

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
NAIROBI

MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS
DIVISION

PETITION E647 OF 2025

HON. TIYAH GALGALO ALI,
MBS.....PETITIONER

VERSUS

PUBLIC SERVICE COMMISSION.....1ST
RESPONDENT

THE HEAD OF PUBLIC SERVICE..... 2ND
RESPONDENT

NATIONAL LAND
COMMISSION.....INTERESTED PARTY

JUDGMENT

1. The petitioner is a commissioner with the National land Commission (the commission) appointed on 21st December 2020 for a non-renewable term of 6 years following a recruitment process conducted in accordance with the Constitution and the National Land commission Act. The petitioner's term expires on 20th December 2026.

2. On 11th August 2025, the President issued Gazette Notice No. 11212 published in the Kenya Gazette on 15th August 2025 declaring impending vacancies for the position of chairperson and members of the commission. The President also appointed a selection panel to commence the process of recruiting nominees for appointment as chairperson and members of the commission.

3. The selection panel published an advertisement in the daily Nation Newspaper on 27th August 2025 calling for applications from qualified applicants for purposes of recruiting nominees for appointment to those vacancies. The declaration of impending vacancies and the advertisement, according to the petitioner, purportedly declared her position as commissioner vacant and the process of recruiting nominees for appointment as chairperson and

members of the commission effectively seeks to replace her as a commissioner even though her term of office of six years has not expired.

4. The petitioner states that even though she wrote a letter dated 28th August 2025 to the 2nd respondent drawing his attention to the fact that her term of officer was not about to expire, the letter was ignored. Her advocate's letter dated 5th September 2025 to the 2nd respondent raising the issue of premature termination of the petitioner's term of office was also ignored, prompting the filing of this petition.

Petition

5. The petitioner has filed this petition challenging the decision to purport to declare her position vacant and starting the process of recruitment of Commissioners of National Land Commission,

including her replacement terming the process an unconstitutional. The petitioner states that the on 11th August 2025, the President declared impending vacancies in the position of chairperson and members of the National Land commission whose terms were to lapse on 14th November 2025. The Gazette Notice implied that her position was also to fall vacant on the same date which is not factually correct.

6. A selection panel was appointed and on 27th August 2025 called for applications from qualified persons for nomination for appointment to the positions of chairperson and members of the commission. On 24th September 2025, names of applicants shortlisted for interviews were published in the Standard Newspaper as well as dates for interviews which commenced on 1st October 2025 and were to conclude on 14th October 2025,

thereby taking active steps towards terminating the petitioner's constitutionally secured term of office.

7. The petitioner asserts that the respondents' actions constitute a threat to remove her from office in violation of the Constitution and the law; that the recruitment process is faulty and is based on the erroneous premise that the petitioner's term expires on 14th November 2025 and the action contravenes article 250 (6) of the Constitution read with section 8(5) of the National Land Commission Act.

8. The petitioner therefore seeks the following reliefs:

(a) A declaration that Hon. Tiyah Galgalo Ali, MBS, is entitled to serve her full six year term as a commissioner, National Land Commission

which commenced on 21st December 2020 and is set to expire on 20th December 2026.

(b) An order of prohibition restraining the respondents their agents, and or anybody or person acting under their authority from proceeding with the recruitment which includes, inter alia conducting interviews, recommending and or appointing any individual to the petitioner's position as commissioner of the National Land Commission.

(c) An order of certiorari to bring into this Court for the purpose of being quashed, Gazette Notice No. 11212; the newspaper advertisement dated 27th August 2025 published in the Daily Nation Newspaper and the notice of shortlisted candidates in the Standard Newspaper of 24th September 2025 to the extent that they purport to declare a

vacancy in or recruit for the petitioner's position as commissioner of the National Land Commission.

Response

9. The 2nd respondent has opposed the petition through grounds of opposition. The 2nd respondent asserts that the petitioner has no cause of action arising from Gazette Notice No. 11212; the petition is speculative and premature.

Submissions

10. Mr. Ngatia, learned senior counsel for the petitioner, argues that the petitioner having been appointed on 21st December 2020 for a term of 6 years which will expire on 20th December 2026, the respondents' actions of declaring vacancies in the

position of commissioners, including the position of the petitioner violate article 250 of the Constitution read with section 8(5) of the National Land Commission.

11. Learned senior counsel argues that the terms of office of chairperson and 6 commissioners end on 14th November 2025 and it was wrong to declare all commissioners' terms as coming to an end thus, threatening to end the petitioner's term of office in violation of the Constitution and the law.

12. Mr. Ngatia, SC. argues that although the petitioner drew the respondents' attention to the fact that her term of officer was not about to expire and wrote a letter to that effect, the letter was ignored. Learned senior counsel's own letter dated 5th September 2025 to the same effect was also

ignored. In that regard, the process of recruiting 8 commissioners instead of 6 will amount to removal of the petitioner from office in violation of the Constitution and the law. According to senior counsel, the suggestion that the petitioner exit the commission and be paid for the remainder of her term was rejected because the petitioner did not want to be paid for work not done.

13. On jurisdiction of this court to hear the petition, Mr. Ngatia, SC. relies on article 165(3) of the Constitution to argue that this court has jurisdiction to determine this petition since the issue raised is on the interpretation of the Constitution. Senior counsel relies on several the decisions, including the decision in *Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others* [2020] KECA 30 (KRL), for the position that appointment of commissioners is an issue falling

for determination by the High Court and not the Employment and Labour Relations Court (ELRC).

14. Learned senior counsel again relies on several other decisions in on the position of an interested party. In the view of senior counsel, an interested party cannot take over the case of the main parties as was explained in Francis Karioko Muruatetu & another v Republic & others [2016] eKLR. Learned senior counsel argues that the interested party's role is to facilitate appointed commissioners into office and enable them perform their roles.

15. Learned Senior Counsel has urged the court to allow the petition and grant the reliefs sought, including prayer c, arguing that if the process is allowed to go on, the result will lead to the recruitment of 8 commissioners instead of 6 and end the petitioner's term thereby violating the Constitution and the law.

16. Senior counsel urges that the decision in this petition do apply in all respects to petition E646 of 2025 Hon. Esther Murugi Mathenge, EGH v Public Service Commission & the Head of Public Service since the facts in this petition and those in petition E646 of 2025 are similar in all respects. The two commissioners were appointed on the same day and their terms of office will expire on the same day.

2nd Respondent's submissions

17. Mr. Kaumba, learned counsel for the 2nd respondent, submits relying on their grounds of opposition, that the petition as framed is speculative, does not disclose crystalized cause of action against the 2nd respondent and there is no contention on the composition of commissioners of the National Land Commission. Learned counsel

admits that the petitioner's term of office and that of petitioner in petition E646 will expire in on 20th December 2026 and that it is the position of chairperson and 6 commissioners that expire on 14th November 2025.

18. Mr. Kaumba, however, argues that according to section 8 of the National Land Commission Act, 3 players have distinct roles in the recruitment of commissioners- The President; the Selection Panel and the National Assembly. According to Mr. Kaumba, the President declares vacancies and appoints the selection panel. The selection panel calls for applications, conducts interviews and recommends persons for appointment. The National Assembly vets the successful applicants and approves them before the President makes formal appointments.

19. Mr. Kaumba submits that the declaration of vacancies did not mention the number; the 1st respondent merely provides secretarial services to the selection panel and the petition against the 2nd respondent is speculative since the declaration was on impending vacancies. Learned counsel argues that the number of commissioners to be appointed will be checked by the National Assembly when vetting the applicants thus, the court should allow the process to proceed to the end.

20. Regarding the prayers sought, Mr. Kaumba argues that the prayers are too wide. Learned counsel urges the court to invoke the doctrine of proportionality and fashion an appropriate remedy bearing in mind that the recruitment process is to ensure that the commission functions taking into account public interest.

21. Mr. Kaumba agrees with Mr. Ngatia, Sc, that the decision in this petition do apply in all respects to petition E646 of 2025 Hon. Esther Murugi Mathenge, EGH v Public Service Commission & the Head of Public Service given that the facts in the two petitions are similar in all respects and the two petitioners were appointed as commissioners on the same day and their terms of office will end on the same day.

Interested party's submissions

22. Mr. Echesa, learned counsel for the interested party has not filed any pleadings though he opposes the petition. Learned counsel associates himself with the position taken by Mr. Kaumba on behalf of the 2nd respondent. Learned counsel argues that should the court grant prayer c in the petition, the functioning of the commission will be brought to a standstill given that the term of 6

commissioners comes to an end on 14th November 2025 leaving the Commission without quorum.

Rejoinder

23. In a brief rejoinder, Mr. Ngatia, Sc, argues that although Mr. Kaumba admits that the petitioner's term and that of the petitioner in Petition E646 of 2025 end on 20th December 2026 and therefore the two commissioners are in office until then, the recruitment should have been limited to 6 commissioners. That notwithstanding, Mr. Ngatia argues, the respondents and interested party have not consented to the petition being allowed. Learned senior counsel maintains that it is not the business of the National Assembly to determine the number of vacancies. The petitioner has had to come to court to demonstrate that the process

would culminate to her removal as a commissioner in violation of the constitution and the law.

24. Regarding the appropriate relief to grant, senior counsel points out that Mr. Kaumba has not explained what would happen if the court does not quash the Gazette Notice. Mr. Ngatia, Sc, asserts that issuing an order of certiorari is merited and should be granted because in senior counsel's view, public interest favours transparency and the rule of law which will be enhanced if the order is granted. Learned senior counsel maintains that since the petitioner is still in office, all the prayers sought in the petition are merited and should be granted.

25. Mr. Ngatia further asserts that it is a contradiction for Mr. Kaumba to urge the court to dismiss the petition despite admitting that the

petitioner's term has not expired. Senior counsel also points out that the interested party cannot persuade the court not to grant an order of certiorari yet the petitioner's notices drawing the 2nd respondent's attention to the fact that her term was not about to expire were ignored.

26. The 1st respondent has not taken part in these proceedings, though served.

Determination

27. I have considered the petition, the responses and arguments by counsel for the parties. The issue for determination is whether the declaration of impending vacancies in Gazette Notice No. 11212 dated 11th August 2025 and published in the Kenya Gazette of 15th August 2025 and the subsequent processes are a threat to violate the Constitution; the law and the petitioner's rights.

28. The facts in this petition are not in dispute.

The petitioner is a commissioner with the interested party appointed on 21st December 2020 for a single term of 6 years which will expire on 20th December 2026. Six commissioners were appointed on 15th November 2019 whose term of is to expire on 14th November 2025. The above factual position notwithstanding, on 11th August 2025 a declaration of impending vacancies was issued through Gazette Notice No. 11212 published on 15th August 2025; a selection panel was appointed and the process of recruiting new commissioners commenced.

29. The petitioner wrote to the 2nd respondent pointing out the error that was occasioned by the declaration of impending vacancies and the ongoing process of recruitment of new

commissioners to no avail, prompting the petitioner to move this court through this petition contending that the process is a threat to violate the Constitution and the law.

30. Before addressing the main issue in this petition, there is a secondary issue of jurisdiction that I should dispose of first. Mr. Ngatia, Sc, argues that the issue in this petition is on the appointment of commissioners which falls within the jurisdiction of this court and not the ELRC.

31. Although this issue has not been directly raised, the interested party filed an application seeking to set aside conservatory orders this court issued on 9th October 2025 on the basis that another matter was before the ELRC. In response to that application, the petitioner has sworn an affidavit asserting the jurisdiction of this court.

32. The petitioner has explained that she had previously filed a petition before the ELRC but withdrew it on realizing that the ELRC has no jurisdiction over the issue and has now filed this petition before this court which has jurisdiction to determine the matter.

33. Jurisdiction is the power or authority given to a court to determine disputes or cases brought before it. A court's jurisdiction must flow from the Constitution, the law or both. This position was well articulated by the Supreme Court in *Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR, 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... without jurisdiction, the Court cannot entertain any proceedings...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.

34. *In re the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011 [2011] eKLR, the Supreme Court, after referring to Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited (supra), observed:*

[30] The Lillian 'S' case establishes that jurisdiction flows from the law, and the

recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.

35. Jurisdiction of this court is not and should not be in doubt since article 165(3) confers on the court unlimited original jurisdiction in criminal and civil matters. Under article 165(3) (b) the court has jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; and (d) jurisdiction to respecting the interpretation

of the Constitution including determination of the question whether any law is inconsistent with or in contravention of the Constitution and the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of the Constitution.

36. This petition calls for interpretation of the Constitution regarding appointment; tenure of office and termination of that tenure. The petition also calls for determination of whether the actions of the respondents are inconsistent with or in contravention of the Constitution. That is, the issues raised in the petition fall within the constitutional mandate of this court.

37. That appointment of commissioners of constitutional commissions falls within the

jurisdiction of this court is no longer debatable. In *Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others* (supra), the Court of Appeal stated that from the provisions of the Constitution and the ELRC Act, the jurisdiction of the ELRC is precise and limited rather than unlimited.

38. The Court of Appeal determined that the appointment and removal from office of commissioners of independent commissions has nothing to do with labour and employment, but a special constitutional innovation, a *sui generis* devise to address challenging governance needs and gaps. The court of Appeal was clear that appointment of the chairperson and members of the Commission did not involve any of the parties or raise any of the employment and labour relations issues contemplated by section 12 of the Act.

39. The Court of Appeal was once again called to determine the issue of jurisdiction between the High Court and the ELRC with regard to independent commissions in *Attorney General & another v Dr. Major (RTD) Shadrack Mutia Muiu & another* (Civil Appeal No. E146 of 2021) [2025] KECA 816 (KLR). The Court of Appeal made reference to the decision in *Attorney General & 2 others v Okiya Omtatah Okioti & 14 others* (*supra*) and observed:

[25] In its judgment in Attorney General & 2 others v Okiya Omtatah Okioti & 14 others (supra), this Court emphatically found that the appointment and removal from office of the commissioners or holders of independent offices is not a labour and employment issue as it does not involve any of the parties or

raise any of the employment and labour issues contemplated by section 12 of the Act.

40. The pronouncements by the Court of Appeal in the above cited decisions settled the issue of which court between the High Court and the ELRC has jurisdiction to determine issues on interpretation of the Constitution with regard to issues such as those raised in this petition. The answer is therefore obvious that this court has jurisdiction to determine the issue raised in the petition.

Term of office

41. The term of office of commissioners of constitutional Commissions and Independent offices is provided for in article 250 of the Constitution or in exceptional circumstances where

the Constitution provided otherwise, such as in the case of the Judicial Service Commission.

42. Article 250(6) provides that a member of a commission or holder of an independent office other than an ex officio, shall be appointed for a single term of six years and is not eligible for re-appointment. Article 250(6) provides in mandatory terms that a commissioner once appointed serves a single term of six years. The petitioner having been appointed on 21st December 2020 is to serve a mandatory term of six years from that date which expires on 20th December 2026.

43. That the petitioner's term does not to expire until 20th December 2026, is not in dispute since the 2nd respondent and the interested part acknowledge this fact. That notwithstanding, the declaration of impending vacancies in the positions

of commissioners of the interested party was issued in Gazette No. 11212 dated 11th August 2025 and published in the Kenya Gazette on 15th August 2025 and the process of identifying qualified persons for appointment as chairperson and members of the commission put in place through the appointment of the selection panel. The selection panel then put out an advertisement calling for applications and later names of shortlisted applicants were announced with dates for interviews set.

44. The petitioner is concerned that even though her term of office is not about to expire, the declaration of vacancies was for all members of the commission which has the effect of removing her from office in violation of the Constitution. The petitioner argues that the fact of her term not expiring was brought to the 2nd respondent's attention but was ignored.

45. The 2nd respondent's argument is that the declaration of impending vacancies did not mention the number of vacancies and that the National Assembly will deal with the issue numbers when vetting successful applicants.

46. Section 7(1) of the Act provides that the Commission shall consist of a Chairperson and eight other members appointed in accordance with the Constitution and the provisions of the Act. Subsection (2) states that the Chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule. Section 8(1) provides for qualifications of a person to be appointed chairperson of the commission while subsection (2) provides for qualifications of a person seeking to be appointed as a member of the commission.

47. Section 12 provides that where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in accordance with the procedure set out in the First Schedule to the Act and the member so appointed shall serve the Commission for a single term of six years. This provision is in harmony with article 250 (6) of the Constitution.

48. The First Schedule to the Act provides for the procedure to be followed in appointing replacements to fill vacancies of chairperson and members of the commission. Paragraph (1) states that whenever a vacancy arises, the President is to constitute a selection panel and provides its composition. The 1st respondent provides the selection panel with such facilities and other support the selection panel may require for the discharge of its functions under the Act.

49. The selection panel has within seven days of convening, to publish an advertisement in at least two daily newspapers of nationwide circulation, inviting applications from persons who qualify for nomination and appointment for the position of the Chairperson and members of the commission.

50. The selection panel has within twenty one days after the expiry of the deadline for receipt of applications, to consider the applications received determine their compliance with the Constitution and the Act; shortlist the applicants; publish names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of nationwide circulation; conduct interviews of the shortlisted persons in public; shortlist two qualified applicants for the position of Chairperson; shortlist sixteen qualified applicants for the position of the

members; and forward the names of qualified persons to the President.

51. On receiving names of successful applicants, the President has fourteen days within which to nominate the Chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.

52. The National Assembly has, within twenty-one days of the day, it next sits after receipt of the names of the applicants, to vet and consider all the applicants, and may approve or reject any or all of them. Where the National Assembly approves the nominees, the Speaker of the National Assembly has within seven days to forward the names of the approved nominees to the President for appointment. The President has, within seven days of receipt of the approved nominees from the National Assembly, by notice in

the Gazette, to appoint the Chairperson and members of the Commission approved by the National Assembly. If the President does not appoint the Chairperson or members of the Commission, the approved nominees are taken to have been appointed upon the lapse of twenty one days.

53. The petitioner and the 2nd respondent having agreed that the positions falling vacant are those of chairperson and six commissioners, the declaration of impending vacancies issued on 11th August 2025 did not appreciate and take this fact into account. The declaration as issued assumed that the vacancies for the chairperson and those of all 8 commissioners were to fall vacant. Everything thereafter proceeded as though the entire body of commissioners is to be replaced.

54. The advertisement calling for applications from qualified applicants indicated clearly that the vacancies are for eighty (8) commissioners instead of six commissioners whose positions are to fall vacant. The advertisement for positions of eighty commissioners failed to appreciate the factual positions and isolate and secure the position of the petitioner which is not falling vacant and is therefore not available for replacement. Applicants also proceeded on the basis that the positions of chairperson and all 8 commissioners are to fall vacant and will be filled which is not the correct position.

55. The procedure provided for in the First Schedule to the Act details how the selection panel is to proceed and the timelines. The selection panel is required to submit 3 names for the position of chairperson from which the

President is to select one person and sixteen names for the positions of commissioners from which the President is to select 8 persons for appointment as commissioners, implying that the selection panel submits two names for each position of commissioner to the President to choose names to forward the National Assembly for vetting and approval before formal appointment.

56. The declaration of impending vacancies and the advertisement by the selection panel calling for applications from qualifies persons for the positions of all 8 commissioners included positions of commissioners that were not falling vacant and therefore the petitioner's concerns are valid. This is because the procedure provided in the First Schedule gives the selection panel the number of names it will forward to the President with regard

to the position of commissioners. In that regard, since the declaration of impending vacancies and the advertisement calling for applications was for all 8 commissioners, the declaration of impending vacancies and the subsequent advertisement by the selection panel threaten to violate the Constitution and the law as well as the petitioner's right to serve for a full term of six years.

57. This is so, because, the commission is an independent constitutional commission and the term of office of commissioners, the procedure for their appointment and removal is provided for by the Constitution and the Act. A commissioner once appointed, enjoys security of tenure and can only cease to hold office or be removed in accordance with article 251 of the Constitution read with the Act. Filling of positions falling vacant must also be

done in compliance with the Constitution and the law.

58. This position was well articulated by the Court of Appeal in *Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others* (supra), thus:

We have already set out the provisions of the Constitution regarding the Commission which indicate that it is an independent constitutional Commission whose members are appointed in accordance with a special procedure provided by the Constitution and the Act; upon appointment they are only subject to the Constitution and the law and not subject to the direction or control of any person or authority; they enjoy security of tenure and cannot be removed from office except for cause and following a specific procedure entailing recommendations of an

independent tribunal as is the case with judges; and their terms and benefits cannot be varied to their prejudice, again just like judges.

59. In this petition, the petitioner having been appointed for a fixed constitutional term of six years, she has to serve the full term and can only cease to hold office as provided by the Constitution and the law. The declaration of impending vacancies of commissioners in the commission and the subsequent advertisement by the selection that 8 positions of commissioners were to be filled which purported to suggest that the petitioner's position was also to fall vacant and was up for replacement, was not only erroneous, it amounted to purported removal of the petitioner from office contrary to the Constitution and the law.

60. The Mr. Kaumba, learned counsel for the 2nd respondent, argues that the petition is speculative and that the petitioner's cause of action has not crystalized following declaration of impending vacancies in the position of commissioners. This argument cannot hold for several reasons: First; the impugned Gazette Notice in essence declared impending vacancies for the positions of all commissioners when in fact the petitioner's position is not about to expire. The declaration failed to identify the number of vacancies that were to fall vacant and were due for replacement.

61. Second; the failure to identify in the declaration of impending vacancies the actual number of position of commissioners that were to fall vacant implied that the petitioner's position was also due to fall vacant with the effect that the

petitioner's term of office was being cut short in contravention of the Constitution and the law.

62. Third; the petitioner's cause of action crystalized the moment the declaration on impending vacancies in the positions of commissioners was made without excluding her position since her term is not expiring. The declaration and the subsequent processes being undertaken to fill the vacancies are a threat to violate the Constitution and the law. The petitioner is right to have filed this petition to arrest the impending violation rather than wait to see the Constitution and the law being violated.

63. In other words, the petitioner did not have wait for the violation to crystalize before moving the court because she enjoys a constitutional term of six years and any attempt to declare her position vacant; call for applications with a view to

recommending a person for appointment to her position is a threat to violate not only the Constitution and the law, but also her right to hold that position for the fixed term of six years unless lawfully removed. That is why article 165(3)(d)(i) allows a person to move the court to determine whether anything said to be done under the authority of the Constitution or of any law is inconsistent with or in contravention of the Constitution.

64. Mr. Kaumba's other argument that the petition is premature since the National Assembly will still have to determine the issue of the number of commissioners when vetting the successful applicants whose names the President will send to the National Assembly for vetting falls flat for the simple reason that the National Assembly vets suitability of applicants the President sends for

vetting and approval for purposes of appointment as commissioners and not to determine the number of commissioners that should be vetted for appointment given that the advertisement by the selection panel is clear that vacancies are for all the 8 commissioners.

65. The argument that declaration of impending vacancies did not mention the number of positions does not help because as already pointed out, the selection panel advertised 8 vacancies for commissioners which includes the petitioner's position. In that respect, the selection pane can only send sixteen names to the President as required by the First Schedule to the Act thereby threatening the petitioner's position.

66. In the circumstances, I agree with the petitioner that the Gazette Notice declaring impending vacancies in the commission and the subsequent

advertisement by the selection panel calling for applications for 8 positions of commissioners; shortlisting of applicants and setting dates for interviews is a threat to violate the Constitution; the law and the petitioner's right to hold office as commissioner.

Appropriate relief to grant

67. The petitioner has urged the court to issue declarations and orders nullifying the Gazette Notice and the subsequent actions taken in furtherance of the declaration of impending vacancies. The 2nd respondent takes the view, that allowing the petition will negatively impact the commission given that there will be no quorum to run its affairs.

68. The court has found that the respondents' actions are a threat to violate the Constitution, the

law and the petitioner's right to hold officer despite the issue having raised by the petitioner but was ignored. The issue therefore is what relief should the court grant.

69. Article 23(3) of the Constitution provides that in any proceedings brought under article 22, a court may grant appropriate relief- including declaration of rights and an order for compensation. The essence of an appropriate relief is not only to enforce the Constitution but also to ensure that rights and fundamental freedoms enshrined in the Bill of Rights are protected and enforced- (*Fose v Minister of safety and Security* (CCT 14/1996) [1997] ZACC 6.)

70. In *Tinyefuze v Attorney General of Uganda*, (Constitutional Petition No. 1 of 1996) [1997] UGCC 3, the Constitutional Court of Uganda held

that *“if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter of course.”*

71. In *Attorney General of Trinidad and Tobago v Siewchand Ramanoop* (Appeal No. 13 of 2004 [2005] UKPC 15, Lord Nicholls of Birkenhead, writing for the Privy Council, stated that *“When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the court may award him compensation.*

72. Applying the above principles, and the court having found a threat to violate the Constitution and the law, the appropriate relief in the circumstances of this case is declarations since actual violation has not yet occurred.

73. Consequently, and based on the above reasons, the petition succeeds and the court make the following declarations and orders it considers appropriate.

1. A declaration is hereby issued that Hon. Tiyah Galgalo Ali, MBS, is entitled to serve her full term of six-year as a commissioner of the National Land Commission which commenced on 21st December 2020 and will expire on 20th December 2026.

2. An order of certiorari is hereby issued quashing Gazette Notice No. 11212 dated 11th August 2025 and published in the Kenya Gazette on 15th August 2025 declaring

impending vacancies in the position of chairperson and commissioners of the National Land Commission for being a threat to violate the Constitution, the law and Hon. Tiyah Galgalo Ali's right.

3. An order of certiorari is hereby issued quashing the advertisement published by the selection panel in the Daily Nation on 27th August 2025 and the notice of shortlisted candidates published in the Standard Newspaper on 24th September 2025 for purporting to declare a vacancy in the petitioner's position as a commissioner of the National Land Commission and seeking to replace her.

4. An order of prohibition is hereby issued prohibiting the respondents, their agents, assigns and or any one acting on their behalf from taking any steps that would lead to

recommending persons for the appointment of eight commissioners and or in any manner interfering with the petitioner's term of office as a commissioner, National Land Commission.

5. Costs of the petition to the petitioner.

6. The declarations and orders issued herein above shall apply with full effect to petition E646 of 2025-Hon. Esther Murugi Mathenge, EGH, v Public Service Commission & the Head of Public Service.

**Dated and delivered at Nairobi this 11th Day of
November 2025**

**E C MWITA
JUDGE**