



**Thitu (Suing as the Legal Representative of Makaga Help Group) v
County Government of Nyeri & 5 others (Environment and Land Petition
E001 of 2023) [2025] KEELC 6188 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6188 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ENVIRONMENT AND LAND PETITION E001 OF 2023

JO OLOLA, J

SEPTEMBER 25, 2025

**IN THE MATTER OF ARTICLES 22 (1), 23 AND
162 (2) OF THE CONSTITUTION OF KENYA 2010**

**AND IN THE MATTER OF CONTRAVENTION OF RIGHTS OF
FUNDAMENTAL FREEDOM UNDER ARTICLES 35,40,47(1),
67 AND 68 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE LAND ACT (ACT NO. 3 OF 2012)

AND

IN THE MATTER OF THE LAND REGISTRATION ACT (ACT NO.3 OF 2012)

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS)
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

**PETER THITU (SUING AS THE LEGAL REPRESENTATIVE OF MAKAGA
HELP GROUP) PETITIONER**

AND

THE COUNTY GOVERNMENT OF NYERI 1ST RESPONDENT

**THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL
PLANNING 2ND RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT, MINISTRY
OF LANDS AND PHYSICAL PLANNING 3RD RESPONDENT**

THE LAND REGISTRAR NYERI 4TH RESPONDENT



JUDGMENT

Background

1. By the Petition dated 18th September 2023 Peter Thitu, suing as the Legal Representative of Makaga Self Help Group (the Petitioner) prays for:
 - a. A declaration that the Petitioner's rights to property have been violated by the Respondents' actions;
 - b. A declaration that the failure of the Respondents to resettle the members of Makaga Self Help Group amounts to violation of their rights;
 - c. A mandatory order against the Respondents to resettle the members of Makaga Self Help Group in decent land within Nyeri County or elsewhere within the Republic of Kenya;
 - d. An order for compensation to the members of Makaga Self Help Group for the violation of their constitutional rights;
 - e. Costs of this Petition be granted to the Petitioners; and
 - f. Any other or further orders that the Honourable Court may deem fit to grant.
2. Those prayers arise from the Petitioner's contention that sometimes at the end of the year 1989 its members were evicted from Kahurura and Gathiuru forests through a Presidential Decree upon which they were promised to be given settlement land elsewhere. Upon the said eviction the Petitioner avers that its members settled along the road reserves in Karima, Kamichiri, Cecilia, Burguret, Mwichiuri, Ichuga and Kakuret areas among other areas in Nyeri County awaiting re-settlement.
3. The Petitioner avers that around the year 2008, some people who had been evicted and resided in Ragati and Chehe were resettled by the Government of Kenya through Solio Settlement Scheme which prompted the members of the Petitioner to form Makaga Self Help Group.
4. It is the Petitioner's case that its members lack decent shelter and are unable to fend for themselves. According to the Petitioner the actions and omissions of the Respondents are unconstitutional and discriminative and the same have rendered the members of the Petitioner squatters in their own County.
5. The County Government of Nyeri (1st Respondent) is opposed to the Petition. In a Replying Affidavit sworn on its behalf by its Director Lands and Survey Daniel Mukiri, the 1st Respondent avers that it's the predecessor in title, the County Council of Nyeri had no jurisdiction over management of forests or resettlements of evictees as that was a preserve for the Forest Department and the Provincial Administration.
6. The 1st Respondent further avers that Kahurura and Gathiuru forests form part of Mt. Kenya forest which was gazetted in the year 1932 and as such the Petitioners were unlawful occupants therein. In addition, the 1st Respondent avers that while public land is indeed vested in them, the same is administered by the National Land Commission (6th Respondent). The 1st Respondent therefore avers



that it has not violated the Petitioners' rights and the claim against it is frivolous and without any basis in law.

7. The Cabinet Secretary Ministry of Land and Physical Planning, the Director of Land Adjudication and Settlement, the Land Registrar Nyeri and the Honorable the Attorney General (the 2nd, 3rd, 4th and 5th Respondents respectively) are equally opposed to the Petition. In a Joint Replying Affidavit sworn on their behalf by the Nyeri County Land Adjudication and Settlement Officer James Wachira on 5th August, 2024, the Respondents aver that they have never received any claim on resettlement from the Petitioners herein and that they are therefore unaware of the claim by the Petitioners.
8. In addition, the 2nd, 3rd, 4th and 5th Respondents aver that there is inordinate delay in filing this Petition and that the failure to explain the delay shows that the Petitioner's claim is not genuine. They further assert that that the Petitioners have not precisely pleaded on how the Respondents have breached their constitutional rights and urge the court to dismiss the Petition.
9. The National Land Commission (the 6th Respondent), neither entered appearance nor did it file any pleadings herein.

Analysis and Determination

10. I have carefully perused and considered the Petition as well as the respective responses thereto. I have similarly perused and considered the submissions placed before the court by the Learned Counsels representing the parties.
11. The Petitioner herein is described as a duly registered self help group registered under the [Societies Act](#) Cap 108 of the Laws of Kenya. By this Petition it prays for a declaration that its members' rights to property have been violated by the Respondents' failure to resettle its members in decent land within Nyeri County or elsewhere within the Republic of Kenya. The Petitioner therefore prays for a mandatory order directing the Respondents to resettle its members in decent land within Nyeri or elsewhere in the Republic. In addition, the Petitioner seeks an order for compensation to its members for the said violation of their constitutional rights.
12. It is the Petitioner's case that sometimes at the end of the year 1989, its members were evicted from Kahurura and Gathiuru forests through a Presidential Decree upon which they were promised to be given land to settle elsewhere and that ever since, its members have been residing in road reserves in various parts of Nyeri County.
13. It is the Petitioner's contention that other people who had been evicted from Ragati and Chehe areas were resettled by the Government around the year 2008 through the Solio Settlement Scheme. It is therefore its position that its members have been discriminated against and have been rendered squatters in their own country.
14. As was held in the case of Anarita Karimi Njeru –vs- Republic (1979) eKLR.

“...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 should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
15. In the matter before me, the Petitioner asserts that its members were evicted from two forests in the year 1989 following a presidential decree and that they were promised that they would be resettled



elsewhere. The Respondents on the other hand deny that they were responsible for any alleged eviction and/or that they made any promise to resettle the said members of the Petitioner.

16. I have looked at the Affidavit of Peter Kamuri Thitu sworn in support of the Petition. Peter who describes himself as the Chairman of the group states at paragraph 4 of the Affidavit that he knows the membership of the Petitioner is at least 1,500 at the moment. He does not however provide any list of members or any evidence to back this knowledge.
17. While he avers that the members of the Petitioner were evicted from various forests in 1989, there was no evidence of the alleged Presidential decree or the promises made to resettle the alleged evictees. The Petitioner does not also make it clear if at the time of eviction, there were any records of the members who were evicted and/or how he came to establish that those evicted were now 1,500 members. The resolution alleged to have been passed by the Makaga Self Help Group Members on 18th September 2023, giving Peter authority to file the Petition is only sworn by Peter himself and two other people who are described as the Treasurer and Secretary of the Group.
18. It was also clear to me from a perusal of the Certificate of Registration for the Group (Annexure MSHG -03) that the Group only came to be registered on 11th August, 2015. That would be about 26 years after the members of the Petitioner were allegedly evicted from the said forests and it was vital that the Petitioner gives an explanation how the members came to be identified.
19. Again and as stated by the Respondents, this Petition was filed some 34 years after the alleged eviction of the members of the Petition. There is absolutely no explanation offered for that delay which, in my view, is clearly inordinate. Given the circumstances herein, one would have expected some sort of explanation as to what had prevented the Petitioner from coming to court to enforce the rights that were allegedly infringed.
20. In the premises, I was not persuaded that there was any merit in this Petition. The same is dismissed with no order as to costs.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 25TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Ms. Koki Advocate for the Petitioner

Mr. Irungu Advocate holding brief for Ms. Kimunya for the 1st Respondents

Ms. Kisengese Advocate for the 6th Respondent

Mr. Gisemba Advocate for the 2nd to 5th Respondents

