



**Nicholus v Attorney General & 7 others; National Environmental  
Complaints Committee (NECC) & 5 others (Interested Parties)  
(Petition 2 of 2021) [2025] KEELC 5026 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5026 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
PETITION 2 OF 2021**

**AE DENA, J  
JULY 7, 2025**

**BETWEEN**

**ABIDHA NICHOLUS ..... PETITIONER**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH ANDEERE NYAANGA ..... 2<sup>ND</sup> RESPONDENT**

**OWANG' ISAACK OGWEYO ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY MINISTRY OF MINING & BLUE  
ECONOMY ..... 4<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY ENVIRONMENT AND FORESTRY .... 5<sup>TH</sup>  
RESPONDENT**

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY .... 6<sup>TH</sup>  
RESPONDENT**

**COUNTY COMMISSIONER, SIAYA COUNTY ..... 7<sup>TH</sup> RESPONDENT**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**THE NATIONAL ENVIRONMENTAL COMPLAINTS COMMITTEE  
(NECC) ..... INTERESTED PARTY**

**COMMISSION ON ADMINISTRATIVE JUSTICE ..... INTERESTED PARTY**

**KATIBA INSTITUTE ..... INTERESTED PARTY**

**KITUO CHA SHERIA ..... INTERESTED PARTY**

**ACACIA EXPLORATION KENYA LIMITED ..... INTERESTED PARTY**



**MEMBER OF COUNTY ASSEMBLY EAST ASEMBO WARD .... INTERESTED PARTY**

**RULING**

1. The subject of the ruling is the Petitioners application brought by way of Notice of Motion dated 26<sup>th</sup> September 2024. The Petitioner seeks the following verbatim orders; -
2. That the Honourable Court be pleased to order the 1<sup>st</sup> Interested Party to avail the report on water quality analysis recommended in their report of 4<sup>th</sup> November, 2020.
3. That the Honourable Court be pleased to order for a site visit and to direct the 1<sup>st</sup> and 7<sup>th</sup> Respondent provide security for the same.
4. That the Honourable Court be pleased to summon the Attorney General of the Republic of Kenya Hon. Dorcas Oduor, the Cabinet Secretary for Mining & Blue Economy Hon. Hassan Ali Joho and the Cabinet Secretary for Environment, Climate Change and Forestry, Hon. Aden Bare Duale to appear before the Honourable Court and explain:
  - a. Why they have been condoning, permitting and/or allowing Isaac Owang Ogweyo and Joseph Andere Nyaanga to continue and/or proceed with illegal mining activities within Ramba Area for the last 6 years.
  - b. The whereabouts of the minerals and proceeds thereof extracted by the said Isaac Owang Ogweyo and Joseph Andere Nyaanga from their illegal mining activities within Ramba Area for the last 6 years.
5. That costs be provided for.
6. The application is premised on the following grounds on its face most of which are rehashed in the supporting affidavit to the application.
7. The application is supported by the Affidavit sworn by the Petitioner on even date.
8. It is deponed that the 1<sup>st</sup> Interested Party conducted site visit where the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are conducting their illegal mining activities and tendered a report on 4/11/2020 which pointed that the impugned activities have contaminated the local water sources. That the 1<sup>st</sup> Interested Party also took samples for testing and recommended the same for analysis and such the report for the same ought to be ready by now.
9. The Petitioner asserts that issues raised in the Petition filed herewith will better and properly be better determined if this Honourable Court visits the site and a report be tendered. That premised on the militia controlled by Isaack Owang, there is need for the 7<sup>th</sup> Respondent to provide security during the said visit.
10. The Petitioner asserts that the Attorney General is the legal adviser of the government of the Republic of Kenya while the Cabinet Secretaries in charge of Mining and Environment are exercising powers held in trust for Kenyans. That the Attorney General and Cabinet Secretaries in charge of Mining and Environment have all along been aware of the illegal mining activities but intentionally opted to condone and/or permit the same.
11. It is deponed that on 19<sup>th</sup> September, 2024 the Ministry of Mining & Blue Economy confirmed its awareness that Isaack Owang has been conducting illegal mining activities for the last six years.



- Therefore it is clear that the Attorney General and Cabinet Secretaries in charge of Mining and Environment are under duty to explain why they have supported illegal mining activities and blatant pollution of the environment by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.
12. Further the Attorney General and Cabinet Secretaries in charge of Mining and Environment should also explain the whereabouts of the minerals and/or proceeds thereof extracted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
  13. The application is supported by the 3<sup>rd</sup> Interested party through the replying affidavit sworn by Emily Kinama, its litigation Manager. She depones the supporting documents annexed provide compelling evidence of dereliction of statutory duties by State organs. That it is critical for the water quality analysis report to be produced in Court or for NECC to provide a sensible update or findings on the same given the likely impact of continued water contamination even as the hearing of Petition is underway which is in tandem with the precautionary principle.
  14. It is deponed the site visit will confirm with certainty whether the illegal mining activities have been ongoing despite the several orders and will also be key in enabling the court to make sense of the protective orders sought by the Petitioner amidst the various allegations. The court will also better understand the nature of evidence adduced by the parties in this matter.
  15. That moreover since the veracity of the stop order issued by the Ministry of Mining, Blue Economy and Maritime Affairs (MBEM) dated 19 September 2024 (Stop Order) is not in dispute, the Court should grant the prayer to summon the Attorney-General, Cabinet Secretary for MBEM Cabinet Secretary for Environment, Climate Change and Forestry to explain why they have been unable to enforce the stop order.
  16. Further, the wording in the Stop Order indicates that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have been non-compliant with past orders to stop the illegal mining activities. Specifically, the Stop Order indicates that previous stop orders dated 8<sup>th</sup> March 2024 and 5 April 2024 have not been complied with. To further indicate the severity of the non-compliance with the previous stop orders, the Stop Order is copied to all the State security departments in Nyanza Region, Siaya County and Rarieda Sub-County which is a clear indication of abdication of duty by the various State organs in the enforcement of law for it to get to a point where the State Department of Mining has to revert to requesting law-breaking individuals to comply with the stop orders instead of simply enforcing the provisions of the [Mining Act](#).
  17. Citing the provisions of Section 202 of the [Mining Act](#) on prohibition of unauthorized mining activities and Section 201 which empowers the Director of Mines or an authorized officer to institute proceedings regarding any contravention of any provision of the [Mining Act](#) or for any offence committed thereunder. It is submitted the failure to enforce the various stop orders amounts to abdicating the Constitutional duties imposed upon the State organs. As a result of their inaction, the Petitioner has suffered a breach of his constitutional right to a clean and healthy environment under Article 42 of [the Constitution](#).
  18. It is asserted that the application is based on the need to protect the rule of law and to guarantee the Petitioner's right to a clean and healthy environment. The prayers sought will also go a long way in ensuring that the Petitioner's constitutional right to access justice under Article 48 of [the Constitution](#) as the illegal mining continues even after the Petitioner's case has been delayed by the various appeals regarding jurisdiction, which reached to the Supreme Court of Kenya.



19. There is a high risk that the lawlessness and environmental harms will continue even though there are various stop orders (for contravention of the licensing requirements under the *Mining Act*) issued to the 2nd and 3rd Respondents concerning the illegal.
20. On the other hand the 2<sup>nd</sup> and 3<sup>rd</sup> respondents opposed the application through the affidavit sworn by Isaac Ogweyo Owang the 3<sup>rd</sup> respondent on 14/10/2024. It is averred that the allegation of the conduct of the site visit by the 1<sup>st</sup> Interested party are unsubstantiated as no evidence has been tendered in this regard. That the illegality of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' activities is yet to be determined by this court making the application premature.
21. The deponent reiterates that the allegations that the he operates a militia are unsubstantiated and malicious. The court is invited to allow the application.
22. The court is informed that the stop order dated 19/09/2024 is currently stayed vide Kisumu ELC JR No. E009 of 2024, R Vs Regional Mining Officer Kisumu & Others exparte Isaac Owang Ogweyo by an order issued on 29/09/2024. Additionally, the stop order dated 10/9/2024 by the Regional Mining office is out of order as the said issues are before this court pending determination.
23. It is asserted that it is unprocedural for the Petitioner to ask for summons for the AG and the Cabinet Secretaries herein to explain the whereabouts of the minerals and proceeds of the mining that are alleged to be illegal hen the court is yet to pronounce on the legality of the same.
24. Further that the request for site visit could be raised at the hearing of the main petition and did not necessitate this application.
25. The applicant in rejoinder to the above depositions swore a further affidavit wherein it is reiterated that the 8th Interested Party in the company of agents of the 1<sup>st</sup>,4th, 5th, 6th and 7th Respondents visited the site and a report dated 4th November, 2020 was prepared and submitted to Court. The conclusions therein are self-explanatory that the 2nd and 3rd Respondents were running illegal mining activities and also polluting the environment and local water sources.
26. That the 3rd Respondent cannot feign ignorance of the said report yet the same was filed in the Court vide the Replying Affidavit of Dr. John Kipkorir Chamo, the Secretary of the Interested Party, who reiterated the violations of the 2nd and 3rd Respondents.
27. It is emphasised that the stop order of 19.09.2024 is merely additional evidence that the 2nd and 3rd Respondents are conducting illegal mining activities. Notably, the 2nd and 3rd Respondents have not challenged the report aforesaid.
28. It is asserted that the 3rd Respondent has stated elsewhere that they have been conducting mining for the last 8 years within Ramba Area- Rarieda Sub County and as such the 1st, 4th and 5th Respondents as people charged with responsibility over the natural resources of the country have a duty to avail information relevant for purposes of protection of rights and fundamental freedoms.
29. Further indeed, the 1st, 4th and 5th Respondents have tendered their positions over the case and it is odd that the 3rd Respondent seeks to speak on their behalf. The 1st Respondent has higher obligation being the chief government legal adviser and it is strange that the 3<sup>rd</sup> Respondents seeks that the said office should not discharge its constitutional mandate.
30. That the opposition to the site visit is a cover up by 2nd and 3rd Respondents of their activities and attendant pollution. It is emphasised that it is advisable for the site visit to be done by the Court in advance to enable parties to make rejoinders and highlight their positions accordingly.



31. The rest of the parties did not respond to the application. The 5<sup>th</sup> & 8<sup>th</sup> Interested Party's opted not to participate in the present application. Mr. Ngararo for the 6<sup>th</sup> Respondent informed the court he would not oppose the site visit but requested to be given time to respond on the summoning of the PS. The reply is not on record

### **Hearing Of The Application**

32. The application was canvassed by way of written submissions. The applicants submissions are dated 14/03/2025. The 3<sup>rd</sup> Interested Party are dated 26/09/2025 and respondents 25/03/2025.

### **Analysis And Determination**

33. I have considered the application, the responses in support and against and the submissions on record. The main issue for determination is whether the orders sought should issue.
34. The application is brought under the provisions of Articles 50 and 159(2) (d) of *the Constitution* of Kenya 2010, Section 1A, and B, and 3A of the *Civil Procedure Act*.
35. Article 50 is on the right to a fair hearing in any dispute that can be resolved by application of law.
36. Article 159(2)(d) of *the Constitution* stipulates that justice shall be administered without undue regard to procedural technicalities.
37. Section, Section 1A, and B, and 3A of the *Civil Procedure Act* bid this court to facilitate the overriding objective of the *Civil Procedure Act* by enabling the just, expeditious, proportionate and affordable resolution of civil disputes.
38. The applicant desires that the 1<sup>st</sup> Interested Party should avail the report on water quality analysis recommended in their report of 4th November, 2020. This report is linked to a site visit conducted by The National Environmental Complaints Committee (NECC) to the site where the 2nd and 3rd Respondents were conducting the mining activities and pursuant to which visit they took samples for testing and recommended the same for analysis.
39. At paragraph 12 of the replying affidavit sworn by Dr. John Kipkorir Chumo the Secretary NECC on 18/11/2020, NECC is stated to have visited the site of the mining activities herein pursuant to the petitioner's complaint. They engaged the community as well as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and prepared a report produced as JKC1. Paragraph 17 of the affidavit sets out a number of recommendations but specific to this application is (d)that Water Resources Management Authority to conduct regular monitoring of water quality to ensure there is no pollution according to section 13 of the *Water Act* 2017. Paragraph 17 of the affidavit goes further to state that a water analysis report by the Water Resources Management Authority is awaited to confirm the extent of pollution to the nearby river by the activities. The recommendations are also contained in paragraph VIII (3) of the report dated 4/11/2020 which also shows the relevant government agencies expected to take further action at Paragraph X (3).
40. The importance of the above report to these proceedings therefore cannot be gainsaid. It is expected that there would be a follow up by the NECC on this matter after informing the Water Resources Management Authority of their initial findings and the need for the above reports. Indeed, I agree with the Petitioner/applicant who was the originator of the complaint that necessitated the visit and investigations by NECC that he had a legitimate expectation that the report would be availed.
41. The court would ordinarily equally expect such report would be produced as a follow up and for completeness of the investigations. The report cannot be wished away at all. I note that there is no



further affidavit by NECC that has been filed to produce the said report as a follow up to the specific recommendation of the said investigations. Moreover, the Water Resources Management Authority is not a party to these proceedings. The lull may be understandable following the various issues that were raised necessitating determination of the Apex Court that remitted the matter for hearing before this court including the applications filed thereafter.

42. Ordinarily the matter of availing the report would seem to anyone as a procedural issue as pointed by the 3<sup>rd</sup> Interested Party who supports the application. It's a matter that would have been easily handled at pretrial stage. However, this being a Petition I will focus on substantive justice. I therefore see no hinderance in allowing this prayer.
43. On the issue of the court making an order for site visit, I do not think I hear the 3<sup>rd</sup> respondent to be opposing the same. My understanding of paragraph 9 of his affidavit in response to the application is on at what stage of these proceedings would such an application be ordinarily urged. According to the 3<sup>rd</sup> respondent this would be at the hearing of the main petition. The applicant proposes the same to be undertaken in advance. I think this is pertinent and I will revisit the issue.
44. I have read the decision in *Ayoyih v Muhanji* [2023] KEELC 17511 (KLR) cited by both the applicant and 3<sup>rd</sup> Interested Party. The court had this to say about site visits; -

10. Whenever it becomes necessary for a court of law to conduct a site visit, the court does so to reach a just determination of the matter before it. The raw materials that a court of law uses in its determination are the law and facts. Facts are to be presented before the court as evidence. Consequently, site visits are essentially an occasion to receive evidence since the law can be cited by parties in pleadings or submissions. Further, the court can access the law on its own. A site visit that is incapable of yielding any evidence is not a prudent use of the court's time and resources. See *Beatrice Ngonyo Ndungu & another v Samuel K. Kanyoro & 2 others* [2017] eKLR'.

45. The court further stated, a site visit is as much a judicial process as a hearing in open court.
46. The 3<sup>rd</sup> Interested Party has cited the provisions of Order 18 Rule 11 which gives power to the court at any stage of a suit to inspect any property or thing concerning which any question may arise. The jurisdiction of a court to make a site visit is therefore not in doubt.
47. I think the question that remains then is whether a site visit is necessary in the circumstances of the case. According to the applicant he bases the request on interalia the grounds in the application, the extent to which the 2<sup>nd</sup> and 3<sup>rd</sup> respondents activities are violating the environment, pollution of the nearby water body and suppression of evidence.
48. I think for me a site visit should be welcome by all the parties in these proceedings. It prejudices no one, to the contrary it is more illuminating. For the court it will be useful in better appreciating the genesis and or subject of the petitioners claim, the issues in contention and also the status on the ground. Provision of security is an administrative issue which need not be discussed in this forum.
49. As I have noted earlier the issue may be at what stage of the suit the same should be undertaken. In my view it is a matter for all the parties to agree upon. I will therefore leave it for further discussion and participation of all the parties during the pretrial conference.
50. The court has been invited to summon the Attorney General of the Republic of Kenya, the Cabinet Secretaries for Mining & Blue Economy and Environment, Climate Change and Forestry, to appear before the Honourable Court and explain why they have been condoning, permitting and/or allowing Isaac Owang Ogweyo and Joseph Andere Nyaanga to continue and/or proceed with illegal mining



activities within Ramba Area for the last 6 years. Further the whereabouts of the minerals extracted and proceeds thereof.

51. In my considered view the summoning of the Cabinet Secretaries in person is uncalled for. I say so because there are governance structures that have been set where delegation of duties is what governs the day to day running of Ministries and government departments. In most cases what is sought to be done here by the said Cabinet secretaries is the responsibilities of the Chief Executives Officers or their equivalent who run these ministries and departments. They are the ones to be targeted for the day to day running and implementation of the designated mandates.
52. Moreover, I think we should not be jumping the gun here. A final determination of the illegality or otherwise of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents activities herein is a substantive issue awaiting determination in this petition (see prayer c) of the reliefs sought by the petitioner. Additionally in relation to the whereabouts of the minerals extracted and proceeds thereof the applicant states that it is the duty of the 1<sup>st</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents to account for the Mineral resources. This must be considered against the final determination in my view. Justice must be seen to be done on both sides of the divide. Both parties are entitled to a right to be heard. This is what a fair hearing is all about.
53. Moreover, an order of Mandamus has already been sought compelling the respondents to supply the petitioner or any member of Ramba with all mining records on Ramba area since 1998. If the petitioner wants to be more specific then he knows what he should do to his pleading.
54. The upshot of the foregoing is that the application partly succeeds. The following orders issue to dispose of the application dated 26<sup>th</sup> September 2024; -
  1. That an order hereby issues that the 1<sup>st</sup> Interested Party to avail the report on water quality analysis recommended in their report of 4th November, 2020.
  2. That the above report shall be availed within 21 days of today's date.
  3. That an order hereby issues for a site visit. Further directions to be issued.
  4. Prayer No. 3 of the application is hereby declined.
  5. The costs shall be in the cause.

**DATED, SIGNED, AND DELIVERED AT SIAYA THIS 7<sup>TH</sup> DAY OF JULY 2025**

**HON. LADY JUSTICE A.E. DENA**

**JUDGE**

**7/07/2025**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Abidha Nicolus Petitioner/Applicant

Ms. Akinyi for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent

No appearance for the rest of the parties

Court Assistant: Ishmael Orwa

