



**Mohamed & 4 others v National Land Commission & 12 others
 (Environment and Land Petition E014 of 2022 & E005 of 2025
 (Consolidated)) [2025] KEELC 7597 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7597 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT MALINDI
 ENVIRONMENT AND LAND PETITION E014 OF 2022 & E005 OF 2025 (CONSOLIDATED)
 EK MAKORI, J
 OCTOBER 30, 2025**

BETWEEN

**MSELLAM SALIM MOHAMED 1ST PETITIONER
 BAKARI KHAMISI MBWANA 2ND PETITIONER
 JOHN GITARI WAKAHIU 3RD PETITIONER
 ABDULWAHID MAHMOUD MOHAMED 4TH PETITIONER**

AND

**NATIONAL LAND COMMISSION 1ST RESPONDENT
 CORDISONS INTERNATIONAL LIMITED 2ND RESPONDENT
 DIRECTOR OF LAND ADMINISTRATION 3RD RESPONDENT
 LAMU COUNTY GOVERNMENT 4TH RESPONDENT
 DIRECTOR OF SURVEY- KENYA 5TH RESPONDENT
 HON ATTORNEY GENERAL 6TH RESPONDENT**

**AS CONSOLIDATED WITH
 ENVIRONMENT AND LAND PETITION E005 OF 2025**

BETWEEN

**CORDISONS INTERNATIONAL LIMITED PETITIONER
 AND
 MSELLAM SALIM MOHAMED 1ST RESPONDENT**



BAKARI KHAMISI MBWANA	2 ND RESPONDENT
JOHN GITARI WAKAHIU	3 RD RESPONDENT
ABDULWAHID MAHMOUD MOHAMED	4 TH RESPONDENT
NATIONAL LAND COMMISSION	5 TH RESPONDENT
DIRECTOR OF LAND ADMINISTRATION	6 TH RESPONDENT
DIRECTOR OF SURVEY KENYA	7 TH RESPONDENT
LAND REGISTRAR, LAMU COUNTY	8 TH RESPONDENT
THE MINISTRY OF LANDS	9 TH RESPONDENT
HON. ATTORNEY GENERAL	10 TH RESPONDENT
LAMU COUNTY GOVERNMENT	11 TH RESPONDENT

JUDGMENT

1. There are two consolidated Petitions for determination. The first is an Amended Petition dated January 6, 2025, filed by the Petitioners in ELC E014 of 2022 (lead file), in which they sought the following reliefs:
 - a. A declaration that the 1st Respondent's proposed allocation of LR No. 32956, which encroaches upon or overlaps with CR.70989-Plot No. 30214, CR.70988-Plot No. 30213, and CR.71212-Plot No. 30215 in Lamu, among other plots, infringes on the Petitioners' private property rights protected by Article 40 of *the Constitution*.
 - b. An order of prohibition prohibiting the Respondents from interfering in any manner with the Petitioners' proprietary rights regarding CR.70989-Plot No. 30214, CR. 70988-Plot No. 30213, and CR.71212-Plot No. 30215 in Lamu without full compensation at the market value.
 - c. A declaration that the Respondents' intended allocation of plot LR. No.32956, measuring approximately 1707 Ha, to the 2nd Respondent without the consent or approval of the National and/or County Assembly, violates the rule of law guaranteed by Article 10 and 27 of *the Constitution*. Therefore, it is illegal, unenforceable, null, and void.
 - d. An order of prohibition preventing the 1st Respondent from allocating the property known as LR. No.32956, measuring approximately 1707 Ha, to the 2nd Respondent without the approval of the National and/or County Assembly of Lamu.
 - e. An order prohibiting the 4th Respondent from implementing the 1st Respondent's recommendations made on October 18th, 2024.
 - f. An order directing the 5th Respondent to cancel the Part Development Plan (PDP) No. 501/46 of the purported L.R. No. 31956 in favor of the 2nd Respondent, authenticated on June 13th, 2021, and an additional order directing the 5th Respondent to de-gazette the same.
 - g. An order directing the County Land Registrar of Lamu County to issue valid certificates of titles to the 1st to 3rd Petitioners for parcels of land as listed in paragraphs 4A (i) to 4A (iv) of this Petition.



10 and 27, and that the impugned allocation notice of March 16, 2022, had been issued without prior compliance with due process requirements concerning compulsory acquisition, agreement, and compensation to the 1st-3rd Petitioners. They added that viable alternative land, measuring approximately 1638 hectares, existed for settlement purposes without encroaching on their parcels. In sum, the Petitioners contended that the actions or inactions of the 1st Respondent violated their rights guaranteed under Articles 10, 27, 40, and 47 of *the Constitution*.

7. The second Petition filed by Cordisons International Limited in ELC Petition E005 of 2025 is dated February 21, 2025, and the reliefs sought therein are outlined as follows:
 - a. A declaration is hereby made that the alienation and issuance of certificates of titles and letters of allotments to the 1st, 2nd, 3rd, and 4th Respondents on the Public Land under PDP No. LMU/1281/01/16, which covers 1,707 hectares, was unprocedural, illegal, null, and void from the beginning.
 - b. A declaration hereby states that the 1st, 2nd, 3rd, and 4th Respondents' titles and letters of allotment for the land issued under PDP No. LMU/1281/01/16, covering 1707 hectares, were obtained illegally, without proper procedures, and through a corrupt scheme, and are therefore liable for cancellation.
 - c. An order is hereby issued canceling the titles and letters of allotment of the 1st, 2nd, 3rd, and 4th Respondents, along with all other titles or overlaps related to the public land under PDP No. LMU/1281/01/16, which measures 1,707 hectares. This land has been approved and is currently being processed for the Petitioner's Public Interest Wind Power Project.
 - d. An order that the 8th Respondent be and is hereby directed to correct the register by removing all the titles and the names of the 1st, 2nd, 3rd, 4th, and 5th Respondents, along with any other entries related to the public land under PDP No. LMU/1281/01/16 measuring 1707Ha, and revert ownership back to the government.
 - e. A declaration that the Petitioner's right to fair administrative action under Article 47 of *the Constitution* and their right to property as provided in Article 40 of *the Constitution* have been violated by the Respondents, and that the public land in question is at real risk of being permanently and arbitrarily acquired by the 1st, 2nd, 3rd, and 4th Respondents to the harm of the Petitioner, a Citizen of Lamu County, and the general public.
 - f. A declaration that the Petitioner's constitutional right to fair administrative action under Article 47 and their right to property under Article 40 of *the Constitution* deserve protection by this Court. The process of allocating the Public Land to the Petitioner has been long overdue. The 5th, 6th, 7th, 8th, 9th, 10th, and 11th Respondents have taken over 15 years to process and approve the Petitioner's application for the allocation of the Public Land for the Public Wind Power Project 350W.
 - g. An order of mandamus compelling the National Land Commission to issue and deliver to the Petitioner the Letter of Allotment for the entire public land identified as/under the PDP LMU/1281/01/16 (LR. NO. 32956-New Grant), measuring 1,707 hectares, within 30 days of this judgment, for the implementation of the Cordisons Lamu Wind Power Project 350MW.
 - h. That upon granting prayer G above, a permanent injunction shall be issued to prevent the 1st, 2nd, 3rd, 4th, and 5th Respondents, directly or through their agents, employees, or anyone working under their instructions, from interfering with the Petitioner's application process, possession, use, development, and ownership of the entire public land under PDP LMU/1281/01/16-1707HA (LR. NO. 32956-New Grant).



8. This Petition detailed the extensive process undertaken by Cordisons International (K) Limited to secure the official allocation of 1,707 hectares of public land in Lamu County for a 350 MW wind farm project. Starting in October 2009 with a request to the Ministry of Energy, the Petitioner stated that it obtained a non-renewable right of first refusal and gradually received numerous formal approvals, including letters of no objection from the County Council and the Ministry of Lands, endorsements from community stakeholders, authorization from the County Commissioner, and a final directive from the Ministry of Lands in January 2013 to proceed to the National Land Commission (NLC) for land alienation.
9. The Petitioner claimed that the process involved a successful survey and demarcation, a valuation report released by the County Government in 2014, and the preparation and gazetting of the Revised Part Development Plan (PDP) No. LMU/1281/01/16 in September 2016. This plan specifically designated the area for the Petitioner's use, followed by the publication of a notice to allocate public land on March 18, 2022. Subsequently, the Director of Surveys prepared, approved, and authenticated the definitive survey of PDP LMU/1281/01/16 for LR No. 32956 - the New Grant.
10. The Petitioner argued that the titles held by the 1st to 4th Respondents for the same land, along with any other existing titles, were illegal and procedurally invalid. It was claimed that these titles were issued by the Director of Surveys/Ministry of Lands without proper authority to allocate public land and in violation of the active planning and legal processes concerning the gazetted PDP. This includes the lack of an approved PDP from the Director of Physical Planning, approval from the Cabinet Secretary, and compliance with the Physical Planning Act, Cap 286. It was also stated that the titles were issued in clear breach of an ongoing court case over the same PDP, LMU/1281/01/16, which is ELC No. 18 of 2016 and ELC Misc. Application No. 11 of 2017. Furthermore, it pointed out that the titles allegedly held by the 1st to 4th Respondents were issued in February 2018, after the PDP LMU/1281/01/16 had already been gazetted.
11. To the Petitioner, those titles were issued in violation of Articles 62(1), 62(2), and 67 of *the Constitution* of Kenya, 2010, as well as sections 5(2), 12, and 14 of the NLC Act.
12. This petition was supported by the affidavit sworn by Crispin B.O. Kodi on February 21, 2025.

Responses

13. In response to the Amended Petition dated January 6, 2025, responses were filed by Cordisons International Limited, Lamu County Government, and the Attorney General, who are listed as the 2nd, 4th, and 6th Respondents.
14. The 2nd Respondent filed a replying affidavit sworn on January 27, 2025, by Crispin B. O. Kodi, who is identified as the Chairman and CEO of Cordisons International (K) Limited. He largely reiterated the contents of their Petition in ELC E005 of 2025. He stated that the Ministry of Energy approved the 2nd Respondent to develop 350 MW of wind power offshore in Lamu in 2009, and that the processes for allocating the public land had been properly completed. Additionally, the National Land Commission published its intention to allocate the land under PDP No. LMU/1281/01/16 to Cordisons International (K) Limited on March 18, 2022 (Annexed as CK-2).
15. It was added that the Amended Petition is res judicata in Malindi ELC-Petition No. 12 of 2022; Shungwaya Welfare Association -vs- National Land Commission and 4 others, Malindi ELC-Petition No. 18 of 2016, Omar Abdalla Mohamed & 20 others v County Government of Lamu and 8 others [2018] eKLR, Malindi ELC-Judicial Review, ELC Miscellaneous Application No. 11 of 2017, and Court of Appeal-Civil Appeal No. 91 of 2018; Cordisons International (K) Limited v Chairman



- National Land Commission & 44 others EKLK (Annexed as CO – 1A, B, C & D), where the courts declared the land under PDP No. LMU/1281/01/16 to be public land.
16. The deponent further stated that after gazetting the notice CK-2, no objection was filed by the Petitioners. He deposed that the title deeds presented by the Petitioner were issued fraudulently because the same parties claiming to have allocated the public land and issued the Petitioners with the title deeds were the same parties processing the land for allocation to Cordisons International Limited for the Wind Power Project (Annexed as CK-3 is a letter from the County Government of Lamu to the Chairman of the National Land Commission dated 27th April 2017, and CK-4 is a bundle of documents showing the application process and approval of their allocation).
 17. The 4th Respondent, Lamu County Government, filed a Replying Affidavit sworn on April 14, 2025, by its Chief Physical Planning Assistant, Paul Munyendo. He stated that, according to documents in the possession of the 6th Respondent, the County Council of Lamu—its predecessor—approved an application by Cordisons for the construction of a 350MW wind power project at its meeting held on November 15, 2012, as shown in the minutes annexed as "PMM 1" and "PMM 2." He further mentioned that this approval was communicated to Cordisons via a letter dated November 19, 2012, labeled "PMM3."
 18. The deponent further stated that upon devolution, the 2nd Respondent (Cordison), via its letter dated August 1, 2013 ("PMM4"), advised the 4th Respondent of the approval of its wind power project by the Ministry of Energy and the County Council of Lamu, and requested re-adoption and the award of, among other things, a certificate of authority for project implementation and a letter of award for land lease for a period of 35 to 40 years, renewable.
 19. In response, the 4th Respondent, through its letter dated September 2, 2013 (PMM 5), approved and issued a letter of award to the 2nd Respondent for land use to be leased for a renewable period of 40 years in Moa, Witu Division, and Kiongwe, Mpeketoni Division. The 4th Respondent also issued the 2nd Respondent a certificate of authority for project implementation via its letter dated September 2, 2013 (PMM 6), and requested the County Physical Planner to prepare a PDP for Cordisons International (K) Limited concerning the proposed Kiongwe wind power site, in a letter dated June 9, 2016 (PMM 7).
 20. It was stated that the PDP No. LMU/1281/01/16 was gazetted through Gazette Notice No. 6128 of August 5, 2016 (PMM 8), and was later amended to include Kenwind (K) Ltd., Resettlement Area, Cordisons (K) Ltd., and Conservation Area. This revision was gazetted as Gazette Notice No. 7851 of September 30, 2016 (PMM 9). Subsequently, on March 16, 2022, the National Land Commission issued a Public Notice of Intent to allocate (PMM 10) 1,707 hectares of land for wind power generation to Cordisons International Limited.
 21. The deponent further stated that after the notice to allocate, the 4th Respondent filed an objection to the allocation through written submissions in a letter dated April 7, 2022. The objection was based on the approval for land allocation and the resulting PDP No. LMU/1281/01/16 being irregular and fraudulent; the land was being re-planned and subdivided for the settlement of the landless; Cordison's International Limited had not shared the profile and financial statements of the consortium; and the ground status had since changed, and the allocation of 1,707 hectares could lead to litigation ("PMM 11"). He added that the Petitioners objected by filing the Amended Petition. The deponent also noted and attached the recommendations of the NLC in a report dated October 18, 2024 ("PMM 12").
 22. The 6th Respondent, the Honorable Attorney General, relied on the Replying Affidavit sworn on May 8, 2025, by Mike Sego Manyarkiy, a land registrar stationed at Mombasa Land Registry. He stated that lease documents for Parcel No. LR No. 30213 Lamu were forwarded to their office in favor of Bakari



- Khamisi Mbwana. These were registered on January 30, 2018, and a Certificate of Title, CR. 70988, was issued. (Annexed as MSM-1 (a) and (b) are copies of the lease and certificate of title, respectively). He also submitted a copy of deed plan No. 379060, prepared on January 26, 2015, for LR 30213 (MSM-2). Furthermore, as “MSM-3 (a) and (b),” he provided copies of the application for registration and the certificate of search.
23. Similarly, regarding Parcel LR No. 30214, lease documents were submitted for registration in favor of Msellem Salim Mohamed, which was completed on January 30, 2018, and a Certificate of Title CR. 70989 was issued (“MSM-4 (a) and (b)”). Its deed plan No. 379061 was prepared on January 26, 2015 (“MSM-5”). On October 30, 2019, Msellem Salim Mohamed received a letter of consent from the Land Control Board in Lamu (“MSM-6”) for subdividing parcel LR No. 30214 Lamu into five portions of 2.0 hectares each. He also presented a letter dated November 21, 2019 (“MSM-7”) from the County Surveyor of Lamu County, from the Ministry of Lands and Physical Planning, addressed to the Chief Officer of Lands and Infrastructure of the County Government of Lamu, indicating that his office had no objections to the proposed subdivision of LR No. 30214. Additionally, there was a letter of subdivision approval dated December 10, 2019 (“MSM-8”) from the County Physical Planner of Lamu County, along with another approval letter from NLC dated December 13, 2019 (“MSM-9”).
 24. The deponent stated that the County Government communicated the approval to Msellem through a P.P.A 2 (“MSM-10”). Following this, the deponent surrendered parcel No. LR No. 30214, registered as C.R. 70989, to the Government via a deed of surrender registered on September 29, 2020 (“MSM-11”). After surrendering and applying for subdivision registration (“MSM-12”), the parcel known as LR No. 30214, registered as C.R. 70989, was subdivided and closed.

Responses to the second Petition, ELC E005 of 2025

25. Responses were filed by the 1st through 4th Respondents, NLC (5th Respondent), the Director of Survey (7th Respondent), and Lamu County Government (11th Respondent).
26. The 1st-4th Respondents filed an answer to the petition dated May 29, 2025, in which they stated that the process used by the Petitioner (Cordisons) for allocation was fraudulent and unlawful. They argued that all documents held by the Petitioner were unenforceable without a prior Letter of Allotment from the 6th Respondent. The Respondents added that the statutory notice under Section 14 of the [Land Act](#) was only issued on March 16, 2022, and no allocation documents could be lawfully issued before that date. They also noted that the Petitioner’s Survey Plan No. F/R 501/46 was processed between May 17 and June 3, 2021, indicating that the land had been identified and acted upon before the lawful allocation process began.
27. The Respondents argued that the dates of examination, approval, and authentication of the Petitioner’s PDP No. LMU/1281/16 for 1707Ha show the document was prepared improperly, revealing contradictions and signs of fraudulent behavior in how all the documents were obtained or issued to the Petitioner. They added that the Petitioner’s allegations in paragraph 64 of the Petition are unfounded, misleading, and misplaced because, at the time the 1st to 4th Respondents received the letters of allotment, the land was vested with the President of Kenya and delegated to the Commissioner of Lands. Therefore, the provisions of Article 62(1) and 62(2) of the current Constitution did not apply, and the allotment letters issued to them were accompanied by a PDP approved by the Director of Physical Planning at the then-Commissioner of Lands.
28. In response to paragraph 66 of the Petition, the 1st through 4th Respondents argued that the allegations were misleading because land cannot legally be surveyed and approved without a prior Letter of Allotment from the Director of Land, which the Petitioner never obtained. They further



- noted that the Petitioner had previously filed Malindi ELC Misc. Application No. 11 of 2017 seeking mandamus to approve the disputed process and documents, but that application was dismissed. They added that the issue of res judicata was unfounded as the cases were not heard and decided on their merits, and there were no injunctive orders to prevent the issuance of the Titles.
29. They stated that after identifying the overlapping PDP, the 5th Respondent wrote to the County Government of Lamu, advising that the PDP No. LMU/1281/16 for 1,707 hectares issued to the Petitioner was irregular and invalid due to missing amendments, which had never been made. They highlighted copies of various correspondences between the 4th Respondent and the Ministry of Lands, especially the Director of Survey (7th Respondent) and the Chairman of the National Land Commission (5th Respondent), concerning the discovery and confirmation of the overlap of the Petitioner's parcel of land No. 32956, allegedly created from Survey Plan No. F/R 501/46.
 30. The Respondents urged the court to find that Petition No. E005 of 2025 lacks merit, is frivolous, constitutes an abuse of court process, and should be dismissed with full costs. They also argued that Survey Plan No. 501/46 of the purported L.R. No. 31956 overlaps parcels of land known as CR.70989-Plot No. 30214, CR.70988-Plot No. 30213, and CR.71212-Plot No. 30215, including the existing Survey Plan Numbers F/R 560/60, F/R 560/61, F/R 560/62, and F/R 560/63, and is therefore unlawful, illegal, unenforceable, null, and void. The reliefs requested in Petition No. E014 of 2022 should be granted as prayed. The 2nd Respondent in Petition No. E014 of 2022 and the Petitioner in Petition No. E005 of 2025 should be ordered to pay costs to the Petitioners in Petition No. E014 of 2022 and to the 1st through 4th Respondents in Petition No. E005 of 2025.
 31. In addition to the above, the 1st - 4th Respondents filed a Replying Affidavit sworn on May 29, 2025, by Msellam Mohamed, in which he reiterated the contents of their answer to the Petition and exhibited copies of the said correspondence as "MSM-1 (a) – (g)."
 32. In a Replying Affidavit sworn on March 18, 2025, by Brian Ikol, the 5th Respondent stated that after conducting public hearings on September 12 and 13, 2023, it found that the approved PDP No. LMU/1281/01/16 and the authenticated Survey Plan FIR No. 501/46, intended for land allocation to the Petitioner (Cordisons), overlapped with existing titles, including those owned by the 1st to 4th Respondents. This prompted it to write a letter dated July 5, 2021, to the 9th Respondent ("BI-1"). The Ministry of Lands and Physical Planning (9th Respondent), through its letter dated August 20, 2021 ("BI-2"), indicated that its records do not show the proper creation or allocation of the land in accordance with due process to the owners of the parcels. The deponent also stated that, in addition to the recommendations in their report dated October 18, 2024, the 5th Respondent recommended a thorough review of all documentation related to the land, including any letters of allotment, part development plans, and title records, to establish the chain of events that led to the acquisition of titles on the disputed land, including those owned by the 1st to 4th Respondents.
 33. On its part, the 7th Respondent (Director of Survey) filed a Replying Affidavit sworn on May 15, 2025, by Teddy Mulusa Mudaka, a principal land surveyor. He stated that the parcels in dispute, L.R. Nos. 30208–30216, originated from new-grant cadastral surveys lodged on February 12, 2014, by Stephen O. Ambani. These surveys were accompanied by letters of allotment with reference No. 79586/IV, and approved development Plan No. LMU.206.II.11.97, dated May 14, 1997, identifying nine (9) unsurveyed plots labeled A through J ("TMM-1" is Cadastral Survey Plan F/R NO 255/44, 494/119).
 34. He stated that the survey was registered as Cadastral Survey Plan F/R No. 560/60 with Computations File No. 65472, examined and approved via notice Ref. No. CR/265/VOL.34/34 dated February 21, 2014. The resulting parcels were issued with Land Reference Numbers L.R. Nos. 30208-30216. Deed Plan Nos. 379038 and 379055–379062 were subsequently issued through notice Ref. No. CR 265/



VOL.34/225 dated February 18, 2015, following a request by the National Land Commission in its letter dated February 24, 2014.

35. He further stated that L.R. Nos. 30217-30226 stem from another new grant survey submitted by the same surveyor through a letter dated February 17, 2014. The accompanying documents included letters of allotment with Reference No. 79586/IV and an Approved Development Plan No. LMU.206.VII.6.97 dated September 15, 1997, which showed ten (10) unsurveyed plots labeled A to K. (TMM-2 is Cadastral Survey Plan F/R NO 526/95). Similarly, he said that the survey was properly examined and approved via notice dated February 21, 2014, registered under F/R No. 560/63 and Computations file No. 65475, and issued with Land Reference Numbers L.R. Nos. 30217-30226. The NLC, through a letter dated February 24, 2014, requested deed plans, which were issued as Deed Plan Nos. 379045-379054.
36. For L.R. Nos. 30236-30240, the deponent stated that they arose from a new grant survey submitted by Mr. Ambani via letter dated 12th February 2014. The same was accompanied by letters of allotment with Reference No. 79585/IV and Approved Development Plan No. LMU.206.VII.5.97 dated 23rd September 1997, showing five (5) plots labeled A-E. (TMM-3 is Cadastral Survey Plan F/R No. 526/95). The survey was also registered as Cadastral Survey Plan F/R No. 560/61 with Computations File No. 65473 and was approved via notice Ref. No. CR 265/VOL.34/23 dated 21st February 2014. The resulting parcels were issued with Land Reference Numbers L.R. Nos. 30236-30240, and deed plans (Nos. 379075-379079) were issued via notice Ref. No. CR 265/VOL.35 T.J/42/224 dated 30th June 2015, following a request by the NLC in a letter dated 24th February 2014.
37. The deponent further stated that L.R. No. 32956 originated from a subsequent new grant survey submitted on May 7, 2021, by licensed surveyor W.A. Abutto, supported by a Part Development Plan Ref. No. 1281/01/16 dated December 22 and 23, 2016. The survey was registered under F/R No. 501/46 and Computations File No. 77173, and it was approved on June 3, 2021. (TMM-4 is Cadastral Survey Plan F/R NO 562/140, 303/82, 397/52, 255/44). He added that the computations file for F/R No. 501/46 could not be located at the time of reporting, so its contents and correspondence were unavailable.
38. The deponent confirmed that, according to the Survey Records Office, the Director of Surveys determined that the footprint of L.R. No. 32956, registered under F/R No. 501/46, substantially overlaps with pre-existing, approved parcels LR Nos. 30217–30226, 30208-30216, 30236–30240, and 30194–30205, which were previously surveyed and registered in 2014 under F/R Nos. 560/60, 560/61, 560/63, and 395/61. (TMM-5 is Cadastral Survey Plan F/R No. 562/140, 303/82, 397/52, 255/44).
39. The 11th Respondent, the Lamu County Government, submitted a Replying Affidavit sworn on April 14, 2025, by Paul Munyendo, its Chief Physical Planning Assistant. The affidavit essentially restates the statements in his earlier affidavit filed in response to the Amended Petition, and I see no need to repeat its contents here.

Submissions

The Petitioners' submissions dated June 1, 2025

40. Learned counsel for the Petitioners, Mr. Omwancha, identified three issues for determination: whether the processing, issuance, and authentication of documents that facilitated the creation of the 2nd Respondent's Survey Plan No. F/R-501/46, which resulted in the parcel of land Title LR. No. 32956 of PDP No. LMU/1281/16 for 1707 Ha, were fraudulent, irregular, and/or unlawful; whether the



Petitioners are entitled to the reliefs sought in their amended petition dated January 6, 2025; and what reliefs the court may grant to the parties, given the circumstances of the case.

41. Regarding this first issue, counsel argued that the process of allocating public land to a private individual or corporate entity by the NLC is outlined in the Land (Allocation of Public Land) Regulations No. 284 of 2017. Counsel contended that the entire process followed by the second respondent (Cordisons) was flawed because reallocation of public land cannot be legally carried out before canceling an existing offer that was properly made and accepted by another party, in accordance with the law. Counsel further argued it was entirely illegal for the 5th respondent to conduct or oversee a re-survey of the area and to authenticate the illegal survey plan No. 501/46, which overlaps with existing plots owned by the Petitioners and whose records are in the possession of the 5th Respondent. Additionally, counsel pointed out that even under adverse possession, the law imposes strict guidelines, including adequate notice, public participation, and prompt compensation to affected parties, among other lawful considerations.
42. The counsel stated that the re-survey was irregular, fatally flawed, and cannot be salvaged. He argued that the actions of the 5th Respondent in claiming to approve a survey plan that significantly overlaps, encroaches upon, or impacts existing boundaries recognized by the land registry are illegal, null, and void. Counsel cited the case of Republic v Director of Surveys & 2 Others [2018] eKLR, Shaiyah v Kihonge & Another [2023] KEELC 14, and Warab Limited v Machakos County Government & 8 Others [2020] KEELC 2716 (KLR) to support this argument.
43. He added that since the 2nd Respondent admitted that the Petitioners were the original allottees, the proposed reallocation cannot legally proceed unless the previous allocation to the Petitioners has been terminated through cancellation, adverse possession, or other lawful means.
44. The Petitioners further challenged the findings of the report filed in this Court by NLC, stating that their property rights were blatantly ignored, which proves there is a deliberate scheme to illegally deprive, dispossess, and/or deny the Petitioners the right of ownership without due process of law, as it pertains to compulsory land acquisition under Article 40(3) and (4) of the 2010 Constitution of Kenya. Counsel urged the Court to find that the intended reallocation to the 2nd Respondent by NLC is improper, irregular, and therefore unlawful.
45. On the second issue, counsel submitted that the court is obliged to refuse lending aid to a party that commits an illegality caused by failure to follow the due process of compulsory acquisition as outlined in Article 10, 27, & 48 of *the Constitution*. Counsel argued that the Petitioners' interest in the suit properties should thus be protected under Article 40 of *the Constitution* and requested that the court find merit in the reliefs sought.
46. Regarding the final matter, counsel acknowledged the need to balance conflicting claims and proposed that there is sufficient land, specifically a parcel measuring approximately 1,638 hectares, which could serve as a proposed re-settlement area. This land could be allocated by the 1st Respondent (NLC) to the 2nd Respondent without encroaching on the Petitioners' property or the homes of other residents whose livelihoods and habitation could be seriously impacted if the planned allocation of the 1,707 hectares to the 2nd Respondent goes ahead. Additionally, the 2nd Respondent and the Petitioners may reach an amicable settlement regarding compensatory damages, particularly for the affected portions of the Petitioners' land, based on current valuation rates and other terms agreed upon by the parties.

2nd Respondent's (Cordison's) submissions dated June 9, 2025

47. Learned for the 2nd Respondent, Mr. Okoyo, submitted that the two Petitions raise only two issues for determination – whether the petitioner in Petition No. E014 of 2022 has good titles and valid



- letters of allotment on the subject public land under PDP LMU/1281/01/16 (LR No. 32956 – New Grant) measuring 1707 Ha intended to be allocated to Cordisons by NLC for the implementation of the Cordisons Lamu Wind Power Project 350MW; and whether Cordisons International (K) Limited is entitled to the prayers sought in its Petition No. E005 of 2025.
48. On the first issue, counsel argued that the 2nd Respondent’s challenge to the Petitioners’ title and letters of allotment was twofold: that the titles were obtained illegally and unprocedurally; and that the letters of allotment are invalid because the offers expired after August 15, 1998. Citing section 26 of the [Land Registration Act](#) and the case of *Dina Management Limited v County Government of Mombasa & 5 Others* (Petition No. 8 (E010) of 2021, along with *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR on land title indefeasibility, counsel contended that a title holder must demonstrate that the entire acquisition process was legal from start to finish.
 49. Counsel argued that the letters of allotment issued to the 1st-3rd Petitioners on July 14, 1998, included a specific condition requiring them to communicate their acceptance and make payment within 30 days. According to counsel, this was not demonstrated before the court, as there was no evidence they accepted the offer within the required timeframe. He pointed out that the payments shown were made in 2012, sixteen years after the offer was made. To counsel, this indicated that the offer to the 1st-3rd Petitioners had expired, making the land available for allocation to Cordisons. He cited decisions in *Philma Farm Produce and Supplies & 4 others vs Attorney General & 6 others* [2022] eKLR; *Bukaki Investment Company Ltd vs the National Land Commission & 2 others* [2015] eKLR; *Mbau Saw Mills Limited v Attorney General for and on behalf of the Commissioner Of Lands & 2 others* [2014] eKLR; *Ahmed v Wamalwa (Sued as the Legal Representative of the Estate of Cormelius Wanyonyi Wamalwa - DCD) & 5 others (Environment & Land Case E003 of 2022)* [2024] KEELC 4772 (KLR); and *Mutua & 2 Others v Attorney General & 5 others (Environment & Land Petition 10 of 2020)* [2023] KEELC 18346 (KLR).
 50. Further citing the definition of public land under Article 64 (a) of [the Constitution](#) and as discussed in the case of *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 Others*, Civil Appeal No. 79 of 2007; [2015] eKLR, counsel argued that an allotment letter is merely an offer awaiting the fulfillment of certain conditions and cannot confer an interest in land, as held in *Dr. Joseph N. K Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 Others*, C.A.60/1997 [unreported]; *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 Others*, HC Civil Case No. 182 Of 1992; [2008] eKLR; *Torino Enterprises Limited v Attorney General (Petition 5 (E006) Of 2022)* [2023] KESC 79 (KLR); *Peter Wariire Kanyiri v Chrispus Washumbe & 2 Others*, Environment and Land Court Case No. 603 of 2017 [2022] eKLR; *Board Of Management Bulla College Primary School & another v Dahir (Civil Appeal 7 of 2022)* [2023] KEELC 20178 (KLR); and *Dr. Sydna Mohamed Bulhammuddin Saheb & 2 Others v Benja Properties & 2 Others* [2007] eKLR.
 51. Counsel further argued that there was no evidence of gazettelement of the intended allocation to the 1st-3rd Petitioners, as was required under sections 13 and 21 of the Government Lands Act (repealed). To the counsel, these omissions led to one conclusion: that the titles of the 1st-3rd Petitioners were unlawfully and irregularly issued based on expired letters of allotment, whose offers had long lapsed.
 52. Counsel argued that the court had long decided regarding the suit properties within PDP LMU/1281/01/16. In *Petition No. 18 of 2016, Omar Abdalla Mohamed & 20 others v County Government of Lamu and 8 others* [2018] eKLR, the court affirmed that the suit properties were public land. Later, in *Shungwaya Welfare Association v NLC & 4 Others (ELC Petition 12 of 2022)* [2023] KEELC (KLR), the court ruled that the suit was barred by *res judicata* because it was based on the same land under PDP LMU/1281/01/16.



53. In relation to their petition, the second Petition herein, counsel submitted that the issues are ripe and properly before this Honourable Court for final determination and conclusion. The NLC has handled the matter, provided its report and position, and has invited this court to investigate the origins of the titles and deliver its final verdict. Similar to the County Government of Lamu and the Ministry of Lands, counsel argued that all issues have been properly presented through affidavit evidence, and there was no demand for viva voce evidence.
54. Counsel reiterated that the 2nd Respondent had followed proper procedure and argued that there was no reason for the delay in processing the titles in his client's favor. He contended that under Article 47 of *the Constitution* of Kenya, the 2nd Respondent was entitled to administrative action that was prompt, efficient, lawful, reasonable, and procedurally fair.
55. Counsel highlighted the legal framework governing land allocation, particularly public land. He cited sections 2, 12, and 14 of the *Land Act*, Article 62 (1) (a), 62 (2) of *the Constitution*, and sections 5 (1) (a) and (2) of the NLC Act. He added that the procedure for allocating unalienated land was outlined in *Nelson Kazungu Chai & 9 Others v Pwani University* [2014] eKLR and *African Transport Co. Limited v AG Mombasa HCCC No. 276 of 2013*, as referenced in *Dina Management Limited v County Government of Mombasa & 5 Others* [supra]. He argued that the second Respondent properly followed this procedure. To him, the actions of the 5th to 11th Respondents—processing public land for allocation to Cordisons for a public wind power project while accepting late payments and allocating the same land to the 1st-4th Petitioners—constituted a clear violation of the 2nd Respondent's right to fair administrative action under Article 47 of *the Constitution* and a breach of Article 10 (2) (c) of *the Constitution*.
56. He argued that the titles and letters of allotment issued to the 1st–4th Petitioners within the public land under PDP No. LMU/1281/01/16 were obtained unconstitutionally, unprocedurally, and through a corrupt scheme and are subject to cancellation. He also stated that the actions of the 6th–8th Respondents in issuing title deeds to the 1st–4th Petitioners on public land based on an expired or invalid Letter of Allotment violated Article 67(2) of the Kenyan Constitution, which grants the authority to manage and allocate public land exclusively to the National Land Commission.
57. In the foregoing, counsel urged the court to dismiss Petition E014 of 2022 and, in turn, allow Petition No. E005 of 2025.

The submissions of the 3rd, 5th, and 6th respondents, dated June 30, 2025.

58. Mr. Munga learned state counsel for the 3rd, 5th and 6th Respondents identified three issues for determination: whether the procedure for allocating unalienated land was followed; whether the Respondents have violated the Petitioners' rights to property under Article 40; and whether the Petitioners are entitled to the reliefs sought.
59. Counsel argued that the process for allocating unalienated land was outlined by the Environment and Land Court in *Nelson Kazungu Chai & 9 others v Pwani University* [2014] eKLR, where the court stated that under the repealed Government Lands Act, a Part Development Plan must be prepared and approved by the Commissioner of Lands or the Minister for Lands before any unalienated Government land can be allocated. Once a Part Development Plan (PDP) is prepared, a letter of allotment based on the approved PDP is then issued to the allottees. He also contended that this process was reinforced in *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR).



60. It was his submission that, on one hand, the Petitioners in Petition no. E014 of 2022 provided a detailed explanation of how they came to be allocated the suit properties and subsequently received titles. They attached correspondence letters, allotment letters, and receipts for the stand premium payment. Although there is no PDP, they included an approved Development Plan with their documents. On the other hand, Cordisons International Limited was found to have been allocated land that was not available for allocation.
61. He thus argued that since The Land Act, 2012, governs the suit property. The Land Registration Act, 2012, and considering the provisions of section 26(1) of the Land Registration Act, as well as the findings in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, Cordisons International Limited could not have been issued a title or lease because doing so would result in double allocation of land, as the land was not available for allocation.
62. Regarding the second issue, counsel argued that the Petitioner's reliance on Article 40 of the Constitution was mistaken, since although Article 40(1) safeguards the right to acquire and own property, Article 40(6) explicitly excludes from protection any property found to have been unlawfully obtained. He further stated that property rights are also governed by statutes, specifically the Land Registration Act and the Land Act, and that indefeasibility only applies to titles that are lawfully issued.
63. Counsel argued that L.R. No. 32956 had not been available for allocation and that its acquisition process was never legally completed, as shown by the Replying Affidavit of Teddy Mulusa Mudaka, Principal Land Surveyor. He stated that spatial and records analysis revealed that L.R. 32956 (F.R. 501/460) overlapped four previously approved surveys. Counsel referred to Section 21 of the Survey Act to emphasize that the survey's accuracy is the surveyor's responsibility, and that authentication does not validate an illegal survey. He also cited *Evelyn College of Design Ltd v Director of Children's Department & another* [2013] eKLR, where the Court confirmed that Article 40(6) prevents constitutional protection for unlawfully acquired property, and such a ruling can only be made following due process. Based on this, counsel argued that no violation of Article 40 had been proven.
64. Lastly, counsel argued that the Petitioners were not entitled to the reliefs sought under Article 23(3) of the Constitution, which only allows a court to issue appropriate remedies when a violation of rights under Article 22 is proven. Counsel contended that the Petitioners had neither demonstrated any breach of Article 47, as they had been heard and informed at every stage of the administrative process, nor proved a violation of Article 40, since the protection there does not extend to unlawfully acquired property, and the PDP underpinning the suit property was allegedly irregular. Counsel therefore maintained that no constitutional violation had been established, rendering the Petitioners ineligible for any relief. Counsel urged the Court to dismiss the Petition with costs.

The 4th Respondent's (Lamu County Government) Submissions dated June 16, 2025

65. Ms. Swaleh learned that counsel for the 4th Respondent believed the petitions raised three issues for determination. First, whether due process was followed in the allocation of the land that is the subject of the petitions to the petitioners; second, whether filing a petition is the proper forum to resolve contested ownership disputes of properties if there is another procedure provided by law or statute; and lastly, whether the petitioners are entitled to the orders sought.
66. Regarding the first issue, counsel argued that the Petitioners' claims are based on letters of allotment dated July 14, 1998, and that the legality of the titles issued afterward depends on whether the statutory requirements under the repealed Government Lands Act and the Physical Planning Act have been met. They relied on *Ahamed v Kenya National Highways Authority & 2 Others* (ELC 333 of 2013) [2024] KEELC 5130, where the Court emphasized that the preparation, approval, and authentication



of a PDP must occur before the issuance of letters of allotment, and that the approved plan number must be included. The 4th Respondent referenced the Supreme Court in *Dina Management Limited v County Government of Mombasa & 5 Others* (Pet. 8 (E010) of 2021) [2023] KESC 30, along with *Nelson Kazungu Chai & 9 Others v Pwani University* [2014] E.K.L.R., and *African Line Transport Co. Ltd v Attorney General* (HCCC 276/2013), noting that courts have confirmed that without an approved PDP, a valid allocation of public land cannot occur.

67. Counsel argued that no evidence was presented to prove compliance with allocation conditions or timely payment of premiums. They relied on *Joseph Kamau Muhopro v AG* [2021] eKLR, *Dr. Syedna Mohammed Burhannuddin Saheb v Benja Properties* [2007] eKLR, and the Supreme Court case *Torino Enterprises Ltd v AG* (Pet. 5(E006) of 2022) [2023] KESC 79, all of which state that unaccepted or non-compliant allotment letters expire and do not create valid titles. They also cited *Dr. Joseph N.K. Arap Ngok v Moiwo Ole Keiuwa* [1997] eKLR, which established that a lease certificate only arises from a valid prior allotment.
68. Dealing with the second issue, counsel invoked the doctrine of constitutional avoidance and cited *Mikaal Limited v Land Registrar Kilifi & 2 Others* (Pet. 38 of 2021) [2025] KEELC 445, and *Yaa v District Land Registrar Kilifi* (Pet. 23 of 2022) [2023] KEELC 21694, to argue that contested land ownership and the validity of the title require civil proceedings with viva voce evidence, not constitutional litigation.
69. Counsel further cited *Joseph Musikali Mutemi v National Land Commission* [2021] eKLR, where the Court refused to resolve title disputes based solely on affidavit evidence.
70. On the final issue, counsel argued that the Petitioners are not entitled to the orders sought in the Amended Petition and that the same should be dismissed with costs to the 4th Respondent. Given the finding in the second issue above, it is clear that the orders sought by the Petitioners in ELC Petition No. E005 of 2025 cannot be granted without a court determination on the validity of the Petitioners' title to the suit properties. Counsel thus urged the Court to dismiss both petitions with costs.

The 5th Respondent's (NLC) Submissions Dated June 30, 2025.

71. Mr. Kiilu, learned counsel for the 5th Respondent, argued that the 5th Respondent acted within its constitutional and statutory authority under Article 67(2)(e) of *the Constitution*, the *National Land Commission Act*, and Section 12 of the *Land Act* in managing the public land in question. He maintained that the allocation of public land could only be carried out by the NLC following a formal request from either the National or County Government, and that in this case, the County Government of Lamu initiated the process by submitting allocation requests and approvals dated September 16, 2016; January 24, 2017; and April 27, 2017, in favor of Cordisons.
72. Counsel further argued that the 5th Respondent observed the procedural safeguards in Section 12 of the *Land Act*, including the prohibition against allocating ecologically sensitive land under Section 12(2), the requirement for community benefit under Section 12(4), and the pre-allocation prerequisites under Section 12(7) that land must first be planned, surveyed, and serviced. He submitted that the 5th Respondent ensured compliance by facilitating the preparation and approval of PDP No. LMU/1281/01/16 and the authentication of the survey plan on June 3, 2021, pursuant to Section 32 of the *Survey Act*. He added that the 5th Respondent had fulfilled Section 14 of the *Land Act* by publishing the required notice on March 18, 2022, and conducting public hearings on September 12 and 13, 2023.
73. Counsel argued that the County Government, having initiated the allocation process and approved the PDP, could not later oppose it without breaching the principle of legitimate expectation. He cited



Trustees of the Church Commissioners of Kenya; Registered Trustees v National Land Commission & County Government of Taveta, ELC Voi Petition 1 of 2024, where the court confirmed that the legal authority to allocate public land is exclusively vested in the NLC, provided they follow constitutional and statutory procedures, and not in the County Governments.

74. Counsel further submitted that, during its investigations, the 5th Respondent found that PDP No. LMU/1281/01/16 and Survey Plan F/R 501/46 overlapped with existing private titles, including L.R. No. 27770 (CR 42662) and others (L.R. Nos. 30228–30214, 25228–25223, 30343–30345, 30344–30350, 30183–30185, 30334, 20739). Relying on Section 26(1) of the [Land Registration Act](#), counsel argued that although registered titles serve as prima facie evidence of ownership, they can be challenged if obtained illegally or irregularly. He stated, based on correspondence from the Ministry of Lands dated August 20, 2021, and July 5, 2021, that the contested titles may have been processed irregularly. Counsel also submitted that letters of allotment, which formed the basis of the titles, were issued in 1998 but were not accepted and paid for until after their conditions had expired, making any subsequent titles legally indefensible.
75. Consequently, counsel argued that the 5th Respondent could not proceed to issue a letter of allotment to the Petitioner while overlapping titles existed, as doing so would violate Section 12(7) of the [Land Act](#) and undermine Section 26(1) of the [Land Registration Act](#). Therefore, in its report of 18th October 2024, it recommended identifying and canceling illegally or irregularly acquired titles; amending and resurveying the PDP to exclude legitimate titles in Portion C; allocating the remaining area in Portion C to Cordisons International Limited; reserving Portion B for community resettlement under the Settlement Fund Trustees; and vesting Portion D in the Kenya Forest Service for conservation.
76. To counsel, this matter was properly before this court for determination. That the NLC has provided its position and report, and what is before the court is solely the issue of canceling or validating the private titles, a matter that can only be decided by this court.
77. Ultimately, he urged the Court to declare that the NLC complied with its procedural obligations under the [Land Act](#), 2012, in processing the allocation request; order a judicial review of the Respondents' titles (e.g., L.R. No. 27770 and others listed) to determine their legality, with cancellation of any irregular titles per Section 26(1) of the [Land Registration Act](#); direct the County Government of Lamu to finalize the PDP amendment and resurvey within a specified timeline, excluding legitimate titles, to facilitate the allocation of Portion C to Cordisons International Limited; uphold the NLC's recommendations to reserve Portion B for community resettlement and Portion D for conservation; award costs to the 5th Respondent; and grant any other relief deemed just and equitable.

Analysis and determination

78. I have thoroughly examined the two Petitions filed, along with the supporting affidavits thereto, responses, replying affidavits, annexures, submissions, and authorities submitted by the parties involved. I hereby formulate the following issues for determination:
 - i. Whether the Petitions meet the threshold of constitutional petitions.
 - ii. Whether the doctrine of res judicata bars the Amended Petition.
 - iii. Whether the parcels held by the Petitioners in E014 of 2022 were lawfully allocated, surveyed, processed, and registered, and whether their titles are valid.
 - iv. Determine whether the process undertaken for Cordisons International Limited to allocate LR No. 32956 under PDP LMU/1281/01/16 was lawful,



complete, and procedurally compliant to justify the remedies sought in Petition E005 of 2025.

- v Whether the Petitioners in either Petition are entitled to the relief sought, and if so, under what terms.

Issue (i): Whether the Petitions meet the threshold of constitutional petitions.

79. The wheel need not be reinvented. The threshold for constitutional petitions was long settled in *Anarita Karimi Njeru v Republic* (1979) eKLR, where the Court underscored the obligation on a petitioner to plead with reasonable precision the constitutional provisions allegedly infringed, the manner of such infringement, and the relief sought; a position later affirmed and restated by the Court of Appeal in *Mumo Matemtu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR.
80. A brief review of the two petitions suggests that they were pleaded with reasonable accuracy. In the Amended Petition, the provisions alleged to be infringed by the 1st Respondent were identified as Articles 10, 27, 40, and 47 of *the Constitution* of Kenya, 2010. The manner of such infringement is also described, and the reliefs sought are clearly outlined. Regarding the second Petition, dated 21st February 2025, the 6th, 7th, and 8th Respondents are claimed to have violated the Petitioner's rights under Article 67 (2) by alienating public land to the four petitioners in the amended petition; moreover, the actions of the 5th through 11th Respondents of processing public land for allocation to the petitioners in both petitions are alleged to violate the Petitioner's rights under Articles 10 (2) (c) and 47 of *the Constitution*. The reliefs sought are well articulated in that petition.
81. In the foregoing, I am satisfied that the two Petitions meet the threshold established in the *Anarita Karimi Case* (supra) and reaffirmed in the *Mumo Matemtu Case* (supra).

Issue (ii) - Whether the Amended Petition is barred by the doctrine of res judicata

82. The doctrine of res judicata is based on Section 7 of the *Civil Procedure Act* and clearly relates to a court's jurisdiction. That provision states that no court shall hear any suit or issue in which the matter directly and substantially in issue has already been directly and substantially in issue in a previous suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court capable of trying such subsequent suit or the suit in which the issue was subsequently raised, and that has been heard and finally decided by such court.
83. The Court of Appeal sitting in Kisumu in *Onyinkwa v The Kisii County Assembly Service Board & another* (Civil Appeal 10 of 2020) [2025] KECA 547 (KLR) emphasized that:
- “ 21. The provision is anchored on the doctrine that there should be an end to litigation. The doctrine exists to protect public interest so that a party should not endlessly be dragged into litigation over the same issue or subject matter that a court of competent jurisdiction has conclusively determined.
22. Res judicata will successfully be raised as a defence if the issue(s) in dispute in the previous litigation or suit were between the same parties as those in the current suit; the issues were directly or substantially in issue in the previous suit as in the current suit and they were conclusively determined by a court of competent jurisdiction. This Court in the case of *Independent Electoral and Boundaries Commission vs. Maina Kiai & 5 Others*, [2017] eKLR, held that:



“For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms:

- a. The suit or issue was directly and substantially in issue in the former suit.
- b. That former suit was between the same parties or parties under whom they or any of them claim.
- c. Those parties were litigating under the same title.
- d. The issue was heard and finally determined in the former suit.
- e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

84. The 2nd Respondent (Cordisons) stated that the Amended Petition is res judicata, citing Malindi ELC - Petition No. 12 of 2022; Shungwaya Welfare Association v National Land Commission and four others, Malindi ELC - Petition No. 18 of 2016; Omar Abdalla Mohamed & 20 others v County Government of Lamu and 8 others [2018] eKLR; Malindi ELC - Judicial Review, ELC Miscellaneous Application No. 11 of 2017; and Court of Appeal - Civil Appeal No. 91 of 2018; Cordison International (K) Limited v Chairman National Land Commission & 44 others [2019] KECA 830 (KLR).

85. A review of the mentioned decisions shows that the 1st-4th Petitioners in the Amended Petition were not parties to those decisions. Suffice it to say, the 2nd Respondent failed to prove to this court whether the 1st-4th Petitioners were litigating under or through those former parties. For this reason alone, the objection based on the doctrine of res judicata fails.

86. Even assuming, for argument’s sake, that the parties were the same, the 2nd Respondent’s case on res judicata rests solely on the fact that the previous courts found the suit property to be public land. However, in my view, the issues before this court go beyond the simple question of whether the suit property is public land. As will be evident later, this court is required to determine the validity of the titles held by the 1st – 3rd Petitioners; the lawfulness of the process leading to the formulation of PDP LMU/1281/01/16; and, based on that, to examine the alleged violations of rights as pleaded in each Petition. I conclude that the Amended Petition is not res judicata Malindi ELC- Petition No. 12 of 2022; Shungwaya Welfare Association v National Land Commission and 4 others, Malindi ELC - Petition No. 18 of 2016, Omar Abdalla Mohamed & 20 others v County Government of Lamu and 8 others [2018] eKLR, Malindi ELC - Judicial Review, ELC Misc Application No. 11 of 2017, and Court of Appeal - Civil Appeal No. 91 of 2018; Cordisons International (K) Limited v Chairman National Land Commission & 44 others [2019] KECA 830 (KLR).

Issue (iii): Whether the parcels held by the Petitioners in E014 of 2022 were lawfully allocated, surveyed, processed, and registered, and whether their titles are valid.

87. The Petition in ELC Petition No. E005 of 2025 challenged the manner in which the suit property was alienated and subsequently allocated to the 1st to 3rd Respondents. What clearly emerged from the material presented before the Court is that the Government originally owned the suit property. To properly analyze this issue, it is necessary to restate the legal and procedural framework governing the alienation and allocation of public land.



88. Article 62 of *the Constitution* classifies such land as public land held in trust by the State. Article 62(2) vests the management of public land in the National Land Commission, acting on behalf of the National or County Governments, as appropriate. Furthermore, the *Land Act*, 2012 (particularly Sections 9–14) outlines the process for allocating public land under the current regime, while the Government Lands Act (repealed) governed allocations before the enactment of the 2010 Constitution. Section 9(2)(a) of the *Land Act* states that public land may be converted to private land through allocation.
89. Under the Government Lands Act (Cap 280) (now repealed), the President or the Commissioner of Lands, acting under delegated authority, could allocate government land (see sections 3 and 5 of the Government Lands Act- repealed). That system gave broad discretionary powers to the executive and included few procedural safeguards, especially regarding public participation, competitive processes, transparency, and accountability.
90. The impugned alienation spanned both legal regimes, having begun under the Government Lands Act (repealed) (GLA) and concluded after the enactment of the 2010 Constitution. The process for alienating government land, as it was under the GLA, was clearly outlined by the Supreme Court in *Dina Management Ltd v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR):

“104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in *Nelson Kazungu Chai & 9 others v Pwani University* [2014] eKLR as follows:

“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013*, where Njagi J held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

105. This process is restated in *African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003* [2007] eKLR, where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to



the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.”

91. Based on the record and submissions, it is undisputed that the parcels known as CR.70989-Plot No. 30214, CR.70988-Plot No. 30213, and CR.71212-Plot No. 30215 Lamu were initially allocated to the 1st–3rd Petitioners around 1998. However, the corresponding certificates of title were only issued on January 30, 2018, July 1, 2018, and March 28, 2018, respectively. It is also clear that the Part Development Plans provided with these titles are all PDP Ref. No. LMU/1281/01/16, which was approved on December 23, 2016, according to the record. The Petitioners failed to present any evidence of an initial PDP at the time when the alleged letters of allotment were first issued in 1998. Additionally, I have not seen the specific letters of allotment related to these three parcels. The allotment letters shown instead pertain to parcels listed in paragraph 4A(i)–(iv) of the Amended Petition.
92. Furthermore, no explanation was provided regarding the connection between the three parcels, CR.70989-Plot No.30214, CR.70988-Plot No.30213, and CR.71212-Plot No.30215, and those parcels mentioned in paragraph 4A(i)–(iv) of the Amended Petition. As clarified by the Supreme Court in *Dina Management Limited v County Government of Mombasa & 5 others* [supra], a letter of allotment is typically accompanied by a Part Development Plan with a specific number, meaning that a PDP must be prepared and approved before any unalienated government land can be allocated. In this case, the Petitioners did not show that an approved PDP was in place at the time of the alleged initial allocation. Based on the materials before me, I am therefore not convinced that the 1st–3rd Petitioners met their evidential burden of proving the validity of the origin of their respective titles, which is the core issue raised in Petition No. E005 of 2025.
93. That said, once the validity of the title is questioned, the law as outlined in *Munyu Maina v Hiram Gathiha* (supra) requires a registered owner to go beyond the title document and prove the legality of the acquisition. The 1st–3rd Petitioners failed to meet that evidentiary burden. The consequence of this failure is that the disputed titles cannot, at this stage, receive the automatic protection usually given to registered owners. Whether this evidentiary shortcoming alone justifies an immediate finding of invalidity or cancellation is a separate matter that must be assessed considering all the facts and legal factors, including the competing claim outlined by Cordisons.
94. In the current dispute, there are overlapping and unresolved factual and administrative narratives. On one side, the 1st–3rd Petitioners’ chain of acquisition has revealed apparent procedural gaps related to the lack of an antecedent PDP and the timing of payments in relation to the letters of allotment. On the other side, the competing claim from Cordisons is based on a survey (F/R 501/46) that the Director of Surveys has confirmed significantly overlaps with earlier approved surveys and land for which titles have already been issued. These conflicting irregularities put the Court in a position where, based on the existing record, neither an affirmation nor a nullification of titles can be made solely on the Petitioners’ evidence
95. Having established the evidential adequacy of the root of the Petitioners’ titles, the Court now turns to the fourth question: whether the parallel process relied upon by Cordisons International Limited for the allocation of the suit land meets the legal threshold for alienation.

Issue (iv) - Whether the process undertaken in favor of Cordisons International Limited for the allocation of LR No. 32956 under PDP LMU/1281/01/16 was lawful, complete, and procedurally compliant to support the remedies sought in Petition E005 of 2025.

96. From the documentation and affidavits filed, it is not disputed that Cordisons International Limited began the process of acquiring land for a wind energy project around October 2009. The record shows



that the process involved several administrative steps, including ministerial and county endorsements, as well as the gazettment of PDP No. LMU/1281/01/16 in 2016, the authentication of Survey Plan F/R No. 501/46 in June 2021, the publication of a notice of intent to allocate the land under Section 14 of the *Land Act* in March 2022, and the holding of public hearings in 2023.

97. However, the evidence before the Court also shows that the surveyed footprint of F/R No. 501/46 significantly overlaps with several pre-existing parcels, which had been previously approved and for which titles had already been issued. Additionally, the NLC report, dated October 18, 2024, submitted to this Court, notes that during its inquiry into the allocation, it identified both procedural gaps and irregularities in the allocation process in favor of Cordisons thus far. These findings are significant because the allocation of public land assumes that the land is available for transfer. When the land being allocated is already subject to registered interests or if the administrative procedures contain irregularities that could compromise the legal integrity of the process, then the allocation cannot be considered complete for the purpose of granting final relief as requested herein. This then brings me to the last issue: whether the Petitioners in either Petition are entitled to the relief sought, and if so, under what terms.

Issue (v): Whether the Petitioners in either Petition are eligible for the reliefs sought, and if so, under what conditions.

98. As previously discussed in this judgment and supported by relevant legal references and judicial precedents related to the allocation of public land, the Petitioners in In, Petition No. 14, 2022, did not meet the necessary criteria for allocating public land. Therefore, the reliefs requested cannot be granted. Accordingly, the Petition is dismissed with costs.
99. Regarding Petition No. E005 of 2025, I have also thoroughly reviewed the process undertaken by the Petitioner for the allocation of the suit property for the development of a wind energy project. This time, unlike in the past, the Petitioners followed a detailed process, whereas previously, the NLC was not involved, as observed in related litigations. See the Supreme Court decision in *Cordisons International (K) Limited v Chairman National Land Commission & 44 others* [2020] KESC 50 (KLR), where the Apex Court noted:

“The question that must necessarily arise in the above context is this; what was before the Court of Appeal post Olola J’s Judgment to trigger the issues now placed before this Court? In its Judgment, the Court of Appeal had inter alia stated as follows:

“(1) At the core of this appeal is a parcel of land situate in Kiongwe within Lamu County measuring approximately 11,100 acres or thereabout, hereinafter referred to as “the suit land”. The Appellant’s claim to the suit property is premised on the following facts: the suit property was allocated to Kenwind (K) Limited, the 5th Respondent herein, by the National Land Commission, the 2nd Respondent, vide a letter of allotment dated 7th February 2017.”

23. The Court then went on to state thus:

“(27) The fundamental issue for determination in this appeal is: who, between the national Land Commission and the County Government, is lawfully mandated to allocate public land and what is the appropriate procedure thereof?”

24. In answering the above question, the Appellate Court addressed Article 67 of *the Constitution*, which establishes the National Land Commission, as well as Article 62(1)(a), which defines public land, and concluded thus:(



“40) In view of the foregoing, it is obvious to us that the Appellant had not taken cognizance of the new land policy that had been ushered by the Constitution of Kenya, 2010 and the Land Act; and as a result backed the wrong horse. The Appellant ought to have engaged the National Land Commission as soon as it came into operation, given its constitutional and statutory role in allocation of public land.”

100. As shown in these proceedings, as the NLC was in its final stages of allocating the land in question to the Petitioners after completing all necessary processes, objections were raised, including the filing of Petition No. 14 of 2022.

101. During the hearing of the Petition and in the interest of promoting the doctrine of abstention, as well as giving parties an opportunity to be heard by a primary adjudicative body other than the court, this court paused proceedings pending the resolution of the objections filed with the NLC, as thoroughly detailed by the NLC in the current case.

102. Arising from the hearing of objections raised by various stakeholders and after considering objections related to the intention to allocate L.R. No. Lamu/Kiongwe/C, surveyed as LR. No. 32956, to Cordisons International Limited in its determination dated October 18, 2024, the NLC found in paragraph 61 of its determination that:

“In light of the foregoing and having heard all the parties and analyzed all the submissions, the objections are successful on the grounds of irregularities and procedural gaps as the approved PDP NO. LMU/1281/01/16 and authenticated Survey Plan F/R No. 501/46 overlap existing titles. The Commission is therefore not able to issue a letter of allotment for LR. No. Lamu/Kiongwe/ C surveyed as LR. No. 32956 to Cordison International Limited as intended.”

103. To address the irregular situation and complete the allocation process, the NLC provided a series of recommendations and a roadmap aimed at finalizing the process and resolving all grievances and objections from various stakeholders, especially those related to overlaps. As stated elsewhere in this judgment, it will not be possible for this court to order the cancellation of all titles encompassed and created over the parcel intended to be allocated to Cordison, because it would require a thorough review of those titles, which is beyond the scope of this Petition.

104. In my view, the recommendations by the NLC on how to resolve the overlaps will prevail, as they offer a Solomonic precis of the current situation. It will be enforced. Consequently, ELC Petition No. E005 of 2025 will only be partially granted. I will issue the following final orders: that the NLC Report attached, dated October 18, 2024, be implemented as outlined below:

- a. An order of mandamus is hereby issued, compelling the County Government of Lamu (4th Respondent) to facilitate the amendment of the PDP and the subsequent resurvey of the allocated L.R. No. Lamu/Kiongwe/C, surveyed as LR. No. 32956, within 90 days of this judgment. This should include retaining portions A, B, and D as in the current PDP but exclude the existing titles in portion C where those titles are confirmed to be legitimate.
- b. The settlement area, that is, portion B in the subject PDP, is to be set aside and reserved for the Communities through the Settlement Fund Trustees Board. The area marked C, excluding any existing legitimate titles, is to be retained for allocation to Cordisons International Limited.



- c. The conservation area marked D in the subject PDP be set aside for conservation and be vested in the Kenya Forest Service.
- d. The revision of the plan and resurvey mentioned above should be completed and submitted to the NLC and this court for action within 90 days of this judgment for implementation.
- e. Cost in Petition No. E005 of 2025 to be borne by each party.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 30TH DAY OF OCTOBER, 2025.

E. K. MAKORI

JUDGE

In the presence of

Mr. Omwancha for the Petitioners

Mr. Kiilu for the 1st Respondent

Mr. Saro for the 2nd Respondent

Mr. Munga for the 3rd, 5th, and 6th Respondents

Happy: Court Assistant

In the Absence of:

Ms. Swaleh for the 4th Respondent.

