

**REPUBLIC OF KENYA**

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

**PETITION NO. E004 OF 2021**

JOSEPH LORUNYEI KUWAM .....1<sup>ST</sup> PETITIONER

JOHN OYAN LUSURU .....2<sup>ND</sup> PETITIONER

JOYCE NAIREZIA LESEGI .....3<sup>RD</sup> PETITIONER

ALI HASSAN MOHAMMED .....4<sup>TH</sup>  
PETITIONER

KURESHA BILLE MOHAMMED .....5<sup>TH</sup>  
PETITIONER

MARY KEPEN MBATIA .....6<sup>TH</sup> PETITIONER

JOSEPH MTWANJA .....7<sup>TH</sup> PETITIONER

***VERSUS***

THE CABINET SECRETARY, MINISTRY OF DEFENCE, REPUBLIC OF  
KENYA .....1<sup>ST</sup> RESPONDENT

THE CABINET SECRETARY, MINISTRY OF INTERIOR &  
COORDINATION OF NATIONAL GOVERNMENT .....2<sup>ND</sup> RESPONDENT

THE CABINET SECRETARY, MINISTRY OF LANDS ...3<sup>RD</sup>  
RESPONDENT

THE COUNTY COMMISISONER, ISIOLO COUNTY .....4<sup>TH</sup>  
RESPONDENT

THE COUNTY GOVERNMENT OF ISIOLO .....5<sup>TH</sup>  
RESPONDENT

THE ATTORNEY GENERAL .....6<sup>TH</sup>  
RESPONDENT

**AND**

LAW SOCIETY OF KENYA .....1<sup>ST</sup> INTERESTED  
PARTY

NATIONAL LAND COMMISSION .....2<sup>ND</sup> INTERESTED  
PARTY

**RULING**

1. What is before me is the Notice of Motion Application dated **16<sup>th</sup> July 2025**; brought pursuant to the provisions of **Section 5 of the Judicature Act; Section 29 of the Environment & Land Court Act; and Order 51 Rule 1 of the Civil Procedure Rules 2010** and wherein the petitioners/applicants [*hereinafter referred to as the applicants*] have sought the following reliefs:

- (i) *That this application be certified as urgent and service be dispensed within the first instance.*
- (ii) *That the Honourable court be pleased to cite Mr. Gershom Otachi EBS, the chairperson of the 2<sup>nd</sup> interested party herein for contempt of court due to the disobedience and/or breach of the court's order issued on 11<sup>th</sup> November 2024.*
- (iii) *That Mr. Gershom Otachi EBS, the chairperson of the 2<sup>nd</sup> interested party herein, be and is hereby ordered to attend court in person at the hearing of this application.*
- (iv) *That the honourable court be pleased to cite Ms. Kabale Tache Arero, the chief executive officer of the 2<sup>nd</sup> interested party herein for contempt of court due to the disobedience*

*and/or breach of the court's order issued on 11<sup>th</sup> November 2024.*

- (v) That Ms. Kabale Tache Arero, the chief executive officer of the 2<sup>nd</sup> interested party herein be and is hereby ordered to attend court in person at the hearing of this application.*
- (vi) That the honourable court be pleased to give an order citing the contemnors herein for contempt of court and committing them to civil jail for a term of six (6) months and/or until they purge the contempt by adhering to the decree issued on 11<sup>th</sup> November 2024.*
- (vii) That the honourable court be pleased to give such further reliefs as it may deem fit and just to.*
- (viii) That costs be provided for.*

2. The subject application is premised on various grounds which have been enumerated in the body thereof. In particular, it has been contended that the respondents herein and the 2<sup>nd</sup> interested party have breached and violated the terms of the decree of the court issued and signed on 11<sup>th</sup> November 2024.
3. Moreover, it has been contended that the 2<sup>nd</sup> interested party has failed to undertake and complete the investigations which were decreed by the court within the prescribed 24 months. To this end, it has been posited that the failure by the respondents and in particular, the 2<sup>nd</sup> interested party constitutes willful disobedience and contempt of the decree of the court; and thus the necessity for the designated Officers to be cited and punished for being in Contempt of Court.
4. The subject application is supported by the affidavit of Joseph Lorunyei Kuwam [the 1<sup>st</sup> applicant] sworn on 16<sup>th</sup> July 2025 and to which the

applicant has annexed various documents, including a copy of the judgment of the court delivered on 14<sup>th</sup> October 2024. In addition, the deponent has also annexed a copy of the decree arising from the judgment under reference.

5. The 1<sup>st</sup> respondent filed grounds of opposition to the subject application. In particular, the 1<sup>st</sup> respondent has contended that the application is premature, misconceived and otherwise an abuse of the due process of the court. Furthermore, it has been contended that the decree of the court circumscribed the timelines for completion of the investigations by the 2<sup>nd</sup> interested party to 24 months; and that the timeline provided is yet to lapse.
6. The 5<sup>th</sup> respondent filed a replying affidavit sworn on 22<sup>nd</sup> August 2025; and wherein same has averred that the 5<sup>th</sup> respondent has complied with and adhered to the terms of the judgment and the consequential decree. Moreover, it has been deponed that the 5<sup>th</sup> respondent has neither interfered with nor threatened to evict the petitioners and the communities that same represent from the suit property.
7. Additionally, it has been averred that the 5<sup>th</sup> respondent has continued to facilitate; support; and provide public [social] services in the affected area. To this end, the deponent of the replying affidavit has posited that the 5<sup>th</sup> respondent has continued to construct schools, medical clinics and to provide water projects with a view to serving the welfare of the applicants and the communities that same represent.

8. Furthermore, the deponent of the replying affidavit has averred that the subject application has been mounted prematurely and prior to the lapse of the timeline that was stipulated in the judgment under reference. For good measure, the deponent has highlighted that the 24 months, which were alluded to at the foot of the judgment, are yet to lapse. In this regard, it was posited that the application constitutes an abuse of the due process of the court.
9. The rest of the respondents and the interested parties did not file any response to the application. In any event, no such responses are obtainable on the court tracking system [the CTS].
10. The subject application came up for directions on 16<sup>th</sup> September 2025; whereupon the advocate for the parties agreed to canvass and dispose of the application by way of written submissions. To this end, the court proceeded to and gave directions pertaining to the filing and exchange of the submissions.
11. The Applicants filed written submissions and wherein same have highlighted two key issues, *namely*; the 2<sup>nd</sup> interested party has failed to comply with and abide by the terms of the judgment of the court; and the acts of the 2<sup>nd</sup> interested party amount to and constitute contempt of court.
12. The 1<sup>st</sup> respondent filed written submissions dated 27<sup>th</sup> October 2025; and wherein same has equally highlighted two [2] key issues, *namely*; the application is premature and misconceived; and the applicants have neither met nor established a basis to warrant the citation and punishment

of the officials of the 2<sup>nd</sup> interested party in the manner sought. Moreover, it has been posited that the timelines for the completion of the investigations that were decreed by the court are yet to lapse.

13. The 5<sup>th</sup> respondent filed written submissions dated 27<sup>th</sup> October 2025; and wherein same has highlighted two [2] issues. The issues highlighted by the 5<sup>th</sup> respondent are *namely*; the subject application is premature and misconceived; and the applicants have failed to demonstrate willful and deliberate disobedience of the court order or at all.

14. I have reviewed the subject application, the supporting affidavit and the annexures thereto, the responses filed on behalf of the designated respondents; and upon consideration of the written submissions filed by/on behalf of the parties, I come to the conclusion that the determination of the subject application turns on two [2] key issues, *namely*; whether the subject application has been mounted prematurely and prior to the lapse of the stipulated duration or otherwise; and whether the subject application constitute[s] an abuse of the due process of the court.

15. Regarding the first issue, it is worthy to recall and reiterate that the petitioners/applicants herein filed the subject petition and wherein same canvassed a plethora of issues. The petition under reference was subsequently heard and disposed of *vide* judgment delivered on 14<sup>th</sup> October 2024. For good measure, the judgment of the court adverted to various orders.

16. To the extent that the subject application highlights contempt of the said orders, it is imperative to reproduce same.

17. The various orders of the court are as hereunder;

- (i) *All the issues apposite to this petition are referred to the national land commission for consideration, which commission in obeisance to any legal process it may deem necessary to undertake may complete the work of the technical committee it has established in 2018 and the national land commission must complete the apposite investigation within **24 months of today**.*
- (ii) *The court declines to grant prayers (a), (b), (c) and (e) in the petition.*
- (iii) *Pending the completion of investigations this court has ordered national land commission to conduct, this court confirms the status quo granted by the court on 19<sup>th</sup> May 2021 and for avoidance of doubt with the effect that; an order is hereby issued restraining the respondents by themselves, their agents and or servants from evicting the applicants and the more than 20,000 members of the Turkana, Samburu, Borana, Somali, Meru and Ndorobo communities within Burat ward, Isiolo County, that they represent from the land they presently occupy measuring approximately 350 square miles that comprise Burat ward – Isiolo County and this order to protect any other Kenyans who may have been living within the confines of the suit land when the petition was filed.*
- (iv) *In view of the inchoate attempts by the ministry of defence through the formation of the committee and by national land commission and stakeholders to form a technical committee*

*both seeking a resolution of the dispute which is the subject of this petition, an advisory order is hereby issued advising the parties to explore a resolution of the dispute through the alternative justice system, structures already established at the Isiolo Law courts or generally through adoption of the alternative justice system. It is clarified that this advisory order does not in any way encumber the National Land Commission from autonomously executing its constitutional mandate.*

- (v) *As this petition as evinced an overwhelming veneer of public litigation the court orders that the parties do bear their own costs.*

18. The applicants have contended that the 2<sup>nd</sup> interested party [National Land Commission] has breached and violated limb one of the judgment under reference. For good measure, limb one of the judgment relates to the undertaking and completion of investigations by National Land Commission **within 24 months** from the date of the delivery of the judgment.

19. It is not lost on me that the judgment was delivered on 14<sup>th</sup> October 2024; and hence the 24 months duration adverted to thereunder would lapse on or about the 13<sup>th</sup> October 2026. Nevertheless, the subject application was filed on 16<sup>th</sup> July 2025. Quite clearly, the application was filed prematurely and before the lapse of the stipulated timeline.

20. I am afraid that learned counsel for the applicants ought to have taken time to appraise self of the terms of the judgment and thereafter to internalize the computation of time.
21. Notably, the provisions of **Sections 57 and 58 of the Interpretation and General Provisions Act Cap 2 Laws of Kenya**, would have been of great help/assistance. Nevertheless, I reiterate that the subject application was prematurely filed and thus same is not only misconceived, but still-borne.
22. Turning to the second issue, it is common ground that a party, the applicants not *excepted*, are obligated to revert to court and prosecute a matter which is not only ripe, but justiciable. In this regard, parties are not at liberty to revert to court for purposes of propagating hypothetical; fanciful; and academic issues.
23. As pertains to the subject matter, the applicants acknowledge and concede that the 2<sup>nd</sup> interested party was granted 24 months within which to undertake and conclude the designated investigations. Furthermore, the applicants concede that the 24 months have not lapsed. In particular, the applicants have highlighted that only 7 months have lapsed from the date of rendition of the judgment. [See ground No. 11 of the application].
24. Nevertheless, the applicants have the temerity to revert to court and propagate an application contending that the 2<sup>nd</sup> interested party and in particular, its officials have failed to comply with the terms of the judgment. For coherence, it has been posited that the 2<sup>nd</sup> interested party has failed to undertake and conclude the investigations in the manner decreed by the court.

25. I am at pains to understand the foundation of the claims being made by the applicants and their learned counsel. Nevertheless, it is common ground that the complaints beforehand reek of bad faith, mala-fides and ulterior motives. To this end, I am afraid that the court process is being misused and abused for collateral; and ulterior purposes.

26. In my humble view, the applicants and their learned counsel should appreciate that courts of law are under extreme pressure to handle and dispose of various pending matters and backlogs. In this regard, it was incumbent upon the applicant and counsel to embrace the provisions of section 1B of the Civil Procedure Act, which espouses the overriding objectives of the court, including the obligation of parties to assist the Court in achieving the designated Objective[s].

27. Without belabouring the point, I hold the humble view that the subject application constitutes and amounts to a classic abuse of the due process of the court. For good measure, same ought not to have been filed in the first place.

28. The concept of abuse of the due process of the court was highlighted in the case of **Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)**, where the court [per Mativo J – as he then was] stated thus;

*28. Multiplicity of actions on the same matter between the same parties even where there exist a right to bring the action is regarded as an abuse.[18] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per*

*se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.[19]I find no difficulty in concluding that this Judicial Review Application is based on similar grounds as the Petition referred to above.*

*29. This obstacle to the efficient administration of justice is not immovable. Courts need not and should not wait for lawyers and litigants to initiate proceedings where there is substantial reason to believe that the processes of the court have been abused. Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which such abuse cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception, fraud and blatant abuse of judicial processes.*

**30. All courts have an inherent or implied jurisdiction to prevent their processes from being used as an instrument of oppression. Courts are able to modify their procedures to avoid such prejudice and take any steps that are necessary to prevent an abuse of process.[20]The concept of abuse of process extends to the use of the court's processes in a way that is inconsistent with two fundamental requirements arising in Court proceedings.**

*These are, first, that the Court protect its ability to function as a Court of law by ensuring that its processes are used fairly by State and citizen alike. The second is that unless the Court protects its ability to function in that way, its failure will lead to an erosion of public confidence. The court's processes will be seen as lending themselves to oppression and injustice.*

29. In view of the foregoing, it is my finding and holding that the subject application, which was filed clearly before the lapse of the stipulated timeline, constitutes an abuse of the court process.

#### **FINAL DISPOSITION.**

30. Flowing from the reasons which have been highlighted in the body of the ruling, it is apparent that the subject application was not only premature and misconceived, but same was clearly designed to abuse the due process of the court. The application offends the overriding principles of the court and must therefore be deprecated.

31. In the upshot, and for the reason[s] alluded to; the final orders that commend themselves to the court are as hereunder;

- (i) The Application dated 16<sup>th</sup> July 2025 be and is hereby dismissed.**
- (ii) Costs of the application be and are hereby awarded to the 1<sup>st</sup> and 5<sup>th</sup> Respondents only.**
- (iii) The Costs in terms of clause [ii] are hereby assessed and certified in the sum of Kshs.20,000/= only to each of the named respondents.**

**(iv) Moreover, the costs in terms of clause of [iii] above shall be borne/paid by the advocate for the Applicants personally.**

32.It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 5<sup>TH</sup> DAY OF  
NOVEMBER 2025.**

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

**JUDGE**

**In the presence of:**

Hussein/Mukami -Court Assistants

Miss Olao holding brief for Mr. Kimani for the Petitioners/ Applicants.

Ms. Nyonje holding brief for Mr. Kiiru for the 1<sup>st</sup> Respondent.

Mr. B. Kimathi [Principal litigation counsel] for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 6<sup>th</sup>  
Respondents

Ms. Ruth Kiunga holding brief for Mr. Eric Theuri for the 5<sup>th</sup> Respondent.