 6<sup>TH</sup> PETITIONER**  
**JOHN CHELULE TOWETT ..... 7<sup>TH</sup> PETITIONER**  
**ROBERT KIPKEMOI YAGONG ..... 8<sup>TH</sup> PETITIONER**



WILLIAM CHERUIYOT ..... 9<sup>TH</sup> PETITIONER

AND

THE NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT

NTOROBO GROUP RANCH ..... 2<sup>ND</sup> RESPONDENT

THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT

THE MINISTRY OF LANDS ..... 4<sup>TH</sup> RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 5<sup>TH</sup>  
RESPONDENT

THE HON ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT

## JUDGMENT

### The Petitioners' Case

1. The Petitioners instituted this Constitutional Petition dated 6<sup>th</sup> May 2019, alleging violations of their constitutional rights under Articles 10, 20(1), 21(1), 40(1), 40(3), 40(4), 47, and 50(1) of the *Constitution of Kenya, 2010*, among other provisions. They are registered proprietors of various parcels of land resulting from the subdivision of Cismara/Lemek/40, a parcel formerly held under Ntorobo Group Ranch, located in the Lemek Adjudication Section within Narok County.
2. The Petitioners contend that Ntorobo Group Ranch was legally dissolved through a resolution passed by its members on 19<sup>th</sup> December 1996, and the dissolution was effected with all necessary approvals from the Director of Land Adjudication and Settlement and the Land Control Board. Following the dissolution, a demarcation committee was constituted, and each member of the group ranch was allocated a defined portion of land. The process culminated in a lawful adjudication and subdivision, and the Petitioners were subsequently issued with individual title deeds in 2012, without objection or contest from any party.
3. They assert that their ownership was further judicially recognized in Nairobi Miscellaneous Civil Application No. 799 of 2007, where the High Court quashed attempts by certain individuals to interfere with their ownership through the Provincial Land Disputes Appeals Tribunal. In that matter, the Court issued orders of certiorari and prohibition, nullifying the tribunal's decision and confirming the Petitioners' ownership. The Petitioners maintain that the said decision has neither been overturned nor appealed against and remains binding.
4. The Petitioners' cause of action arises from a decision made by the 1<sup>st</sup> Respondent, the National Land Commission (NLC), published in the Kenya Gazette dated 1<sup>st</sup> March 2019, wherein the Commission purported to revoke their title deeds and directed a fresh adjudication process over the suit land with the intention of reallocating portions to the 2<sup>nd</sup> Respondent, Ntorobo Group Ranch. The Petitioners state that this drastic action was undertaken without any form of notice, summons, complaint, or hearing, and without being given a chance to inspect any documents or respond to any allegations.
5. They assert that this decision was made in breach of their rights to fair administrative action and fair hearing, guaranteed under Articles 47 and 50(1) of the *Constitution* and Section 4 of the *Fair Administrative Action Act*, 2015. Further, they argue that the 1<sup>st</sup> Respondent acted ultra vires its



statutory powers under Section 14 of the [National Land Commission Act](#), as the land in question was not public land at the time of revocation and therefore did not fall within the Commission's jurisdiction. They deny any allegations of fraud or illegality in the acquisition of their titles and insist that they complied fully with the legal and procedural requirements.

6. The Petitioners submit that the actions of the 1<sup>st</sup> Respondent amounted to an abuse of power, a violation of their legitimate expectations, and a breach of the doctrine of finality of judicial decisions. They seek a declaration that the Gazette Notice issued on 1<sup>st</sup> March 2019 is unconstitutional, null, and void, and pray for orders of certiorari to quash it. Additionally, they seek orders of prohibition to restrain any further actions by the Respondents affecting their land titles. Initially, they also sought costs of the Petition.

### **The Respondents' Case**

7. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents filed a joint response through the Replying Affidavit of Josephine N. Njoroge, sworn on 13<sup>th</sup> November 2019. They support the decision of the 1<sup>st</sup> Respondent and contend that the revocation of titles was lawfully undertaken following complaints made by persons associated with the 2<sup>nd</sup> Respondent (Ndorobo Group Ranch). According to them, the land in question has been subject to long-standing disputes since 2003, and the National Land Commission was justified in investigating the matter under Article 67(2)(e) of the [Constitution](#) and Section 14 of the [National Land Commission Act](#).
8. The Respondents assert that two separate dissolution meetings of the group ranch were recorded one in 1995 and another in 1996 raising questions about the procedural integrity of the 1996 dissolution relied upon by the Petitioners. Following the complaint, the 1<sup>st</sup> Respondent held public hearings on 8<sup>th</sup> March 2018 and 24<sup>th</sup> September 2018, during which both sides were invited to present their case. The Respondents allege that the Petitioners either failed or refused to attend.
9. Upon determining that the titles were acquired irregularly, the 1<sup>st</sup> Respondent directed the Chief Land Registrar to revoke them in accordance with Section 14(5) of the [NLC Act](#). They further argue that the right to property under Article 40 of the [Constitution](#) is not absolute, and does not extend to property acquired unlawfully, as clarified under Article 40(6). They therefore contend that the Petition lacks merit and should be dismissed, asserting that due process was followed and no constitutional violations have been proven.

### **Issues for Determination**

Upon a careful reading of the Petition dated 6<sup>th</sup> May 2019, the responses by the 3<sup>rd</sup> to 6<sup>th</sup> Respondents, the affidavits, legal authorities cited, and the written submissions, this Court identifies the following issues for determination:

- a. Whether this Court has jurisdiction to hear and determine this Petition.
- b. Whether the National Land Commission acted within its constitutional and statutory mandate under Article 67(2)(e) of the [Constitution](#) and Section 14 of the [National Land Commission Act](#).
- c. Whether the Petitioners were accorded a fair hearing and fair administrative process in line with Articles 47 and 50(1) of the [Constitution](#) and Section 4 of the [Fair Administrative Action Act](#).



- d. Whether the Petitioners' rights to property under Article 40 of the Constitution were violated.
- e. Whether the Petitioners' titles were fraudulently or unlawfully acquired, and whether they enjoy protection under Article 40(6) of the Constitution.
- f. Whether the decision by the 1st Respondent contravened the doctrine of finality of judicial decisions, in light of Nairobi Judicial Review Miscellaneous Civil Application No. 799 of 2007.

**whether this court has jurisdiction to hear and determine this petition**

10. The Petitioners have brought this Petition under various provisions of the Constitution, including Articles 40, 47 and 50(1), alleging violation of their rights to property, fair administrative action and fair hearing. They submit that this Court, by virtue of Article 165(3)(b) and 165(3)(d) of the Constitution, has jurisdiction to hear and determine claims alleging denial, violation or infringement of rights under the Bill of Rights. They further invoke Article 23(1) and (3) of the Constitution as the basis for the Court's power to grant appropriate relief, including declarations and judicial review orders.
11. The Respondents, while not expressly challenging the jurisdiction of this Court, appear to suggest in their written submissions that the subject matter of the Petition being land-related ought to be addressed exclusively by the Environment and Land Court (ELC) under Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act, 2011.
12. The question of jurisdiction is a foundational one. In the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012] eKLR, the Supreme Court held that jurisdiction flows from the Constitution or statute and that a Court cannot arrogate to itself jurisdiction not conferred by law. However, in Ernest Kevin Luchidio v Attorney General & 2 Others [2015] eKLR, the High Court reaffirmed that constitutional claims relating to alleged violation of fundamental rights can be heard either in the High Court or in specialized courts such as the ELC, depending on the nature of the claim.
13. In the present case, the gravamen of the Petition is not a contest over ownership or boundaries of land per se, but rather an allegation that the Petitioners' constitutionally guaranteed rights under Articles 40, 47 and 50 were violated by the conduct of the 1st Respondent. The Petitioners allege that they were deprived of their titles without due process, without being heard, and in contravention of a prior High Court judgment. These are matters properly justiciable before this Court under Article 165(3) (b) and (d) of the Constitution.
14. This Court is persuaded that the Petition raises legitimate constitutional issues requiring determination, and that the jurisdiction of this Court is properly invoked. The Petition concerns the violation of rights, and not the determination of title or boundary disputes, which fall within the exclusive domain of the ELC. Accordingly, the preliminary objection implied by the Respondents with respect to jurisdiction is without merit and is hereby rejected.

**Issues no: 2 & 3. whether the NLC acted within its mandate, and whether the petitioners were accorded fair hearing and administrative justice**

15. The 1<sup>st</sup> Respondent's statutory authority is found in Article 67(2)(e) of the Constitution and Section 14 of the National Land Commission Act, which empower it to investigate and review titles to public land to determine their legality. While the Commission has this important mandate, its powers are not unlimited and must be exercised strictly in accordance with the principles of natural justice and procedural fairness.



16. Section 14(3) of the *NLC Act* provides that the Commission “shall give every person who appears to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.” The Petitioners contend and it is not controverted by sufficient evidence that they were not issued with any notice, were not furnished with details of any complaint, and were not invited to inspect any documents or participate in any hearing.
17. This omission is a clear breach of Articles 47 and 50(1) of the *Constitution*, which entitle all persons to fair administrative action that is lawful, reasonable and procedurally fair, and to a fair hearing before any adverse decision is taken.
18. The 1<sup>st</sup> Respondent’s failure to issue proper notice and allow the Petitioners to participate in the proceedings was not only procedurally unfair, but also substantively unjust. It also rendered the decision ultra vires and invalid, even assuming jurisdiction was properly exercised.
19. Accordingly, the Court finds that the 1<sup>st</sup> Respondent failed to act within the confines of its constitutional and statutory mandate, and that the Petitioners were denied both fair administrative process and the right to be heard, in contravention of Articles 47 and 50(1) and Section 4 of the *Fair Administrative Action Act*.

**Issues No: 4 & 5. whether the petitioners’ rights to property were violated, and whether their titles were lawfully acquired**

20. The Petitioners allege that the revocation of their titles violated their constitutional right to property under Article 40(1). They contend that they lawfully acquired the titles after a lawful dissolution of the Ntorobo Group Ranch in 1997, with all necessary consents from the Director of Land Adjudication and the Land Control Board. The adjudication process was completed in 2012, and they were issued with titles without objection.
21. In response, the Respondents argue that the Petitioners’ titles were irregularly acquired, as the group ranch had allegedly been dissolved earlier in 1995. They invoke Article 40(6), which provides that rights under Article 40 do not extend to property unlawfully acquired.
22. It is settled law that fraud or illegality must be specifically pleaded and strictly proved to the required standard. In *Kinyanjui Kamau v George Kamau* [2015] eKLR, the Court of Appeal held that “allegations of fraud must be proved to a standard higher than a balance of probabilities.”
23. The Respondents have not discharged this burden. Their allegation of dual dissolution meetings (1995 and 1996) is not in itself conclusive proof of fraud. The Petitioners, on the other hand, provided a Certificate of Incorporation of the Group Ranch, minutes of the general meeting, approval from the Land Control Board, mutation forms, and a completed adjudication register. These demonstrate compliance with lawful processes.
24. Moreover, if fraud was suspected, the proper course was to challenge the titles through court proceedings or criminal investigations, not by unilateral administrative action.
25. This Court therefore finds that the Petitioners’ titles were not proven to have been fraudulently acquired. The revocation of their titles without lawful justification and without compensation amounts to a violation of Article 40 of the *Constitution*.

**Issue No 6. Whether the revocation violated the finality of a prior judicial decision (res judicata)**

26. The Petitioners have relied on the judgment rendered in Nairobi Judicial Review Miscellaneous Civil Application No. 799 of 2007, in which the High Court quashed the decisions of the Rift Valley Land



Disputes Appeals Tribunal concerning the same suit land and prohibited any enforcement thereof. The decision affirmed the legitimacy of the Petitioners' claims to the land and restrained further interference.

27. This Court takes judicial notice that a final court order is binding, and public bodies such as the National Land Commission cannot lawfully make decisions that effectively reverse or negate a judgment of a superior court without first seeking its setting aside through proper judicial channels. To do so is to act in contempt of court and in breach of the principle of separation of powers.
28. In this regard, the decision by the 1<sup>st</sup> Respondent amounted to an abuse of administrative power and a disregard of the doctrine of finality of judicial decisions. The action by the 1<sup>st</sup> Respondent had the effect of undermining the judicial authority of the High Court, contrary to Article 159(1) of the [Constitution](#).
29. The Court therefore finds that the 1<sup>st</sup> Respondent acted in disregard of a binding High Court judgment, and that the decision to revoke titles was unlawful.

### **Final Orders**

30. Having found that the Petitioners have established violations of their rights under Articles 40, 47, and 50(1) of the [Constitution](#); that the 1<sup>st</sup> Respondent acted ultra vires its statutory mandate under Section 14 of the [National Land Commission Act](#); that the Petitioners were denied procedural fairness and a fair hearing; and that the impugned decision contravened a prior binding judicial pronouncement, this Court finds the Petition meritorious.

Accordingly, I issue the following orders:

- a. A declaration is hereby issued that the decision of the 1<sup>st</sup> Respondent, the National Land Commission, published in the Kenya Gazette of 1<sup>st</sup> March 2019, revoking the Petitioners' titles to various parcels of land formerly comprising Cismara/Lemek/40, was unconstitutional, unlawful, and procedurally unfair.
- b. An order of certiorari is hereby issued to bring into this Court and quash the Gazette Notice published on 1<sup>st</sup> March 2019 by the 1<sup>st</sup> Respondent purporting to revoke the Petitioners' titles to the suit property.
- c. An order of prohibition is hereby issued restraining the 1<sup>st</sup> Respondent from hearing, entertaining, or determining any complaint relating to the Petitioners' ownership of the suit property unless and until proper notice is served, and fair hearing in line with Article 47 and 50(1) of the [Constitution](#) is guaranteed.
- d. An order of prohibition is issued restraining the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents from acting upon, implementing, or otherwise giving effect to the impugned decision of the 1<sup>st</sup> Respondent published in the Kenya Gazette of 1<sup>st</sup> March 2019.
- e. An order of prohibition is issued restraining the 2<sup>nd</sup> Respondent from lodging, publishing, or otherwise interfering with the Petitioners' title to the suit property unless and until a competent court of law determines any claim or dispute in accordance with due process.
- f. The Petitioners' titles over the respective parcels of land forming part of the subdivision of Cismara/Lemek/40 are hereby declared valid, subsisting, and protected under Article 40(1) of the [Constitution](#), subject only to lawful and fair process as may be determined by a competent court.



g. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 14<sup>TH</sup> DAY OF JULY, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Judgement delivered in the presence of: -

..... for the Petitioners

..... for the Respondents

Philomena W. Court Assistant

