



Kalba & another v Ministry of Lands, Housing and Urban Development & 4 others (Environment and Land Petition E002 of 2024) [2025] KEELC 6277 (KLR) (24 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6277 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND PETITION E002 OF 2024**

JM MUTUNGI, J

SEPTEMBER 24, 2025

IN THE MATTER OF: ARTICLES 22 & 258 OF THE CONSTITUTION OF KENYA, 2010.

AND IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 2, 3, 10, 35, 40, 42, 47, 60, 62, 63, 67, 69 AND 70 OF THE CONSTITUTION OF KENYA.

AND

IN THE MATTER OF: THE COMMUNITY LANDS ACT AND THE ENVIRONMENT MANAGEMENT AND COORDINATION ACT

BETWEEN

IDRIS FALIR KALBA 1ST PETITIONER

MOHAMED MAALIM ALI 2ND PETITIONER

AND

MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 1ST RESPONDENT

THE COUNTY GOVERNMENT OF GARISSA 2ND RESPONDENT

KENYA WILDLIFE SERVICE 3RD RESPONDENT

BADAL AHMED SHALE AS CHAIRMAN OF KAMUTHE WILDLIFE CONSERVANCY 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT



JUDGMENT

1. The Petitioners filed the petition dated 12th February 2024 which was supported by the Supporting Affidavit of even date sworn by Idris Falir Kalba, the 1st Petitioner herein. The Petition was amended on 7th October 2024 and by the Amended Petition, the Petitioners pray for orders:-
 - a. A declaration be and is hereby made that the conversion of the suit land into the Kamuthe Community Land vide Gazette Notice 8887 dated 30th June 2023 is unconstitutional, unlawful and of no legal effect and the land be reverted to the pre- 30th June 2023 status.
 - b. An order of certiorari be and is hereby issued bringing into this Court and removing for purposes of quashing Title No. Garissa/Kamuthe/2.
 - c. An order of certiorari be and is hereby issued bringing into this Court and removing for purposes of quashing the license issued by the 3rd Respondent to the Kamuthe Wildlife Conservancy.
 - d. Permanent injunction be issued against the 4th Respondent and other office bearers of the Kamuthe Wildlife Conservancy, their employees, staff, associate, agents, partners or any other party working with them from evicting the Petitioners and their communities from the Kamuthe Community Land and or from restricting access thereto.
 - e. A declaration be and is hereby made that the Petitioners' rights under Article 35, 40,42 and 47 were violated by the Respondents jointly and/or severally.
 - f. Costs of this Petition be provided for.
 - g. Any other reliefs this honourable Court may deem fit to grant.
2. The Petitioners in the Petition contend that they are residents of Kamuthe location in Garissa County. They aver that on 30th June 2023 the Cabinet Secretary Ministry of Lands, Housing and Urban Development issued Gazette Notice No. 8887 in Vol. CXXV- No. 157 declaring an adjudication programme for parts of Garissa County pursuant to the provisions of the *Community Land Act*, 2016. The Petitioners further averred that following the Gazette Notice, a portion of the land in Kamuthe, Garissa County was delineated, mapped and Surveyed for the purpose of registering it as a Community Land and that the process was finalised and a title was issued to the Kamuthe Community. The Petitioners contended the overwhelming majority of the residents of Kamuthe location, being pastoralists never had notice of the Gazette Notice respecting delineation, demarcation and the registration of the Kamuthe Community Land. They contended the registration of the land as Community Land was not carried out in compliance of the *Community Land Act*, 2016 as no public participation was carried out as envisaged under the Act.
3. The Petitioners further averred that the Respondents without the participation and involvement of the Respondents of Kamuthe location converted the use of the Community land to a Wildlife Conservancy without undertaking the necessary environmental impact assessment and/or social study and the land is presently guarded by armed guards who deny the residents access rights to graze their livestock. The residents are living in fear of being evicted from their Community land and argue that the conversion of their land was not in conformity with the *Community Land Act*, 2016 and was contrary to values and principles of good governance as espoused under Article 10(1) and (2) of *the Constitution*. They particularly averred the Respondents ignored to carry out public participation



- before the registration of the land as Community Land and the conversion of the same to a Wildlife Conservancy. The Petitioners argued the Respondents in addition to violating Article 10 of *the Constitution* also contravened Article 40(2) of *the Constitution* as they deprived the residents of their land. They further contended the Respondents were in breach of Article 47 of *the Constitution* relating to right to Fair Administrative Action and Article 35 of *the Constitution* in regard to denial to access of their right of access to information relating to the registration and change of user of their community land. The Petitioners thus contended they were entitled to the redress they sought in the Petition and urged the Court to grant them the remedies.
4. The 1st and 5th Respondents filed a Replying Affidavit in response to the Petition sworn by Amos Musyoka, the Deputy Director Land Adjudication and Settlement. He affirmed the land in dispute was Community land within the meaning of Article 63 of *the Constitution*. He averred that it was true the Cabinet Secretary Gazetted the subject land for adjudication of community land in Garissa vide Gazette Notice No. 8887 Vol CXXV – No. 157 Kamuthe Community on 30th June 2023. He further averred that the Garissa County Government issued an inventory under Form C.L.A dated 16th January 2023 that showed user of the land as agricultural and grazing. Subsequently he stated a notice dated 20th March 2023 was issued indicating the intention to survey, demarcate and register the suit land as community land. He averred that due process was followed and the process of survey was completed and all the beneficiaries were identified and area list together with the cadastral map was forwarded to the Land Registrar for registration.
 5. The 1st and 5th Respondents averred the Community were involved and participated in the adjudication process and that they elected their Officials Management Committee and that the election of the Committee was by the Community members after notification. They contended the provisions of the *Community Land Act* were fully complied with in completing the process of adjudication and that the Community members on their own initiative set aside land for conservancy measuring 32.647 and a title was issued for the purpose on 23rd August, 2023. The 1st and 5th Respondents further affirmed after the Community set aside the land for conservancy, the conservancy was duly registered with Kenya Wildlife Service (KWS) who have directed the Community to prepare a management plan which inter alia will address any environmental impact and any mitigation measures to be employed. The 1st and 5th Respondents thus contend there was ample public participation and involvement in the registration of the Community Wildlife Conservancy and the Petition was therefore without any merit.
 6. The 4th Respondent, Badal Ahmed Shalle, swore a Replying Affidavit dated 23rd April, 2024 in opposition to the petition. He explained that members of Kamuthe Community applied to the Community Land Registrar to be registered as a Community. He averred that all the necessary procedures as outlined under Section 7 of the *Community Land Act* were complied with before Kamuthe Community was registered. The 4th Respondent in the Replying Affidavit annexed the Notices issued by the Land Community Registrar leading to the Registration of Kamuthe Community and certificate of registration issued.
 7. The 4th Respondent further deposed the necessary processes were duly adhered to in having Kamuthe Community land adjudicated, surveyed, demarcated and delineated and a title issued. He affirmed the elected Land Management Committee members of the community are the ones who pursued the registration. He denied that Kamuthe Wildlife Conservancy were the ones who were managing the Community land and that they had denied members of the Community access rights to graze their livestock. He averred there was adequate public participation before the registration of the community and the Wildlife Conservancy.



8. The Petitioners in response to the 1st and 5th Respondents Replying Affidavit, swore a further Affidavit dated 24th February 2025 through the 1st Petitioner, Idris Falir Kalba. The Petitioners reiterated that no public participation was carried out and nor was any environmental impact assessment conducted before the approval for registration of the Kamuthe Wildlife Conservancy.
9. The Petitioners explained the 2nd Respondent approved the registration of a conservancy on Kamuthe Conservancy land vide a letter dated 7th June 2022 yet Kamuthe Community had neither been registered as a Community nor had the land been registered as Community land in their favour under the provisions of the Community Land Act, 2016. The Petitioners averred that the Community Land Registrar only called a meeting of members of Kamuthe Community vide the Notice dated 15th February 2023 inviting members to a meeting on 7th March 2023 at which meeting the Community members were to elect the Community Land Management Committee in accordance with the Community Land Act.
10. The Petitioners thus contended the approval by the 2nd Respondent of a Wildlife Community Conservancy in 2022 was flawed as Kamuthe had not been registered as a Community and no land had been registered or set apart for Kamuthe Community. It is only the Management Committee of Kamuthe Community land that could have lawfully sought to have a conservancy registered for the Community and since no such Management Committee of Kamuthe Community land was in existence, the 2nd Respondent could not on the basis of having been approached by purported representatives of Kamuthe Community lawfully give approval for the establishment of Kamuthe Wildlife Conservancy. The Petitioners therefore pray that the certificate of title issued to Kamuthe Wildlife Conservancy be cancelled and/or revoked for having been acquired irregularly and unprocedurally.
11. The Petition was heard by way of Written Submissions. The Petitioners, the 1st and 5th Respondents and the 4th Respondent filed their respective submissions. The County Government Garissa (2nd Respondent in the Amended Petition) neither filed a response and/or submissions.

Petitioners Submissions.

12. The Petitioners submitted that due process was not followed in the issuance of Title No. Garissa/Kamuthe/2 where the Kamuthe Community Wildlife Conservancy was established. The Petitioners contended the provisions governing the process of the registration of a Community Land under the Community Land Act was disregarded as was the requirement of public participation as underpinned by the Constitution. The Petitioners argued there was violation of Article 10 of the Constitution as regards the requirement of Public participation and Article 69(1)(d) and (f) of the Constitution as appertains to the necessity to have environmental impact assessment carried out before the implementation of any development of land that had potential to have an impact on the environment.
13. The Petitioners submitted that the designated use of the Kamuthe Community Land falling under Fafi Constituency as set out in Form CLA6 annexed to the Replying Affidavit of the 1st and 5th Respondents “AG -1” under column 5 as for:-

“Human Settlement, small scale agriculture, Livestock rearing, cultural heritage site indigenous forests, sand harvesting, quarry Stoney mining, ballast making, bee keeping, poultry-keeping, tourism, rangeland, water catchment area, group activities, business and entrepreneurship, burial sites, fishing.”



14. The Petitioners contended such restricted user of the Community Land could only be converted or changed after there had been wide public consultations and public participation of the Community. The Kamuthe Community was unregistered and for the user of the land to be converted from the user above to community Wildlife Conservancy, the Kamuthe Community needed, first to be registered in its name, and for wide public participation to be carried out amongst the members to have the members to consent to the Wildlife Conservancy being established for the Community. The Petitioners argued the Kamuthe Community had not been registered as at 2nd May 2022 when allegedly a meeting was held with members of Kamuthe Community to seek validation for the registration of Kamuthe Wildlife Conservancy. Further on 7th June 2022 when the County Government of Garissa purported to give its approval for the registration of the Kamuthe Wildlife Conservancy, Kamuthe Community had not been registered under the *Community Land Act*, and therefore did not have a Community Land Management Committee who could have led the process to register a Community Wildlife Conservancy.
15. The Petitioners therefore submitted that to the extent that Kamuthe Community land had not been registered in the name of the Community at the time approval for the establishment of Kamuthe Wildlife Conservancy in Kamuthe Community land was approved, the registration and establishment of the Wildlife Conservancy was a nullity as it was done in violation of *the Constitution* and of the *Community Land Act*. The Petitioners in support of their submissions placed reliance on the case of *Osman & 164 Others (suing on their behalf and behalf of Residents of Merit Sub County, Chari, and Cherab Wards in Isiolo County) –vs- Northern Rangelands Trust & 8 Others (2025) KEELC 99(KLR)* where the Court having found there had been Wildlife Conservancies established without due public participation and on Community land that had not been registered in the name of the Communities, proceeded to annul and revoke the licences issued in respect of the conservancies..

1st and 5th Respondents submissions.

16. The 1st and 5th Respondents in their submissions argued there was due compliance with the law before the Wildlife Conservancy was established. They submitted the Community Land Registrar duly registered Kamuthe Community after a resolution of Kamuthe Community members elected their representatives on 7th March 2023. They submitted it was the Kamuthe Community Land Management Committee who applied for registration as Community and were duly registered on 14th March 2023. It was their argument that the legal requirements for the registration were fully complied with. They argued there was adequate and appropriate public participation before Kamuthe Community Land was registered and title issued. The 1st and 5th Respondents contended it was not true that the Petitioners were denied grazing rights. They submitted that the Community land was in excess of 149000 acres and only 32,674.28 Ha (approximately 80,700 acres) was set apart for the Conservancy and besides *the constitution* establishing the Community land allowed unrestricted access to members to the Community land set aside for the conservancy.

4th Respondents Submissions.

17. The 4th Respondent in his submissions contended that the suit land was registered as Community Land in accordance with the law. He argued the land set aside as a Wildlife Conservancy was only a portion of the land belonging to Kamuthe Community. The 4th Respondent submitted that the Community Land was regularly registered in favour of Kamuthe Community after the process stipulated under the *Community Land Act* had been complied with as per Section 7 of the Act. The 4th Respondent argued the Petitioners had not demonstrated any valid reasons to warrant the Court to find that their rights had been violated and/or to justify any intervention by the Court to give the Petitioners any redress.



Analysis Evaluation and Determination.

18. The issues that arise for determination in this petition are as follows:-
- i. Whether the registration of Kamuthe Land Community and the issuance of land title Garissa/Kamuthe/2 violated the provisions of the Constitution and the Community Land Act, 2016?
 - (ii) Whether the established of Kamuthe Community Wildlife Conservancy violated the principle of public participation under Article 10 of the Constitution and the provisions of Section 7 of the Community Land Act, 2016?
 - (iii) Whether the Petitioners are entitled to the reliefs sought in the Petition?
19. There is no dispute that the land within Fafi Constituency, Garissa County was unregistered land and was therefore Community Land within the definition of Community land under Article 63(2) of the Constitution and was held by the County Government on behalf of the community under Article 63(3) of the Constitution. Article 63(4) of the Constitution restricted any dealing with Community land and provided as follows:-
- 63(4) “Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.”
20. Under Section 4 of the Community Land Act, Cap 287 Laws of Kenya, community land vests in the Community and under Section 4(3) of the Act may be held under any of the following tenure system :-
- a. Customary
 - b. Freehold
 - c. Leasehold and
 - d. Such other tenure system recognised under the Act or other written law.
21. Section 7 of the Community Land Act sets out the procedure for registration of Communities who claim an interest in land and provides as follows:-
1. A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.
 2. The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.
 3. The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.
 4. The community land registrar may use all available means of communication including electronic media to reach the community members.
 5. The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.



6. The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.
22. Section 8 of the Act sets out the procedure for recognition and adjudication of Community Land rights before such land is registered in favour of a given Community and title issued to the Community. Once the land is registered in favour of the Community, the Community Land Management Committee elected under Section 7(5) and Section 15(3) of the Act is charged with the duty of managing and administering the Community land for the benefit of all the members of the Community. Community land may under Section 21 of the Act be converted to public land or to private land provided approval by at least two thirds of the members of the Community is obtained in a special meeting convened for that purpose under Section 21(2) of the Act. Section 21(2) of the Act provides:-
- 21(2) A registered Community shall before the conversion of a registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.
23. Under Section 19 of the *Community Land Act*, only a registered community may submit to the County Government a plan for the development, Management and use of the Community land administered by the registered community for approval. Section 19(1) of the *Community Land Act*, provides as follows:-
- 19(1) A registered community may, on its own motion or at the request of the county government, submit to the county government a plan for the development, management and use of the community land administered by the registered community for approval.
24. In the instant matter it is evident having regard to the Replying Affidavit sworn on behalf of the 1st and 5th Respondents by one Amos Musyoka and the Replying Affidavit sworn by Badal Ahmed Shalle on behalf of the 4th Respondent, that indeed due process was adhered to in regard to the registration of Kamuthe Community. There was a formal notification by the Garissa Community Land Registrar for a meeting on 7th March 2023 of ALL Kamuthe Community Members published in the Daily Nation dated 15th February 2023 (“BASI”). It was clear in the notice that the Notice was issued under Section 7(2) of the *Community Land Act* for the purpose of electing the Community Land Management Committee. At the said meeting the Community Land Management Committee members were elected and it was resolved that the Community applies to be registered under the *Community Land Act*. An application was made and Kamuthe Community was duly registered under the provisions of the *Community Land Act* on 14th March 2023 and issued a certificate of Registration No. 002 by the Community Land Registrar, Garissa. The Minutes of 7th March 2023 held at Kamuthe Trading Centre indicates that about 600 Community Members attended and at the meeting the Assembly elected 15 members to be their Community Land Management Committee members. The Committee at the meeting was mandated by the Assembly to pursue registration of the Community under the provisions of the *Community Land Act*.
25. The Community Land Management Committee upon being elected applied for registration of Kamuthe Community and registration was effected in compliance with Section 7 of the *Community Land Act*. The process of recognition and adjudication of Community Land as provided under Section 8 of the Act was adhered to as the appropriate Gazette Notice of intention to survey, demarcate and register Community land was issued vide Gazette Notice No. 8887 dated 30th June 2023 and published on 7th July 2023. The County Government of Garissa had earlier prepared and submitted to the



Cabinet Secretary an inventory form for unregistered Community land dated 23rd April 2019. Included in the inventory was Fafi Community within which Kamuthe Community falls.

26. The concern of the Petitioners seems not to be the registration of Kamuthe Community under the provisions of the [Community Land Act](#) but rather the registration and licensing of Kamuthe Wildlife Conservancy. The process outlined by the 1st and 5th Respondents and the 4th Respondent clearly related to the registration of Kamuthe Community land under the [Community Land Act](#). The process of registration of Kamuthe Community under the Act, cannot be faulted as it is evident due process was followed as provided under the Act.
27. The registration of a Wildlife Conservancy within Community land relates to use of such land as a Wildlife Conservancy and would invite the approval of the members of the Community as per the threshold of two third of the members of the Community as provided under the Act. Under Section 39 of the Wildlife Conservation Act, 2013 a community that owns land inhabited by Wildlife may establish a wildlife conservancy. Section 39 of the Wildlife Conservation Act, 2013 provides:-
39. Any person 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.
27. While Kamuthe Community may have been legally and validly registered under the [Community Land Act](#), registering the land it owned or part of it as a Wildlife Conservancy constituted use of such land and the Community members needed to give their approval for their land to be used for such purpose. Section 19 of the [Community Land Act](#) makes provision for land use and development planning of Community land and envisages that the community is a registered one. Section 19(1) and (2) of the [Community Land Act](#) provides as follows:-
- (1) A registered community may, on its own motion or at the request of the county government, submit to the county government a plan for the development, management and use of the community land administered by the registered community for approval.
- (2) Before submitting a plan to the county government under subsection (1) a registered community shall—
- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the land;
- (b) incorporate in the plan a statement that it has considered those issues in paragraph (a) when drawing up the plan;
- (c) consider any environmental impact plan pursuant to existing laws on environment;
- (d) comply with the values and principles of [the Constitution](#);
- (e) seek ratification from the members of the registered community; and
- (f) be bound by any approved relevant physical development plan.
28. Under paragraph 19(2)(e) any use and development plan has to be ratified by the members of the registered community.
29. In the present Petition the Kamuthe Community Land Management Committee who were elected only on 7th March 2023 resolved to apply to the Community Land Registrar for registration on 8th March 2023 and the Community was registered on 14th March 2023. There is no evidence as to when Kamuthe Community applied to have their land and/or part of their land registered as a Wildlife



Conservancy. The letter dated 13th March 2013 by the Director General KWS addressed to Kamuthe Wildlife Conservancy annexed to the Replying Affidavit of Amos Musyoka (“AM6”) making reference to undated letter by the County Government of Garissa recommending the establishment of the conservancy, no doubt affirms the application for registration of a Wildlife Conservancy was made before the Kamuthe Community was registered. Clearly therefore there was no compliance with the provisions of Section 19 of the Community Land Act.

30. While a Wildlife Conservancy may have been in operation before Kamuthe was registered as a Community as per the minutes of 2nd May 2022 and letter dated 7th June 2022 from the County Government of Garissa, once the Community was registered, it was incumbent on the Community Land Management Committee to seek and obtain approval of the Community members to have the Wildlife Conservancy registered and issued with a licence.
31. The registration therefore of the Kamuthe Wildlife Conservancy was without the approval of the members of the registered community and failed to comply with the provisions of the Community Land Act, 2016. A reading of Section 19 and 20 of the Community Land Act, 2016 makes it clear that there would have been necessity for an environmental impact assessment to be undertaken to affirm whether or not there would be any environmental impacts that would impact the environment negatively (Section 19(2) (a) & (c) and Section 20(1) and 2(a). There was no approval by NEMA that was exhibited. The approval of the Wildlife conservancy by KWS was given before even the Cabinet Secretary Lands had issued Notice of Intention to adjudicate, demarcate and survey the Community land and as such the land to which the conservancy related was unidentifiable.
32. Having reviewed and considered the petition and the opposition thereto, I am satisfied the petition has merit. There was no adequate public participation before the Kamuthe Wildlife Conservancy was registered. The Community members were not involved in public participation as there is no evidence that they were involved in the approval of registering Kamuthe Wildlife conservancy on any portion of their land. I however find and hold that the registration as a Community under the provisions of the Community Land Act was validly done and there was appropriate public participation of the members. Equally the title to the parcel of land Garissa/Kamuthe/2 measuring 32,674.28 Hectares registered in the name of Kamuthe Community was regularly done save for the endorsement that there was an easement in favour of Kamuthe Wildlife Conservancy. The interest of Kamuthe Wildlife Conservancy noted in the register was not procedurally acquired and therefore not valid.
33. I therefore issue the following consequential orders:-
 1. That the registration and issue of any operating licence in favour of Kamuthe Wildlife Conservancy was in violation of the Constitution and the provision of the Community Land Act for want of public participation.
 2. Any license issued by Kenya Wildlife Service to Kamuthe Wildlife Conservancy is null and void and is hereby revoked and/or cancelled.
 3. Any interest noted in the register of title No. Garissa/Kamuthe/2 in favour of Kamuthe Wildlife Conservancy is hereby cancelled.
 4. A declaration is hereby issued that Kamuthe Wildlife Conservancy operated and managed by the 4th Respondent and other officials is illegal until the establishment of a Wildlife Conservancy through legal means as envisaged under the Community Land Act and the Community Wildlife Conservation Act, 2013 is undertaken.
 5. The parties shall meet their own costs of the Petition.



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY
OF SEPTEMBER 2025.**

J. M. MUTUNGI

ELC JUDGE

