



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

PETITION NO. 1 OF 2015

(Formerly Nairobi Constitutional & Human Rights Division

Petition No. 272 of 2015)

**IN THE MATTER OF SIYIAPEI COMMUNITY LAND UNDER ARTICLES 40 AND 63 OF THE
CONSTITUTION**

AND

**IN THE MATTER OF THE UNLAWFUL ALIENATION AND APPROPRIATION OF SIYIAPEI
COMMUNITY LAND WITHOUT PROMPT, ADEQUATE OR EFFECTIVE COMPENSATION**

**IN THE MATTER OF THE ILLEGAL MINING AND EXTRACTION OF ROAD BUILDING
MATERIALS FROM SIYIAPEI COMMUNITY LAND WITHOUT COMPENSATION**

AND

**IN THE MATTER OF ENVIRONMENTAL DEGRADATION AND ENFORCEMENT OF
ENVIRONMENTAL RIGHTS UNDER ARTICLE 70 OF THE CONSTITUTION OF KENYA
2010**

AND

**IN THE MATTER OF ARTICLES 22, 23, 40, 48, 60, 63, 67, 70, 159, 258 AND 259 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF BREACH OF ARTICLES 2, 3, 5, AND 8 OF THE DECLARATION ON
THE RIGHTS OF INDIGENOUS PEOPLES**

AND

**IN THE MATTER OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS (1996)**

AND

**IN THE MATTER OF BREACH OF THE RIO DECLARATION ON ENVIRONMENT AND
DEVELOPMENT AGENDA 21 (1992)**

**IN THE MATTER OF BREACH OF THE REPORT OF INTERNATIONAL CONFERENCE ON
POPULATION AND DEVELOPMENT**

LAWRENCE TATIYIA OLE SEMPELE

(Suing on his behalf and on behalf of the

*Members of Siyiapei Community Group.....***PETITIONER**

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE KENYA NATIONAL HIGHWAYS AUTHORITY....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. This Petition was coming up for judgment. However, for reasons that will become evident, the court considered it more prudent to prepare a Ruling instead. That notwithstanding I find it necessary, as a first step, to set out the Petitioners' case before this court and answers thereto. The Petition was first filed in the Constitutional and Human Rights Division of the High Court in Nairobi. Subsequently, **Lenaola J.** (as he then was) ordered it transferred to this court. On 19/7/2016, the Petition was marked as settled between the Petitioners and the Kenya National Highways Authority, the 2nd Respondent.

2. The uncontested background to the Petition is as follows. The Petitioners, the Siyiapei community are an indigenous group of Maasai ethnic extraction, resident at Narok and belonging to the Purko clan. For several decades now, they have been embroiled in a dispute with their neighbours, also Purko, who are the members of the Ilmashariani group. The dispute relates to a piece of land in the area identified as Olepolos, which borders the Siyiapei River. The Siyiapei community claims that the said land has always belonged to them, although prior to the dispute they allowed the Ilmashariani Community to use it for pasture.

3. Thus, during land adjudication process in the seventies, the Siyiapei community objected to the registration of the Ilmashariani group as owners of the **Land Title No. Ilmashariani/Morijo 1/Narok** which included the disputed land parcel.

4. Proceedings were commenced by the Petitioners, resting with their appeal to the Minister being **Minister's Appeal Case No. 102 of 1972**. The appeal terminated in the Petitioners' favour. The Minister in his decision ordered that the disputed land parcel be split between the two community groups. The Petitioners were awarded a total of 7,915 acres in the decision. Subsequent attempts by the Ilmashariani Community group to challenge the decision through Judicial Review in **High Court Miscellaneous Civil Case No. 319 of 1985 In the matter of Land Adjudication Act and District Commissioner Narok District**, and later an appeal to the Court of Appeal in **Civil Appeal No. 10 of 1989** were unsuccessful.

5. In 1998 the Attorney General (the 3rd Respondent) notified the Director of Land Adjudication and Settlement of the outcome of the appeal in the Court of Appeal and advising that he proceeds to implement the decision of the Minister (in Appeal Case No. 102 of 1972) and to issue title deeds accordingly. There followed a prolonged exchange of correspondence between, *inter alia*, the Director of Land Adjudication and Settlement, the District Surveyor Narok and the Chief Land Registrar regarding the implementation of the decision.

6. Eventually, in 2004 the Director of Land Adjudication and Settlement sought the advice of the Chief

Land Registrar concerning the difficulties inhibiting implementation. At the same, time the District Surveyor, Narok, informed the Petitioners that the District Land Registrar had advised that **“the decision had been overtaken by events”**, because, titles in respect of the disputed land parcel had been issued to other parties within the Ilmashariani group. The said titles were **CISMARA/ILMASHARIANI MORIJO/434-449, 450 – 482, 483, 484, 529 – 531, 532, 571, 572 – 573, 574, 575, 576 – 577, and 579**. The Petitioners were further advised to commence court proceedings with the aim of nullifying the titles.

7. The Petitioners were and are aggrieved by this turn of events. They view the disregard of the Minister’s decision by the above state officers as constituting a historical land injustice against them, which falls under the mandate of the National Land Commission, sued as the 1st Respondent. Further that the actions of the state officers in question amount to an illegal appropriation of their land by the state, in contravention of Article 40 (3), 48, 63, 64 and 156 (6) of the Constitution, as well as other relevant international Covenants and Declarations to which the state is a party. Asserting the practical

impossibility of the forcible eviction of families now settled in the disputed land parcel in execution of the 1972 decision of the minister, the Petitioners consider compensation by the state as a more appropriate relief.

8. Thus they seek the following orders against the 1st and 3rd Respondents:-

“a. A declaration under Article 23 (3) of the Constitution that the Petitioner’s rights and the rights of the Siyiapei Community Group under Articles 28, 29, 40, 47, 48 and 64 have been violated by the state.

b. A declaration under Article 23 (3) (a) of the Constitution of Kenya that the Petitioner’s right and the right of the Siyiapei Community Group under Article 40 of the Constitution of Kenya to protection of the right to property and prompt full, fair and just compensation in respect of the compulsory acquisition has been violated by the State.

c. A declaration under Article 23 (3) (a) of the Constitution of Kenya that the Petitioner’s right and the right to the Siyiapei Community Group and legitimate expectation to fair administrative action under Article 47 of the Constitution has been breached by the State.

d. Special damages under Article 23 (3) of the Constitution for Kenya Shillings Four Billion Seven Hundred and Fifty Six Million Nine Hundred and Two Thousands (KShs 4,756,902,000.00) being compensation for the value of the parcel of land of 7,915 acres plus interest thereon at Court rates from 1985 until payment in full.

e. Kenya Shillings Eight Million Four Hundred and Eighty Two Thousand and Four Hundred (8,482,400) being the professional fees of the Land Economist (Valuer) charged for undertaking the valuation of the suit property.

f. General damages for loss of use, revenue, expected earnings and enjoyment of the property.

g.

h. General damages under Article 23 (3) of the Constitution in favour of the Petitioner as against the State being compensation for the State’s violation of the Petitioner’s right and the rights of Siyiapei Community Group under Articles 28, 29, 40, 47, 48 and 64 of the Constitution and Articles 3, 12 and 17 of the Universal Declaration of Human Rights 1948 and all other International obligation cited in paragraph 34F hereof.

i. Interest on all monetary awards, at Court rates from the date of filing suit until payment in full.

j. Costs of this Suit on a higher scale and for two counsel and Interest at Court rates from the

date of filing this Suit until payment in full.

k. Any other or further relief that this Court may deem apt to grant.

9. The Petition is supported by the two affidavits sworn by **Lawrence Tatiya Sempele** who brought the Petition in his own behalf and on behalf of the Siyiapei Community Group. The 3rd Respondent filed a replying affidavit on 19/7/2016. However after the hearing of the Petition got underway, one Miss Mwangi appeared in court on 19/7/2016 and sought time to file a further affidavit and submissions. I do not find on the record, any further affidavit by the 3rd Respondent.

10. In the Replying affidavit filed on 19/7/2016 the 3rd Respondent disputed any claim against the Ministry of Transport and Infrastructure, in connection with the 2nd Respondent. That by dint of **Legal Notice No. 193 (of 2011) the Kenya Roads (Kenya National Highways Authority) Order of 2011** and a vesting agreement dated 19th August 2010, the rights and obligations of the ministry in respect of the road project undertaken by the 2nd Respondent were transferred to the 2nd Respondent. The reference to a project therein relates to the rehabilitation of Maai Mahiu – Narok Road regarding which, the Petitioners had raised several complaints against the 2nd Respondent in this Petition.

11. The 1st Respondent did not participate in the Petition, beyond filing Grounds of Opposition on 21st October, 2016, a month after hearing of the Petition was over. Admitting its constitutional mandate to inquire into present and historical land injustices, including that alleged in the present Petition, the 1st Respondent asserts that the Petitioners have not approached the Commission in respect of the present dispute. Thus the 1st Respondent is improperly enjoined, not having been aware of the dispute and/or given a chance to act upon it. That as against the 1st Respondent the Petition fails the test in **Anarita Karimi Njeru -Vs- Republic (No. 1) [1979] 1 KLR 154**. The 1st Respondent asserted that the same is frivolous, vexatious and an abuse of the court process.

12. The Petitioners adduced evidence through **Lawrence Tatiya Sempele** who adopted his two affidavits on record and annexures thereto in the course of his evidence. Thereafter, the Petitioners withdrew their case against the 2nd Respondent and closed their case. Pursuant to orders made by this court, the 3rd Respondent was invited to file submissions but no such submissions are on record.

13. The Petitioners have filed submissions in support of their Petition. Restating their evidence on record, the Petitioners submitted that the Director of Lands and Settlement, the Director of Surveys (District Surveyor Narok) and the District Land Registrar ignored and flouted the decision in the **Minister's Appeal Case No. 102 of 1972** and caused the registration of the land parcel decreed to the Petitioners therein, in favour of members of the **Ilmashariani** Group as well as third parties.

14. Therefore, the state is guilty of compulsorily and constructively acquiring the Petitioner's land without due compensation. That the flagrant disregard of the decision in **Minister's Appeal No. 102 of 1972** by state officers constitutes a historical land injustice visited upon the Petitioners, and falls under the mandate of the National Land Commission, the alleged successor of the Director of Adjudication and Settlement. The Petitioner also submits that the state officers in question disregarded the advise of the Attorney General and facilitated the illegal appropriation of land to which Siyiapei Community Group was entitled, thereby contravening in contravention of Article 48, 63 and 40 (3) and 156 (6) of the Constitution in relation to the Petitioners.

15. In support of the claim for damages in respect of the violations of their rights, the Petitioners relied on the decisions of **Lenaola J** (as he then was) in **Arnacherry Limited -Vs- Attorney General [2014] eKLR** where relevant principles in **Ntandazeli Fose -Vs- Minister of Safety and Security CCT 14/96 (1997) ZACC 6**, were cited with approval. The Petitioners also placed reliance on the decision of the South African Constitutional Court in **President of the Republic of South Africa & Another -Vs Modderklip Boerdery (Pty) Ltd and Another CCT 20/2004** and in **re Estate of William Kimngeny Arap Leting (Deceased) Eldoret ELC Petition No.1 of 2013 [2016] eKLR**.

16. Regarding the applicability of the 2010 Constitution to the present Petition, counsel for the Petitioners submitted that the repealed Constitution contained a provision equivalent to the present Article 40 of the Constitution in safeguarding and protecting private property. Citing the cases of **E.T. -Vs- Attorney General & Another [2012] eKLR** and **Orbit Chemicals Industries -Vs- Attorney General [2012] eKLR** *inter alia*, the Petitioner argued that the present claim ought to be adjudged under the proviso of the repealed Constitution so far as rights and their enforcement in the High Court is concerned. In this regard, Section 75 (2) (on protection of property) and 84 (1) and (2) (on jurisdiction) as contained in the said Constitution were relied on.

17. The Petitioners asserted that the state misled them through an orchestrated pretence that the decision of the Minister was being implemented while surreptitiously dishing out the Petitioners' land parcel to third parties.

18. I have carefully considered the Petition herein, the affidavit and oral evidence in support thereof, as well as submissions. I have also considered the Replying Affidavit and Grounds of Opposition by the 3rd and 1st Respondents, respectively. The Replying affidavit by the 3rd Respondent was primarily tailored in defence of the Ministry of Transport and Infrastructure, in connection with the Petitioners' claim against the Kenya National Highways Authority. That claim was withdrawn by the Petitioners after the Petitioners had called their witness. Thereafter, the Petitioners closed their case.

19. Subsequently 3rd Respondent did not make any filings or otherwise participate in the matter. In so far as the 3rd Respondent was concerned therefore, the evidence of the Petitioner is uncontroverted. Ditto the 1st Respondent. The Petitioner has therefore submitted that the court should find that the Petitioners' case against the 1st and 3rd Respondents proven and allow the Petition. This is a reasonable general proposition in my view. However, this where the court's difficulties with this Petition start.

20. Based on the Petition, there is no prayer sought against the 1st Respondent even though at paragraph 23 of the Petition the Petitioners averred that:

“The above action on the part of State Officers was contrary to the Land Adjudication Act and to the Hon. Attorney General’s advice in letter Ref No. AG/MLE/17/85 of 1st April 1998. The same was in flagrant disregard of the decision in the Minister’s Appeal Case No. 102 of 1972. The same constitutes a historical Land injustice to the Siyiapei Community Group within the mandate of the National Land Commission under Section 5 (e) of the National Land Commission Act 2010. The Petitioners therefore move this Court for Orders compelling the 1st Respondent to act on the Petitioners’ Claim on the basis of their Constitutional Powers so as to address the historical injustice.” (*Emphasis Added*)

21. The Grounds of Opposition filed by the 1st Respondent confirm its above-stated mandate but the Commission complains it has been prematurely brought to court as the Petitioners' complaint had not been placed before the Commission, for action in terms of Section 15 of the National Land Commission Act. I can find no averment in the Petition or deposition in the affidavits supporting the Petition asserting the contrary. The Petitioners, at paragraph 31 (the numbering is erroneously repeated after paragraph 33) of submissions restate the mandate of the National Land Commission to investigate historical land injustices but proceeds at paragraph 32 to contend that:

“The National Land Commission came into existence in the year 2012 after the promulgation of the 2010 Constitution and passing of the enabling legislation..... It is the successor in obligations of the erstwhile Director of Land Adjudication and Settlement and is now charged with function of acquiring land for public use and effecting compensation therefor.”

22. While it is legally debatable whether the National Land Commission has succeeded the office of the Director of Land Adjudication and Settlement and exclusively assumed its full mandate, I also can find no corresponding averment in the Petition and affidavits, regarding the involvement of or failure by the National Land Commission to effect compensation to the Petitioners in respect of the alleged illegal

appropriation of the Petitioners' land. [On the mandate of the National Land Commission vis-à-vis the Ministry of Lands (see **Supreme Court Advisory Opinion Reference 2 of 2014 In the matter of National Land Commission [2015] eKLR**)]. It must be noted that the Petitioners' complaint concerning the acquisition of land for the Maai Mahiu – Narok Road project was tied to the withdrawn claim against the 2nd Respondent.

23. The 1st Respondent's objection that the Petitioners have failed to demonstrate any wrong doing on the part of the National Land Commission, has merit therefore. As stated in oft-quoted case of **Anarita Karimi Njeru -Vs- Republic (No. 1) [1979] 1 KLR 154:-**

“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 shall set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”

24. Further in **Trusted Society of Human Rights Alliance Vs. Attorney General & 2 Others [2012] eKLR** the court observed regarding the decision in **Anarita Karimi Njeru** that:-

“We do not purport to overrule Anarita Karimi Njeru as we think it lays down an important rule of constitutional adjudication; a person claiming constitutional infringement must give sufficient notice of the violations to allow her adversary to adequately prepare her case and to save the court from embarrassment on issues that are not appropriately phrased as justiciable controversies. However we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are too insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged.

The test does not demand mathematical precision in drawing constitutional Petitions. Neither does it require talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against the Respondents in a constitutional petition are fashioned in a way that gives proper notice to the Respondents about the nature of the claims being made so that they can adequately prepare their case.” (Emphasis added)

25. To my mind therefore, the Petition against the 1st Respondent is at best prematurely brought and at worst tenuous. In my view, the Petitioners herein, while classifying their complaint as constituting a historical land injustice admit the mandate of the National Land Commission to investigate such. At the same time, the Petitioners, rather than presenting their complaint before the National Land Commission, under Section 15 of the National Land Commission Act as a first step, have sued the National Land Commission. If the court were to grant the declarations sought in prayer a, b and c and compensation sought in the Petition, the entire dispute would dissipate having been resolved by the court. Thus it is surprising to this court that the Petitioners sued the 1st Respondent.

26. Rule 5(d)(i) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) states:

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just-

(i) order that the name of any party improperly joined, be struck out; and

(ii)”

27. Reviewing all the foregoing, I have come to conclusion that the National Land Commission was

improperly joined in this Petition and would order that its name be struck out.

28. Turning now to 3rd Respondent, the Petitioners assert severally that he gave appropriate legal advice to the Director of Land Adjudication and Settlement, upon the determination of the appeal by Ilmashariani Group in the Court of Appeal. At paragraph 4 of the Petition, the Petitioners restate almost in verbatim form the constitutional mandate of the Attorney General under Article 156 (4) (a) and (b) of the Constitution: the principal legal advisor to the government and mandated to represent the national government in court or in any other legal proceedings **“to which the national government is a party, other than criminal proceedings.”**

29. In its recital of the breaches of the Petitioners’ constitutional rights by State Officers (in this case the Director of Land Adjudication and Settlement, the Land Registrar and District Surveyors concerned), the Petition reiterates the illegal appropriation of the Petitioners’ land and proceeds to aver in the particulars set out at **paragraph 24 (x)** as follows:

“Failing to adhere to the advise of the Attorney General, the Chief Legal Advisor and representative of the National Government by ignoring such advise, falling into breach of Articles 156 (6) of the Constitution.....acts and omissions amount to Breach of the Constitutional right and guarantee to equal protection of and by law by the state and public organs/offices by favouring Ilmashariani and issuance of titles to Ilmashariani Communitydespite court orders in favour of the Petitioner.” (sic)

30. Thus, with respect to these alleged breaches, one must conclude that the Attorney General was brought on board not for any particular wrong done by his office but as a representative of the government, as is the practice under the Government Proceedings Act. Indeed the Petitioners appear to suggest that the Attorney General too was a victim of the alleged impunity of the State Officers. In respect of the claim that had been made against the 2nd Respondent, a national authority, the Attorney General was sued in the same capacity.

31. Once the Petition against the 2nd Respondent was withdrawn, all that remained was the Petitioners’ complaint regarding the alleged misconduct of various state officers in the Ministry of Lands through their alleged failure to heed the Attorney General’s advice, to issue titles in respect of disputed land to the Petitioners; and the subsequent alleged issuance of the said titles to the Ilmashariani Group, thereby violating the Petitioners’ rights to property and, access to justice, *inter alia*.

32. In the circumstances, the 3rd Respondent appears to be hanging loosely in the Petition. Which party is he representing, or is it enough for the Petitioners’ case that the Attorney General was made a party to the Petition? I do not think so, in the circumstances of this case. The malfeasance complained of was allegedly perpetrated by officers of the national government in the identified offices of the Director of Land Adjudication and Settlement; the Chief Land Registrar and his subordinates and the District Surveyor (Narok). These to my mind are necessary parties to this suit.

33. In my view, the context of this case, calls for a strict reading of Article 156 (4) (b) of the Constitution. It states:-

(4) The Attorney-General-

(a);

(b) shall represent the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings; and

(c)”(Emphasis added)

34. The national government is not a party in this case as the state organs allegedly responsible for the

breaches complained of, were not made parties to the Petition. My position on this question is fortified by the fact that the notice served upon the Attorney General by the Petitioners regarding their intention to sue dated 27th November 2014 and annexed to the supporting affidavit as “LTS 23” states concerning the “Proposed Respondent” that:

“The proposed Petitioner intends to sue the National Land Commission and the Attorney General in the High Court of Kenya at Nairobi (Constitutional and Human rights Division on behalf of the National Government Ministries/Departments:

a) The Ministry of Lands.

b) The Ministry of Roads and Public Works

c) The Attorney General in his capacity as the principal (legal) advisor and Representative of the National Government.” (sic)

35. The first addressee of the notice is the chairman of the National Land Commission. However the intimation given is that the proposed suit against the National Land Commission would be in its representative rather than direct capacity as was eventually the case. It is not clear to me why, despite the nature of the Petitioners’ complaint, it was decided against joining the Ministry of Lands or relevant departments. Whatever the explanation, the ultimate result is that the said Ministry could not and did not participate in the Petition. The Attorney General could not be deemed to represent a state body or organ that is not a party to these proceedings in terms of Article 156 (4) (a) of the Constitution.

36. In **Judicial Service Commission -Vs- Speaker of the National Assembly & 8 Others [2014] eKLR**, a bench of five judges considered *inter alia* the Attorney General’s mandate under the provisions of Article 156 (4) of the Constitution and Section 7 of the Office of the Attorney General Act. In its judgment, the court while answering the Attorney General’s assertion that the National Government was not a party to the said proceedings, considered the nature of the proceedings and the parties thereto before observing that:

“The Constitution does not define the national government, but it is implicit in its provisions that the national government is the national Executive, the Legislature and the Judiciary as opposed to the County or devolved government. That being the case, any dispute in Court that involves either of these organs of state to which the people of Kenya have delegated their sovereign power are proceedings in which the AG has a constitutional duty to appear.”
(Emphasis added).

37. However this does not necessarily mean that the Attorney General is a ready substitute to the substantive government organ, department or party in a dispute, or against whom a claim lies. In the present case, the offices against which the gravamen of the Petitioners’ complaint is directed are part of the executive arm of the national government, or the state, the latter which is defined at Article 260 of the Constitution as follows:

“State” when used as noun, means collectivity of offices, organs and other entities comprising the government of the Republic under this Constitution”

38. This latter term, namely “state”, is used in the Petition, prayers (a) (b) and (c), that seek declarations that the Petitioners’ various rights have been “**violated by the state**”. And certainly the damages and other compensation sought in the remainder of the prayers are against the State.

39. Rule 5 (b) of the Mutunga Rules provide:

“A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute.”

In this regard, I think I have said enough to demonstrate that in this case the failure or omission by the Petitioners to enjoin the specific organs of state, allegedly guilty of the malfeasance complained of, makes it difficult for this court to adjudicate fairly and with some degree of finality on this old dispute. If, despite the said omissions this court were to proceed to make a determination, based only on the pleadings and evidence of the Petitioners, it would have denied the impugned state organs the chance to defend themselves, for no reason of their own making.

40. Such a course of action would also contravene Article 50 (1), 48 and 159 (2) of the Constitution which guarantee the right to a fair hearing and access to justice for all persons, regardless of their status. Ultimately, the state would be condemned unheard in respect of a claim running into billions of shillings. Such sums as claimed would no doubt be paid by tax payers in the Republic. To my mind, that would be an unconscionable outcome.

41. It is unfortunate that the question of the non-joinder of the impugned state organs could not have been discovered earlier, as the 3rd Respondent also elected to play a peripheral role in this matter, the pleadings notwithstanding. Under Rule 5 (8) of the Mutunga Rules the court is empowered “**to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.**” In order to do justice to the Petitioners and to bring this long-running legal saga to a close, the court must have recourse, in the peculiar circumstances of this case, to Rule 5 (d) (ii) of the Mutunga Rules which states:-

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—

(i);

(ii) order that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.”

42. Consequently, I direct that the Petitioners do amend the Petition herein, in order to bring on board the state organs and offices cited in the Petition, in connection with the alleged illegal appropriation of the Petitioners’ land and resultant rights violations. The said amendments are to be effected within 14 days of today’s date, and the amended Petition served on all the parties within 14 days of filing. The parties will thereafter appear before the High Court of Kenya at Narok, in whose jurisdiction the dispute falls, to receive directions with regard to the further or *denovo* hearing and determination of the Petition, or such other order as the court may deem fit.

43. This Petition will therefore be removed to the Registry of the High Court at Narok and be listed for mention before the Presiding Judge for this purpose on 18th April 2017. Costs will abide the outcome of the Petition.

Delivered and Signed at Naivasha this 8th day of March, 2017.

Mr. Wafubwa for the Petitioners

N/A for the Respondents

Court Clerk – Barasa

C. MEOLI

JUDGE