

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC PETITION NO. E010 OF 2020**

**(CONSOLIDATED WITH PETITION No. 1 OF 2022)**

JOEL MWARIAMA & 18 OTHERS [SUING ON THEIR BEHALF AND ON BEHALF OF ABOUT 3,000 RESIDENTS OF TIMAU AREA IN BUURI SUBCOUNTY, MERU COUNTY ..... PETITIONERS

**VERSUS**

NATIONAL LAND COMMISSION .....1<sup>ST</sup>  
RESPONDENT

THE HON. ATTORNEY GENERAL .....2<sup>ND</sup>  
RESPONDENT

CABINET SECRETARY FOR LANDS AND PHYSICAL PLANNING  
.....3<sup>RD</sup> RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....4<sup>TH</sup>  
RESPONDENT

NYAKIO HOLDINGS COMPANY LIMITED .....5<sup>TH</sup> RESPONDENT

KABARI WAMBUGU GITUMBI .....6<sup>TH</sup>  
RESPONDENT

**AND**

MERU COUNTY .....1<sup>ST</sup> INTERESTED  
PARTY

COUNTY COMMISSIONER MERU COUNTY ....2<sup>ND</sup> INTERESTED  
PARTY

AND

MONICA KAITHIORI KATHONO .....1<sup>ST</sup> AFFECTED PARTY

JY KARWITHA KAARIA .....2<sup>ND</sup> AFFECTED PARTY

GERSHON OTACHI BW'OMWANWA .....3<sup>RD</sup> AFFECTED PARTY

**RULING**

1. What is before me is the Notice of Motion Application dated **14<sup>th</sup> July 2025**; brought pursuant to the provisions of **Sections 1A, 1B, 3A and 63 of the Civil Procedure Act chapter 21 Laws of Kenya; Order 40 Rule 3 of the Civil Procedure Rules 2010; Section 3 of the Judicature Act, Chapter 8 Laws of Kenya; Part 81.4 of the Civil Procedure Rules 1999 of the Supreme Court of England; and all enabling provisions of the law**; and wherein the 5<sup>th</sup> and 6<sup>th</sup> Respondents [*who are the Applicants*] have sought the following reliefs:

- i. ....  
*Spent*
- ii. ....  
*Spent*
- iii. *That the said Monica Kaithiori Kathono, Joy Karwitha Kaaria and Gershom Otachi Bw'Omwanwa be held in contempt of the decree issued by the court on **3<sup>rd</sup> November 2023** directing the National Land Commission to listen to all the parties who have a registerable interest over the suit property.*
- iv. *That the said Monica Kaithiori Kathono, Joy Karwitha Kaaria and Gershom Oatchi Bw'Omwanwa for their acts of contempt of order of the court, be declared unfit to hold any*

*public office and/or exercise public authority as an officer, agent and/or contractor whatsoever.*

- v. *That the court be pleased to order that Monica Kaithiori Kathono, Joy Karwitha Kaaria and Gershom Otachi Bw'Omwanwa be committed to prison for a period of up to six (6) months for contempt of the decree issued by the court on 3<sup>rd</sup> November 2023 or any other appropriate punishment or penalty including the sequestration of their personal assets as the court may deem fit and proper. Further, the said Monica Kaithiori Kathono, Joy Karwitha Kaaria and Gershom Otachi Bw'Omwanwa be directed to form of alienation, registration of surveys done on the suit property namely Plot No. LR 2890 Timau Township (the portion of fifty (50) acres of land that adjoins Plot No. 7452 Laikipia County).*
- vi. *That the costs of this application be assessed by the court, and borne personally by the said Monica Kaithiori Kathono, Joy Karwitha Kaaria and Gershom Otachi Bw'Omwanwa and be paid forthwith or drawn from their salaries and/earnings until full payment.*

2. The subject application is premised on various grounds which have been enumerated in the body thereof. In particular, the Applicants have contended that the 1<sup>st</sup> Respondent; the 1<sup>st</sup> Interested Party; and the Affected Parties, have disobeyed and or disregarded the judgement and decree of the court issued on the **5<sup>th</sup> October 2020**. In addition, the Applicants have also contended that the impugned actions of the named parties have brought the dignity and integrity of the court to disrepute.

3. Additionally, the Applicants have posited that despite the clear terms of the judgement and decree of the court, the 1<sup>st</sup> Interested Party has since purported to allocate the suit property and commenced the process of subdivision and beaconing of same. To this end, it has been contended that the 1<sup>st</sup> Interested Party is therefore in contempt of the orders of the court.
4. The subject application is supported by the affidavit of Wachira Wambugu Gitumbi [the 6<sup>th</sup> Applicant] sworn on the **14<sup>th</sup> July 2025**; and wherein the deponent has annexed assorted documents *inter alia* a copy of the Judgement rendered on the **5<sup>th</sup> October 2022**; copy of the decree arising therefrom; copy of the applicant's letter dated **18<sup>th</sup> October 2022**; copy of the letter by the National Land Commission dated **11<sup>th</sup> February 2025**; and copy of the letter by the County Government of Meru dated **10<sup>th</sup> March 2025**, the latter wherein the County Government of Meru was intimating to National Land Commission that the land in question has already been reserved for public use and hence same is not available for allocation.
5. The 1<sup>st</sup> Respondent filed grounds of opposition and wherein same has contended that the application beforehand is premature, misconceived, and otherwise constitute an abuse of the due process of the court. Furthermore, the 1<sup>st</sup> Respondent has contended that following the issuance of the judgement of the court delivered on **5<sup>th</sup> October 2022**, the 1<sup>st</sup> Respondent herein generated an advisory to the 1<sup>st</sup> Interested Party and thereafter the 1<sup>st</sup> Interested Party acted on the advisory as pertains to the allocation of the suit property. In this regard, it has been posited that the 1<sup>st</sup> Respondent is not in contempt of the judgement and the consequential decree of the court.

6. Moreover, the 1<sup>st</sup> Respondent has also contended that the Applicants have neither met nor established the requisite elements to warrant a finding of contempt as against the 1<sup>st</sup> Respondent.
7. The Petitioners filed grounds of opposition dated **26<sup>th</sup> July 2025**; and wherein same have highlighted a plethora of issues. The issues raised by the Petitioners are *inter alia*, the subject application is prohibited by the doctrine of res judicata; the application seeks reliefs [sic] against the County Government of Mombasa who is not a party to the instant suit; the application is contrary to public interest because of over 5000 residents in Timau area require the suit premises to enable Meru County Government render services and social amenities to the residents; the subject application is a disguised invitation to the court to sit on appeal on its own decision; the applicants herein are not the registered owners of the suit properties; the subject application is vitiated by non-disclosure of material facts; the court is functus officio; and the court has no jurisdiction to supervise National Land Commission as pertains to its execution of constitutional mandate.
8. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed grounds of opposition dated **28<sup>th</sup> July 2025** and wherein same have contended that the application beforehand is misconceived; the 1<sup>st</sup> Respondent has since complied with the terms of the judgement of the court; and the Applicants have not established a basis to warrant citation and punishment of the Respondents and the affected parties for contempt.
9. The affected parties were duly served with the subject application. Nevertheless, the affected parties neither filed any response to the application nor participated during the hearing thereof.

10. The subject application came up for hearing on the **30<sup>th</sup> July 2025**; whereupon the court issued directions pertaining to the hearing and disposal of same. For coherence, the court directed that the application be canvassed by way of written submissions to be filed and exchanged by the parties. Moreover, the court also circumscribed the timelines for the filing of submissions.
11. The Applicants herein filed written submissions dated **25<sup>th</sup> August 2025**; and wherein the applicants have highlighted various issues, *namely*; the Respondents and the affected parties have acted contra the terms of the Judgement of the court issued on **5<sup>th</sup> October 2022**; the 1<sup>st</sup> Respondent has abdicated her obligation to the 1<sup>st</sup> Interested Party and thus violated the express decree of the court; the 1<sup>st</sup> Interested party failed to act/abide by the timelines prescribed at the foot of the decree of the court; the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Interested Party have disregarded the Applicants' interests over the suit property; and the conduct complained of constitutes contempt.
12. To this end, the Applicants have implored the court to find and hold that the actions complained of constitutes contempt and thus the contemnors ought to be cited and punished, appropriately.
13. To buttress the foregoing submissions, learned counsel for the Applicants has cited and referenced various decisions including *Arithi [Suing as the Administrator of the estate of Joseph Karanja] vs Secretary-National Land Commission (2025) KEELC 3679*; *Beatrice Kanzayire & Another vs Adams Gasongo (2019) KEELC 4521*; *Adkison vs Adkison (1992) All England 1952*; and *Arthur Mathitu Nderitu & Another vs Settlement Fund Trustees & 2 Others (2019) KEELC 2346*, respectively.
14. The Petitioners filed written submissions dated **16<sup>th</sup> September 2025**; and wherein same has canvassed three [3] key issues, *namely*; the

honorable court is divested of jurisdiction to entertain the subject application; the application is prohibited by the doctrine of res judicata; the court is functus officio; and the subject application is intended to supervise the National Land Commission in the discharge/execution of its constitutional mandate.

15. The 1<sup>st</sup> Respondent filed written submissions dated **19<sup>th</sup> September 2025**; and wherein same has highlighted three[3] key issues. The issues highlighted by the 1<sup>st</sup> Respondent are *namely*; the 1<sup>st</sup> Respondent has duly complied with the terms/tenor of the judgement of the court rendered on **5<sup>th</sup> October 2022**; the Applicants have failed to meet the legal threshold for contempt proceedings; and the subject application constitutes an abuse of the due process of the court.
16. The 1<sup>st</sup> Respondent has thereafter cited and referenced various decisions inter alia *Mutitika vs Bahrani Farm Limited (1985) eKLR*; *R vs Ahmad Abolfathi Mohamed & Another (2018) eKLR*; *Teachers Service Commission vs Kenya National Union of Teachers & 2 others (2013) eKLR* and *Economy Form Limited vs Mohammed Ibrahim & 2 others (2021) eKLR*, respectively.
17. In addition, and to anchor the submissions as pertains to abuse of the court process, the 1<sup>st</sup> Respondent has referenced the decision in *Muchanga Investment Limited vs Safaris and Limited [Africa Limited] & 2 others (2009) eKLR* and *Benjo Amalgamated Limited & Another vs Kenya Commercial Bank Limited (2014) eKLR*.
18. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents; and the 2<sup>nd</sup> Interested Party [who were represented by the Hon. Attorney General] filed written submissions dated **1<sup>st</sup> September 2025** and wherein same have highlighted two [2] key issues, *namely*; the 1<sup>st</sup> Respondent has since complied with and adhered to the terms of the judgement of the court rendered on the 5<sup>th</sup>

October 2022; and the Applicants have not established/met the threshold to warrant citation and punishment of the respondents and the affected parties for contempt.

19. Having reviewed the subject application; the supporting affidavit, and the annexures thereto; the responses by the Respondents; and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the subject application turns on three [3] key issues, *namely*; whether the applicants have established and proved the plea of contempt as against the 1<sup>st</sup> Respondent/1<sup>st</sup> Interested Party and the affected parties or otherwise; whether this court is seized of the requisite jurisdiction to make a declaration as to whether the affected parties are fit/unfit to hold any public office or otherwise; and whether the court can compel the affected parties to form [sic] an alienation and undertake registration of survey on the suit property or otherwise.
20. I beg to start with the first issue. The Applicants herein have approached the court contending that the 1<sup>st</sup> Respondent; the 1<sup>st</sup> Interested Party; and the affected parties have disregarded and disobeyed lawful orders of the court. In particular, it has been contended that this court [differently constituted] rendered a judgement on the 5<sup>th</sup> October 2022 and wherein the court directed the 1<sup>st</sup> Respondent to entertain and adjudicate upon the applicants' request for regularization of the use and occupation of the suit property within a duration of six months from the date of the Judgement.
21. Nevertheless, it has been posited that despite the clear and explicit orders of the court, the 1<sup>st</sup> Respondent failed to abide by and or comply with the directives. Moreover, it has been contended that instead of undertaking the regularization exercise, the 1<sup>st</sup> Respondent abdicated its mandate and

remitted the determination of the ownership rights of the suit properties to the 1<sup>st</sup> Interested Party. In this regard, it has been contended that the 1<sup>st</sup> Respondent therefore disobeyed the clear terms of the court orders.

22. Additionally, it has been submitted that the 1<sup>st</sup> Interested Party to whom the 1<sup>st</sup> Respondent remitted the question of determination of the ownership rights of the suit land was/ is an Interested Party. In this respect, it was contended that the actions by the 1<sup>st</sup> Interested Party was therefore contrary to the rules of natural justice.

23. Be that as it may, it has been submitted that the actions by and on behalf of the 1<sup>st</sup> Respondent; 1<sup>st</sup> Interested Party; and the Affected Parties constitute contempt; and hence the named parties ought to be cited and punished for contempt.

24. I have reviewed the Judgement of the court rendered on the 5<sup>th</sup> October 2022; and the consequential decree arising therefrom. In particular, I have internalized the import and tenor of limb one of the said Judgement.

25. For ease of reference same states as hereunder;

***i. Declaration that the petitioners request for regularization on the use and or occupation of the land measuring approximately 50 acres or thereabout forming part of LR. Number 2890 and adjoining its LR. NO. 7452 Timau Township Buuri Subcounty-Meru be determined in accordance with the relevant land laws by the 1<sup>st</sup> Respondent within 6 months from the date hereof.***

26. Based on the foregoing limb of the Judgement; the applicants have contended that the court directed that the 1<sup>st</sup> Respondent [National Land Commission] by itself was to address the issue of regularization and not to remit the dispute to the 1<sup>st</sup> Interested Party. In addition, the Applicants

have also contended that the 1<sup>st</sup> Respondent was obligated to entertain presentations and or objections [if any] while discharging its mandate in determining the true ownership of the suit property.

27. In my humble view, the position taken by the Applicants and their counsel as pertains to the true import and tenor of the Judgement of the court is erroneous and premised on misapprehension of the constitution; the Land Act 2012[ 2016]; the National Land Commission Act 2012 [2016] and the Land [Allocation of Public Land] Regulations 2017, respectively.

28. I beg to highlight that the question of allotment of land or the regularization of the use and occupation of the suit property at the instance of the applicants is a process that is structured and governed by the law. To start with, there is no gainsaying that the applicants were enjoined by law to make the application for allotment of the land to National Land Commission (NLC). Thereafter, it behooved NLC to remit the request for allocation [read regularization] of the land to either the Cabinet Secretary for Land or to the County Government subject to whether the land in question is public land falling under the purview of the National Government or the County Government [***See section 9(1) of the Land Act 2012/2016***].

29. Moreover, the process pertaining to allocation of public land was highlighted by the Supreme Court of Kenya in the case of ***National Land Commission v Attorney-General & 5 others; Kituo Cha Sheria & another (Amicus Curiae) (Advisory Opinion Reference 2 of 2014) [2015] KESC 3 (KLR) (2 December 2015) (Advisory Opinion)***.

30. For coherence, the apex court stated as hereunder;

*“222. The Land Act defines “alienation” as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.*

*223. It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC’s function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration. Section 5(2)(e) of the NLC Act-versus-the Constitution’s terms*

*224. Section 5(2)(e) of the NLC Act mandates the Commission to manage and administer all unregistered trust land and unregistered community land on behalf of County Government. Counsel for the Commission for the Implementation of the Constitution submitted that this provision was contrary to the terms of the Constitution. In the case, In Re IIEC, this Court had held that while exercising its Advisory Opinion jurisdiction, it may undertake the interpretation of the Constitution.”*

31. It is instructive to observe and underscore that the process of allocation of public land entails the involvement of the designated county government.

In this regard, it cannot be contended that this court [differently constituted] directed National Land Commission by itself to undertake the process of regularization of the occupation and use of the suit property. For good measure, that was not the import and tenor of the Judgement of the court.

32. It is not lost on me that the court decreed that the entertainment and determination of the request for regularization was to be undertaken in accordance with the relevant land laws. The relevant land laws comprised of the statutes which have been referenced herein before.

33. Back to the question as to whether the remission of the request by the Applicants to the 1<sup>st</sup> Respondent constituted contempt. To my mind, there is no way the 1<sup>st</sup> Respondent could entertain and determine the issue of allocation of the suit property which is public land falling within the jurisdiction of the County Government of Meru without referring the matter to the said county government. Notably, it is the County Government of Meru who was/is tasked with the mandate of recommending allocation and thereafter generating the request [where appropriate] in accordance with section 9 of the Land Act, 2012 [2016].

34. I beg to underscore that by remitting the request to the County Government of Meru *vide* its letter dated **11<sup>th</sup> February 2025**, the 1<sup>st</sup> Respondent was acting in accordance with the Constitution 2010; the Land Act 2012 [2016] and the National Land Commission 2012 [2016].

35. In addition, there is no gainsaying that the 1<sup>st</sup> Respondent was acting in accordance with the decision of the Supreme Court of Kenya [the Apex Court] in the advisory opinion [supra].

36. I am afraid that the actions by the 1<sup>st</sup> Respondent cannot be deemed as constituting contempt. On the contrary, the actions complained of complied with the tenor of the judgement of the court which directed that the determination of the request be undertaken in accordance with the relevant land laws.
37. Other than the fact that the acts complained of were undertaken in consonance with the judgement of the court and the constitution, there is also the aspect touching on and concerning the fact that the current application was filed long after the request for allocation/ regularisation had been determined. Instructively, the applicants herein made a request for allocation of the suit property *vide* letter dated **18<sup>th</sup> November 2022**.
38. Thereafter, the request under reference was acted upon by the 1<sup>st</sup> Respondent *vide* letter dated **11<sup>th</sup> February 2025**, remitting the request to the County Government of Meru in accordance with section 9 of the Land Act 2012.
39. It is common ground that the County Government of Meru reacted to the remission by National Land Commission *vide* its letter dated **10<sup>th</sup> March 2025**; and wherein the County Government of Meru stated that the suit property [which is admittedly public land] is not available for allocation. Suffice it to state that the decision under reference is well within the knowledge of the applicant.
40. Additionally, it is important to highlight that the applicants herein filed another suit, *namely*; **Meru ELC JR No. E007 of 2025** [touching on the said decision by the County Government of Meru]. Notably, the said matter was heard and determined by this court in terms of the judgement rendered on **25<sup>th</sup> September 2025**; whereupon this court dismissed the said Judicial Review proceeding[s].

41. What I am saying is that the applicants herein were aware and knowledgeable of the decision/ determination of its request for allotment of the suit property. In this regard, can it be said that by the time the current application was being filed, the First Respondent had not complied with the terms of the judgement of the court?
42. I am afraid that the contention by the applicants at the foot of the subject application constitutes approbation and reprobation at the same time. On one hand, the Applicants are admitting that their claim was determined, even though some are displeased with the outcome, while on the other hand, some are invoking contempt proceeding[s]. Such kind of conduct must be frowned upon by conscientious courts of law.
43. Be that as it may, I beg to state that the applicants herein have neither established nor demonstrated disobedience of the judgement of the court rendered on 5<sup>th</sup> October 2022.
44. Nevertheless, I must admit that the actions by the 1<sup>st</sup> Respondent were taken outside the six months period that were highlighted by the learned Judge. However, there is no gainsaying that by the time the subject application for contempt was being filed; the terms of the Judgement had been acted upon and hence the failure to act within the six [6] months period was rendered redundant.
45. Before concluding on this issue, I beg to state that citation and punishment for contempt ought to be undertaken by courts of laws in clear cut situations; and where it is demonstrated to the requisite standard [the intermediate standard] that the Citee is indeed guilty of contempt.

46. In addition, a court of law is also enjoined to invoke and deploy punishment for contempt as a last result. To this end, where there are alternative mechanisms for dealing with the complaint, then such alternative mechanisms ought to be considered, and adopted.

47. In the case of *Mutitika v Baharini Farm Ltd [1985] KECA 60 (KLR)* the Court of Appeal highlighted the applicable standard of proof in matters of contempt.

48. The court stated thus;

**“In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi – criminal in nature Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved**

**“with such strictness of proof ... as is consistent with the gravity of the charge ...”**

*The principle propounded in Re Maria Annie Davies [1889] 21 QBD 236, and 239, that*

**“Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice. The observations of the later Master of the Rolls in the case of Re Clement seem much in point: ‘It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on**

*the part of judges to see whether there is not other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. I say that a judge should be most careful to see that the cause cannot be mode of dealing with persons brought before him.*

*On accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found. Probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction”*

49. With the foregoing in mind, I conclude that the Applicants herein have neither established nor satisfied the threshold for citation and punishment for contempt. Moreover, there is no gainsaying that a person, the 1<sup>st</sup> Respondent not *excepted*, cannot be cited and punished for undertaking an act in accordance with the prescription of the constitution.

50. The provisions of Article 236 of the Constitution of Kenya 2010 are apt and succinct.

51. Same provide thus;

**“A public officer shall not be–**

*(a) victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or*

*(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”*

52. Turning to the second issue, *namely*; whether this court is seized of the requisite jurisdiction to make a declaration that the affected parties are unfit/unsuitable to hold any public office; exercise public authority or at all.
53. The relief sought herein is *ex facie* a substantive relief. Moreover, the relief in question has serious constitutional ramifications in so far as it seeks to deny the affected parties the right to hold public office and or exercise public authority.
54. Given the nature of the relief sought, it is apparent that same cannot be sought at the foot of an interlocutory or post judgement application. On the contrary, such relief can only be sought at the foot of a substantive suit; and wherein the affected parties are impleaded as parties. I dare add that the nature of orders sought can only be canvassed *vide* a substantive Constitutional Petition.
55. Furthermore, it is not lost on me that the issuance of declaratory orders cannot be undertaken at the foot of an application. To this end, it is instructive to take cognizance of the provisions of **Order 3 rule 9 of the civil procedure rules, 2010**; which underpins the filing of suits seeking declaratory reliefs.
56. In my humble, albeit considered view, the applicants herein cannot by side wind seek to accrue substantive orders *vide* an application. To my mind, the grant of such an order, would constitute a travesty to justice. I beg to remind myself that a court of justice cannot turn itself into a court of injustice by breaching the Constitution at the request of a party.
57. Such kind of endeavour does not accord with the tenets and the principles espoused *vide* Article[s] 10 and 232 of the Constitution., 2010.
58. To the extent that a court of law cannot engage with and grant substantive declaratory orders at the foot of an application, I find and

hold that this court is divested of jurisdiction to grant the orders sought at the foot of prayer four [4] of the subject application.

59. Suffice it to posit that jurisdiction is everything. Without jurisdiction, a court of law cannot purport to make and or grant any order. Moreover, any proceedings undertaken and any orders made by a court without jurisdiction amount to nullities. [See *In the Matter of Interim Independent Electoral Commission (2011) eKLR- Paragraphs 29, 30, and 31*; see *Owners of Motor Vessel Lillian S vs Caltex Oil Kenya Limited (1989) eKLR*; and *Phoenix of East Africa Assurance Company Limited vs S.M Thiga T/A Newspaper Service (2019) eKLR, respectively*].

60. Next is the issue as to whether this court can direct the affected parties to form [sic] alienation and undertake registration of survey on the suit property or otherwise.

61. To start with, I am unable to apprehend what exactly the applicants are seeking at the foot of prayer five [5] limb two thereof which states thus;

*“Further, the said Monica Kaithiori Kathono, Joy Karwitha Kaaria and Gerison Otachi Bwur’ Omanwa be directed to form of alienation, registration of survey done on the suit property namely Plot Number 2890 Timau Township [the portion of 50 acres of land that adjoins plot number LR. NO. 7452- Laikipia County].”*

62. Despite my inability to fully comprehend what is being sought, I hasten to imagine that I am being asked to direct the affected parties to form an alienation committee to undertake the alienation process; and thereafter facilitate registration of survey as pertains to the suit property.

63. If this be the import and tenor of the relief under reference, then I beg to remind the applicants that there is a dichotomy between the chairperson

of the National Land Commission and the Commission itself. For good measure, it is worthy to reiterate that a commission is comprised of the chairperson and the commissioners.

64. To the extent that the commission is comprised of the commissioners, where an act is to be undertaken by the commission, then one cannot purport to single out the chairperson alone. In this regard, I am afraid that this court cannot purport to direct Gerison Otachi Bwur' Omanwa to undertake some form of alienation of the suit property in favor of the applicant.

65. Worse still, it is common knowledge and in the public domain that the tenure of Gerison Otachi Bwur' Omanwa as the chairperson of the National Land Commission lapsed. For good measure, same ceased to be the chairperson of the commission long before filing of the subject application. Can such a person be compelled to undertake a public action? Sadly, the limb of the application under reference is misconceived and legally untenable.

66. Other than the foregoing, it is also instructive to recall that National Land Commission and its commissioners including the chairperson are not subject to the directions of any person or body in the performance of its constitutional mandate.

67. The provisions of Article 249(2) of the Constitution are instructive.

68. Same stipulate thus;

*“(1) The objects of the commissions and the independent offices are to--*

*(a) protect the sovereignty of the people;*

*(b) secure the observance by all State organs of democratic values and principles; and*

*(c) promote constitutionalism.*

**(2) The commissions and the holders of independent offices-**

**(a) are subject only to this Constitution and the law; and**  
**(b) are independent and not subject to direction or control by any**  
**person or authority.”**

69. I am afraid that the nature of orders sought at the foot of prayer number five [5] and in particular the limb seeking direction to form [sic] alienation are legally untenable. Moreover, what is discernible from the relief sought is to the effect that the applicants herein are seeking to use this court to achieve allocation of the suit property contra the terms of the Constitution 2010; and the relevant land laws.

70. I am alive to the decision of the Supreme Court in *National Land Commission vs the Attorney General (2015) eKLR [The Advisory Opinion]*; the decision of the Court of Appeal in *Cordisons Investments Limited vs The Chair Person National Land Commission* and above all, the provisions of Article 67(2) of the Constitution. In this regard, I must confine the orders emanating from my court to the confines of the Constitution, and to avoid usurpation of the Powers of Independent Constitutional Commissions.

71. Finally, it is apposite to take cognizance of the decision of the Supreme Court in the case of *Macharia & another v Kenya Commercial Bank Limited & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling)* where the court stated thus;

“68. A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents

*in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”*

72. Simply put, the directions being sought as against the affected parties in terms of prayer five [5] are outside the scope of this court’s jurisdiction. Moreover, there is no gainsaying that those directions are *ultra vires* the Judgement rendered on 5<sup>th</sup> October 2022, whose terms are [sic] being enforced *vide* the subject application.

#### **FINAL DISPOSITION.**

73. Flowing from the analysis contained in the body of the ruling, it is apparent that the subject application is premature; misconceived, and legally untenable.

74. To this end, the application courts dismissal.

75. In the upshot, and for the reasons alluded to; the final orders that commend themselves to the court are as hereunder:

- I. The Application dated 14<sup>th</sup> July 2025 be and is hereby dismissed.**
- II. The Costs of the Application be and are hereby awarded to the Petitioners; the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents only.**
- III. The Costs in terms of clause [II] shall be agreed upon; and in default same shall be taxed in the conventional manner.**

76. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF OCTOBER 2025**

**OGUTTU MBOYA, FCIArb; CPM [MTI-EA].**

**JUDGE**

**In the presence of:**

Hussein – Court Assistant

Mr. Gikandi Ngibuini for the 5th & 6th Respondents/Applicants

Mr. Kurauka for the Petitioners/Respondents

Miss Mwanyika for the 1st Respondent

Mr. Eric Obura [Principal Litigation counsel] for the 2nd & 3rd Respondents

No appearance for the 4th Respondent

No appearance for the Interested Parties.