



Kingena Farmers Co-operative Society Limited v Attorney General & 8 others; Commission on Administrative Justice & another (Interested Parties) (Environment and Land Constitutional Petition E006 of 2025) [2025] KEELC 7210 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7210 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E006 OF 2025**

CK NZILI, J

OCTOBER 15, 2025

**IN THE MATTER OF ARTICLES 2(1), (4),3(1),19(1)(2)(3),20(1)(2)(3)
(4),22(1),23(1),27,28,40,43,47,57,67,159(2)(A)(D)(E) AND 162(2) OF THE CONSTITUTION**

AND

**IN THE MATTER OF SECTIONS
107,112,113,115,118,,119,120,125,126,127 OF THE LAND ACT**

AND

**IN THE MATTER OF SECTIONS 3, 5, AND 15
OF THE NATIONAL LAND COMMISSION ACT**

AND

**IN THE MATTER OF SECTIONS 3 AND 13 OF THE
AGRICULTURAL DEVELOPMENT COOPERATION ACT**

AND

**IN THE MATTER OF SECTIONS 7 AND 8 OF THE KENYA
FOREST CONSERVATION AND MANAGEMENT ACT,2016**

AND

**IN THE MATTER OF SECTIONS 3 AND 4 OF THE
FAIR ADMINISTRATIVE ACTIONS ACT NO.4 OF 2015**

BETWEEN

KINGENA FARMERS CO-OPERATIVE SOCIETY LIMITED APPLICANT

AND

THE HONORABLE ATTORNEY GENERAL 1ST RESPONDENT



CABINET SECRETARY, MINISTRY OF LANDS HOUSING & URBAN DEVELOPMENT 2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF ENVIRONMENT, CLIMATE CHANGE & FORESTRY 3RD RESPONDENT
NATIONAL LAND COMMISSION 4TH RESPONDENT
KENYA FOREST SERVICE 5TH RESPONDENT
AGRICULTURAL DEVELOPMENT CORPORATION 6TH RESPONDENT
LANDS LIMITED 7TH RESPONDENT
NYAYO TEA ZONES DEVELOPMENT CORPORATION 8TH RESPONDENT

AND

GEOFFREY KIMUTAI NDIEMA (SUING AS THE LEGAL REPRESENTATIVE OF NDIEMA CHERUNGUT SAKONG (DECEASED) AND ON BEHALF OF NDIEMA CHERUNGUT & PARTNERS) APPLICANT

AND

COMMISSION ON ADMINISTRATIVE JUSTICE INTERESTED PARTY
NATIONAL ASSEMBLY INTERESTED PARTY

RULING

1. Before the court are two applications dated 22/7/2025 and 24/6/2025.
2. In the first application, the applicant, as the proposed 9th respondent, is seeking the following orders:-
 - i.spent.
 - ii. To join the petition as the 9th respondent.
 - iii. Striking out of the petition as the petitioner lacks capacity or locus standi to institute the suit on behalf of Ndiema Cherungut & Partners.
 - iv. That the instant petition is sub judice on account of the existence of similar ongoing proceedings in the National Land Commission filed under reference number NLC/HLI/939/2021 filed by and on behalf of Ndiema Cherungut & Partners.
 - v. Stay of these proceedings pending the delivery of a ruling or decision by the National Land Commission.
 - vi. Stay of the proceedings before the National Land Commission, as well as arrest the delivery of any ruling arising from the historical land injustice claims filed by persons, communities, or entities claiming interests in land parcels located within Trans-Nzoia County, until the instant application and petition before this Honourable Court is dispensed with.
 - vii.spent.



- viii. Summon to issue to Benson Musaket Masai and other officials of Kingena Farmers Cooperative Society Limited for cross-examination on the documents they have filed in support of their application and petition.
 - ix. ...spent.
 - x. Costs.
3. The grounds are that the applicant/proposed 9th respondent is a biological son of the deceased Ndiema Cherungut Sakong, who died on 11/5/2003, and is a duly appointed joint administrator of the estate of Ndiema Cherungut Sakong with his siblings, Claudia Sakong, Collins Chesumba Ndiema, and Ronald Matui, through a certificate of confirmation of grant dated 3/4/2019.
 4. According to the applicant/proposed 9th respondent, the Agricultural Development Corporation advertised for sale of parcel Saandet Wallop Farm L.R. No 11122, measuring approximately 1188 acres. It is deposed that in the suit parcel, Ndiema Cherungut and Partners pooled financial resources and expressed an interest in procuring the specified property. It is deposed that Ndiema Cherungut & Partners, composed of the deceased and 32 other partners, had applied for and paid for land in 1971.
 5. The applicant/proposed 9th respondent deposes that on 14/4/1971, a meeting was convened by the Agricultural (Selection) Committee at the Provincial Commissioner's office in Nakuru, with the primary objective of evaluating potential tenants and purchasers for the farms advertised. It is deposed that Ndiema Cherungut & Partners, among other interested buyers, were considered and their proposal approved since they had demonstrated the financial ability to purchase the suit, as per the minutes of the said date.
 6. It is deposed that Ndiema Cherugu & Partners remitted a payment of Kshs. 170,000/=, as shown by the receipt No. 2844 dated 3/8/1971, followed by an additional sum of Kshs. 40,000/=, vide cheque No.UD351646.
 7. The applicant deposes that despite full payment, the suit parcel of land was gazetted as a forest, vide a gazette notice of 25/8/1978. According to the applicant/proposed 9th respondent, the suit parcel has never been transferred to Ndiema Cherungut & Partners, owing to the erroneous and unlawful gazettement of the land as forest land, which has frustrated the process of possession.
 8. The applicant/proposed 9th respondent deposes that in 2021, a group of Ndiema Cherungut & Partners, being part of the Kony Community, resolved to lodge a historical land injustice claim before the National Land Commission, which claim was duly registered as NLC/HLI/939/2021. It is deposed that the group later submitted additional documentary evidence after a public hearing that was held on 17/9/2024 at Kitale Museum in Trans-Nzoia County.
 9. The applicant/proposed 9th respondent deposes that the petitioner does not have any valid claim over the suit parcel, as the original purchasers, Ndiema Cherungut & Partners, who have been actively pursuing their rights over the suit parcel.
 10. The applicant/proposed 9th respondent further deposes that the petition is a fraudulent scheme, as the persons now claiming to be members of Kingena were never members of the original land-buying group, Ndiema Cherungut & Partners.
 11. The applicant/proposed 9th respondent deposes that the deceased was never a founder, officer, or member of Kingena Cooperative Society, which allegedly came into existence in 1985, almost 14 years after the original acquisition of the suit parcel by Ndiema Cherungut & Partners. Therefore, it is



- deposed that the petitioner lacks a legal or moral claim, or locus standi, to lay claim to the suit parcel of land.
12. As the administrator of the estate of the deceased, the applicant/proposed 9th respondent denies that he has ever been involved in, nor has any activity or decision of Kingena Cooperative Society ever been brought to his attention. It is deposed by the applicant that he only learnt that the name and identity of his late father are being used by the petitioner, without his knowledge, consent, or information.
 13. The applicant/proposed 9th respondent deposes that as he and the other partners of the deceased were preparing their own claim for filing before the National Land Commission, only to learn that that documents initially entrusted to one Lawrence Kipsoi had been tampered with and were now stamped with the name "Kingena Cooperative Society", a group that was neither part of the original buyers in 1971 nor known to the deceased.
 14. According to the applicant/proposed 9th respondent, Lawrence Kipsoi used to serve as secretary to the deceased Ndiema Cherung Sakong, and upon his demise in 2003, but took advantage of the access to information and documents, and proceeded to hatch a scheme to hijack the claim by Ndiema Cherungut & Partners, by incorporating and using the name Kingena Cooperative Society, and excluding all the members and beneficiaries of Ndiema Cherungut & Partners.
 15. It is deposed that such documents include the minutes and or resolutions dated 3/3/1985, where the name of Ndiema Cherungut Sakong was not included in the list of those alleged to have attended the meeting that passed the alleged resolution.
 16. The applicant/proposed 9th respondent deposes that the deceased did not attend the meeting alleged to have been held on 28/3/1985, and a resolution was passed to register Kingena Cooperative Society. Further, it is deposed that the petitioner's claims on the loss of the original certificate of registration and some relevant original documents on the suit parcel, and having made a report in 2023, are extremely suspicious.
 17. The applicant/proposed 9th respondent deposes that despite serving the petitioners' official with a demand letter to surrender all the documents in the name of Ndiema Cherungut & Partners, no response or explanation was received.
 18. The applicant/proposed 9th respondent deposes that he has lodged a formal criminal complaint before Gituamba Police Station, recorded under OB Number 11/16/07/2025, upon learning that the petitioner had moved to court using documents and entailing fraudulent alterations, purporting to sneak in the name of Ndiema Cherungut in the resolutions and or minutes of 3/3/1985.
 19. The applicant/proposed 9th respondent deposes that there has been a deliberate and coordinated attempt to defraud the rightful owners by "Kingena Cooperative Society", claiming historical connection and ownership over the suit parcel, without any legal or historical basis.
 20. According to the applicant/proposed 9th respondent, all the correspondence and or letters from various government offices between 14/1/2006 and 6/11/2007, annexed by the petitioner at pages 91-102, are in the name of Ndiema Cherungut & Partners as the claimant and the party who was constantly addressed. He refers to annexures labelled BMM-9,10,11,12,13,14,15,16,17).
 21. It is deposed that the name of the petitioner does not feature in any of these correspondences, yet it purports to own and treat the same documents and correspondences as belonging to or referring to him.
 22. The affidavit in support to the application has attachments namely copies of the death certificate and the rectified grant dated 3/4/2019; copies of the cheque and receipt; an extract of the minutes



from Agricultural Development Corporation; the cover page of the claim received by National Land Commission on 21/9/2021; cover page of the additional documents submitted to National Land Commission on 14/4/2025; the further affidavit to National Land Commission dated 10/4/2025; minutes omitting the name of the deceased; minutes filed by the petitioner with the name of Ndiema Cherungut inserted; a demand letter to the petitioner of December 2023; the OB number and lastly the list of the original 33 members as annexures marked GK 1-9.

23. The application is also supported by an affidavit of Samken Kimatwai, sworn on 22.7.2025. He deposes to being aged, of frail health, and as an original member of Ndiema Cherungut & Partners.
24. The deponent confirms that Geoffrey Ptala and Arnold Tekin visited him on 9/6/2025, where they took a photograph of him and a copy of his identification card, claiming that they were going to register him under the Social Health Authority, only to later realize that they had submitted to court without his authority.
25. The deponent denies being a member of the petitioner, as shown in annexure BMM-37; otherwise, he has never attended any meeting or endorsed any process with the petitioner. The deponent further deposes that the use of his credentials in legal proceedings without his knowledge and consent amounts to a gross violation of his rights, given his age and illness.
26. Silas Chepkumul, in an affidavit on 22.7.2025 in support of the 1st application, confirms the averments made by his father. He adds that on the said day of the visit, he left the homestead shortly and later met Geoffrey Ptala and Arnold Tekin walking towards a nearby tea plantation, which is part of the land currently under claim by Ndiema Cherungut & Partners.
27. The deponent avers that the visit was a misrepresentation and the photographs were taken under pretenses in violation of his father's right to privacy and dignity.
28. The application is opposed through a replying affidavit sworn on 30/8/2025 by Francis Benduka Kipsoi. The deponent, as one of the founding members of the petitioner, has attached the authority to plead, and the list of the members of the petitioner as FBK1 and 2.
29. The petitioner terms the application as frivolous and vexatious, as brought with unclean hands. Further, the petitioner says that the applicant/proposed 9th respondent irregularly filed an additional supporting affidavit of Geoffrey Kimtai Ndiema, an amendment to the original pleading, without leave of the court, which he terms as fatally defective ab initio for failing to annex a supporting affidavit by the party seeking to be enjoined. A copy of the printout of the E-filing is attached as FBK-3.
30. The petitioner deposes that prayer (2) as sought is unmerited and should be dismissed, since the applicant/ proposed 9th respondent is a natural person distinct from a legal entity, who lacks the locus standi given that the alleged registered partnership is the one that ought to have moved the court. It is deposed that the applicant/proposed 9th respondent is “technically” attempting to amend the confirmed grant to include the disputed property as residue of the estate, and that the court lacks jurisdiction to sit as a succession court.
31. It is deposed that the proper forum for such claims is the High Court in accordance with Articles 22 and 258 of *the Constitution*; otherwise, the allegations cannot ground an application to be enjoined in these proceedings.
32. The petitioners depose that the application is full of misrepresentations and falsehoods, as the supporting affidavit of Samken Kimatwai, at paragraph 2, who avers that he is the original founding member of Ndiema Cherugut and Partners, yet his name does not appear in the purported original



- founding members produced by the applicant/proposed 9th respondent, in the impugned annexure GKN 9, as the list of the purported original and founding members of Ndiema Cherugut and Partners.
33. The petitioner deposes that in the 2009 Parliamentary Report it determined that the Petitioner was the genuine and legitimate owner of the suit land as per paragraph 28 of the application, showing correspondence and letters written by various government offices between 2006 and 2007 bearing the name of Ndiema Cherugu, including Letters dated 11/1/2006 and 21/3/2006 recognizing the transition that the group registered Kingena Farmers Cooperative Society Ltd.
 34. Further, it is deposed that the applicant/proposed 9th respondent has never challenged the said recognition by government correspondence as per annexure marked FBK1.
 35. The petitioner contends that Silas Chepkumul Matwoi and Samken Kimatwai, who have sworn supporting affidavits, have not annexed any authority to depose the same on behalf of the applicant/proposed 9th respondent. It is deposed that the further affidavit marked as GK3C was filed a few months before the filing of this Petition at the National Land Commission, which is a forum with separate constitutional and statutory jurisdiction. The petitioner avers that the contents are a continuation of averments in separate proceedings, into which this court should not be invited.
 36. The petitioner avers that the principle of sub judice relates to a pending case before a competent court or tribunal. In this case, it is deposed that the National Land Commission has no jurisdiction to determine the prayers sought in our application and Petition.
 37. It is deposed that the petitioner's claim was determined by the National Land Commission vide letter dated 6/2/2015, which made several recommendations, but subsequently, after a delay, the Petitioner lodged a complaint Ref: NLC/HLI/146/2017.
 38. On the stay of the proceedings in this court and at the NLC, the petitioner it is deposed that though the applicant/proposed 9th respondent has cited a complaint with separate issues, prayers, and parties, this court has constitutional and statutory powers and or jurisdiction to determine disputes and violations of rights accruing from land rights.
 39. Therefore, it is deposed that this court cannot be stopped by a commission, and should instead allow the Commission to exercise its powers and determine the complaint; otherwise, the petition before the court is limited to specific violations of specific rights by the respondents.
 40. The petitioner further deposes that the contents of paragraphs 16, 17,18, and 21 of the application are contradictory, given that the grant attached as GKN-1b provides for properties, heirs, and the shares of the suit parcel are not included among the properties of the deceased, which is a wrong interpretation and misapplication of the confirmed grant in the Estate of Ndiema Cherugut Sakong (Deceased) (2019) KEHC 2992 (KLR), which gives a detailed property schedule of the deceased's assets. Annexed and marked as "FBK-4" is a copy of the case law of the Estate of Ndiema Cherugut Sakong.
 41. The petitioner deposes that the applicant/proposed 9th respondent seeks to be enjoined in these proceedings to represent Ndiema Cherugut and Partners, which is a non-existent partnership; otherwise, there is no annexed certificate of incorporation to that effect.
 42. It is deposed that the founding members, who form part of the "partners", in a meeting held on 28/3/1985, resolved to form Kingena Farmers Cooperative Society, yet the applicant/proposed 9th respondent has failed to acknowledge that the name (then) Ndiema Cherugut and Partners was an association of more than one person.



43. The petitioner deposes that annexure (BMM-18) at page 103 of the petition shows that after investigations on the petitioner's membership, Parliament recognised it as the genuine and legitimate owner. Annexed and marked as "FBK-5" is a copy of the Gonzi Rai Report.
44. On the allegations at paragraph 10 of the affidavit of Silas Chepkumul Matwoi, regarding the alleged violation of the privacy rights of his father, the petitioner deposes that the right forum to lodge such a violation is through a High Court petition to grant relevant reliefs.
45. The petitioner deposes that he has listed the members of Ndiema Cherugu Sakong's family at paragraph 48 of the affidavit and annexed the list of its entire membership as FBK-11 together with a copy of the list of founding members issued by the Registrar of Societies.
46. The petitioner deposes that all the investigations, reports, recommendations, and observations recognised and referenced the petitioner as the genuine and legitimate owner; otherwise, the subdivision of the suit parcel had commenced, and transfer was about to be concluded.
47. The petitioner has annexed as FBK-9 copies of the Gonzi Rai Report, Parliamentary report, and National Land Commission report, and a copy of the letter dated 30/10/2007 as FBK-10, which confirmed that the petitioner's predecessor, Ndiema Cherugut and Partners, had lawfully purchased the property from the 6th respondent, for Kshs. 200,000/= on 14/4/1971, with payment evidenced by Receipt No. 2844 for Kshs. 170,000/= and Cheque No. UD 351646 for Kshs. 40,000, making an excess of Kshs. 10,000/=, over the price.
48. The petitioner deposes that the above reports had established that the land, created through the amalgamation of L.R. Nos. 6950/2 and 9160 were unlawfully gazetted as part of Mt. Elgon Forest under Notice No. 2479 of 25/8/1978, despite the Petitioner's valid claim of ownership.
49. Further, the petitioner deposes that he has annexed the letters dated 6/2/2015, 10/11/2015, 17/12/2015, receipt dated 10/2/2016, and the Parliamentary Lands Committee Report as FBK 15-18. The petitioner deposes that the 2nd respondent formally recommended, inter alia, that the 2nd interested party revoke Gazette Notice No. 2479 of 1978, which had improperly incorporated the land into the Pulpwood Forest Scheme and Mt. Elgon Forest.
50. The petitioner deposes that it has annexed as FBK-19 a copy of the said letter dated 13/1/2016, where the county surveyor set out the petitioners longstanding grievances, a copy of the said letters dated 6/4/2016 and 9/8/2016 from Trans Nzoia Titling Centre to Permanent Secretary, Ministry of Lands and Kenya Forest Service, and a copy of the letter dated 20/5/2016 from National Titling Centre to Chief Legal Officer, Ministry of Lands are annexed as FBK-20-22. together the survey maps are annexed as FBK-23.
51. In written submissions dated 30/8/2025, the petitioner submits that the application dated 22/7/2025 is defective and ought to have been dismissed in the first instance on 24/7/2025, for failing to annex the supporting affidavit of a party that seeks to be enjoined in the proceedings. Reliance is placed on Kenya Railways Corporation & Others v Okiya Omtatah & others KESC Petition No. 13 of 2020 eKLR.
52. On whether the applicant has locus standi, it is submitted that a partnership is capable of suing and being sued in its own name; otherwise, the applicant/proposed 9th respondent is a natural person distinct from a legal entity and thus lacks the locus standi.
53. Regarding whether the suit parcel is part of the properties of the deceased for the applicant/proposed 9th respondent to administer, the petitioner submits that Sections 82 and 83 of the Law of Succession



- provide for the powers and duties of a personal representative of an estate in accordance with the confirmed grant.
54. In this case, it is submitted that the applicant/proposed 9th respondent is usurping powers not donated to him since the suit parcel is not part of the estate of the late Ndiema Cherugut.
 55. The petitioner further submits that the application is full of falsehoods and should be dismissed. Reliance is placed on *Manjula Zaverchand Shah v Gulf Africa Bank Ltd & 3 Others* Civil Case no. 546 of 2014.
 56. Further, the petitioner, relying on *Macharia & Another v Director of Public Prosecutions & 11 others* (Petition E011 of 2022) [2022] KESC 61 (KLR), submits that the applicant/proposed 9th respondent has not met the principles of enjoining a party otherwise party seeking to join proceedings in any capacity must come to terms with the fact that the overriding interest or stake in any matter is that of the primary parties before the court. In every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the court will always remain the issues as presented by the principal parties, or as framed by the court from the pleadings and submissions of the principal parties.
 57. Again, the petitioner submits that the application is sub judice NLC/HLI/939/2021. Relying on *Joseph Kimata Wachira & another v Wilson Waithaka Gitau & another*, Thika ELC no. 867B of 2017, the petitioner submits that the National Land Commission lacks jurisdiction to determine prayers sought in its application, since they are separate issues.
 58. On the contents of the correspondence, reports, and recommendations attached, the petitioner submits that the applicant has never challenged the same and should therefore challenge the membership of the petitioner in a different forum.
 59. The second application is dated 24/6/2025. The petitioner/applicant is seeking orders that;
 - i. ...spent
 - ii. A declaration that the petition herein raises substantial questions of law under Articles 2, 3, 10, 19, 20, 22, 23, 24, 25, 27, 28, 29, 40, 43, 47, 48, 57, 67, 162, 165(3)(4), 232, 258, and 259 of *the Constitution* requiring in-depth interpretation based on the background of this matter.
 - iii. The court refers this petition to the Chief Justice for the assignment of an uneven number of judges to hear and determine the matter expeditiously.
 - iv. A temporary injunction be issued restraining the 5th and 8th respondents, their agents, servants, or any person acting on their behalf from; transferring, alienating, amalgamating or interfering with L.R. No. 11122, and; from further developing, harvesting, or commercializing the tea and forest resources on the suit parcel, without the approval of this court or consent from the petitioner.
 - v. The 5th and 8th respondents are ordered to produce audited accounts detailing all income generated from the sale of tea and trees harvested from L.R. No. 11122 from 1971 to date, for purposes of assessing mesne profits.
 60. The grounds adduced in support of the motion are that the petitioner has suffered unlawful deprivation of property, denial of fair administrative action, economic and social rights violations, and historical land injustices, contrary to Articles 40, 47, 43, and 67 of *the Constitution*.



61. The petitioner avers that the respondents' actions in handling the land dispute violate Articles 29, 28, 27, and 57 of *the Constitution* on psychological torture, inhuman, degrading treatment, discrimination, and rights of older members of society.
62. Further, the petitioner avers that the petitioner lawfully purchased L.R. No. 11122 in 1971 and fully paid the consideration, but the land was arbitrarily reallocated to the 3rd respondent. That multiple government reports, such as the Hon. Gonzi Rai Report (2009) and Parliamentary Report addressing Question No. 149 of 2015, confirmed the petitioner's legitimate claim and recommended restitution, which the respondents have failed to comply with.
63. The petitioner avers that respondents continue to exploit the suit property through commercial tea and forestry activities, thereby accruing unlawful benefits, while the petitioner's rightful ownership remains unrecognized; hence, the court should issue orders to prevent further unjust enrichment.
64. Again, the petitioner avers that its members are elderly and many have passed away during the prolonged pursuit of justice; therefore, a delay in resolving this matter would not only perpetuate injustice but also constitute a cruel denial of their constitutional right to access justice under Article 48 of *the Constitution*.
65. The petitioner avers that the petition raises substantial and complex constitutional issues on the scope of Article 40, protection against unlawful deprivation of property; the extent of the 4th respondent's mandate under Article 67 to redress historical injustices, fair administrative action under Article 47; and the constitutional thresholds for psychological torture as an accruing right under Article 29, questions which require authoritative determination by an expanded bench to provide clarity on the state's obligations regarding historical land injustice, establish landmark precedent for similar pending cases, and give full effect to the constitutional protections under Articles 20(3) and 259.
66. The petitioner avers that the respondents may alienate or further develop the suit property, which would irreparably prejudice the petitioner's claim and render any eventual judgment nugatory. Petitioner avers that it has demonstrated a prima facie case with overwhelming documentary evidence, including the original purchase documents from 1971; multiple government reports validating their claim, and admissions by state officials of the unlawful taking of the suit property.
67. The petitioner avers that the balance of convenience favors the grant of the relief sought as it stands to permanently lose its legitimate ownership of the suit property, more so when the respondents' continued use of the same is purely commercial rather than an essential public interest. The petitioners aver that Irreparable harm will occur if the injunction is not granted, as the respondents may transfer interests in the property to third parties, destroy or alter critical evidence, or further entrench their unlawful occupation.
68. The petitioner further avers that he 5th and 8th respondents have profited from the suit land for 53 years without accounting to the rightful owners, violating constitutional principles of accountability under Article 10 and equitable benefit-sharing under Article 60(1)(g).
69. It is deposed that the financial records are critical for quantifying mesne profits in the main suit, yet they are solely within the respondents' custody, and risk being concealed or destroyed without court supervision. Production aligns with the court's powers under Article 162(2)(b) to grant just and equitable relief in land matters.
70. Benson Musaket Masai, the secretary of the petitioner, in the sworn affidavit reiterates the foregoing and adds that the petitioner's complaints prompted a response from Mr. G.K. Kariithi, the then PS, Office of the President, who, in a letter dated 14/5/1971 addressed to the General Manager of 6th



respondent regarding;- the lawful advertisement and sale of suit property; the petitioner's successful interview and full payment of the required consideration; the arbitrary reallocation of the suit property to the 3rd respondent, the deliberate and unlawful advertisement of the property by the respondents; and recommended the 6th respondent to buy land and give it to the petitioner.

71. Attached to the affidavit are a copy of the authority granted to me by the petitioner's members dated 5/6/2025; the certificate of incorporation; minutes of the meeting dated 28/3/1985, where they passed a resolution to incorporate; the letter dated 27/2/1971; the interview-minutes dated 14/4/1971; receipts as proof of payment; letters dated 14/5/1971 and a Gazette Notice No. 2479 dated 25/8/1978 marked annexures BMM 1-8.
72. The petitioners depose that the then D.C of Trans Nzoia addressed the then P.C. of Rift Valley Province, confirming receipt and review of the petitioner's documentary evidence; the 1971 advertisement and sale of the suit property; the petitioner's successful application and approval by the Agricultural Select Committee following payment of Kshs. 200,000/= in April 1971; a copy of the said letter dated 11/1/2006.
73. It is deposed that the P.C. then formally communicated with the P.S. for Provincial Administration and Internal Security, transmitting and endorsing the contents of the DC's letter, recommending two alternative courses of action for the President's consideration, namely that the 6th respondent provides alternative land to the petitioner; or, in the alternative the 3rd respondent surrender the land to the petitioner for lawful occupation. The said letters are attached as annexures marked BMM- 9-12.
74. The petitioner deposes that in the letter dated 17/7/2007, attached as BMM-13, the D.C. noted that while the forest department maintained nominal control of the disputed land, its development was impeded by the petitioner's members, who continued to occupy and cultivate portions of the suit property.
75. It is deposed that the D.C. had cautioned against forced eviction, warning that such action would negatively impact both the security conditions and public perception of the government's fairness. Nevertheless, the petitioner states that the dispute has to date remained unresolved, as seen in the letter dated 20/7/2007, annexed as BMM- 14.
76. The petitioner deposes that through a letter dated 30/10/2007, the P.S. acknowledged the petitioner's ongoing complaint and advised the members to schedule a meeting with the P.C. Rift Valley Province for further directions. It is deposed that in a subsequent letter of even date, it reminded provincial authorities of the government's preference for administrative resolution over litigation, while noting that the continued inaction had created grounds for legal action by the petitioner.
77. It is deposed that the letter further directed that if the government intended to retain the suit property, the respondents, through the responsible Ministry, should properly invoke the Land Acquisition Act, to facilitate either compensation or surrender of the suit property to the petitioner's original members. The letters are marked as annexures BMM-15 and 16.
78. The petitioner deposes that the Gonzi Rai Report marked BMM-18, prepared between 7th and 13th October 2009, following Parliamentary Question No. 140, by Hon. Fred Kapondi Chesebe, documented the historical background of the suit property, confirming that the petitioner's predecessor had lawfully purchased the property from the 6th respondent for Kshs. 200,000/= on 14/4/1971, with payment evidenced by Receipt No. 2844 for Kshs. 170,000/= and Cheque No. UD 351646 for Kshs. 40,000/=, making an excess of Kshs. 10,000/=, from the actual price.



79. Further, it is deposed that the report established that the land, created through the amalgamation of L.R. Nos. 6950/2 and 9160 were unlawfully gazetted as part of Mt. Elgon Forest under Notice No. 2479 of 25/8/1978, despite the petitioner's valid claim of ownership.
80. It is deposed that the 4th respondent expressly noted the complete absence of any justification for this irregular administrative action and the failure to refund the petitioner's payment as per the correspondence is annexed as BMM- 17-19.
81. The petitioner deposes that, after communication by the government to conduct a comprehensive inventory of land holdings for purposes of surveying, planning, and registration, it formally submitted all required documentation on 10/11/2015 for consideration in the title issuance process, thereby fulfilling all administrative requirements for the resolution of their claim, and that it further requested the National Titling Centre in Trans Nzoia County to facilitate a site visit, to subdivide the suit parcel, among its members according to their respective shares. Annexed are copies of the letters dated 17/12/2015 and receipt dated 10/2//2016, marked BMM- 21-22.
82. Further, it is deposed by the petitioner that the 2nd respondent's submission established the land's provenance, confirming that the suit property was originally granted to the Right Honorable Gerald Vernon Earl of Portsmouth of Kitale on 1/6//1963 for a term of 99 years. It is deposed that the report further specified that the 1,188-acre suit property is situated west of Kitale Municipality in Trans Nzoia County, and detailed the subsequent transfer of the property to the 7th respondent on 30/7/1970 for Kshs. 192,100/=, followed by its surrender to the 2nd respondent on 25/4/1972.
83. It is deposed that the 2nd respondent acknowledged the petitioner's organizational history, noting that Kingena Farmers Cooperative Society originated as Ndiema Cherungut and Partners, with an original membership of 226 persons, comprising both primary and extended family members.
84. The petitioner deposes that the official response confirmed the petitioner's lawful purchase of the suit property from the 6th and 7th respondents, following a public advertisement dated 3/8/1971; payment of Kshs. 200,000/= as consideration; abrupt reallocation of the land to the 3rd respondent for forestation when the petitioner was preparing to take possession.
85. The petitioner deposes that the Report formally recommended that the 2nd interested party revoke Gazette Notice No. 2479 of 1978, in which it had improperly incorporated the suit property into the Pulpwood Forest Scheme and Mt. Elgon Forest.
86. It is deposed by the petitioner that the official recommendations included; an immediate action by the 4th respondent, to restore the land to its legitimate owners; an implementation of the Hon. Gonzi Rai Report recommendations of October 2009, by the 3rd and 4th respondents; parliamentary revocation of Gazette Notice No. 2479 dated 25/8/1978; and, full compensation or provision of alternative land to the petitioner by the 3rd and 6th respondent. Both the parliamentary report and the county surveyors' letter dated 13/1/2016 are attached as BMM- 23 and 24.
87. The petitioner deposes that the 2nd respondent, through its County Surveyor, proposed for: an immediate regularization of forest land allocations made under Presidential directives during the 1980s-1990s that were never properly formalized, noting that provincial administration failures directly violated the petitioner's constitutional rights to property; formal engagement of the 5th respondent through its Forestry Directorate, whose persistent non-responsiveness on settlement matters has systematically obstructed regularization efforts by competent authorities; an expedited processing under the then land regularization program, requiring coordinated inter-ministerial action to resolve jurisdictional conflicts; and the petitioner's established, legitimate proprietary interests.



88. The petitioner deposes that letters dated 6/4/2016, 20/5/2016, 8/11/2017, and the letter dated 9/8/2016 confirm the completion of surveying and mapping exercises for the following properties, which were pending registration, including the suit property, and are marked as annexures BMM-25-28 together with copies of the acknowledgment letter and a printout of the National Lands Commission website, respectively detailing resolved cases are marked BMM- 29 and 30, respectively.
89. The petitioner contends that the 1st interested party, in its official correspondence addressed to the petitioner, had acknowledged receipt of the complaint filed against the 5th respondent, on 25/1/2021, generally and specifically, one concerning the unlawful allocation of the suit property.
90. The petitioner deposes that its representatives formally reported to the police over the disappearance of critical evidentiary documents, including the original certificate of registration for the petitioner, as well as all primary documentation establishing the petitioner's claim to the disputed land parcel, yet up until now, neither the police nor the petitioner's members have been able to locate these vital records. Annexed and marked as BMM-32 and 33 are copies of the police abstract dated 29/9/2023, copies of the title, and search documents.
91. The petitioner deposes that its members' constitutional rights continue to be violated through the respondents' persistent failure to remedy the documented grievances, yet the 5th and 8th respondents are in occupation of the land, on which they have planted trees and tea. The copies of photos showing the current state of the suit property are annexed hereto and marked BMM-34.
92. The petitioner contends that the technical regularization process, including completion of land surveys on 9/8/2016 for purposes of title deeds issuance, has been unlawfully stalled and or suspended without proper justification or formal communication to the petitioner.
93. The petitioner deposes that the intergenerational impact of this injustice is evidenced by: the demise of most founding members; the current pursuit of justice by their descendants, who continue to suffer from broken governmental promises; and systemic violations of rights necessitating this court's urgent intervention. Copies of death certificates and identification cards of older members are annexed and marked BMM-35.
94. The petitioner deposes that the Trans Nzoia County Government recognizes it as the legitimate and lawful owner of the suit property, given that it is registered under the petitioner's name as the bona fide payee for county land rates assessment; and has hitherto consistently fulfilled land rate payments for many years preceding the filing of this Petition. Copies of the Land Rate Certificate and Demand for Payment of Land Rate are annexed and marked BMM-36.
95. The petitioner further avers that its current membership stands at 294 members, the majority of whom are elderly persons protected under Article 57 of *the Constitution*. Annexed and marked BMM-37 is a copy of the list of the petitioner's membership.
96. The 8th respondent opposed the 2nd application through an affidavit sworn on 13/8/2025 by Charles Mucheke. The 8th respondent contends that it is mandated under Section 3 of the State Corporations Act (Nyayo Tea Zones Development Corporation) Order, Legal Notice No. 30 of 2002, in consultation with the Chief Conservator of Forests, to create tea and fuel wood growing zones to be known as "Nyayo Tea Zones", in gazetted forests and gazetted trust land forests in those areas of Kenya where the Kenya Tea Development does not, in accordance with the Schedule to the Kenya Tea Development Agency Order, operate. The Legal Notice No. 30 of 2002 is annexed as CM- 1.
97. The 8th respondent deposes that the zones serve as buffer zones to protect and conserve forests, rehabilitate ecologically fragile areas, and promote sustainable land use practices by planting tea,



indigenous trees, and other suitable tree crops. Further, the 8th respondent deposes that on or around 2013, Makunga Forest was gazetted under the *Forest Conservation and Management Act*, A Declaration of Makunga Forest, 2013, Legal Notice No. 23 of 2012, as being forest land falling within the mandate of the 5th respondent, under Saboti Zone. The Legal Notice No. 23 of 2012 is annexed to this affidavit and marked as CM-2.

98. Further, the 8th respondent deposes that, guided by Section 3 of the *State Corporations Act* (Nyayo Tea Zones Development Corporation) Order, Legal Notice No. 30 of 2002, and in consultation with the Chief Conservator of Forests, undertook to develop a 50-meter-wide buffer zone around the gazetted Makunga Block. The 8th respondent deposes that it only developed 2.5 hectares of the 50-meter-wide buffer zone of land duped the Makunga Block, at Saboti zone, and halted the development upon cognizance of brewing conflict over the aforementioned buffer segment.
99. According to the 8th respondent, the petition and the application are vexatious, frivolous, an abuse of the court process, and defective, since the petitioner has unjustifiably lumped together various state organs and entities, including the 8th respondent, under a single umbrella while making generalized allegations devoid of factual or legal basis.
100. It is deposed that the 8th Respondent's mandate, as outlined in Section 3 of the *State Corporations Act* (Nyayo Tea Zones Development Corporation) Order, Legal Notice No. 30 of 2002, is to create and manage tea and fuelwood growing zones within gazetted forests, planting of indigenous trees in consultation with the Chief Conservator of Forests, without excising any forest land.
101. It is deposed by the 8th respondent that the principle of ultra vires dictates that a state corporation can only act within the scope of its established mandate and powers as defined in its establishing legislation, in this case, Section 3 of the *State Corporations Act* (Nyayo Tea Zone Development Corporation) and Order, Legal Notice No. 30 of 2002.
102. Again, the 8th respondent deposes that, in statutory compliance with its mandate, it halted the plantation of the tea and fuel wood buffer zone at the 50-meter-wide stretch of land duped the Makunga Block, at Saboti zone, upon cognizance of brewing conflict over the aforementioned buffer segment.
103. It is deposed that the operations of the 8th respondent are not concerned with any matters related to the protection of forest land from encroachment, as well as creating economic opportunities for the surrounding communities through the establishment, management, and development of tea and fuel wood plantations, albeit under the guidance of the Chief Conservator of Forests.
104. The 8th respondent contends that it is not in charge of evictions and has not carried out any evictions or any activities beyond the scope of its mandate as defined in the *State Corporations Act* and the Nyayo Tea Zones Development Legal Notice No. 30 of 2002.
105. Further, it is deposed that the petitioner has failed to adduce any evidence to substantiate their claims that the 8th respondent has violated and neglected its duties or that its actions or omissions have infringed upon their rights.
106. It is deposed that the petitioners rely heavily on unsubstantiated narratives and fail to substantiate the specific statutory roles of the 8th Respondent, which have been executed within the constraints and limitations expected.
107. It is deposed that the 8th respondent has acted within its legal mandate and continues to prioritize sustainable forest conservation and the establishment of tea zones for the benefit of the communities and the environment.



108. In the absence of any evidence of violation, neglect, or infringement, it is deposed that the petition does not disclose a reasonable cause of action against the 8th respondent and that courts should only grant relief where there is clear evidence of a violation or infringement of rights is conspicuously lacking in this case.
109. The 8th respondent also filed grounds of opposition dated 21/7/2025, terming the petition as bad in law, an abuse of court process, and a waste of the court's time; does not disclose a reasonable cause of action against it; is vexatious, frivolous, and scandalous.
110. The 1st interested party opposed the second application dated 24/6/2025, through an affidavit sworn by Mercy K. Wambua on 29/8/2024. The 1st interested party deposes that it is established under Article 59(4) of *the Constitution* and Section 3 of the *Commission on Administrative Justice Act*, with a mandate of investigating any conduct in state affairs or acts of omission in public administration by a state organ, state, or public officer in the National and County Governments likely to result in impropriety or prejudice.
111. The 1st interested party deposes that it is also mandated by the *Access to Information Act* to oversight, and enforce functions and powers to give effect to Article 35 of *the Constitution*. It is admitted in this petition that the petitioner had lodged a complaint by a letter dated 25/1/2021, seeking it to compel the 3rd respondent to return the suit property to it.
112. Subsequently, it is deposed that the 1st interested party established that the matter had already been heard and determined by the 4th respondent. The 1st interested party deposes that Section 30(h) of its Act precludes it from handling any matter under investigation by a person or any constitutional commissions, or any other law.
113. In this case, it is deposed that the 1st interested party thus advised the petitioner to pursue the decision by the 4th respondent through a letter dated 12/2/2021, and confirmed that it has not been involved in the allocation, reallocation, or adjudication of the suit property.
114. The issues for my determination in the two applications are:
- i. If the 9th respondent has demonstrated an interest in being a respondent in this petition.
 - ii. If the petition should be stayed and or struck out.
 - iii. If the petitioners have locus standi.
 - iv. If the petition raises substantial issues calling for the empanelment of a bench.
 - v. If temporary orders should issue against the respondents at this stage.
115. A party seeking to join a petition touching alleged breach of constitutional rights and freedoms has to demonstrate an identifiable stake, legal interest, or duty in the proceeding under Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules). The court in Francis Mutuatetu & Others v Republic & Others [2016] eKLR, set the consideration to include personal interest or stake, prejudice to be suffered in case of non-joinder, and demonstration of the relevance for input to the matter
116. From the material placed before me by the proposed respondent and the rival replying affidavit, I think the proposed (9) respondents fit the description of a respondent.
117. Stay of proceedings has been termed as a grave interruption in the rights of parties to access justice, to a fair hearing, and the court's overarching duty to expedite the hearing of suits. A party seeking the



- same has to demonstrate exceptional circumstances under Order 42 of the Civil Procedure Rules. See *William Odhimbo Ramogi & Others v Attorney General & Others* [2019] eKLR. It interrupts the right of a party to conduct its claim based on substantive merits. See Halsbury's Laws of England 4th Edition Vol 37 pg 331.
118. In *Re Global Tours & Travel Ltd Nairobi Winding Up Cause No. 43 of 2000*, the court held that it is a discretionary power to be exercised while weighing the pros and cons of granting or not granting the orders sought. I think the applicant has not met the threshold; even before it joins the petition, the court should find the same hopeless, or filed in the wrong forum.
 119. Striking out of pleadings is a discretionary power that must be sparingly used. The court's role is to hear the matter on its merits. It is only exercised in exceptional circumstances as held in *D.T. Dobie & Co. Ltd v Muchina* [1982] eKLR. The proposed applicant has yet to file a substantive response to the petition. That notwithstanding, I have looked at the petition. I do not think the petition is an abuse of the court process, hopeless and or discloses no known cause of action. The petition cannot be said to be academic or to raise premature or moot issues. The nexus between the petition and the alleged pending National Land Commission historical injustice complaint has not been laid bare before the court. I find the prayer lacking merit.
 120. As to locus standi, it refers to a standing before a court of law. Articles 22, 258, and 260 of *the Constitution* allow a party, person, incorporated or unincorporated, to move to court individually, or in public interest, or through a class of persons, where there is a threatened breach or violation of fundamental rights and freedoms. A person may also move the court to protect *the Constitution*.
 121. The petitioner, in my view, has demonstrated individual and or collective interests or rights in the subject matter, which grant it the requisite capacity to approach the court to determine whether or not the rights and freedoms pleaded have been violated by the respondents. See *Alfred Njau & 5 others v City Council of Nairobi*[1983] eKLR.
 122. On the empanelment of an uneven bench, the decision to do so has to be exercised while taking into consideration Article 165(3)(b) and (d) of *the Constitution*. A substantial question of law is left to the judge to satisfy himself that the matter is substantial, to the extent that it warrants reference to the Chief Justice to appoint an uneven number of judges to determine the matter. See *Community Advocacy Awareness Trust & Others v The Attorney General & Others*, Petition No. 243 of 2011.
 123. The court has to consider inter alia, the backlog of cases, the optimum utilization of judicial resources, and the need for expeditious disposal of cases. Substantial question or issue of law is not just limited to a weighty matter or one that raises novel issues of law or fact, or is complex. Empaneling a bench should be an exception rather than the norm. It is not a matter of right for the parties, where, in their own thinking, a matter deserves the establishment of a bench. The burden is on the party that applies to meet the threshold set under Article 165(4) of *the Constitution*, taking into consideration the complexity of the matter, the amount of time to be spent on the matter, the level of public interest, and whether the issue raised has been subject to or has been settled by the higher courts. See *Martin Nyaga Wambora v Speaker County Assembly of Embu & 5 others* [2014] KEHC 6715 (KLR)
 124. The pleadings herein have not been closed. The issues touching on historical land injustices and the resettlement of squatters have been subject to the court's determination. In the circumstances, I find it premature for the applicant to seek empanelment of a bench even before all the respondents have made any responses to the petition.
 125. On temporary orders, the applicant has to meet the test for the issuance of conservatory orders, as held in *Gatirau Peter Munya v Dickson Mwenda Kithinji & Others* [2014] eKLR and Board of



Management Uhuru Secondary School v City County Director of Education & 2 others [2019] KEELRC 1267 (KLR). The prospect of irreparable harm occurring during the pendency of the matter, high probability of success, inherent merits of the case, public interest element, proportionate magnitudes, constitutional values, and the priority levels are what the applicants had to surmount, further to establishing the principles set in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. The delay in moving to court has not been addressed. The irreparable loss that is imminent, apparent, and real has not been addressed. Therefore, the balance of convenience tilts in favor of maintaining the existing status quo.

126. The upshot is that the proposed (9) respondent is allowed to join as a respondent. The application for a temporary injunction is disallowed.

127. There will be no order as to costs

128. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 15TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant - Dennis

Kipkemboi and Chorongos for petitioners - present

Naibei for the proposed 9th Respondent - present

Cheborgot for the 2nd interested party - present

Attorney General - absent

Obilio for 4th Respondent - present

HON. C.K. NZILI

JUDGE, ELC KITALE.

