



**Mathenge v Public Service Commission & another; National Land Commission  
(Interested Party) (Petition E646 of 2025) [2025] KEHC 16371 (KLR)  
(Constitutional and Human Rights) (11 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16371 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E646 OF 2025  
EC MWITA, J  
NOVEMBER 11, 2025**

**BETWEEN**

**HON ESTHER MURUGI MATHENGE, EGH ..... PETITIONER**

**AND**

**PUBLIC SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THE HEAD OF PUBLIC SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**JUDGMENT**

1. The petitioner is a commissioner with the National land Commission (the commission) and was appointed on 21<sup>st</sup> 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 20<sup>th</sup> December 2026.
2. On 11<sup>th</sup> August 2025, the President issued Gazette Notice No. 11212 published in the Kenya Gazette of 15<sup>th</sup> 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 getting persons to nominate to fill the impending vacancies.
3. On 27<sup>th</sup> August 2025, the selection panel issued an advertisement calling for applications to for purposes of filling vacancies for the position of chairperson and members of the commission following the declaration of impending vacancies in those positions.



4. The declaration of impending vacancies and the advertisement by the selection panel purported to declared the petitioner's position as commissioner vacant and the process of recruiting nominees for appointment as chairperson and members of the commission effectively sought to replace the petitioner as a commissioner even though her term of office of six years has not expired.
5. The petitioner filed this petition challenging the constitutionality of the declaration of impending vacancies and the advertisement by the selection panel seeking applications from qualified persons to recommend for appointment to fill those vacancies.
6. The facts of this petition and arguments are on all fours similar to those in petition E647 of 2025, Hon. Tiyah Galgalo MBS, v Public Service Commission & the Head of Public Service. The petitioner herein was appointed a commissioner of the National Land Commission on 21<sup>st</sup> December 2020 for a term of six years which expires on 20<sup>th</sup> December 2026. Just like that of Hon. Tiyah Galgalo Ali, MBS, petitioner in petition E647 of 2025.
7. Mr. Ngatia, senior counsel has urged that the decision in petition E647 of 2025 Hon. Tiya Galgalo, MBS, v Public Service Commission & The Head of Public Service do apply in all respects to this petition since the facts in the two petitions are similar on all fours similar. The two commissioners were appointed on the same day and their terms of office will expire on the same day.
8. Mr. Kaumba Learned counsel for the 2<sup>nd</sup> respondent supports the position taken by Mr. Ngatia, Sc, and urges that the decision in Petition E647 of 2025 do apply to this petition.
9. I have perused the pleading in this petition and indeed, except the name of the petitioner, the respondents in the two petitions are the same and so is the cause of action and the two petitions seek similar prayers.
10. Petition E647 of 2025 having succeeded, the decision in that petition (E647 of 2025) including the declarations and orders shall apply with full effect to this petition. For avoidance of doubt and for completeness the court makes the following declarations and orders.
  1. A declaration is hereby issued that Hon. Esther Murugi Mathenge, EGH, is entitled to serve her full term of six-year as a commissioner of the National Land Commission which commenced on 21<sup>st</sup> December 2020 and will expire on 20<sup>th</sup> December 2026.
  2. An order of certiorari is hereby issued quashing Gazette Notice No. 11212 dated 11<sup>th</sup> August 2025 and published in the Kenya Gazette on 15<sup>th</sup> 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. Esther Murugi Mathenge's right.
  3. An order of certiorari is hereby issued quashing the advertisement published by the selection panel in the Daily Nation on 27<sup>th</sup> August 2025 and the notice of shortlisted candidates published in the Standard Newspaper On 24<sup>th</sup> 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.



**DATED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF NOVEMBER 2025**

**E C MWITA**

**JUDGE**

