JE & 72 others v Tullow Kenya BV & 2 others; National Environment Management Authority & another (Interested Parties); Kenya Legal and Ethical Issues Network on Hiv & Aids (KELIN) & another (Amicus Curiae) (Environment and Land Constitutional Petition E001 of 2024) [2025] KEELC 5917 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5917 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT LODWAR

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E001 OF 2024

CK NZILI, J

JULY 30, 2025

IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 40, 42, 43, 53, 56, 57, 69, 70, 162(2)(B) AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTIONS OF ARTICLES 2(5) & (6), 3(1), 10(2), 19, 20, 21(1), (2), (3), 22(1), (2), 23(1), (3), 24(1), (3), 26, 27, 28, 35(1), (3), 40, 42, 43(A), (C), (D), 44(1), (2A), 53, 56, 57 AND 70 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLE 3(3) OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE 1992

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLE 8(1) OF THE PARIS AGREEMENT 2015

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 16 AND 24 OF THE AFRICA CHARTER ON HUMAN AND PEOPLES' RIGHTS (ACHPR) 1981

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 3(B), 112 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY 1999

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTION 3, 15, 19, 20 AND 23 OF THE CLIMATE CHANGE ACT NO. 11 OF 2016

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTION 3 AND 56A OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT NO. 8 OF 1999

AND

IN THE MATTER OF RULES 10(1), 11(1) & 13 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

JE ..... 1ST PETITIONER

SA ..... 2ND PETITIONER

EK ..... 3RD PETITIONER

DE ..... 4TH PETITIONER

KA ..... 5TH PETITIONER

JE ..... 6TH PETITIONER

DE ..... 7TH PETITIONER

DE ..... 8TH PETITIONER

SE ..... 9TH PETITIONER

SE ..... 10TH PETITIONER

JE ..... 11TH PETITIONER

MN ..... 12TH PETITIONER

AN (1ST TO 13TH PETITIONERS BEING MINORS SUING THROUGH THEIR NEXT FRIEND LEGAL ADVICE CENTRE T/A KITUO CHA SHERIA) ..... 13TH PETITIONER

ELKANAH ELIMLIM LOKIPEET ..... 14TH PETITIONER

ILIKWEL LOREGAE EKUWOM ..... 15TH PETITIONER

PAULINA AMUCHA ENULAN ..... 16TH PETITIONER

JOSEPH EKALE EKARU ..... 17TH PETITIONER

CHARLES ESINYEN ARIONG ..... 18TH PETITIONER

LONYEITA IPORI ..... 19TH PETITIONER

EKASKOUT LOMOSONG LOMOKORI ..... 20TH PETITIONER

ISAAC KEBO EKUWAM ..... 21ST PETITIONER

NILEMKES LOCHIYO ..... 22ND PETITIONER

PAULO EMANI KURE ..... 23RD PETITIONER

MUSA ESINYON EJORE ..... 24TH PETITIONER

JAMES EMOIP ELOTU ..... 25TH PETITIONER

JAMES EKUTAN ..... 26TH PETITIONER

EKAALE EKUWOM ..... 27TH PETITIONER

AKURETE EDOME ..... 28TH PETITIONER

LOPEM ETOOT EKUWOM ..... 29TH PETITIONER

AMEYEN LOPOROCHO LOGALAN ..... 30TH PETITIONER

PAUL EMANIKOR EMURIA ..... 31ST PETITIONER

ELIM ARUPE ..... 32ND PETITIONER

JAPHETH EYANAE ..... 33RD PETITIONER

AJORE INGOLE LOWAAR ..... 34TH PETITIONER

REBECA EKALE ..... 35TH PETITIONER

AKIRU LOMOJONG ..... 36TH PETITIONER

KLIKWEL LOREGAE ..... 37TH PETITIONER

LOSENY NGUOMO LODURIKO ..... 38TH PETITIONER

RAPHAEL AMODOI NAKOROT ..... 39TH PETITIONER

APURILO KOMOLE ..... 40TH PETITIONER

NAKITELA LORUKENYIT ..... 41ST PETITIONER

LOKWAARO ALEWA ..... 42ND PETITIONER

NAPEYOK ESINYEN ..... 43RD PETITIONER

SILALE LOMANGAT ..... 44TH PETITIONER

IKARU AMODOI ..... 45TH PETITIONER

KOOLI NAKUUMA ..... 46TH PETITIONER

EKOMOL EYANAE ..... 47TH PETITIONER

ILIKWEL EDUNG ..... 48TH PETITIONER

AKAALE KOOLI ..... 49TH PETITIONER

NAWAAR KISIKE ..... 50TH PETITIONER

APUA EKATELA ..... 51ST PETITIONER

NATION LOPATIO ..... 52ND PETITIONER

EKAMATE EROT ..... 53RD PETITIONER

DENNIS NAMURON ..... 54TH PETITIONER

YANO EKADELI ..... 55TH PETITIONER

EDUNG DANIEL ..... 56TH PETITIONER

EMMANUEL ESEKON ..... 57TH PETITIONER

EKASI STEPHEN ..... 58TH PETITIONER

BENSON EYANAE ..... 59TH PETITIONER

PHILIP LOKAMN ..... 60TH PETITIONER

DAVID LOSINYEN ..... 61ST PETITIONER

MUNYES MATHON ..... 62ND PETITIONER

SAMAL METHUSELAH ..... 63RD PETITIONER

LAWRENCE LOSIPAAN ..... 64TH PETITIONER

TITUS LOTIENG ..... 65TH PETITIONER

DERICK KUWOM ..... 66TH PETITIONER

AKITELA SILVESTER ..... 67TH PETITIONER

JOHNSON ETABO ..... 68TH PETITIONER

ELIUD LOBECK ..... 69TH PETITIONER

SILAS LOKUSI ..... 70TH PETITIONER

JOSPHAT ERUKUDI ..... 71ST PETITIONER

NICOLUS NG'AKIM AK ..... 72ND PETITIONER

LOPEYOK RICARDO SIMEON ..... 73RD PETITIONER

AND

TULLOW KENYA BV ..... 1ST RESPONDENT

MINISTRY OF ENERGY & PETROLEUM DEVELOPMENT 2ND RESPONDENT

THE HON ATTORNEY GENERAL ..... 3RD RESPONDENT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... INTERESTED PARTY

TURKANA COUNTY GOVERNMENT ..... INTERESTED PARTY

AND

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN) ..... AMICUS CURIAE

INITIATIVE FOR STRATEGIC LITIGATION IN AFRICA (ISLA) ..... AMICUS CURIAE

RULING

1. Article 165(3) of *the Constitution* is the constitutional underpinning for applications for certification of a matter where, in the court's view, it meets the test for referral to the Hon. Chief Justice to empanel an uneven bench to hear a matter that raises a substantial question of law. Section 21 of the *Environment and Land Court Act* is the guiding law on certification. The manner of dealing with such an application has been subject to the courts' interpretation.

2. In Hermanus Phillipus Steyn -vs- Giovanni Gnecchi-Ruscone, SC Appl No 4 of 2012; [2013] eKLR, the Supreme Court established principles for certification under Article 163(4)(b) of *the Constitution*. The same was adopted with notification by the Court of Appeal in Okiya Omtata Okoiti & Another -vs- Anne Waiguru, C.S. Devolution and Planning & 3 Others [2017] eKLR. In Hermanus Phillipus Steyn -vs- Giovanni Gnecchi-Ruscone (supra), the court held that a party intending for referral must satisfy the court that the issue to be canvassed transcends the circumstances of a particular case and has a significant bearing on the public interest, that such a point raised in its matter is a substantial one whose determination shall have a significant bearing on the public interest, that such questions or question of law must have arisen, the applicant must identify and concisely set out the specific elements of general public importance, which he attributes to the matter for which certification is sought and lastly; that determination of facts in contest between the parties are not by themselves, a basis for granting certification for an appeal before the Supreme Court.

3. In Okiya Omtata -vs- Anne Waiguru (supra), the court emphasized that the applicant must inter alia, show that there is a state of uncertainty in the law. See also Republic -vs- Public Service Commission & Kerioko Tobiko Exparte Nelson Havi [2017] eKLR. In P. Mbete Mwilu -vs- DPP & Others [2018] eKLR, the court appreciated that an expanded bench would sometimes require resources, both personnel and financial, as well as more time to resolve a petition than if it were heard by a single judge. The decision to certify a matter as raising substantial questions of law is an exercise of judicial discretion. See Peter Nganga Muiruri -vs- Credit Bank Ltd & Another Civil Appeal No. 203 of 2006. It has to be exercised judiciously and not whimsically. There must be a sound reason. See also Musya & Others -vs- Muviku & Others ELC Petition E003 of 2022 [2023] KEELC 16087 [KLR] (20th February 2023) (Ruling).

4. In this matter, none of the parties has moved the court other than saying, as suggested by the court, that this is a matter calling for certification. Even as the court takes such a view, especially where the court is acting Suo moto, the key issue is whether the court is satisfied that the matter raises substantial questions of law. Such a finding must be derived from the pleadings. Parties are bound by their pleadings and issues for determination arise from the pleadings. See Stephen Mutinda Mule & 3 others -vs- Independent Electoral and Boundaries Commission & another [2014] eKLR. In an adversarial system, it is the parties who set the agenda for the trial and determination. The court has no room for any other business to travel outside the pleadings. See Raila Odinga & Others -vs- Independent Electoral and Boundaries Commission [2017] eKLR.

5. The meaning of the substantial question of law was addressed in Wycliffe Oparanya & Others -vs- Director of Public Prosecution & Another [2016] eKLR, Community Advocacy and Awareness Trust & Others -vs- Attorney General & Others HC Petition No. 243 of 2011, Martin Nyaga & Others -vs- Speaker of County Assembly of Embu & Others [2014] eKLR and Council of County Governors -vs- Lake Basin Development Authority & Others [2019] eKLR. The petition must raise novel, weighty, complex and substantial questions of law.

6. Our constitution has not defined what is a substantial question of law. See Harrison Kinyanjui -vs- Attorney General & Another [2013] eKLR. It is left to each high court judge to satisfy himself that the matter is substantial to the extent that it warrants referral to the Hon. Chief Justice for empanelment. The question is whether from the pleadings of the parties herein, an open question of law is raised which is not only substantial, is of general public importance and would affect directly and or substantially, the rights of the parties and has not been settled by courts so far, it is not free of difficulty or calling for discussion of alternative views. See Wilfred Karuga Koinange -vs- Republic, Nairobi Misc. Appl. 1140 of 2007.

7. In Wycliffe Oparanya & Others -vs- Director of Public Prosecution (supra), the court held that it has to adopt a holistic approach and that novelty, complexity, or difficulty of the case alone, does not qualify a matter as raising substantial questions of law.

8. What the petitioners in the amended petition dated 29/10/2024 are seeking against the respondents are inter alia:

   (a) Declaration reliefs of violations of community rights to a clean and healthy environment, use and enjoyment of traditional land, to health, information, economic and social life, physical integrity, security of persons, means of survival, development, human dignity, clean safe water, from discrimination and rights of the children.

   (b) Removal and disposal of all wastes and chemicals by the 1st respondent in the Lokichar Basin and its disposal by the 1st interested party.

   (c) An order compelling the 1st respondent to remediate the alleged polluted sites by crude oil.

   (d) An order that the 1st respondent restores the environment under the supervision of the interested parties and the community, in the alternative, creates an adequate special fund for evaluation of damages and carrying out restoration.

   (e) An order that the 1st respondent, under the supervision of the interested parties and the community, periodically monitor the environment in Lokichar Basin for 5 years, with quarterly reports.

   (f) A fine of Kshs.150,000/= per day or such penalties in default of the above reliefs.

   (g) Order that the 1st respondent's acts and omissions during the exploratory drilling of oil and gas in Turkana County consistent a hazardous environmental activity and criminality, punishable under Kenyan Law and amount to acts of violence on development, contravening the rights of the petitioners and residents of Turkana County under Article 10 of *the Constitution*.

   (h) Order that the Office of the Director of Public Prosecution institutes criminal proceedings against the 1st respondent, for possible criminal and other environmental breaches committed during and after the exploration of oil and gas drilling in Turkana County.

   (i) Compensation for violation of their rights.

   (j) Liability on the part of the 1st respondent to meet future claims relating to the environmental damages as a result of its activities in the Lokichar Basin.

   (k) Damages for the harm and injury suffered due to the hazardous activities and negligent acts of the 1st respondent by the appointment of an independent panel in consultation with experts in the area of reparation and compensation for environmental damages and human rights.

(l) An order that the 1st respondent provides a suitable environmental bond in the sum of USD. Two billion, or such sum as the court may impose.

9. The facts of the petition are set out in paragraphs 16-70 of the amended petition. Briefly, the petitioners are members of the Turkana Community affected by and continuing to be affected by the impacts, actions and omissions of the respondents. That the 1st respondent, a subsidiary of Tullow Oil PLC, is an independent oil and gas exploration and production company, duly licensed to operate in Kenya and to carry out exploration and drilling on South Turkana Basin in Turkana County, in which the 2nd respondent is the state department overseeing the management of the extractive sector in Kenya, by developing policies and creating a favourable legal and regulatory framework, programs and projects within the petroleum and mining sector.

10. The 1st interested party (NEMA), has the responsibility to supervise and coordinate all environmental matters related to the said sector, alongside the 2nd interested party (Turkana County Government), who are considerably mandated to implement specific National Government Policies over environmental protection, county health and control of pollution in all manner or form.

11. The petitioners aver that the 1st respondent was licensed by the National Environmental Management Authority, to carry out massive development projects of exploration and well drilling to determine the presence of oil and natural gas in Blocks 10BA, 10BB, and 13T, Ngamia 1, Amosing, Twiga, Etuko, Ekalesi-1, Agete, Ewoin, Ekunyuk, Etom, Erot and Emukuya in Lokichar Basin in Turkana County. It is averred that in pursuance of that mandate, on 4/2/2011, the 1st interested party issued the 1st respondent with the Environmental Impact Assessment (EIA) licenses with an express provision to bear all liabilities to third parties for breach of any terms and conditions contained therein for Block 10BB.

12. Further, the petitioners aver that on 30/1/2013, another license was issued to the 1st respondent by NEMA to carry out exploratory natural gas and oil well drilling activities in Block 13T. The petitioners aver that around 2013 the 1st respondent commenced an aggressive oil exploration and drilling campaign of the South Lokichar area in Ngamia 1, Amosing, Twiga, Etuko, Ekalesi-1, Agete, Ewoi, Ekunyuk, Etom, Erut, and Emukuya oil wells to determine the presence of oil and natural gas.

13. The petitioners aver that in the process of exploratory development project, the 1st respondent knew or ought to have known the obvious facts that the exploratory programme had the potential to cause harm, social and environmental degradation and degeneration, through pollution deposition of pollutants, ecological, destruction, de-vegetation, soil erosion, surface and groundwater contamination, noise pollution, soil and liquid waste and by-production and possible deposition of other hazardous substances and activities which ought to have been remedied and or mitigated. The petitioners aver that in the arena of international law, the aforesaid activities are described as harmful potentials of development, popularly referred to as the violence of development enterprises across the globe.

14. The petitioners aver that as a multinational corporation specialized in development activities in global oil and natural gas exploration, the 1st respondent knew that its activities in the exploration area in Turkana County were bound to inflict the violence of development, on the people resident in the area of mining activities and based on its experimental outcome elsewhere, that this violence of development would result into grave social-economic conditions, inequities, experiences, afflictions, abuses, subjugation and deprivations, manifested in the outcomes if rights violations, environmental degradation, infliction of poverty and other adverse effects on the environment and human conditions of people living in Turkana County and would have also adverse effects on the present and future

generations, including dislocation of communities, excessive environmental devastation through clearing of vegetation, dumping of hazardous wastes oil spills leading to health and human diseases, spread of diseases due to water, soil and vegetation pollution, adulteration of underground and surface water quality and destruction of the habitat.

15. The petitioners aver that the 1st respondent, as a matter of fact, excavated soils to create access roads, created gullies and borrow pits, abandoned several well pads, failed to restore and revegetate the environment, rehabilitation and decommission the said quarries, well pads and borrow pits as required in the licenses and thereby has exposed the residents to diseases and other potential harm, loss and damage to the residents of the affected areas. Further, the petitioners aver that the 1st respondent deployed a land-based drilling method as a result which there was biggest waste stream affecting the environment, due to drilling fluids and drilling cuttings generated during the drilling of wells, which wastes would require and impel an effective disposal method, which if not well managed would also eventuate into environmental pollution and degradation.

16. The petitioners aver that the licences issued to the 1st respondent obligated it to implement an environmental management system, structure and to allocate sufficient resources to ensure optimum environmental protection and timely mitigation and remediation of any adverse consequences of the development project in the decommissioning process. The petitioners aver that from the Environmental Social Impact Assessment (ESIA), it was manifest that due to the unusual characteristics of the Turkana area crude oil, which has high wax content of oil deposits that requires injection of water to extract high volumes of groundwater were needed by the 1st respondent into the crude oil reservoirs, from wells to support the construction phase, hence posse a major impact on groundwater quantity in the area, hence impacting negatively on the lives and livelihood of the people. Therefore, the petitioners aver that the 1st respondent deployed water-based drilling fluids within Blocks 10BB and 13T, to assist in the drilling of the boreholes into the earth, during which the drill-cuttings wastes and by-products were generated, consisting of soil, rock, fragments and other pulverized materials.

17. In addition, the petitioners aver that the 1st respondent made an admission that for some time it used water-based drilling techniques at both Ngamia 1 and Twiga 1 and thereafter, made a formal application to the 1st interested party to change to another technique known as synthetic oil-based drilling, due to technical difficulties experienced in the ongoing experimental exploration, to which the 1st interested party varied the terms of the ESIA licenses, to allow the said new technique. The petitioners aver that it is a well-known fact in the mining industry that the two aforementioned techniques are prone to emit hazardous wastes such as drilling cuttings and synthetic mud. However, the petitioners aver that though the water-based technique, according to the 1st respondent, had minimal adverse environmental impacts and was more economical, it was not clear why the 1st respondent embarked on the second method without proffering more effective remediation and mitigation measures, to combat hazardous hydrocarbon known to result from synthetic oil based fluids, which have potentially hazardous and harmful effect on the environment, habitat and human life.

18. The petitioners aver that from 2013, the 1st respondent in the process of exploratory drilling has accumulated large stocks of drilling cuttings which are always kept on the surface of the site in Twiga 1, near Lomokomar village, which are purely close to an intermittent stream/laga, close to existing community residences. The petitioners aver that the waste holding site in Twiga 1 was not initially licensed by NEMA, and even after the licensing, the 1st respondent failed to adhere to the license conditions and left a trail of overstayed waste at the holding site, overfilled pits, unpermitted water holding ponds and poorly managed disposal sites. As to the second method, the petitioners aver that

the synthetic oil-based mud was stored in old and perforated polythene surface ponds, which are prone to flooding and overflows, thus causing contamination of the soil and surface water.

19. The petitioners aver that the 1st respondent's poor waste management systems of the hazardous wastes and drilling cuttings since the project inception were confirmed by the intervention letter dated 7/8/2018 and intervention by NEMA and the litigants before the National Environmental Tribunal (NET) and continue to pose damage to the environment. The petitioners aver that proceedings before NET in Appeal No. 13 of 2018 between the 1st interested party and the 1st respondent were secretly settled after negotiations, without informing the local community and compromised such that the 1st interested party revoked its own decision dated 7/6/2018, hence imposing the community with more dangers of hazardous waste. The petitioners aver that it was only later that the 2nd interested party intervened on behalf of the community via a letter dated 26/9/2019, to the 1st respondent who ignored the demands, failed to make disclosure or comply as urged or at all, despite the license conditions and terms at Section 5.12, 7.4.9.2.1, where there was admission of the adverse impacts likely to arise from the project.

20. The petitioners aver that no information in the ESIA had been disclosed to them about the expected indirect downstream Green House Gases(GHGs) emission associated with the proposed project and therefore, the 1st respondent took no measure and indeed did nothing as a matter of procedure, to stop or reverse the contamination in the shallow groundwater, or took no corrective measures to restore or replace the groundwater that has been impaired by the emitted hazardous wastes.

21. The petitioners that at all stages including exploration, production, transporting, refining and distribution, leek emission occurred in all segments of the oil and natural gas system including emission from equipment components such as valves, connectors, open-ended lines and flanges, yet the 1st respondent had an obligation to consider the reasonable foreseeable direct effects such as GHGs emissions, during the process of exploring and extracting the fossil fuel and the indirect effects (associated with the processing, refining, transporting and end use of the fossil fuel being extracted, including the combustion of the resource to produce energy), of the proposed action together with any reasonable alternatives, which information, in the ESIA was not availed to the petitioners, on its significance. The petitioners aver that they rely on credible peer-reviewed empirical accidence academic study reports, which indicate that oil and gas exploration in the Lokichar Basin has produced massive negative effects on ground and surface air quality and the 1st respondent's own admission in the ESIA report.

22. The petitioners aver that it is the 1st respondent who introduced the contamination in the recharge pathway and within the aquifer, thus leading to poor quality, heavy metal deposits and radioactive elements rendering the water toxic for consumption. Further, the petitioners aver that the depositing of drilling cuttings in the disposal well also resulted in the local community continuing to suffer losses such as the death of their goats, sheep and cattle, which they rely upon as a source of livelihood and economic mainstay.

23. The petitioners aver that after a NEMA report dated 7/10/2021, on environmental monitoring, it was agreed by the respondents that the 1st respondent could develop a detailed remediation plan of the South Lokichar field, engage NEMA's licensed waste handlers to treat contaminated trial Density Polythene (HDPE) linings and waste oil and oily waster which unfortunately, they have failed to do. Moreover, the petitioners aver that in February 2015, hundreds of barrels of oil leaked at one of the 1st respondent's sites in Amosing and discharged on the environment thereby negatively impacting on it, however, the 1st respondent has failed to take adequate remedial measures to restore or inform the County on the dangers posed, on its environmental and social impact of the spill.

24. The petitioners aver that due to the pollution of groundwater sources, indigenous shrubs are unable to outlive dry seasons or provide feed to their livestock, hence drastically reducing the size of their livestock, in terms of size and which balance is also now contaminated and facing annihilation of their animals in the foreseeable future. The petitioners aver that sometime in 2018, livestock died after consuming contaminated water in the Lagas in the areas, some of whom also strayed in unfenced or fenced sites, including their children and adults straying in the abandoned, vandalized sites, with no drainage system, posing a danger to them. The petitioners aver that the Kapese campsite and airstrip in Lomokamar Ward, belonging to the 1st respondent is a residential area, converted into a storage area where expired and dangerous chemicals and explosives are kept in a container, thereby posing a risk or harm to the environment.

25. Additionally, the petitioners aver that on or about 31/5/2022, the 1st respondent burned hazardous expired explosives at the campsite and airstrip, without authorization for the destruction of waste and explosives, contrary to NEMA directive to ship back the same to the manufacturer for disposal, during which one person passed on, scores were injured and hazardous debris left scattered then posing danger to grazing livestock around and the residents. The petitioners aver that they have resorted to alternative means of livelihood, such as charcoal burning, due to the perennial losses being subjected to livestock and poverty, for they can no longer sustain themselves.

26. The amended petition is anchored on Articles 2(5), 10, 19, 20, 21, 22, 26, 27, 28, 29, 42, 43, 53, 69(2) 70 and 258 of *the Constitution*, *Water Act*, Environmental Management and Coordination Act, 2015, Waste Management Act, *Climate Change Act*, United Nations Declaration on the Right to Development, 1986, United Nations Framework Convention on Climate Change, 1992, Kyoto Protocol 1997, Paris Agreement 2015, African Charter on Human and Peoples' Rights,1981, East African Community Treaty 1999, Maastricht Principles on Human Rights for Future Generations 2023, Stockholm Declaration, The Committee on Economic Social and Cultural Rights.

27. The amended petition is supported by an affidavit sworn by Dr. Annette Mbogoh on 28/2/2024, annexing copy of Registration as AM-1, Environmental Impact Assessment License as AM-2, Desmog Report as AM-3, NEMA Reports on oil spill as AM-4, Certificate of Variation of Environmental Impact Assessment License as AM-5, Studies by Experts Journals as AM-6, NEMA Directive of 7/8/2018 as AM-7, pleadings before National Environment Tribunal and proceedings as AM-8 and 9, Letter from the 2nd interested party dated 26/9/2019 as AM-10, complaint in 2019 as AM-11, report form Desmog UK 2020 as AM-12 and 13, chief's report as AM-14, photographs as AM-15, 16 and 17, newspaper report as AM-18, study reports as AM-19 and 20, demand letters as AM-21, bundle of exhibits as AM-22, Public Complaints Committee Report dated 23/2/2021 as AM-24 and lastly, decision in Riki at et al -vs- State of Montana as AM-25.

28. Further, the amended petition is supported by an affidavit of Mark Chernaik, a Scientist at the US Office of the Environmental Alliance Worldwide (ELAW), sworn on 20/2/2024, attaching the reported project oil, Upstream Environmental and Social Impact Assessment submitted to the 1st respondent by Golder Associates, September 2021.

29. The 1st respondent opposes the petition by a response dated 14/11/2024. On locus standi, the 1st respondent denies that the petitioners have the capacity to act for the alleged affected parties of the Turkana Community and insists that neither the petitioners nor the members of the Turkana Community have suffered any loss or damage on account of the actions or inactions of the 1st respondent. The 1st respondent avers that the first port of call, if at all, the petitioners had any grievances, should have been at the National Environment Tribunal.

30. On pleadings, the 1st respondent avers that the petition is pleaded in a repetitive and convoluted manner. On licenses, whereas the 1st respondent admits that it has been licensed by the 1st interested party to conduct explorative well drilling with a view to determining the presence of gases and oils in Block 10BB and 13T within Turkana County, to which it had commissioned and effected an Environmental and Social Risk Management and Impact Assessment Plan dated 14/1/2024, to identity, assess and document environmental and social impacts associated with exploration and mitigation measures. The 1st respondent avers that the correlation between its activities and violence development, according to Balakrishnan Rajagopal, alluded to in the amended petition, was inaccurate, for it has not contributed to any displacement of communities, in the quest to transform Turkana County into a modern economy. In fact, the 1st respondent avers that it does not acquire land for purposes of its activities, for it was merely granted access thereto.

31. The 1st respondent avers that the exploration process does result in grave social-economic conditions, inequities, experiences, afflictions, abuses, subjugation and deprivations, degradation of the environment, infliction of poverty and other adverse effects currently or in the future, to the people of Turkana County, which allegations have not been substantiated, hence remain absurd. The 1st respondent avers that it has not displaced any communities and that it has a policy in the course of its operation to minimize the impact on the environment and where the environment is affected by its activities, it has always undertaken remedial measures.

32. On gullies and borrow pits, the 1st respondent avers that a civil contractor is mandated to obtain licenses from the County Government and equally source for the relevant materials from the gullies and borrow pits, after which once the permit is completed, restoration measures as approved by the 1st and 2nd interested parties and the local community, prior to handing back/over of the gullies and borrow pits are undertaken. The 1st respondent avers that the gullies and borrow pits, being the property of the 2nd interested party for future use, may be allocated to different private individuals for a specific duration of time, while others remain open for public use. In this case, the 1st respondent avers that the Civil Contractor, Ardan Risk and Support Services Ltd, obtained various permits from the 2nd interested party to access multiple gullies and borrow pits with Block 10BB and 13T and in some instances to create them, which they accessed from mid-2012 to mid-2015. The 1st respondent avers that the petitioners have failed to specify the precise gullies and borrow pits that were in use, or whether the gullies in use were solely permitted to the aforesaid Civil Contractor, jointly or to other private individuals, or were open to the public for use and the time period when they were in use.

33. The 1st respondent avers that at the close of the permit period, the Civil Contractors submitted decommissioning plans to NEMA for purposes of rehabilitation, which were approved by the 1st and 2nd interested parties and the local community and eventually the Civil Contractors backfilled the borrow pits and conducted revegetation. The 1st respondent avers that the exercise was reduced into restoration reports and sign-off reports, hence it is not accurate that there was no rehabilitation or decommissioning of the gullies or borrow pits. In any event, the 1st respondent avers that the Civil Contractors are distinct and separate from it.

34. Regarding alleged abandoned well pits, the 1st respondent avers that in the ordinary course of natural gas and oil discovery, wells are dug up in order to ascertain their presence, and where a well is dug up and is determined not to yield either natural gas or oil, otherwise known as a 'dry well', the same is securely plugged using cement and decommissioned, reinstated with soil and left to naturally revegetate. In contrast, the 1st respondent avers that there are wells that are dug up yet retain the potential for the discovery of natural gas and oil, which then are secured with well heads and covered and cellar covers firmly locked with the intention of exploration.

35. The 1st respondent avers that all these methods of well management prevent environmental exposure, and are recognized as best industry practice for rehabilitation of well pads. In the exploration phase of this project, the 1st respondent avers that it dug up an estimated total of 45 well pads, 35 of which have been plugged and decommissioned, while 9 remain operative. For each decommissioned well pad, the 1st respondent avers that it submitted a decommissioning plan to the 1st interested party, which was approved prior to formal decommissioning. The 1st respondent avers that to ensure well integrity, it performs monthly inspections on the well pads. In view of the foregoing, the 1st respondent avers that the monthly inspections have not presented any anomalies with the well pads, since they used a secure rehabilitation method that cannot be a breeding ground for mosquitoes during rainy seasons or at all, for they are capped off and thereby cannot be a source of any other medical harm.

36. The 1st respondent denies that well pads can lead to loss of grazing land, since the largest one measures 200 meters by 250 meters, whereas the exploratory block measures approximately 15,872 square meters. In this instance, therefore, the 1st respondent avers that at most the cumulative 45 well pads take up an estimate of 2 square kilometers, with the expansive grazing land in Turkana County.

37. Regarding drilling methods, the 1st respondent avers that at the commencement of the exploration and appraisal phase of the project, it had adopted a water-based fluid drilling method, which faced some difficulties, including:

    (a) Borehole instability due to the enlargement of the washout hole from 12 ½ inches to 22 inches, thereby leading to excessive drill cutting returns.

    (b) Hole cleaning.

    (c) Bit trips.

    (d) Poor log interpretation.

    (e) Increased timelines for drilling each well, leading to an increase in power generation and consumption.

38. The 1st respondent avers that these challenges were constrained to vary the drilling method from water-based fluid to synthetic oil drilling. Even though the former was cheaper, the 1st respondent avers that the latter has advantages such as:

    (a) It can be recycled from one well drilling site to another.

    (b) It improves the lubrication of its well.

    (c) Has faster drilling performance.

    (d) It is biodegradable.

    (e) It is stable and performs well under high temperatures.

    (f) It has a reduced risk of oil failures.

39. Therefore, the 1st respondent avers that on 23/12/2013, it made a formal application to the 1st interested party, seeking to vary the existing Environment Impact Assessment Licenses (EIAL), accompanied by a Best Practice Environmental Option Study (BPEO), conducted by Kurrent Technologies Limited, an independent consultant accredited by the 1st interested party. The 1st respondent averred that the study explored the best method to treat the resultant synthetic oil laced cuttings and determined Thermal Desorption to be the most suitable option, since it has the benefit of

treating the drilling cuttings and thereafter reutilizing them as a road base for construction purposes, while at the same time allowing for treated drilling to be barred on site without contamination. The 1st respondent avers that on 12th and 15th January, 2014, the 1st interested party approved the said application for variation of drilling methodology and issued it with new Environment Impact Assessment licenses.

40. Concerning waste management, the 1st respondent avers that drill cuttings are inevitable by-products of drilling activities, irrespective of the methodology used, with no mode of prevention other than cure. Further, the 1st respondent avers that in the process of synthetic oil-based drilling, hydrocarbons are produced, making the resultant drill cutting, potentially hazardous and therefore out of an abundance of caution, the drill cuttings are treated using the thermal deposition method as recommended in the BPEO study which essentially removes the hydrocarbon in the drill cutting and allows for the treatment cuttings to be buried on site.

41. Regarding Twiga 1, the 1st respondent avers that upon issuance of the new EIA licence in January 2014, and upon completion of the exploration and drilling activities, it partially restored the Twiga 1 - site and installed the Thermal Desorption Unit (TDU) for purposes of treating the drilling cuttings, which TDU was utilization between May and August 2015, before the 1st interested party directed it to cease using the unit and decommission it immediately, which recommissioning was completed on or about 13/8/2015. The 1st respondent avers that the drill cuttings were placed in pits at their respective sites, lined with an impermeable high-density polythene liner to prevent seepage of hydrocarbon into the ground. Further, it is averred that the Twiga 1 site was also secured by an impenetrable fence and was manned by security guards round the clock.

42. The 1st respondent avers that on 3/4/2017, it engaged SGS Kenya Ltd, which is an independent consultant accredited by the 1st interested party to collect samples and analyze the soil, water and air quality from Twiga 1 site, which generated a report dated 28/7/2017, confirming that all gaseous pollutants measured were within the limited set out in the Environmental Management and Coordination Act (Air Quality) Regulations 2014, the water samples did not contain effluent water and lastly; that the soil samples had no environmental harm on the outside of the Twiga 1 well pad, where people and animals were present. The 1st respondent avers that in a meeting held on 6/10/2017, it shared its waste management strategy with the 1st, 2nd and interested parties, who gave it a positive review after which it proceeded to prepare a more detailed waste management concept.

43. The 1st respondent avers that on 13/12/2017, it commenced an environmental audit of the Twiga 1 site and made a formal application to the 1st interested party, seeking to change the license over the Twiga 1 site from a drilling pad to a temporary waste management storage area. The 1st respondent avers that on 19/2/2018, the 1st interested party issued it with a compliance letter confirming that the Environmental Audit of Twiga 1 Site had met the requirements set out in the Environmental Management and Coordination Act, by the 1st interested party. However, shortly thereafter, on or around 6/3/2018, in direct contradiction with its previous directions, the 1st interested party declined its application for a change of user license over Twiga 1, citing unforeseen environmental and social risks that are likely to occur as a result of "the dumping" of the drill cuttings at the Twiga 1 site.

44. For purposes of clarity, the 1st respondent avers that, it had no intention of "dumping" the drill cuttings at Twiga 1 site rather, it was consolidating the drill cuttings safely and securely, pending the actualization of the integrated waste management facility it had proposed within 18 months which position had been communicated to the 1st interested party.

45. The 1st respondent avers that the 1st interested party made several recommendations inter alia:

(a) Removal of all the drill cuttings and any other oil field-related waste deposited at the Twiga 1 site, and outsource the services of NEMA licensed hazardous waste handler with the capacity to handle the waste in an environmentally sound manner.

(b) Prepare a decommissioning plan for the current drill cuttings storage sites that could allow for remediation of the said sites to acceptable standards.

(c) Respond in writing to the Director General of NEMA within 14 days, indicating the commitment to adhere to the requirements.

(d) Source for a suitable waste management solution that was environmentally and socially friendly, and undertake an EIA in line with the CIA and Audit Regulation 2003.

46. The 1st respondent avers that it duly sought to engage the aforesaid licensed hazardous water handlers who visited the sites but were unable to handle out field waste. Therefore, the 1st respondent avers that in July 2018, it presented a revised waste management strategy to the 1st interested party and 2nd respondent and also sought a waste transfer license over Twiga 1 site for a period of 18 months to enable the consolidation and storage of drill cuttings at Twiga 1 site and by a letter dated 7/8/2018 the 1st interested party directed for the removal of all accumulated drill cuttings waste from Twiga 1 site and transportation of the same for the treatment in accordance with the Environmental Waste Management Regulation 2006 and to furnish them with a status report within 14 days of the said directive.

47. The 1st respondent avers that it was unable to comply with the said directive since:

(a) Neither of the NEMA licensed hazardous waste handlers had a viable integrated treatment and disposal option and facilities that met the international standards of handling subject drill cuttings; otherwise, the handlers presented options that were likely to result in legacy waste such as ash.

(b) The movement of waste and the proposed incineration treatment did not historically deal with the potential environmental pollution, and the proposal amounted to transferring a challenge from Turkana County to a different location, which could negatively impact the environment.

(c) The cost of transport and treatment of the drill cuttings alone excluding disposal to one of those handlers, was estimated at USD 30 Million, which was an unsustainable option, given that future operations would generate drill cuttings of a much more significant quantity than what has been generated through the 1st respondent's exploration activities up until that point.

(d) Since 27/3/2017, the Twiga 1 site has been barricaded by minor elements of the local community, making it impossible for the 1st respondent to gain access and transport the drill cuttings for disposal. As a result, the 1st respondent avers that it instituted Tribunal Appeal No. 13 of 2018 before the National Environment Tribunal, seeking a stay of the 1st interested party's directive of 7/8/2018, pending a pragmatic solution to the matter.

48. The 1st respondent avers that for 1 year 8 months, there were consultations involving the 1st interested party and various experts and stakeholders, engaged in robust dialogue with a view of arriving at a practical yet amicable resolution, which bore fruits on 11/6/2020 leading to a consent before National Environment Tribunal, in which it withdrew its appeal and the 1st interested party withdrew the directive dated 7/8/2018. Thereafter, the 1st respondent avers that around 28/12/2020, it formally licensed a treatment plant and waste disposal site, in which drill cuttings from all other sites were consolidated in the Twiga 1 site, as the sole treatment and waste disposal site.

49. The 1st respondent avers that the letter dated 7/8/2018 must be read in its proper context taking into account the chronology of events outlined above, prior to the issuance of the said letter, otherwise as at January 2014, the parties were aligned on the waste management of synthetic oil based drill cutting before the 1st interested party shortly ordered the decommissioning of the Thermal Desorption Unit (TDU) creating a quagmire, without presenting any viable alternatives to treat the drill cuttings despite submitting multiple revised waste management plans. The 1st respondent avers that without the approval of the 1st interested party on the protection of the drill cuttings, it could not take any further steps.

50. The 1st respondent avers that in response to the letter from the County Government of Turkana dated 29/9/2019, the same was solely addressed to the 1st interested party, however, the licensing of Twiga 1 site as a treatment plant and a waste disposal site and its decision to consolidate all the drill cuttings at Twiga 1 site, was made following technical recommendation made by a joint working group consisting of the state department of petroleum, NEMA, KJV and Turkana County Government, with the involvement of members of the communities, and there was incorporation of monitoring protocols among them joint sampling and inspection of the consolidated waste. The 1st respondent denies the suggestion that it compromised the 2nd interested party; otherwise, the 2nd interested party, having been members of the joint working group, were satisfied that the 1st respondent was properly conducting the waste management.

51. On the alleged contamination of soil, water and air at Twiga 1 site, the 1st respondent avers that following the decommissioning of the Thermal Desorption Unit, drill cuttings were placed in pits, at their respective site, were lined with impermeable high density polythene liner to prevent seepage of hydrocarbon into the ground, which mode of waste management was in accordance with the best practice and the IFC Environmental Health & Safety Guidelines for Offshore Oil and Gas Department. Equally, the 1st respondent avers that the site also had an impenetrable fence and was manned by security guards round the clock.

52. The 1st respondent avers that the drill cuttings are treated in a centrifugal dryer to reduce the oil contents to less than 30% before segregating the cuttings for the final disposal, which is confirmed by the testing showing that the drill cuttings underwent attenuation, hence removing the hydrocarbon present, making them organically biodegradable. The 1st respondent equally avers that between 2015 and 2020, there was no drilling taking place, hence no drill cuttings were being produced for the pits to be said to have been overfilled. The 1st respondent avers that the pits that hold drill cuttings are deep and have not been subject to overflow due to rainfall. Equally, the 1st respondent avers that the pits have sidings as a secondary safety measure, designed to capture anything that may fall outside the pit and equally prevent it from seeping into the soil or surface water.

53. The 1st respondent avers that soil, water and air samples taken from Twiga 1 site and around, did not yield any contamination by hydrocarbon and the tests showed the samples were within the required limits and standards contrary to what the petitioners aver going by the Ambient Air Quality Data, Air Dispersion Modelling, soil quality test undertaken, which found no evidence of any contamination on the site. The 1st respondent avers that it constructed a scientifically positioned groundwater monitoring well to determine and detect any water contamination. There were routine soil monitoring to verify contamination, drill cuttings are not known to cause air pollution, other than bad odor and that a joint inspection exercise undertaken at Twiga 1 site on 9/2/2021, in the presence of the respondent, interested parties, Energy and Petroleum Regulatory Authority (EPRA) and the Lolomar Community concluded that the water was properly contained, the HDPE liners had no perforation, there was no evidence of flooding or erosion or any form of contamination or poor waste management at the site.

54. The 1st respondent insists that it has put in place waste management systems that cater for all waste generated during the course of drilling, to ensure that no adverse effects are being occasioned to the environment. Further, the 1st respondent avers that the site has only one neighbour and is not close to any intermittent stream or Laga. The 1st respondent states that it has responded to or acted upon all improvement orders as and when they are issued by the 1st interested party.

55. Regarding ground water, the 1st respondent avers that it drew its water for drilling from the Turkwel River, in accordance with the Environmental Social Impact Assessment, whose report should be read as a whole but not in bits especially the sections on mitigation and the consideration of the actual state of the environment in the area at the moment. In any event, the petitioners have no evidence to sustain their claim that the groundwater has been impacted, or leakage or emission is occurring in all segments of its activities, or breach of the Environmental Social Impact Assessment, or withholding of any information from the regulators generally and in particular the 1st interested party. The 1st respondent avers that the petitioners have been selective in the extraction of information for purposes of this petition and rely on a study reflecting a different scenario from the one suggested at paragraph 50 of the amended petition.

56. The 1st respondent denies that water quality samples of 2022 and 2023 indicate it as the sole contributor or introducer of the alleged contamination in the area since livestock, humans and nitrate would ordinarily be a result of organic waste, in the recharge pathway and within the aquifer. The 1st respondent avers that it has always collected water and soil samples regularly for monitoring purposes, which showed no sign of contamination and where there were improvement orders. The 1st respondent avers that it contracted Charles & Baker to carry out remedial works at South Lokichar as well as Danlay Ltd, a NEMA-approved waste handling company, to collect any contaminated HDPE liner from the Early Oil Pilot Scheme site and to deliver to a NEMA-approved incinerator in Athi River for incineration. Further, and in addition to identifying water that is fit for consumption, the 1st respondent avers that through studies conducted and the monitoring of the water site, it supplies the locals of Turkana County with 400,000 liters of water per day.

57. Concerning the alleged oil leak in February 2015, the 1st respondent avers that the incident took place as a result of machinery malfunction, to which it took immediate remedial actions, in accordance with their Incident Management Procedure which outlives the Oil Spill Response Strategy and Oil Spill Contingency Plan, that is adhered to in such unlikely events of spillage.

58. The 1st respondent avers that Turkana County is approximately 77000 square kilometers out of which its project during exploration and appraisal took up a mere 0.008 square kilometers out of which it has restored and handed back to the community 0.002 square kilometers of land that was either dry well and or seismic sites, hence none of the area taken up has been contaminated in the extent alleged in the amended petition.

59. On deaths of livestock at Lokichar and Loperot, the 1st respondent denies that there were any animal deaths occasioned by its activities for reason that the areas complained about are not only upstream, but also over 19 kilometers from Twiga 1 site where soil, water and air samples obtained did not show any contamination, the deaths which were instantaneously within the area of consumption of water were not consistent with the oil field waste poisoning of water, and lastly, the nature of the deaths is suggestive of water intoxication, either following a period of water deprivation, strenuous exercise or during periods of high environmental temperatures.

60. Regarding the Twiga 2 site, the 1st respondent avers that the waste was moved to Twiga 1 temporary waste transfer station, leaving no waste thereon, which Twiga 2 site remained fenced and secured,

including the well part fully secured by well heads covered with cellar covers that remain monitored on a monthly basis. Equally, the 1st respondent avers that the design of the spill containment facilities around the pits prevents any leak and spillage which is designed to hold 110% volume of the water; and in the unlikely event of an overflow, there is a ditch around the pits and a bump to prevent any water from escaping the site on top of an evaporation pit if the mechanism alluded to above fail.

61. On explosives, the 1st respondent avers that Kapere Campsite is a licensed integrated operation base which is not occupied as a residential area or available for habitation as alleged and it is where the 1st respondent stores its equipment and drilling material securely. The 1st respondent avers that in May 2022, it sought approval of the 1st interested party to dispose of the expired explosives, who said that the destruction of explosives was not within its mandate and directed that it seeks such authorization from the 2nd respondent, which it did and shared its proposed mechanism and plan of destruction of the explosives, who approved the same. Following this, the 1st respondent avers that on 31/5/2022, the registered government blaster went to the campsite to undertake the destruction and directed that the explosives be destroyed by burning in a cellar, which exercise unfortunately resulted in an explosion that caused one injury and a fatality of a police officer; leading to an extensive and conclusive investigation. The 1st respondent denies that the act was as a result of its deliberate flagrant negligence or deliberate pollution of the environment as alleged or at all.

62. The 1st respondent insists that the statistics collected by the National Bureau of Statistics regarding the social, economic activities of the people of Turkana in the last one decade shows that the changes have been attributed to has nothing to do with it. In any event, the 1st respondent insists that it shared all its waste management information with the 1st interested party and complied with all its requests.

63. On the alleged breach of constitutional and legal provisions relating to the grievances of the petitioners, the 1st respondent denies and does not concur with the petitioners' interpretation and understanding of the applicability of those provisions to this matter. In particular, the 1st respondent insists that international law should be complementary, especially in a matter that has sufficient municipal legislation and that its applicability should be devoid of inconsistency with municipal laws.

64. Further, the 1st respondent avers that Articles 21(3) and 260 of *the Constitution*, as invoked, do not apply to it for it is neither a state organ nor a person falling within the categorization of a state officer. On Article 26 of *the Constitution*, the 1st respondent states that both life and livelihood do not synonymously mean the same thing, they are not mutually one and the same thing in its view, and that it is a concept made up of various rights and has no fixed definition or starting point, contrary to what the petitioners propose. The 1st respondent denies that it is a statutory body capable of carrying out the obligation captured in paragraph 84 of the amended petition. The 1st respondent insists that it has enhanced the right to development as per the United Nations Declaration on the Right to Development, by not only carrying out the drilling of oil within the stipulated measures in the law, but also providing accessibility to this right.

65. The 1st respondent faulted the petitioners for misinterpreting the terms in "all peoples" under Article 22 of *the Constitution* to refer only to the residents of Turkana County as the sole beneficiaries of the resources located in their region, despite the fact that they rank in superiority in the utilization of such resources as other Kenyan, who must also benefit out of the generation and the next in a sustainable manner. The 1st respondent insists that the interpretation adopted by the petitioners is wrong, for the drilling establishment by them has not only been done in a legally compliant manner, but also the jobs that have arisen out of the establishment have greatly dignified the residents of Turkana County. The 1st respondent avers that before commencing the project, it sought an Environment Impact Assessment license, under the Environmental Management and Coordination Act, where it

indicated the mechanism for waste management and after getting the appropriate approval, it is still legally compliant with the provisions of the said laws as well as the other approval on water by the Water Regulatory Authority of Kenya.

66. The 1st respondent avers that there is no nexus at all that it has inhibited the realization of the covenant rights because of water, as alleged by the petitioners. To the contrary, the 1st respondent avers that it has actually promoted the right to gain a living by fostering development in the community, which in turn has created direct and indirect employment opportunities for the members of the community within the project.

67. On violence of development, the 1st respondent avers that the exploration of oil and gas in Turkana County has been conducted in a manner as flagrant as described in the amended petition, to the extent of resulting in the social and environmental degeneration alluded to by the petitioners. On the contrary, the 1st respondent avers that comparative studies on the quality of life in Turkana County before it commenced its activities and after would demonstrate that the 1st respondent's operations have had a positive impact, with no expense on the environment. The 1st respondent avers that it has always taken precautions to minimize the chances of their activities having a negative impact on the environment and the community and to mitigate the extent of the effect of any inevitable consequence of the exploration. The 1st respondent avers that where there has been minimal impact, it has taken remediation measures, including employing plans and controls that not only comply with statutory requirements of the 1st interested party, but also the international standards governing onshore exploration operations.

68. The 1st respondent terms the purported cause of action not only injudicious, but also merely motivated by the rise in climate litigation, which, though not averse to it, should be explored in instances where there has been an actual threat to the environment and the community. The 1st respondent denies that its operations or activities have had the consequences attached to in paragraph 108 of the amended petition, and that in the event it was committing such violence as described, the 1st interested party would have suspended its licences over the years, the 2nd and 3rd respondents would have intervened and terminated its operations and there could have been sufficient material, beyond the 1st respondent's own reports, to demonstrate and substantiate the environmental disuse and abuse that is now suggested in the instant petition. The 1st respondent asserts that there has been no dislocation of communities or the need for excessive environmental devastation through clearing of vegetation, more so going by the scientific data collected and tested in credible institutions that demonstrate that the actual status of the air, soil, and water in Turkana has not been harmed by its activities.

69. On breach of the right to clean and healthy environment, the 1st respondent while admitting that there are by-products out of drilling held at Twiga 1 site, it is averred that these by-products are maintained in a manner that does not harm the environment at Twiga 1 site, or its surroundings which by products as alluded above are contained in pits that are lined up with HDPE liners, to ensure that the material albeit bio-degradable, does not sip into the ground, on top of putting in place a Drilling Cuttings Waste Storage and Disposal Plan.

70. Regarding the reports referred to paragraph 112 of the amended petition, the 1st respondent cautions that the said reports relied upon by the petitioners should be considered with great reservations for reasons inter alia that: the timing of collection of samples by Gitari F.M, Makokha M.K, Shisanya CA and Mbugua D [2022]. On samples collected during the Covid -19 pandemic when the 1st respondent was not conducting any operations and travel was greatly restricted, the findings in these reports that the components found in the water are not exclusive to drilling activities or oil field waste and that the water sampled was not related to oil field waste and lastly, the reports do not draw on exclusive and

direct nexus between the operations of the 1st respondent and the state of water in the few parts that are found to be unfit for human consumption.

71. Due to the facts regards consolidation of waste at Twiga 1, the 1st respondent refutes that it has engaged in poor waste management, in violation of the petitioners' rights to clean and healthy environment as alluded in the amended petition, for the drilling methods used have not only been licensed by the 1st interested party, but are also internationally approved for onshore exploration of oil and gas, especially the synthetic oil based drilling that utilizes bio-degradable substances that mitigate and negative effects to the environment. The 1st respondent avers that it has sufficiently demonstrated in this response and through evidentially data that it has managed the disposal of the byproducts of drilling in an environmentally mindful manner, employing both mitigation and remediation measures that meet local and international standards, contrary to the argument set out in paragraph 114 of the amended petition.

72. Regarding paragraph 115 of the amended petition, the 1st respondent terms the contents as unsubstantiated for there has been no displacement of communities or infection of the people with communicable diseases as allegation or at all, save it has worked in collaboration with the 2nd respondent, the interested parties and other state organs to protect and conserve the environment in Turkana County from adverse effects of oil and gas exploration, through joint meetings, joint working groups, inclusive of community members, the receipt of inputs from the communities and the promotion of transparency in carrying out its operations. Further, the 1st respondent avers that it has attended to any improvement orders by the 1st interested party as the statutory organ charged with issuing such orders, including performing prompt remediation action, in accordance with its Incident Management Procedure when an incident occurred.

73. The 1st respondent avers that surface water has been contaminated on account of its drainage system, where the well pads are located. The 1st respondent terms the incident reported in paragraph 118 of the amended petition as unrelated to its activities. The 1st respondent avers that the status of the Kapese campsite has been misrepresented for purposes of the argument made in paragraph 119.

74. As to breach of the right to clean and safe water in adequate quantities and the right to the highest attainable standard of health, the 1st respondent denies that it has compromised the quality and quantity of water in Turkana County. On the contrary, it insists that it has improved the water quality and quantities by supplying the community with 400,000 liters each day for domestic use. On breach of other social-economic rights enshrined in Article 43 of *the Constitution*, the 1st respondent terms the argument sets out in paragraphs 132 - 134 of the amended petition as contrary to the prevailing factual matters in Turkana County, where it has enhanced the socio-economic activities of the communities in the area through provisions of water, jobs, infrastructure and diversifying of the socio-economic activities. The 1st respondent denies that the animal deaths referred to were neither occasioned by any of its oil field operations nor have they said operations resulted in the decline of indigenous herbs and or permanent contamination of water, as argued in paragraph 134 of the amended petition.

75. As to the nexus between breach of the right to clean and healthy environment with other rights, the 1st respondent denies the same as alleged in paragraphs 138, 139, 140 and 141 of the amended petition, otherwise, if that was the case there would be overwhelming evidentiary material collected over the period exceeding a decade that the 1st respondent has been conducting its activities in Turkana County.

76. As to the right to development, the 1st respondent avers that the comparable statistics of the levels of poverty in Turkana County between the period before it commenced its operations and in the period it has been conducting its activities, contradict the arguments by the petitioners, otherwise,

the sustenance of the people of Turkana County has not been compromised but improved by the 1st respondent. The 1st respondent avers that the allegations of loss of land and deepened poverty are inconsistent with the state of affairs in Turkana County; moreover, it only occupies and restricts its activities on a small fraction of the County, as indicated above.

77. Regarding violation of Article 10 and the vales of human dignity, the 1st respondent asserts none of it has been violated or compromised in any manner by its operation as argued in paragraphs 150, 151 and 152 of the amended petition to the extent of rendering the people destitute, homeless, physically incapacitated and unable to achieve basic functioning and live a life of dignity, except the sensationalized of the same in this petition. Concerning breach of the value of accountability and the right to information, the 1st respondent denies the same for it has involved the communities in its operations, called upon them to be involved in the joint working group meetings, engaged in corporate social responsibility activities for the bettering of the community and where possible provided employment to members of the community so that they too can understand the said operations.

78. Regarding paragraph 156 of the amended petition, the 1st respondent avers that although inclusivity and public participation are significant matters, it could be impractical to collate the views of all people in respect of taking proposal for conducting oil exploration because of the scientific nature of the exercise, needless to say the 1st respondent insists that it has been transparent and open about its operations.

79. As for the request for information, the 1st respondent admits that the same was made solely to establish a basis for this claim, it was vague, wide and ambiguous making reference to "all reports from the year 2018 to date" which request not only made it difficult to comply with but also frustrated any efforts that could have made it possible to comply with the request.

80. As to breach of the right to security of the person, the 1st respondent denies such a violation which was inconsistent with Article 29(d) of *the Constitution*, since it has not subjected the people of Turkana or the environment to any form of violence as pleaded in the amended petition.

81. On climate change violations, the 1st respondent denies the same and inserts that it was not responsible for emission of greenhouse gases that would be classified as a violation of the *Climate Change Act*, for it has and continues to adhere to obligations established by statutes, the 1st interested party, the 2nd respondent and the international standards, hence the contents of paragraphs 159 and 166 of the amended petition are unfounded.

82. On the violation of the rights of children, the 1st respondent denies the contents of paragraph 167 of the amended petition, it refutes the negligence, in paragraph 168 thereof and insists that it exercised its duty of care onto all sites that it conducted the operations as well as imposing a similar standard of care to its subcontractors, save for borrow parts that are used by third parties and those that the communities requested to be left open for commercial benefit of the community, the 1st respondent avers that it restored the borrow pits that it had opened.

83. On the breach of right of the present and future generations, the 1st respondent avers that based on the facts and evidentiary material presented herein, the argument contained in paragraph 174 of the amended petition is unsubstantiated fro it has not and is not likely to breach the rights of the present and future generation, neither is the allegation of purported perpetual harm and danger in violation of Article 42 of *the Constitution* apparent.

84. On statutory violations pleaded in paragraphs 175 to 179 of the amended petition, the 1st respondent, in view of the response, refutes the same. On the contrary, to paragraph 180, the 1st respondent insists

that the petitioners lack locus to bring the claim, they have failed to establish proof of causation between the 1st respondent's acts and matters complained about as afflicting the communities in Turkana County, hence are not entitled to the prayers sought in the amended petition.

85. The 2nd and 3rd respondents opposed the amended petition through an amended response and a replying affidavit of Moses Mburu dated 11/11/2024 and sworn on 19/3/2025, respectively. In locus standi, the 2nd and 3rd respondents deny that the petitioners have the capacity to act for, represent, or pursue the interest of the alleged affected members of the Turkana community. The 2nd and 3rd respondents deny knowledge that the petitioners or the alleged members of the Turkana community suffered any alleged loss, damage, or injury resulting from the 1st respondent's exploration. The 2nd and 3rd respondents deny that they violated their precautionary obligations spelt out in the law, the exploration permits, licenses, or agreements and thus contend that the petitioners have no basis to mount this petition against them.

86. While admitting that Articles 22 (1) and 258 of *the Constitution* 2010 expended the scope of locus standi in constitutional matters, the 2nd and 3rd respondents contend that the petitioners have not demonstrated with exactitude their claim against them or nature of violation, or injuries, loss or damage that they have suffered or was suffered by the alleged members of Turkana community that they purport to represent in this litigation and how, if any the 2nd and 3rd respondents, contributed to the alleged injuries, loss or damage.

87. While admitting that paragraphs 10-14 of the amended petition, espouse constitutional and statutory provisions the 2nd and 3rd respondents aver that paragraphs 10, thereof miserably, fails to identify with precision the specific individual they seek to represent and against whom, the rights or obligations arising out of the judgment will attach or the reason that made the alleged Turkana community members unable to access justice in their individual capacity.

88. On jurisdiction, the 2nd and 3rd respondents aver that to the extent that the amended petition at paragraph 15 raises grievous revolve around violations of exploration permits and licences issued during the exploration processes, and also the court is devoid of jurisdiction and that under Section 125 of Environmental Management and Coordination Act, the jurisdiction of the court as ousted and the dispute herein ought to have been filed in the National Environment Tribunal as a body with jurisdiction.

89. The 2nd and 3rd respondents further contend that Section 36 of the *Energy Act* established that the Energy Tribunal, with jurisdiction to determine disputes of inter alia, exploration of oil and petroleum substances and or violation of exploration permits. Therefore, the 2nd and 3rd respondents aver that since there are existing statutory dispute resolution mechanisms, to be exhausted before resorting to the court, the petitioners have not demonstrated that they attempted or invoked the jurisdiction of such institutions or that the said mechanisms were not efficacious or that they sought exemptions as mandatorily required.

90. On the factual background of the petition, the 2nd and 3rd respondents admit the contents of paragraphs 16-19 of the amended petition, to the extent that the 1st respondent was contracted and permitted to conduct petroleum exploration in Block 10BB and 13T in Turkana County and that according to Environmental Management and Coordination Act, the 1st respondent was issued with licences by the 1st interested party for various activities related to petroleum exploration. Thus, the 2nd and 3rd respondents aver that the obligation to oversee the implementation of the environmental licences was the 1st interested party, while the 2nd respondent's responsibility was to monitor compliance with the sound and good exploration practices, which she did.

91. The 2nd and 3rd respondents aver that they could only intervene in the event of breaches under the exploration agreements and or the statutory obligation related to petroleum operations. In the normal order of things, the 2nd respondent avers that it would become aware of the breaches through complaints from the members of the public or upon detecting the breaches during monitoring. The 2nd respondent averred that the measures it had put in place to detect breaches were foul-proof. The 2nd and 3rd respondents aver that they did not receive the alleged complaints of breach of environmental obligations as pleaded in the amended petition, nor did they detect any alleged breaches during the monitoring.

92. The 2nd respondent avers that it consistently monitored the petroleum exploration activities and provided all the requisite policy guidance and support mechanisms as per *the Constitution*, Environmental Management and Coordination Act, *Petroleum Act* and the Petroleum Agreements, hence the allegations by the petitioners that it breached its precautionary mandate or failed to comply with the law, policies and regulations or it failed to develop plans and strategies or that it facilitated the release of harmful substances to water, soil and air are denied in toto.

93. The 2nd and 3rd respondents aver that the responsibility to commission and or implement the Environmental and Social Risk Management (ESRM) and the Environmental Impact Assessment Plan (EIAP), under the Environmental Management and Coordination Act, was not the 2nd respondent's role, whose commissioning and implementation are within the statutory parameters. The 2nd and 3rd respondents aver that it regulated exploration work by ensuring that all the measures put in place were geared toward sustainable exploitation and development, utilization, management, and conservation of the environment and natural resources, hence together with the 3rd respondent, di not endanger the environment, or cause or contribute to the displacement of the people through inaction as alleged or at all in paragraphs 22, 23, 23 and 25 of the amended petition, otherwise, the 2nd respondent avers that concrete measures were put in place to ensure safe and sound exploration works.

94. The 2nd and 3rd respondents deny the content of paragraph 26 of the amended petition, for the 2nd respondent had no control over the gullies and burrow pits or control of their allocation or grant of permits for their use or generally in their management. The 2nd and 3rd respondents aver that any dispute arising out of the allocation or use of gullies and burrow pits or the grant of permits or implementation of the permits should be borne by permit holders and not the 2nd respondent.

95. The 2nd and 3rd respondents further deny knowledge of the abandoned well pads as alleged and aver that the well pads, whether in use or not, were always secured using the international best practices, such as plugging, abandonment and decommissioning. The 2nd respondent wishes to distinguish the term "abandoned" as used in the amended petition, and the term "plugging and abandonment", the latter being an industry term used to refer to the safe and secure sealing of wells. The 2nd and 3rd respondents aver that under Section 44 of the *Petroleum Act*, any liability arising from the failure to implement directions on decommissioning or abandonment of facilities, including well pads, does not lie against the 2nd respondent.

96. On waste management, the 2nd and 3rd respondents invoke Section 60 of the *Petroleum Act* to plead that it was the responsibility of the 1st respondent to manage production, transportation, storage, treatment or disposal of wastes arising out of upstream petroleum operations in accordance with all the applicable environmental, health, safety and best petroleum industry practices.

97. The 2nd and 3rd respondents aver that under Section 60(4) of the *Petroleum Act*, it is the responsibility of the 1st interested party to issue and supervise the relevant waste management licences and that the 2nd respondent usually provides technical and policy support to ensure seamless discharge of the

obligations under the licences, and the latter can only intervene when there is a breach of which has been brought to its attention or is detected in the course of monitoring. In this case, the 2nd and 3rd respondents aver that they were not aware of complaints of waste management, nor did it breach any law. The 2nd and 3rd respondents aver that Section 60(5) of the *Petroleum Act* creates an offence as a result of managing production, transportation, storage, treatment, clean up, or disposal of wastes arising out of upstream petroleum operation without a licence or failing to comply with the terms and conditions of the licence.

98. The 2nd respondent avers that it was not a party to the waste management licence and cannot be held liable for the breach of the terms of the said licence, and that in any event, no report for an alleged breach was ever brought to the 2nd respondent's attention, neither did the 2nd respondent became aware of or failed to prevent the alleged breach.

99. The 2nd and 3rd respondents deny the contents of paragraphs 40, 41, 42, and 43 of the amended petition, and in particular deny knowledge of or being a party to National Environmental Tribunal Appeal No. 13 of 2018 or the deliberation and or settlements made therein between the 1st respondent and the interested parties, including the assertions that the 2nd interested party was compromised by the 1st respondent to abandon their cause on preservation of the environment or that as a result the petitioners and the entire Turkana community were left to live in toxic habitat where wastes were dumped or stored.

100. The 2nd and 3rd respondents deny the contents of paragraphs 45, 46, 47, 48, 49, and 50 of the amended petition and maintain that they discharged their obligations under Articles 42 and 69 of *the Constitution*, otherwise, there is no evidence to support the alleged contamination of soil, water or air or that the 2nd respondent allowed the contamination to occur or that there were actual contaminations. The 2nd and 3rd respondents urge the court to reject the reports relied upon to suggest that there was any contamination of soil, water and air, for being unreliable, inaccurate and not credible.

101. The 2nd and 3rd respondents deny the contents of paragraphs 51 - 59 of the amended petition. To the contrary, the 2nd and 3rd respondents contend that the provisions of the *Petroleum Act* and the Environmental Management and Coordination Act were dutifully complied with in terms of environmental compliance, waste management and other safety precautions, including dealing with accidental spillages. The 2nd respondent avers that it became aware of a media report published in the Daily Nation newspaper of 24/1/2024, that a local farmer in Turkana county allegedly lost 90 goats and sheep after the animals drank water from polluted water points and based on the report, the 2nd respondents engaged a multi-agency team consisting of the 1st respondent, 1st interested party, 2nd interested party, the Ministry of Interior and National Coordination and the members of the Turkana community allegedly affected, in order to investigate the claims.

102. The 2nd and 3rd respondents aver that between 11/2/2024 and 1/3/2024, the multi-agency team undertook a fact-finding mission to assess the state of waste management practices at Twiga 1 waste consolidation well site, which mission involved the National Government Administration Officers (NGAO) Turkana County Secretary, National Environmental Management Authority and livestock officers, who reviewed previous reports orders by the 1st interested party, regarding waste management and subsequent consolidation at Twiga 1 well site, conducted interviews, barazas, site visits and collected samples for laboratory analysis, concluding that there were no livestock deaths in the month of January 2024, as reported in the newspaper. Similarly, the 2nd and 3rd respondents aver that, according to the reviewed reports, interviews, consultations and laboratory test results, no evidence linking the livestock deaths to petroleum operations in the area was found.

103. The 2nd respondent avers that it discharged its statutory obligations aforesaid dutifully, diligently and properly. The 2nd and 3rd respondents deny the content of paragraphs 60-69 of the amended petition and insist that they have not been aware of harmful substances that may have been discharged into the environment as alleged or at all, otherwise, the multi-agency term engaged by the 2nd respondent visited the Twiga 1 well consolidated waste site and observed that the site was well fenced and inaccessible to unauthorized personnel, did not defect any odors emanating from the consolidated waste well. It is averred that all water collecting on the waste is drained into the silicate pond to evaporate, the waste had been placed in pits with HDPE liners with raised sides and that the 1st respondent had drilled two water table monitoring wells and waste samples are collected and analyzed quarterly to check for underground seepages. In this mission, the 2nd and 3rd respondents averred that the team sampled the waste for laboratory analysis, whose results did not disclose harmful substances.

104. The 2nd and 3rd respondents aver that the multi-agency team visited Kangirega area, where, according to the Turkana County Directorate of Veterinary Services, reports of the death of goats had been received on 11/7/2023. In this instance, the 2nd and 3rd respondents aver that the investigation report by the Turkana County Government Veterinary Department revealed higher concentration of dissolved nitrate and Escherichia coli bacterium whose probable diseases and conditions causing the sudden death included nitrate/nitrite poisoning, grain overload as well as anthrax, which are not attributable to the exploration activities in the area.

105. The 2nd respondent avers that it is aware that there were measures in place to curb or minimize discharges of wastes to the environment. As to paragraph 70 of the amended petition, the 2nd and 3rd respondents refute the same and insist that at no time did the petitioners complain or seek information from the 2nd respondent in respect of the alleged waste spillages, or requests were ignored, or the right to access to information was violated.

106. Regarding the constitutional and legal foundations of the amended petition, the 2nd and 3rd respondents disagree with the interpretation of the constitutional and statutory texts reproduced by the petitioners in paragraphs 71-105 of the amended petition. The 2nd and 3rd respondents invoke the Mitu-Bell Welfare Society -vs- Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] KESC 34 (KLR), that international law is to be invoked and applied as complementary to national laws and or applied where there is lacuna and that it ranks fourth in the hierarchy of Kenyan law. In this case, the 2nd and 3rd respondents contend that in environmental disputes, this court must first consider the import of Article 69 of *the Constitution*, then municipal law, followed by judicial precedents and finally the texts of international laws to fill any lacuna.

107. The 2nd and 3rd respondents further contend that under Article 3 of *the Constitution*, any concept or doctrine that seeks to alter the constitutional architecture or which is plainly contrary to the interest of sustainable development and exploitation of natural resources as underscored by Article 69 of *the Constitution* are void to the extent of the inconsistency; and therefore the concept of violence of development must therefore be interpreted and applied in line with Article 60 of *the Constitution*. The 2nd and 3rd respondents while admitting that every person has an obligation and a duty to protect the environment for the present and future generations, contend that Articles 10 and 69(2) of *the Constitution*, call for balancing between environmental conservation and sustainable development so that the *Petroleum Act* and Environmental Management and Coordination Act have provisions that seek to integrate environmental conservation within economic development agenda.

108. The 2nd and 3rd respondents contend that the petitioners failed to co-operate with the 2nd respondent under Article 69(2) of *the Constitution* in a bid to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources; hence, their allegations remain

unsubstantiated. The 2nd and 3rd respondents aver that other than setting out constitutional texts and proffering contested interpretation, the petitioners have not demonstrated how the said provisions were violated, offer evidence in support of the violation and the loss, injury, or damage that they suffered either individually or as a class and how the 2nd respondent violated or caused the violation.

109. Responding to arguments in support of the petition, the 2nd and 3rd respondents aver that contrary to paragraphs 105 - 109 of the amended petition as to the concept of violence of development, the 2nd respondent diligently performed its obligations to protect and conserve the environment for the present and future generation as spelt out under *the Constitution*, the *Petroleum Act* and the Environmental Management and Coordination Act and did not participate in the alleged violence of development.

110. The 2nd and 3rd respondents further aver that there were no harmful substances or wastes which escaped or were released to the environment or which caused the displacement of the petitioners or other members of the Turkana community, through pollution of air, soil and water as alleged or at all. The 2nd and 3rd respondents further contend that the petitioners misconceptualized the concept of violence of development and that there exists no evidence on record or at all that supports the invocation of the concept of violence of development since petroleum exploration is a legal activity that is regulated by the *Petroleum Act*. The 2nd and 3rd respondents aver that the petitioners did not lead any evidence to show that petroleum exploration was done outside the *Petroleum Act* or that it resulted in the displacement of people without just and prompt compensation or that no accruing benefits were drawn by the local community.

111. The 2nd and 3rd respondents invoke the principle of polluter pays and aver that they are immune to and indemnified against all claims arising out of the unforeseeable release or discharge of waste or harmful substances to the environment in a manner that the 2nd respondent, in the exercise of due diligence and appropriate control or precautionary measures would not control or detect. Further, the 2nd and 3rd respondents aver that the common law principle of vicarious liability cannot be invoked to attribute liability to the 2nd respondent as pleaded. That vicarious liability is a remedy in equity in tort, transferring liability of an agent to the principal and is thus inapplicable, since liability in this case is attached to the 1st respondent under Sections 59 and 60 of the *Petroleum Act* and the 1st respondent is not an agent of the 2nd respondent.

112. As to paragraphs 110-120 of the amended petition, the 2nd respondent maintains that it did not violate Article 42 of *the Constitution* on the right to a clean and healthy environment and reaffirms that it discharged its mandate under Articles 42 and 69 of *the Constitution*, the *Petroleum Act* and the Environmental Management and Coordination Act. The 2nd and 3rd respondents aver that the petitioners did not lead credible evidence in support of the aforementioned claims.

113. The 2nd and 3rd respondents deny participating in compromising the quality or quantity of water or being vicariously liable for the mistakes of the 1st respondent, contrary to paragraphs 121-131 of the amended petition. Further, the 2nd and 3rd respondents deny violation of the petitioners' rights to socio-economic rights and the nexus breach of the right to life, clean and healthy environment as alleged in paragraphs 132-141 of the amended petition.

114. In addition, the 2nd and 3rd respondents deny violating the petitioners' rights to sustainable development, national values and principles of governance under Article 10 of *the Constitution* as pleaded in paragraphs 142-157 of the amended petition. The 2nd and 3rd respondents deny paragraphs 159-167 of the amended petition and deny any neglect, failure and or refusal of the 2nd respondent to discharge its climate change mandate or failure to exercise due diligence or take precautionary measures

to anticipate, prevent, minimize, or mitigate climate change effects. The 2nd respondent avers that it executed its constitutional and statutory mandate in environmental conservation and petroleum exploration and thus no incidents of climate change have been observed or reported as alleged.

115. On paragraphs 167-173 of the amended petition on the rights of children, the 2nd and 3rd respondents deny abdication of duty to monitor the 1st respondent's activities, ensure sustainable exploration, sound waste management and or conservation of the environment. The 2nd respondent denies failure to avert or minimize loss or damages associated with the exploration and further denies that it neglected to formulate policies, programs, plans, regulations, or laws to ensure sustainable exploration and that it allowed the 1st respondent to pollute the environment.

116. The 2nd respondent avers that the claim by the petitioners is mischievous, based on unfounded allegations and that it acted within Articles 42 and 69 of *the Constitution* and statutes. That under Article 69 thereof, the 2nd respondent is mandated in environmental conservation and exploitation of natural resources to:-

    i. Ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources.

    ii. Work to achieve and maintain a tree cover.

    iii. Facilitate public participation in the management, protection and conservation of the environment.

    iv. Establish systems of environmental impact assessment, environmental audit and monitoring of the environment.

    v. Eliminate processes and activities that are likely to endanger the environment.

    vi. Utilise the environment and natural resources for the benefit of Kenyans.

117. Furthermore, the 2nd respondent reiterates its obligation in exploration under Section 10 of the *Petroleum Act* in relation to conservation as to:-

    a. Review an application for a license or permit before entering into negotiations in relation to a petroleum agreement.

    b. Negotiate, enter into, or revoke a petroleum agreement

    c. Oversee upstream petroleum operations carried out under the terms and conditions of a petroleum agreement.

    d. Develop, publish and review national policies and strategic plans in relation to upstream petroleum operations.

    e. Approve exploration activities in accordance with the contractor's programmes.

    f. Suspend, revoke, or terminate a petroleum agreement.

    g. Take any action or decision, or give any permission or consent, or act as a control guard.

    h. Approve field development plans.

    i. Order cessations, discontinuance, or review of upstream petroleum obligations.

118. The 2nd and 3rd respondents refute paragraphs 174-179 of the amended petition and aver that the petitioners are not entitled to the reliefs sought, have no locus standi, that the court has no jurisdiction

to entertain the claim and that under Articles 47, 48, 50 and 157 of *the Constitution*, the court cannot direct the Director of Public Prosecution as sought in the amended petition.

119. The amici curiae filed their brief dated 21/3/2025. They observe that exploitation of natural resources generates significant economic benefits for host countries and communities, but also leads to various human rights violations, including social exclusion, exploitative practices, and untold environmental degradation.

120. The amici curiae state that the petition is important as it raises issues of grave importance on the impact of extractive activities on the host community and the nature and extent of the state's obligation to protect the host community from the harmful effects of extractives. Some of the petitioners in the petition are women on their own right as well as representing other women of their community in the public interest.

121. Further, the amici curiae provide information to the court on the gender inequalities of the impacts of extractives and states' legal responsibility to address the gendered impacts of extractives. The amici addresses the court on: The gendered nature of extractives by demonstrating how women are disproportionately affected by social and environmental impacts of extractive industries; and the nature and extent of state obligation to eliminate indirect discrimination against women in the extractive industries.

122. The court is urged to appreciate the context in which the oil exploration and drilling is being undertaken within the petitioners' community, in order to understand how the issues of environmental degradation and degeneration through displacements of communities excessive environmental devastations through clearing of vegetation, dumping of hazardous wastes, oil spills leading to health and human diseases, the spread of diseases due to water, soil and vegetation pollution; adulteration of underground and surface water quality, and destruction of the habitat has deprived women's socio-economic rights to health, education, economic activities and cultural life.

123. On the environmental impacts and loss of land, the amici curiae relying on Scott, Dakin, Heller & Eftimie (2013). Extracting Lessons on Gender in the Oil and Gas Sector Extractive Industries for Development Series World Bank at page 21, observe that the harm arises out of the activities related to the clearing of vegetation, drilling and excavation, as well as adulteration of both underground and surface water from oil spills, and degradation of the environment through dumping of hazardous waste. These harms are violations of the rights, but for women, the violation is compounded.

124. Further, the amici curiae state that failure to include women in the consultation processes fails to take into account women's lived realities. This makes it difficult to develop a gendered approach in remedying the impacts of the extractives in the community.

125. On health-related impacts, the court is urged that Contaminants from the extractive sites contaminate water for domestic use, and for women, this results in adverse outcomes for the sexual and reproductive health of women. Some of the impacts on the sexual and reproductive health of women arise from the constant exposure to dust from the extractive sites, dumping of hazardous wastes and substances, oil spills and raw minerals that led to adverse birth outcomes, including premature births, decreased birth weights, birth defects, sterility, spina bifida and high-risk pregnancies. Pregnant women have reported experiencing miscarriages and birth defects, and effects on nursing women who reported negative outcomes for their children due to the accumulation of contaminants in breastmilk have also been reported.

126. Regarding violence against women and other social and familial impacts of mining on women, it is stated that violence against women is a form of discrimination against women because it affects women

only, since they are women. Further, the court is urged to appreciate and understand how violence against women within mining communities manifests itself. First, women who work within the mines report sexual harassment, rape, and sexual violence. Also, in many cases, there are cases of the murder of women.

127. The cause of this violence has been identified as due to the masculine nature of extraction, but it can also be explained by the failure of mine owners and the government to take measures to protect women against violence. Secondly, women who do not directly work within sites, but are members of the mining-affected communities, are affected by the activities nonetheless. The amici curiae submit that the detrimental impacts of mining and oil and gas extraction on communities, the environment, and human rights have been well documented.

128. On the legal framework on the state's obligation to protect women from the impacts of natural resources exploitation, the amici curiae submit that the state is obligated to eliminate discrimination against women in the extractive industries under the following laws; Article 18(3) of the African Charter on Human and People's Rights (African Charter) provides for the State's obligation to eliminate every discrimination against women and also ensure the protection of the rights of the women. This provision is bolstered in Article 2 of the Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women (the Maputo Protocol), which provides for the elimination of all forms of discrimination against women.

129. Principles 11, 12 and 13 of the African Union Guiding Principles on Large Scale Land-Based Investments (LSLBI), on the promotion of gender equality in land governance; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Committee on the Elimination of All Forms of Discrimination against Women.

130. Regarding the state's obligation to ensure meaningful public participation in the context of extractives, in General Recommendation No. 34 (2016) on the rights of rural women, the CEDAW Committee has stated that rural women have a right to participate in decision-making processes at all levels and in community-level discussions with high authorities.

131. On the correlation between right to equality and right to Sustainable Development, the right to a clean and healthy environment and the right to property, the amici curiae submit that; under Articles 18, 21 and 24 of the African Charter on Human and Peoples' Rights (the Banjul Charter), women have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to introduce gender perspectives in national development planning procedures and ensure the participation of women at all levels of decision-making.

132. Further, that Principles 11, 12 and 13 of the African Union Guiding Principles on Large Scale Land Based Investments (LSLBI) call for the promotion of gender equality in land governance as a prerequisite to ensure LSLBI promotes sustainable development.

133. The amici curiae further submit that the United Nations Guiding Principles on Business and Human Rights affirm that states must protect against human rights abuse, within their jurisdictions, by third parties, including by business enterprises. The Guiding Principles state that states must take adequate measures through effective policies, legislation, regulations and adjudication to protect all persons from human rights harms involving business enterprises, including through the contribution of such enterprises to environmental harm. The obligation of all business enterprises to respect human rights includes the obligation to do no harm and to address the adverse human rights impacts that they have caused or contributed to.

134. In conclusion, the amici curiae urge that states have ratified international human rights treaties and endorsed instruments on the promotion and protection of women's human rights and gender equality. That the states have further recognized the need to ensure gender equality, protection and fulfilment of the human rights of women and girls.

135. However, states have not incorporated and sufficiently integrated a gender perspective in the resource extraction processes, which has resulted in violations of the human rights of women and girls. They have also failed to remedy gender-based harm arising from extractive activities, yet they have a legal obligation to develop a gendered approach in the extractive industries to ensure the protection of women.

136. It is trite law that parties are bound by their pleadings and courts are, in effect, bound by such pleadings, as set out by the parties. The court notes that none of the parties has made a formal application for the empanelment of a bench. That notwithstanding, even if the court can on its own motion recommend a special bench, the decision is to be exercised judicially and within the defined parameters as set out in the case law cited above.

137. The court has to holistically look at the pleadings by the principal parties to the petition and make a finding if they call for an empanelment. This court notes that the respondents had filed their answers to the petition, way after the issue of whether to empanel the bench came up. Subsequently, after the closure of the pleadings, parties had an opportunity to address the court on the issue of empanelment.

138. Learned counsel for the petitioners submitted that the petitioners had no issue with the matter proceeding before a single judge, since the delay was causing tension on the ground. The same sentiments were expressed by the learned counsels for the respondents and the amici curiae. Be that as it may, the court has to pronounce itself on the issue of empanelment, for completeness of the record, guided by the pleadings and the issues raised by the parties.

139. Having perused the pleadings and the annexures thereto, as well as the issues raised, all the parties appear to agree on the applicable law to the facts and the evidence tendered. In my considered view, there are no serious questions of *the constitution*, statutory laws applicable, and conflict thereto, its interpretation and application, to call for an exhaustive determination by empanelment of a bench pursuant to Article 165 of *the Constitution*.

140. Further, the petition, in my view, does not raise any contested substantial issues of undoubted public importance, which may require a multi-faceted approach to the interpretation of both *the Constitution* and the applicable statutes cited by the parties.

141. In the upshot, I find that the matter does not satisfy the constitutional and legal standards for the empanelment of a bench as articulated by the Court of Appeal in Okiya Omtatah Okoiti & Another -vs- Ann Waiguru-Cabinet Secretary, Devolution and Planning & Others [2017] eKLR. Parties are directed to take directions on the mode and manner of the hearing of the petition on a priority basis.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 30TH DAY OF JULY 2025.

In the presence of:

Court Assistant - Dennis

Mulekyo for petitioners present

Wambui Muigai and Angwenyi for Wetangula for 1st respondent present

Ngara for the 1st interested party present

Namulanda for joint Amici present

Omamo for 2nd interested party present

Odongo for the 2nd and 3rd respondent present

HON. C.K. NZILI

JUDGE, ELC KITALE.