



REPUBLIC OF KENYA



**KENYA LAW**  
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**Makoko v County Government of Taita Taveta (Environment and Land Petition 1 of 2025)  
[2025] KEELC 6282 (KLR) (Environment and Land) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6282 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND PETITION 1 OF 2025  
EK WABWOTO, J  
SEPTEMBER 16, 2025**

**BETWEEN**

**ALFRED NJURUKA MAKOKO ..... PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF TAITA TAVETA ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner moved this court vide a Petition dated 3<sup>rd</sup> April 2019 which was later amended on 10<sup>th</sup> June 2025 seeking for the following reliefs:-
  - a. A declaration that the continued implementation of the said project, devoid of consultation with the Petitioner violates his rights under Article 40(3)(b)(i) of the Constitution of Kenya.
  - b. An order of eviction to issue against the Respondents.
2. The Petition was opposed by the Respondent's wide grounds of opposition dated 7<sup>th</sup> July 2025.
3. Pursuant to the directions issued by this Court, the Petition was canvassed by way of affidavit evidence and written submissions upon which the parties were allowed to also make oral highlights in respect to the same.

**The Petitioner's case and submissions**

4. The Petitioner contends that he is the owner of L.R No. 473 located at Mahoo Ward, Taveta Sub County. That sometimes in 2017, the Respondent encroached on his land with the aim of drilling water. The said project was known as Malikiloriti (A) Water Project which was undertaken and completed by the Respondent. Upon its completion, the residents of the area are now being fully supplied with water emanating from the said borehole.



5. It was contended that his family lives on the said land and that the Respondent has undertaken all the activities without any form of consultation or authority from the Petitioner and all his efforts to seek audience from the Respondent have been futile.
6. It was also averred that through the Respondent's actions, his family has been unable to use the land. The Petitioner also averred that he has been serving a prison sentence since December 2014 and is currently in custody at Shimo la Tewa Maximum Prison.
7. During the plenary hearing of the Petition, the Petitioner made oral submissions and submitted that the Respondent has made over 5 Million from the said project. His children have been unable to go to school and he has been greatly affected. He also urged the court to allow the Petition and grant the reliefs sought.

### **The Respondent's case and submissions**

8. The Respondent opposed the Petition vide grounds of opposition dated 7<sup>th</sup> July 2025. It was pleaded that;
  - i. The Amended Petition is hopeless, fatally defective, a non-starter and a waste of precious judicial time since the Petitioner has sued the wrong party to the case to whom even if the reliefs sought are granted cannot be enforced against the Respondent.
  - ii. The provisions of Section 107 of the Land Act, 2012 provides that the National Land Commission is the authority that acquires private or public land compulsorily on behalf of the National or County Government. The Petitioner ought to have sued the custodian of the lands in Kenya instead of the Respondent herein.
  - iii. Further the impugned project pursuant to the Water Act is a shared responsibility vested on the water regulatory boards both under the National Government and on water service providers under the County Governments, the Respondents herein.
  - iv. Within the Respondent County boundaries, matters concerning water management which is the project that the Petitioner together other residents in the community, is under Coast Water Service Board which falls under the National Government and Tavevo Water and Sanitation Company which is a county water service providers established under Section 77 of the Water Act.
  - v. Both the Coast Water Service Board and Tavevo Water and Sanitation Company are legal entities in law which can sue and be sued under their own names.
  - vi. The borehole that the Petitioner alleges was dug and installed by Coast Water Service Board with the express authority of the residents including the Petitioner through his wife as indicated in the minutes dated 27<sup>th</sup> August, 2018.
  - vii. The Petitioner and the community residents consented to the digging of the borehole without compensation hence the Petitioner should be estopped from evicting the said project and/or the authority that dug the borehole after claims of compensation failed.
  - viii. The Amended Petition in its entirety is premised on factual issues to which no evidence has been furnished to back the same to wit:
    - a. The Petitioner has not furnished evidence to show that the project was actually dug up in his land.



- b. The Petitioner has not presented any evidence of proprietary rights e.g. Certificate of Title over the suit property;
  - c. Since he is serving a life jail term, the Petitioner has not provided any evidence to show that he fully followed the laid down procedure for compensation as required by the [Land Act, 2012](#);
  - d. The Petitioner cannot feign ignorance from his dilatory nature of not pursuing the correct procedure for compensation only to later change and pray of eviction orders;
  - e. The Petitioner never wrote to the National Land Commission of any letter requesting for compensation.
- ix. The Petitioner did not exhaust the interna remedies required under the [Land Act, 2012](#) while on his quest for compensation hence cannot be allowed to seek eviction orders when he did not exhaust the remedies as established under the Act. The doctrine was aptly stated in [Geoffrey Muthiga Kabiru & 2 Others =Versus= Samuel Munga Henry & 1756 others](#) (2015) KLR, where the Court of Appeal stated that:
- “It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be for a of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts.....”
- x. The Petitioner ought to have written to the National Land Commission where upon dissatisfaction of its decision appeal to the Land Acquisition Tribunal or referred the matter to the Land Acquisition Tribunal, sadly none of the above was done.
  - xi. One of the tenets of access to justice as envisaged under Article 48 is just and expeditious disposal of matters, that tenet is hugely hindered by the Petitioner prayer of evicting the Respondent without first adhering to the internal remedies available to him.
  - xii. In light of the foregoing, it is clear that the Amended Petition 10<sup>th</sup> June 2025 is wholly incompetent, scandalous, frivolous, vexatious and gross abuse of the process of Court for the reasons averred above, the same should be dismissed with costs.
9. Learned Counsel, Mr. Kilimo also filed written submissions dated 7<sup>th</sup> July 2025 which were highlighted on 28<sup>th</sup> July 2025 during the hearing of the Petition.
10. It was submitted that the Petitioner’s wife one Joyce Mnyiva was consulted before the commencement of the project as per the minutes dated 27<sup>th</sup> August 2018 and she agreed and consented on behalf of the Petitioner. It was also submitted that the Petitioner gave out the land voluntary for use by the community as they access water.
11. In respect to compensation, it was submitted that the Petitioner was the one supposed to follow up on the same with the National Land Commission and he never complied with the procedure set out under the law. Reliance was placed on the cases of [Patrick Musimba =Versus= National Land Commissioner & 4 Others](#) (2016) eKLR, [Sato Nyumbani Limited =Versus= National Land Commission](#) (Tribunal Case E012 (2014) KLAT 670 (KLR) 16 May 2024) (Judgment) and [Gikiri Thuo & 5 Others =Versus=](#)



12. It was also submitted that since the community is already enjoying water from the said borehole and benefiting from the same, it will be absurd to evict the Respondent and that the Court should allow National Land Commission to compensate the Petitioner through his wife since the Petitioner is serving a life sentence.
13. It was further submitted that the project was done by Coast Water Services Board which is a legal entity that ought to have been sued by its own name and thus the reliefs sought by the Petitioner cannot be granted.
14. The Respondent submitted that the court should refer the matter to the National Land Commission or the Land Acquisition Tribunal as established under Section 133A of the Land Act, 2012 so that the Petitioner can be compensated.

### **Analysis and Determination**

15. The Court has considered the entire Petition and submissions by both parties. The following issues fall for determination:
  - i. Whether there was adequate consultation and or consent obtained from the Petitioner prior to the commencement of the Malukiloriti “A” Water Project.
  - ii. Whether there was any violation of the Petitioner’s right in respect to the actions undertaken by the Respondent.
  - iii. Whether the Petitioner is entitled to the reliefs sought in the amended Petition.
16. It is not in dispute that the Petitioner herein is the legitimate owner of Land Parcel Taveta/Mahoo/473 which was registered in his name on 3<sup>rd</sup> April 2012 as per the title documents that was produced in court. It is also not disputed that there has been a water project known as Malukiloriti ‘A’ Water Project which comprises of a borehole that was undertaken on the said property. It is also not disputed that the Petitioner is currently serving a life sentence at Shimo la Tewa Maximum Prison which he has been serving since 2014 way before the commencement of the project.
17. From the evaluation of the evidence that was tendered herein, it is conceded by the Respondent that the consent and or consultation to use the said land was obtained from the Petitioner’s wife Mnyiva Raphael whom according to the Respondent had consented on behalf of the Petitioner for the land to be utilized for the drilling of the borehole on the Petitioner’s land.
18. The question then that the Court has to decide is whether the same amounted to proper consent and or sufficient consultation on behalf of the Petitioner prior to the commencement of the said project.
19. From the analysis of the evidence tendered herein, there was no evidence that the Petitioner who was the owner of the land had been consulted and or consented prior to the commencement of the project. There was also no evidence tendered to justify the Respondent’s contention that the Petitioner had instructed or allowed his wife to give consent on his behalf prior to the commencement of the project.
20. From the evidence filed by the Petitioner, he produced a letter dated 29<sup>th</sup> January 2018 which clearly indicated that he had not been consulted nor had he consented to the project. The Respondent knew very well that the Petitioner was the owner of the land and as such they ought to have consulted him and obtained his consent prior to the commencement of the project. It did not matter whether or not he was in prison serving a life sentence.



21. In view of the foregoing, it is the finding of this court that the Respondent failed to obtain any consent nor consult with the Petitioner prior to the commencement of the said project.
22. As to whether the actions of the Respondent amounted to any violations of the Petitioner's right, it was contended by the Petitioner that Article 40 of the Constitution protects his right to property and the actions of the Respondent was a violation of the same.
23. Article 40 of the Constitution reads:

Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—  
of any description; and  
in any part of Kenya ....
24. The sanctity of title to property under Article 40 of the Constitution was enunciated in the Supreme Court decision in Rutongot Farm Ltd v Kenya Forest Service & 3 others [2018] eKLR, where the Court held that:

“... once proprietary interest has been lawfully acquired, the guarantee to protection of the right to property under Article 40 of the Constitution is then expressed in the terms that no person shall be arbitrarily deprived of property. The same guarantee existed in Section 75 of the repealed Constitution.”
25. Article 40 of the Constitution protects the right to property and the same prohibits arbitrary deprivation of such property without following due process. In the instant case, it did not matter whether or not the Petitioner was serving a life sentence since he was still entitled to the said right and protection of his property.
26. Having earlier found that the Petitioner was never consulted nor compensated prior to the commencement of the project, it therefore follows that the Respondent's actions amounted to a violation of his right to property as stipulated under Article 40 of the Constitution.
27. As to whether the Petitioner is entitled to the reliefs sought, it is worth noting that the Petitioner amended his Petition to seek only the reliefs captured in the body of this judgment. The Respondent on the other hand objected to the grant of the reliefs sought on the basis that the water project is already serving the community and that the Petitioner ought to follow up to be compensated by the National Land Commission. This is a callous approach by the Respondent having indeed considered that they undertook the said project without offering any compensation or enjoying the Petition. The court is satisfied that the Petition is merited and will proceed to grant the reliefs sought in the Petition.

## Disposition

28. In the end, the amended Petition dated 10<sup>th</sup> June 2025 is hereby allowed in the following terms:-
  - a. A declaration be and is hereby issued that the commencement and continued implementation of the said project, devoid of consultation amounts to violation of the Petitioner's rights under Article 40(3)(b)(ii) of the Constitution.
  - b. The Respondent be and is hereby ordered to vacate the suit parcel being Taveta/Mahoo/473 within 90 days from today, failure of which an eviction order shall issue.
  - c. Costs of the Petition are hereby awarded to the Petitioner.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 16<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:

Ms. Indesia h/b for Mr Bwire for the Respondent.

Alfred Njuruka the Petitioner acting in person.

Court Assistant: Mary Ngoira.

