



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ELC LE PET. NO. E009 OF 2025

IN THE MATTER OF ARTICLES 10, 2021(1), 40 (1), 40 (3), 40 (4), 47, 50, 60, 64, 67, 232 (1) 232 (2), OF THE CONSITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF SECTIONS 5, 24 & 31 OF THE LAND ADJUDICATION ACT, CHAPTER 284 OF THE LAWS OF KENYA

AND

IN THE MATER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE BOUNDARIES OF OLOKURTO ADJUDICATION SECTION

AND

IN THE MATTE OF THE DEMARCATION, DELINEATION OF THE BOUNDARIES AND TITLING OF MAASAI MAU FOREST

BETWEEN

KONENE OLE	YENKO.....	1ST
PETITIONER/APPLICANT		
MOILE OLE	YENKO.....	2ND
PETITIONER/APPLICANT		
MAGERO OLE	YENKO.....	3RD
PETITIONER/APPLICANT		
MAYOKI OLE	YENKO.....	4TH
PETITIONER/APPLICANT		
TALATA OLE	SAOLI.....	5TH
PETITIONER/APPLICANT		
RIMOINE OLE	SAOLI.....	6TH
PETITIONER/APPLICANT		
MANTILE OLE	YENKO.....	7TH
PETITIONER/APPLICANT		
MUSANKA OLE	YENKO.....	8TH
PETITIONER/APPLICANT		
KOITAT OLE	YENKO.....	9TH
PETITIONER/APPLICANT		
MWALA OLE	SAOLI.....	10TH
PETITIONER/APPLICANT		
KAILA OLE	SAOLI.....	11TH
PETITIONER/APPLICANT		

KIAKI SAOLI.....	13TH
PETITIONER/APPLICANT	
PARSINANTE SAO.....	14TH
PETITIONER/APPLICANT	
SITONIK OLE YENKO.....	15TH
PETITIONER/APPLICANT	
VERSUS	
NAROK COUNTY GOVERNMENT.....	1ST
RESPONDENT	
MINISTRY OF LANDS, PUBLIC WORKS, HOUSUNG & URBAN DEVELOPMENT.....	2ND
RESPONDENT	
THE CHIEF LAND REGISTRAR.....	3RD
RESPONDENT	
THE DIRECTOR OF SURVERS.....	4TH
RESPONDENT	
THE LAND ADJUDICATION & SETTLEMENT OFFICER NAROK NORTH & EAST SUB- COUNTIES.....	5TH
RESPONDENT	
THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....	6TH RESPONDENT
THE ATTORNEY GENERAL	7TH RESPONDENT

RULING

1. By a **Notice of Motion Application** dated **14th April 2025**, filed by the Petitioners/Applicants herein ,which Application is premised under **Articles 10, 20, 21, 40, 47, 50, 60, 64, 67 and 232** of the **Constitution of Kenya, Sections 5, 24, 28 and 31** of the Land Adjudication Act, **rules 13, 23 and 24 of the Constitution of Kenya** (Protection of Rights and Fundamental Freedoms) Practice and Procedures Rules **Sections 1A, 1B, 3A** of the **Civil Procedure Act** and **Orders 40 Rule 2, order 51 of the Civil Procedure Rules**, the Applicants have sought for the following orders: -

- i. That pending the hearing and determination of this Petition, a conservatory order be**

issued to stay the implementation of the unilateral decision of the Respondents to alter the boundaries of Olokurto Adjudication Section, to the extent that the area comprising Yenko and Saoli Ridges, has been excluded from the area of land that is part of Olkurto Adjudication section and their incorporation into the Maasai Mau Forest land

- ii. That pending the hearing and determination of this Petition, an order of temporary injunction be issued restraining the Respondents from undertaking the process of demarcating, and delineating the boundaries and the eventual titling of the Maasai Mau Forest land***
- iii. That pending the hearing and determination of the Petition herein, a temporary injunction be issued restraining the 3rd, 5th and 6th Respondents from processing and issuing any and all titles with respect to Olokurto Adjudication Section.***
- iv. That the court be pleased to grant such other or further relief it may deem fit to grant.***
- v. That costs of the Application be awarded to the Petitioners/Applicants.***

2. The Application is premised on various grounds, among them; that the Petitioners/Applicants are residents and

proprietors of various parcels of land situated in the **Olokurto Adjudication Section** within Narok County hence competent to file this application; that in the mid-1970s, the government declared five adjudication sections of the North of **Ol Posimoru** and **Maasai Mau Forest**, being **Ol Posimoru 'A' and 'B', Kamrar, Kilaba and Olokurto**.

3. Further, that five other adjudication sections were declared to the south of these forests which include **Ilmotiok, Ololulunga, Nkobon, Nkareta** and **Naisoya** adjudication sections, and their boundaries were clearly described in the notices issued and marked on the ground.
4. That a declaration establishing **Olokurto Adjudication Section** was issued on **10th July 1975**, under reference **LA/5/1/36/15**; Further, that several **Maasai families** which included **Yenko, Saoli, Rotiken, Kuyoni, Setek, Mpusia Nakola and Snamwala** were identified as beneficiaries in the **Olokurto areas**.
5. That in early **1980**, the **Maasai Mau Forest** was invaded and **settlements** established **illegally** with the support of some politicians, government officers, land speculators and other land dealers, which led to environment concerns-water conservation, deforestation and forest degradation and political problems. - **the Presidential (Ntutu) Commission** was formed in **1986**, to review the boundaries of the **Maasai Mau Forest** in order to conserve the **water catchment areas** and recover lost forest.
6. The Application is also supported by the Affidavit of **Konene Ole Yenke**, who averred that the boundaries established in

the **1975**, Declaration were unilaterally amended in **1990**, (Amendment of Declaration Notice dated **1st February 1990** under reference LA/9/4/154) by the **Ntutu Commission**, and the **Land Adjudication Officer**, but the amendment was **ambiguous**, poorly defined, and never communicated to the affected landowners.

7. The deponent averred that part of **Olokurto Adjudication Section** was hived off to increase forest cover for the **Maasai Mau Forest** without any records to show exactly the new boundaries. It is his further averment that the Government never enforced the supposed **Amendment of Declaration Notice** dated **1st February, 1990**.
8. However, on **27th November 1992**, the then Narok County Council, the predecessor of the 1st Respondent wrote to the **Principal Land Adjudication & Settlement Officer** confirming that they would undertake the adjustment of **Maasai Mau Forest** boundary in line with the recommendation of the **Ntutu Commission**.
9. It was his contention that owing to ambiguity of the Amendment of Declaration Notice dated **1st February, 1990**, consultative meetings between elders of the eight (8) families of the people living in **Olokurto Adjudication Section**, the Narok County Council, the Adjudication team and the **Ntutu Commission** was convened with the aim of resolving the said ambivalence in the **Amendment Notice** and subsequent, agreement on boundaries used in the completion of the Adjudication Register in 1996, and issuance of **the Certificate of Finality in 2017**.

10. However, in **mid-2024**, the 1st Respondent unilateral took action which unjustly diminished acreage of plots, revoked proprietary entitlements, and violated the Petitioners/Applicants' rights under **Articles 40 and 47** of the **Constitution**, the rules of natural justice, the **Land Adjudication Act**, and the **legitimate expectations** of the Petitioners/Applicants.
11. The deponent also contended that the Respondents' conduct is **arbitrary, unreasonable, procedurally unfair**, in *mala fides* and in violation of **Article 10**, tainted with **illegality, irrationality** and **procedural impropriety**, and unless the Court intervenes, the Respondents will continue to **demarcate, delineate** and title of the **Maasai Mau Forest**, and issue titles for **Olokurto Adjudication Section** on the basis of **unlawfully** altered boundaries to the detriment of the Petitioners/Applicants.
12. The deponent, **Konene Ole Yenke** on behalf of the 2nd to 14th Petitioners/Applicants, also averred that the Applicants are residents and proprietors of parcels of land within **Olokurto Adjudication Section**, which was declared on **10th July 1975**, under Reference **LA/5/1/36/15**, with clearly defined boundaries and a Land Adjudication Committee was duly appointed.
13. The deponent reiterated most of the grounds in support of this Application and also averred that as the process of adjudication was continuing, **Maasai Mau Forest** was later invaded in the 1980s prompting the **Ntutu Commission** in 1986, to review forest boundaries, its report was never made public; nonetheless, an ambiguous **Amendment of**

Declaration Notice dated **1st February 1990**, was issued, which purported to alter the forest line of **Olokurto Adjudication Section** without defining new boundaries.

14. Further, that subsequent reports confirmed that **Maasai Mau Forest** had never been **surveyed or gazetted** and relied on boundaries of adjacent adjudication sections. Due to this ambiguity, elders of the eight(8) families of the people living in **Olokurto Adjudication Section**, Narok County Council, the Adjudication Team and the **Ntutu Commission** convened and agreed on a descriptive boundary—**Nkoomani to Orngarrua, Imbokishi at Medungi Ridge, Olekeleteny of Setek Ridge, Entapot of Yenke Ridge, downwards to Koitioko along Saoli Ridge to Sigiter River**—which guided completion of the Adjudication Register in 1996, determination of objections, amendment of the Register under section 15(7) of the Land Adjudication Act, and a Certification of Finality was issued on **10th July 2017**.
15. That despite legitimate expectations that titles would be processed accordingly, in **mid-2024**, the Respondents unilaterally re-adjusted boundaries under a Narok County Assembly Resolution of **11th September 2024**, and during survey works deviated from the agreed boundary by diverting northwards at **Olekeleteny**, thereby excluding **Yenke** and **Saoli Ridges** from **Olokurto** and insisting that these ridges form part **of Maasai Mau Forest**.
16. It was his contention that this action has unjustly reduced acreage and re-classified numerous Petitioners/Applicants' plots, amounting to unlawful deprivation. On advice of their

counsel, he believes that the Respondents' actions breach the legal adjudication process completed in **2017**, *violate legitimate expectations, are unreasonable, procedurally unfair, disregard Articles 47(1) and (2) on fair administrative action, violate Article 40 on the right to property, and contravene Article 10 by acting **arbitrarily, capriciously, in bad faith, and without integrity, transparency or accountability.***

17. Further, that the impugned acts and collective decision of the Respondents offend the rule of **natural justice** and are tainted with **illegality, irrationality** and **procedural impropriety** and should be declared null and void.
18. The deponent further deponed that the Applicants are apprehensive that unless the Court intervenes, the Respondents will proceed to **demarcate, delineate and title Maasai Mau Forest** and **process titles for Olokurto** based on unlawfully altered boundaries to their detriment. Further, that, in the interests of justice and public interest, the Application should be allowed.
19. In opposition to this Notice of Motion Application, the 2nd to 7th Respondents filed a Replying Affidavit dated **24th June 2025** sworn by **Ernest Ngwambu Musembi**, Deputy Director, Department of Adjudication and Settlement, Narok Central, East and North, on their behalf and stated that **Olokurto Adjudication Section** was established on **10th July 1975**, under **Section 5** of the **Land Adjudication Act**, and every person claiming an interest in land was required to lodge claims under **section 13(1)** of the said Act; and an adjudication committee was appointed under **Section 6(1)**.

20. It was his further contention that an amendment to the **1975**, boundary was made on **1st February 1990**, in accordance with **section 10**, and he was unaware of any objection to that amendment; that the said amendment aligned with the boundary established by the **Ntutu Commission**, whose boundary description is not on record, but was pointed out on the ground to the Adjudication Committee.
21. He further averred that during demarcation, **1,870 parcels** of land were recorded, and because of the **1990 amendment**, some parcels of land were cancelled from the adjudication records and the P.ID as they fell within **Kenya Forest Service's Maasai Mau Complex Forest**, affecting parcels mentioned by the litigants.
22. He further deponed that the adjudication and ascertainment of interests in the **Olokurto Adjudication Section** were completed **on 22nd August 1996**, and objections under section 27 were determined; and after amendments following determinations, a **Certificate of Finality** dated **19th July 2017**, was issued, which is conclusive and bars further objections.
23. The deponent further averred that the Petitioners/Applicants cannot seek to stay implementation of the alteration of the boundaries because the **1990** amendment was fully implemented: parcels of land within **Olokurto** were surveyed and placed in sheet numbers listed at page 174 of the Applicants annexures, the Land Adjudication Officer authorized publication of the sheets, the published sheets were sent for titling, the Director of Surveys confirmed

publication of RIMs in **2012**, and the ***Certificate of Finality*** was issued in **2017**.

24. Therefore, the deponent denied the alleged decision to alter boundaries in **2024**, and further averred that the County Assembly's **11th September 2024** resolution only sought to speed issuance of titles, and did not create a new boundary.
25. The deponent further deponed that the **1990**, boundary alteration are already implemented and concluded, and is not amenable **to conservatory orders** because the court cannot stop what has already occurred. The deponent further stated that the Respondents have no intention to title **Maasai Mau Forest land**, which is public land under the **Kenya Forest Service**. That the titles for **Olokurto** have already been issued, with over **1,711** titles issued, and **granting conservatory orders** would affect these title holders without being heard, violating their right to fair hearing.
26. The deponent also affirmed that prior to adjudication, **Olokurto** was trust land under the Narok County Council, which authorized the alteration of the boundary by letter dated **27th November 1992**, following the Presidential Taskforce. He claimed that the applicants have provided no survey report proving that their parcels of land lie outside **Maasai Mau Forest** or within **Olokurto**, and they cannot claim land falling within **Maasai Mau Forest**..
27. The Petitioners/Applicants filed a Further Affidavit through Konene **Ole Yenko**, the owner of Plot No. 1095 in **Olokurto Adjudication Section**, and averred that he relied on

Petitioners' records and advice from their Advocates, and consequently maintained all earlier averments made in his Supporting Affidavit of **14th April 2025**.

28. The deponent responded to the Replying Affidavit of **Ernest Ngwambu Musembi**, by noting that the Respondents' concessions as earlier deposed by him that the **Ntutu Commission's** recommendations led to an alleged unilateral **Amendment of Declaration Notice** dated **1st February 1990**, altering the forest line of **Olkurto Adjudication section** contrary to the Declaration of **10th July 1975**, and that the **Ntutu Commission** never defined or pointed out the new boundary on the ground.
29. The Petitioners/Applicants further deposed that even with the above concessions, the Respondents insisted that demarcation should proceed and **1,870 parcels** of land were created, resulting in cancellation of Petitioners' various parcels of land, even though the final Adjudication Register still contains all Petitioners' names and entitlements, and no evidence exists that such cancellations were ever communicated.
30. The deponent highlighted contradictions in **Mr. Musembi's** averments, including failure to deny key facts about the **Mau Forest boundaries** being undefined, the **ambiguity** of the **1990 Amendment**, the absence of proper enforcement of the amendment during objections, and register alterations, and evidence of consultations aimed at resolving the defective amendment, which produced an agreed boundary description.

31. It was his contention that there are contradictions where the Respondents claim the **1990 amendments** were implemented in **2012**, while simultaneously acknowledging the **2024 Narok County Assembly Resolution**, which actually mandated **surveying, mapping, boundary plans, erection of pillars** and **settling disputes** of Maasai Mau Forest.
32. The deponent termed as a façade the Respondents' claim that they have no intention of delineating and titling of Maasai **Mau Forest land**, pointing to evidence including media reports and an announcement by the President of Kenya that a title deed for **Maasai Mau Forest** had been handed to **Narok County Government**. He annexed the President's website extract as KOY-1.
33. Further, that such contradictions amount to a blatant mockery of the Court, and he averred that the Respondents' averments were filled with half-truths. Concerning the Respondents' claim that **1,711 titles** have already been issued, it was his contention that none relate to parcels of land in **Yenko and Saoli Ridges**—the very areas the Respondents have unlawfully excluded from **Olokurto Adjudication Section** by altering boundaries, contrary to the agreed demarcation from **Olekeleteny to Entapot on Yenko Ridge**, downwards to **Koitioko along Saoli Ridge and to Sigiter River**.
34. The deponent emphasized that Petitioners/ Applicants do not seek cancellation of the **1,711 titles**, but only preservation of their entitlements recorded in the final Adjudication Register. Unless conservatory orders are granted, the

Respondents will complete titling and thereafter evict the Petitioners/ Applicants despite their recognized entitlements, thereby unlawfully extinguishing their rights and wrongfully designating their parcels of land as forest land.

35. The Application was canvassed by way of written submission. The Petitioners/ Applicants filed their submissions dated **7th October 2025**, through **Zahra Legal** and submitted that they have sought for conservatory orders to stop the implementation of the altered boundaries of the **Olokurto Adjudication Section** that unlawfully removed **Yenko and Saoli Ridges**, and absorbed the parcels of land in these ridges into the Maasai Mau Forest.
36. The Petitioners further submitted that they are residents and landowners of various parcels of land in **Olokurto Adjudication Section**, and through the original **1975 Declaration** Olokurto's **boundaries**, were clearly defined. Further, that a **Land Adjudication Committee** was duly appointed, with local **Maasai families** having their claims properly recorded. However, illegal settlement in the **Maasai Mau Forest** later caused serious environmental damage, leading to the establishment of the **Ntutu Commission** in 1986.
37. The Petitioners/Applicants submissions reiterated the averments contained in the Petition and Grounds in support of the Application culminating in the submissions that, the later Prime Minister's Task Force confirmed that the **Maasai Mau Forest boundary** had never been properly surveyed or gazetted, leaving room for arbitrary and unlawful adjustments.

38. The Petitioners/Applicants submitted that although the 1990 amendment existed, it was never applied during objections, and the only reference to it was a **1992 Narok County Council's** letter which had expressed an intention to adjust boundaries as per **Ntutu Commissions** findings. This letter prompted a series of consultative meetings among elders of the eight (8) families living in Olokurto Adjudication Section, the County Council, the adjudication team, and representatives of the Ntutu Commission, which meetings were convened with the aim of resolving the said ambivalence in the Amendment Notice, resulting in an agreed and clearly described boundary.
39. The Petitioners submitted that the Notice of Completion of Adjudication Register was published on **22nd August 1996**, and later finalized in **2017**, using both the **1975 boundary**, and the boundary agreed in the consultative process. People of Olokurto Adjudication Section, including the Petitioners herein, legitimately expected issuance of titles thereafter, but in 2024 the Respondents unilaterally introduced new boundary changes by re-adjusting the boundaries of the Maasai Mau forest, supported by a County Assembly Resolution to expedite forest titling. These changes drastically reduced the Petitioners' land sizes and re-designated the legitimately adjudicated Yenko and Saoli Ridges as part of Maasai Mau Forest.
40. These actions violate the **finalized 2017 register**, undermined the Petitioners' legitimate expectations, and disregard the law governing adjudication. Further, that the Respondents reduced or removed the Petitioners'

entitlements without any notice, consultation, or due process, thereby violating **Article 47** of the Constitution. The Respondents' conduct also infringes upon the Petitioners' property rights guaranteed under **Article 40**.

41. The Petitioners/Applicants raised this issue for determination; **Whether the Petitioners/Applicants are entitled to obtain the orders they seek;**
42. It was their submissions that Courts grant conservatory orders where an applicant has shown both a need to preserve the **status quo** and **a prima facie** case worth protecting. Reliance was made in the cases of **Andy Forwarders services vs Capital Markets authority & another [2011]eklr, Centre for Human Rights Education and Awareness (CREAW) & 7 others vs The Attorney General and others Petition No.16 of 2011, Muslims for Human Rights & Others vs The Attorney General & others Petition No. 7 of 2011 and Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others [2014] eklr.**
43. The Petitioners/Applicants further submitted that the Respondents unlawfully altered **Olokurto boundaries** using the ambiguous **1990** amendment and the **2024 County Assembly Resolution**, wherein during the survey process, the survey team reached **Olekeleteny** on **Setek Ridge**, but made an inexplicable decision not to proceed as originally planned.
44. It was their further submissions that their parcels are located within these **two ridges**, and that no titles have ever

been issued there despite the Respondents' claims. The Petitioners/Applicants also submitted that the Respondents have already begun implementing the disputed boundary changes after this case was filed, including forest demarcation and titling, and the Petitioners fear eviction unless the Court intervenes.

45. Further, that though the Respondents argued that issuing conservatory orders would prejudice **1,711 title holders**, the Petitioners clarified that they do not seek cancellation of any issued titles; but they only want their own land rights preserved.
46. Further, that the Respondents have admitted that part of **Olokurto** was removed in 1990, thus confirming that the Petitioners/Applicants' parcels of land fall within the affected area. However, the Final Adjudication Register, still contains the Petitioners' names and entitlements, directly contradicting the Respondents' claim that these plots were cancelled. Moreover, the Respondents have provided no evidence that any cancellation of the Petitioners' land was ever communicated to them.
47. The Petitioners/Applicants further submitted that they have shown that the Respondents' actions have unlawfully reduced their acreage and improperly re-classified the legally adjudicated land as forest. Therefore, they have established a strong **prima facie case** and have demonstrated an urgent need for the Court to preserve their land rights through conservatory orders.

48. The Respondents filed their submissions dated **24th June 2025**, through **M. W. Odongo(Mr) Senior State Counsel** and submitted the instant Application which seeks for orders to stop the implementation of an alleged alteration of the **Olokurto Adjudication Section boundaries** and to halt demarcation, boundary delimitation, and titling of Maasai Mau Forest pending the hearing of the Petition has **been overtaken by event**.
49. The Respondents argued that the instant application is based on a misunderstanding of both facts and law, and the applicants misinterpreted the **Narok County Assembly** decision of **11 September 2024**, which merely sought to fast-track issuance of titles to genuine adjudicated owners, but which the Petitioners/Applicants herein have mistakenly viewed as a unilateral alteration of **Olokurto boundaries**.
50. Further, the Respondents argued that the only alteration ever made to the **Olokurto Adjudication Section** occurred in **1990**, and none of the Petitioners/Applicants or any other person ever objected to that alteration, making the current challenge baseless.
51. The Respondents summarized the history of **Olokurto Adjudication Section**, which was declared in **1975**, and boundaries were amended in **1990**. Thereafter, the entire adjudication process—**objections, appeals, surveying, mapping, publication of maps, and issuance of completion and finality certificate**—was completed.
52. It was their submissions that in **September 2024**, the **Narok County Assembly**, which was concerned with the

delays, passed a resolution to work with the 2nd -6th Respondents to fast-track titles issuance, and this resolution did not alter the boundaries of **Olokurto Adjudication Section** in any way.

53. Further, they maintained that the only legitimate boundary change was the **1990** amendment, which was done through the involvement of the **Narok County Assembly** and the **Ntutu Presidential Commission**.
54. Further, they submitted that the Petitioners/Applicants only filed this suit after realizing that the parcels of land they claim actually falls within **Maasai Mau Forest**. It was their further submissions that the orders being sought are an attempt to alter **Maasai Mau Forest boundaries**, which is contrary to **section 34** of the **Forest Conservation and Management Act**.
55. They argued that the Petitioners/Applicants must first show a **prima facie case** with arguable grounds involving serious constitutional issues suitable for determination rather than frivolous claims. They also argued that the court must consider public interest when deciding whether to grant conservatory orders, especially where governance or constitutional rights may be affected, and should avoid orders that undermine functioning public institutions.
56. Further, that Petitioners/Applicants herein must show **irreparable harm** if the orders sought are not granted, noting that such harm must be incapable of compensation by damages or later correction. It was their argument that conservatory orders exist to preserve the core subject matter

of the case, and if the subject matter is already spent or unrelated to the claim, such orders serve no purpose.

57. The Respondents further submitted that the court must **balance competing interests** and avoid causing unfair prejudice to any party, including third parties. They also asserted that the court's duty is to test whether the Petitioners/Applicants have satisfied these principles by weighing their allegations against the Respondents' rebuttals.
58. The Respondents submitted that no prima facie case has been shown by the Applicants herein, because their case is based solely on the **Narok County Assembly's decision** to fast-track adjudication process, yet the County Assembly is not even a party to the case. They argued that the said County Assembly did not deal with boundary alterations at all, and that by **2024**, adjudication was long completed, finalized, and a Certificate of Finality issued in **2017**, which meant there was no boundary interference to challenge.
59. Further, that the **1990 boundary amendment** formally established the **Forest line**, that no objections were ever filed against it, and that the entire adjudication process—mapping, surveying, registers, and finality—respected these forest boundaries. Further, that the applicants' alleged parcels of land lie outside **Olokurto Adjudication Section**, and within **Maasai Mau Forest**, and therefore, the 5th Respondent has no authority over the said land. Thus, the Petitioners/Applicants have **shown no legitimate** interest, eliminating any prima facie case.

60. Further, that if the applicants have any claim at all, that claim lies before **Kenya Forest Service** under section 34 of the **Forest Conservation and Management Act**, or before the **National Land Commission**, as a historical injustice, making the current Petition/ Application inappropriate.
61. Regarding public interest, the Respondents argued that it weighs against the orders sought because adjudication was conducted lawfully under the **Land Adjudication Act**, public funds were spent, and legitimate expectations created for bona fide title holders. Consequently, more than **1,711 titles** have already been issued, and substantial resources used; Further that the Petitioners/Applicants never objected to the **1990** boundary change and they acted as though they had no interest in **Olokurto** during adjudication.
62. It was further submitted that the court must balance the rights of **1,711 legitimate title holders**, who were not even joined as parties, and who would be condemned unheard, and for this reason public interest strongly opposes issuance of conservatory orders. Therefore, the Petitioners/Applicants have failed to demonstrate any **irreparable harm** connected to actions by the Respondents because the Applicants' claimed land lies outside **Olokurto Adjudication section**, meaning the Respondents have no role in the alleged harm.
63. Further, that the Respondents lack power to alter **Forest boundaries**, so any harm relating to **Forest land** cannot be attributed to them, and any genuine claim must follow section **34** of the **Forest Act** or **Article 67** of the

Constitution. It was further submitted that there is no valid subject matter to preserve because the Respondents have no control over **Maasai Mau Forest** dealings, and the Applicants have not established claim to **Olokurto**; with no survey linking the land to **Olokurto**, the Petitioners/Applicants cannot claim preservation.

64. Finally, the Respondents submitted that the substratum of the instant Application ceased to exist long after titles were issued to third parties, rendering this application untenable. The Respondents urged the court to dismiss the instant Application with costs.
65. The above are the grounds for and against the instant Application, which this court has carefully read and considered. The court has also considered the rival written submissions, the cited authorities, the relevant provisions of law and finds as follows;
66. The dispute herein is over the adjudication, boundary setting and titling of **Olokurto Adjudication section, which** adjudication section was established on **10th July 1975**. Further, it is clear that there were disputes or disagreements over the said adjudication section, and in **1986**, there was Presidential Commission appointed, which was referred to as **Ntutu Commission** which was set up to re-assess and restore the boundaries of the **Maasai Mau Forest**.
67. The Petitioners/Applicants have averred that the **Findings of Ntutu Commission** were never made public, but vide an alleged Amendment of Declaration Notice dated **1st February 1990**, the Land Adjudication Officer unilaterally

altered the Forest line of ***Olkurto Adjudication Section***, by declaring that the ***old forest line has been altered to follow the new forest line as shown on the ground by the Presidential committee.***

68. The Petitioners/ Applicants have claimed that from the said declared amendment, part of the ***Olkurto Adjudication Section*** in accordance to the Declared Notice of 10th July 1975, was hived off to increase forest cover of ***Maasai Mau Forest***, which affected the Applicants parcels of land.
69. From the pleadings, it is clear that a Certificate of Finality was issued on ***10th July 2017***, and the residents of ***Olkurto Adjudication Section*** expected to be issued with title deeds. The Applicants have alleged that on ***11th September 2024***, the Narok County Assembly made a resolution to re-adjust the boundaries of the ***Maasai Mau Forest***, and this decision has left out the ***Yenko and Saoli Ridges*** from being part of ***Olkurto Adjudication Section***, thus affecting the Applicants land.
70. The above allegations have been denied by the Respondents, and the issue for determination is whether the Applicants are deserving of the orders sought herein.
71. The Applicants have sought for conservatory orders to stay implementation of the unilateral decision of the Respondents to alter the boundaries of ***Olkurto Adjudication Section***, to the extent that the area comprising of ***Yenko and Saoli Ridges*** has been excluded from the land that is part of ***Olkurto Adjudication Section*** an incorporated as part of ***Maasai Mau Forest.***

72. These Respondents have averred that the Applicants are not deserving of the orders sought because what is sought to be stayed has already taken place, and the events complained off have been overtaken by events.
73. Firstly, the Applicants have sought for conservatory orders, which are issued to preserve the ***status quo*** of a matter, until the Petition or a suit filed in relation to the matter is heard and determined. It is evident that conservatory orders are sought and issued when there is a danger or risk to the effect that the subject of the Petition or Petition itself might be rendered meaningless or nugatory by the actions of the Respondent in the interim period.
74. In the case of ***David Ndi & others - Versus - Attorney General & others [2021eKLR*** the court held;

“.....Such orders (conservatory) are granted to preserve the substratum of the Petition and therefore, where it is contended that there is a threat of violation of [the Constitution](#), any stage in the chain of a constitutional process under challenge may properly be the subject of a conservatory order as long as that action is consequential to the process under challenge...”

75. From the above decision, it is clear that ***Conservatory Orders*** are issued to maintain the situation as it is or was by preventing any action that would alter the subject matter of the dispute by ensuring that the said subject matter is preserved before the final determination of the Petition.

76. Therefore, conservatory orders are interim reliefs which are temporary in nature, granted before the full trial commences. See the case of ***Katiba Institute versus Judicial Service Commission & 2 others; Kenya Magistrates and Judges Association & 2 others (Interested Parties) (Constitutional Petition E128 of 2022) [2022] KEHC 438 (KLR) (Constitutional and Human Rights) (3 June 2022) (Ruling)***, the court held that;

“The nature of conservatory orders was further discussed in *Judicial Service Commission v Speaker of the National Assembly & another* [2013] eKLR where the court had the following to say: -Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.

84.Conservatory orders are, therefore, aimed at preserving the substratum of the matter pending the determination of the main issues in dispute.

85.Given the interlocutory nature of conservatory orders, it is argued, that there is need for a court to exercise caution when dealing with any

request for such prayers. I agree with that proposition for the reason that matters which are the preserve of the main petition ought not to be dealt with finality at the interlocutory stage.”

77. The case of **Board of Management of Uhuru Secondary School vs City County Director of Education and 2 others [2015] Eklr** summarized the principles for grant of conservatory orders as follows;

i) The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice.

ii) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.

iii) Thirdly, the Court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.

iv) Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.

78. The Supreme Court also emphasised that above principles in the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR** as follows;

[86] “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.” (Emphasis added).

79. Being guided as above, it is settled law that while determining whether to grant or not to grant conservatory orders, the court will have to consider whether an applicant has established prima facie case with probability of success; whether the party is likely to suffer irreparable prejudice in the absence of such conservatory orders.

80. The court will also consider whether to grant or not to grant the orders sought will enhance constitutional values, and object of the specific rights or freedoms in the bill of rights; Further, the party seeking such orders must demonstrate that if the conservatory orders are not granted, the Petition

and its substratum will be rendered nugatory. Further, the court will consider whether the granting of the conservatory orders is necessary in the public interest.

81. Are the Petitioners/Applicants deserving of the conservatory orders sought? It is the Petitioners/ Applicants allegations that though the boundaries of **Olkurto Adjudication Section** were declared in **1975**, and later amended through a Notice of Amendment dated **1st February 1990**, there was an agreement reached on **27th November 1992**, that the adjustment of the **Maasai Mau Forest** boundary would be done as per the Ntutu Commission.
82. It is the Applicants allegations that vide a resolution of the County Assembly dated **11th September 2024**, the said Assembly unilaterally altered the said boundary and left out **Yenko** and **Saoli Ridges** from **Olkurto Adjudication Section**, thus affecting the Petitioners parcels of land.
83. On their part, the Respondents averred that the Narok County Assembly did not alter any boundary/ries or unilaterally made any recommendations to remove Yenko and Saoli Ridges from the Olkurto Adjudication section, but only recommended quick action on the adjudication so as to facilitate expeditious issuance of title deeds to the affected parties.
84. The above are competing issues, and at this juncture, this court cannot hold with certainty whether the Narok County Assembly vide its Resolutions of **11th September 2024**, did alter the Maasai Mau Forest boundary or not or whether there was a resolution in 1992 to confirm the boundaries as per the

Ntutu Commission Recommendation. These competing issues have to be tested through the calling of evidence in the main trial.

85. What is evident is that a **Certificate of Finality** was issued in 2017, and the Petitioners did not challenge the same. Further, the Narok County Assembly resolved to expedite the process of survey and issuance of title deeds in **September 2024**. The Petitioners/Applicants did not challenge the said resolution until **14th April 2025**, when the instant Petition was filed.
86. This court finds and holds that the Petitioners/Applicants have not demonstrated with certainty at this juncture that the Respondents have gone against the Declared Amended Notice of **1st February 1990**, nor the **Recommendation of the Ntutu Commission**. All the issues raised in the Application herein can only be adequately resolved after calling of evidence and testing the same through the usual cross examination in the main trial.
87. Dealing with the issues raised herein would be tantamount to dealing with issues raised in the Petition with a finality. In the case of **Narendra Chaganlal Solanki vs Neepu Auto Spaces Ltd, Kisumu High Court Civil Case No. 90 of 2003**
88. Consequently, this court has come to a conclusion that for the public interest and to enhance constitutional values, it would not be prudent to issue conservatory orders at this stage without having the benefit of hearing the whole Petition. The court has powers to issue orders that are necessary for the end of justice, to be met, and if at the end

of trial, the court finds in favour of the Petitioners/Applicants, then it will issue the necessary orders then.

89. On **prayers No 7** and **8**, the Petitioners/Applicants have sought for injunctive orders to restrain the Respondents from undertaking the process of **demarcating, delineating** the boundaries and **issuing** the **title deeds** for the area forming **Maasai Forest** Land; Further, the Applicants have sought for restraining orders against 3rd, 5th and 6th Respondents from processing and issuing any title deeds in respect of Olkurto Adjudication section.
90. The Respondents have argued that these orders cannot be issued since the events complained of have already taken place, and the court cannot issue orders in vain. The Applicants have confirmed that survey work did take place, and that the President of the Republic did issue a title deed for the Maasai Mau Forest, and photographs were annexed in the Further Affidavit.
91. It is trite that temporary injunctions are issued where there is immediate danger to property, and are issued to preserve the status quo. See the case of **Noormohammed Janmohamed vs Kassam Ali Vrji Madhani (1953) 20 LRK.**
92. The conditions for grant of injunctive orders have been stated in various court decisions. See the court of **James Njoro Kibutiri v Kenya Shell Ltd [1981] KEHC 11 (KLR)**, where the court held;

“The conditions for granting a temporary injunction in East Africa are well known and

these are: First, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience. See also E.A Industries Vs. Trufoods (1972) EA 420.”

93. The prayers for injunctions are anchored under **Order 40 rule 2 of the Civil Procedure Rules**, which states;

“(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.”

94. It is clear that the Petitioners/Applicants have sought for injunctive orders, which are equitable remedies granted at the

discretion of the court. See the case of ***Hasmukh Khetshi Shah vs Tinga Traders Ltd. Civil Appeal No.326 of 2002.***

95. As usual, the said discretion must be exercised judiciously.

See the case of ***David Kamau Gakuru vs National Industrial Credit Bank Ltd, Civil Appeal No. 84 of 2001.***

96. Further, while considering whether to grant or not to grant the injunctive orders, the court is not required to determine the issues in dispute with a finality. See the case of ***Edwin Kamau Muniu - Versus - Barclays Bank of Kenya Ltd,*** where the court held;

“In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled at that stage is whether the Applicant is entitled to an injunction sought on the usual criteria...”

97. Further, in the case of ***Airland Tours and Travel Ltd...Vs... National Industrial Credit Bank, Milimani HCCC No.1234 of 2003*** the court held;

“In an Interlocutory application, the Court is not required to make any conclusive or definitive findings of facts or law, most certainly not on the basis of contradictory affidavit evidence or disputed proposition of law”.

98. From the available evidence, have the applicants herein established the laid down principles for grant of injunctive orders as set out in the case of ***Giella vs Cassman Brown Ltd [1973] EA 348.***
99. The Applicants have urged this court to restrain the Respondents from undertaking the process of demarcating, alienating and eventual issuance of title deed for ***Maasai Mau Forest***, and from processing and issuing title deeds for Olkurto Adjudication section.
100. The Respondents have alleged that the process or action sought to be injuncted or restrained have already taken place and the ***1170*** title holders have been issued with their title deeds, and they are not parties to this suit. The Applicants have not denied that the said process has already taken place, but are only seeking to restrain the processing and issuance of title deeds.
101. The issue of whether the title deed have been issued or not cannot be determined at this stage, since evidence has to be availed, and this can only be done at the main trial. Further, if the title deeds have already been issued to the 1170 title holders, that is an event that has already occurred, and the court cannot injunct an event that has been overtaken by events. Injunctive orders are issued against a future event, and not against what has already occurred.
102. In the case of ***Mavoloni Company Ltd v Standard Chartered Estate Management Ltd [2005] eKLR***, the court held'

“an injunction cannot be granted once an event intended to be injuncted has been overtaken by event.”

103. It the event that is sought to be injuncted has already occurred, then this court finds and holds that the Petitioners /Applicants have not been able to establish that they have a prima facie case with probability of success at the trial.

104. Having failed to establish a prima facie case, then this court finds no reasons to deal with the others principles of grant of injunctive orders since establishing the said principles is sequential and if one fails in establishing the first one, there would be no need to go to the second principle/ see the case of ***Kenya Commercial Finance & Co. Ltd...Vs... Afraha Education Society (2001) 1EA 86.***

105. Having found that the events complained of have already taken place, and the Petitioners/Applicants have not established that they have a prima facie case with probability of success, and therefore the court finds and holds that the Applicants have failed to establish that they are deserving of temporary restraining orders as sought in prayers **No. 7** and **8** of the instant Notice of Motion Application.

106. On prayer No 9, the court finds and holds that the further orders that this court would issue is to direct the parties to prepare the main Petition for trial so that the contested issues can be dealt with once and for all.

107. On the issue of costs, the court finds and holds that the same is granted at the discretion of the court. Given the

circumstances of this case, the court directs that costs be in the cause.

108. Having carefully considered the instant Application, the court finds and holds that the said Application dated **14th April 2024**, is **Not Merited**. Consequently, the said Application is **dismissed** entirely with costs being in the cause.

109. Further, the court directs the parties herein to prepare the main Petition for hearing so that the contested issues can be dealt with at once.

It is so directed.

Dated, signed and delivered virtually at Narok this 27th Day of November 2025.

***L. Gacheru
Judge.***

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Mr. Kere for the Petitioners/Applicants

N/A for 1st Respondents

N/A for 2nd to 7th Respondents

***L. Gacheru
Judge.***