

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC PETITION NO. E004 OF 2024

MOSES AINEAH WANJALA MASINDE
(Suing as the Chairman of KIBOROA SQUATTERS ALLIANCE)
On behalf of 21,297 Society Members, Squatters and Evictees from Olngatongo and Sabwani Farm)-----**PETITIONERS**

VERSUS

AGRICULTURAL DEVELOPMENT CORPORATION-----**1ST RESPONDENT**
LAND LIMITED-----**2ND RESPONDENT**
CABINET SECRETARY
MINISTRY OF LANDS AND PHYSICAL PLANNING-----**3RD RESPONDENT**
NATIONAL LAND COMMISSION-----**4TH RESPONDENT**
CHIEF LAND REGISTRAR-----**5TH RESPONDENT**
ATTORNEY GENERAL-----**6TH RESPONDENT**

JUDGMENT

1. Before the court is a Constitutional Petition dated **24/12/2024**, brought by Kiborooa Squatters Alliance, a Community-Based Organization, registered on **5/7/2004**, under the Department of Social Services.

2. It is described as comprised of **21,297** members made up of parents, children, and grandchildren, mainly of the Bukusu community, who were the original settlers on Olinga/Tongo Farms, comprising **L.R. Nos. 2993/2, 5722, 5374/1, 11502, 11502/2, 88516/1, 8855/2, 34515, 5346, 5345/1, 5345/2, 5345/3**, and Sabwani Farm comprising **L.R. Nos. 2043, 9078/2, 10297, 5337, 2043/2, 3190/2, 6193/1, 9489, 1233/17, and 10287**, hereinafter the disputed parcels of land.
3. Before colonialism, they became and to date remain squatters on the disputed parcels of land. It is averred that the disputed lands were part of their ancestral and customary lands, which has formed part of their historical land injustice complaints, claims, petitions and agitation, leading to particular departmental committee on land recommendations, in reports dated **8/6/2011** and **15/3/2017**, commissioning the 3rd respondent as the constitutional body with the mandate as read with **Section 5(e)** of the National Land Commission Act, to address the issue of the petitioners resettlement, which mandate it has failed to discharge.

4. The petitioners averred that as original settlers on the disputed lands, they could rear domestic animals in pursuit of their pastoral life and cultivate crops, until the advent of colonialism, when their ancestors were displaced from the disputed properties in favour of white settlers.
5. The petitioners averred that, upon displacement during the colonial period and later in **1987** to fend for their families, their forefathers were granted employment as laborers in the disputed lands by white settlers, where they were placed in clusters referred to as Labour Reservoir Blue Triangle and issued with Blue Cards for identification.
6. Further, the petitioners averred that upon attainment of independence, the government purchased the disputed parcels of land from the white settlers, with a promise made to them that the government of Kenya intended to settle them on the said lands.
7. The petitioners averred that contrary to the assurance, sometime in **1960**, the government through the Ministry of Land, subdivided the two farms, irregularly and illegally subdivided them, allocated and registered the resultant parcels of land to the 1st respondent, despite the petitioners

remaining in occupation and the utilization of the disputed parcels of land, which they deem as part of their cultural heritage and ancestral land.

- 8.** Again, the petitioners averred that in efforts to find reprieve on **30/3/2020**, a public petition was presented to Parliament concerning the squatters' problem in Trans Nzoia for investigations to be undertaken by the National Assembly, on forced evictions on Kiboroa Squatters and the resettlement of genuine squatters.
- 9.** The petitioners averred that upon tabling of the petition, the departmental committee in charge conducted investigations, held meetings with various government departments and relevant stakeholders, culminating in a report dated **8/6/2011**. The report made several recommendations and was transmitted to the implementing authorities for action, including the 3rd respondent, who to date has not taken any action.
- 10.** The petitioners averred that in pursuit of their grievances, a second public petition was submitted to the Parliament on **5/11/2015**. A second report dated **15/3/2017** recommended that the 3rd and 4th respondents, *inter alia*, should profile the **1,062**

families evicted in **1987** and determine whether they benefited from several settlement schemes in the area, and if not, alternative land be provided to resettle them.

- 11.** The petitioners averred that just like in the first report, the Clerk of the National Assembly, through a letter dated **9/3/2021**, confirmed that the report was transmitted to the implementing agencies for action, among them the 3rd and 5th respondents. The petitioners averred that, through a letter dated **29/5/2024**, they requested the 4th respondent's information on the progress of the implementation of the reports, but did not receive any response.
- 12.** The petitioners averred that, regrettably, to date, no action has been taken to either respond, address, or implement the recommendations or address their grievances, despite the deplorable conditions they continue to live in as squatters in their ancestral land.
- 13.** Again, the petitioners averred that the foregoing actions or omissions by the respondents are in conflict with or amount to a breach of their constitutional rights and freedoms, under **Articles 1, 2, 10, 19, 20, 21(1), 22 23, 24, 25, 27, 28, 35,**

63, 43, 47(1) and 260 of the Constitution. **Article 2(3)** of the International Covenant on Civil and Political Rights, **Sections 5(3) 5(4), 46** of the Community Land Act, and **Section 15(2)** of the National Land Commission Act, which define historical land injustices that resulted in displacement from habitual place of residence that occurred between **15/6/1895** and **27/8/2010** and the mode of their resolution.

14. The petitioners pray for:

- (a) Declaration that the action of the 2nd and 5th respondents to allocate the disputed land to the 1st and 2nd respondents was unlawful, illegal, and void.**
- (b) Declaration that the petitioners' rights to property and or ownership over the disputed land were infringed, violated, and threatened.**
- (c) Declaration that the petitioners' rights to fair administrative action, equality, and equal protection of the law were infringed.**
- (d) Cancellation of titles in the disputed lands and subsequently the surveying and issuance of titles to them.**
- (e) Order directing the 3rd to 6th respondents to issue title deeds for the disputed lands under their names, to resettle and allocate to their members.**

(f) Damages for breach or violation of their constitutional rights.

- 15.** In support of their petition, the petition was accompanied by affidavits in support sworn by **Moses Aineah Wanjala Masinde** on **24/6/2024** and **4/11/2025**, annexing a certificate of registration of the group issues on **5/7/2004**, PIN certificate, business permit and member list marked **MAWM-(1)** and **(2)**, chief's letter dated **27/11/2023** marked **MAWN-(3)**, native certificate and aa memorandum of understanding marked **MAWM-(4)** and **(5)**, hut poll tax receipts and land rent payment as **MAWM-(6)**, copies of certificates of title, service and identity cards as **MAWM-(7)** and **(8)**, photographs as **MAWM-(9)**, Parliamentary Hansard Records for **30/3/2010**, **5/4/2011**, and **15/6/2011** as **MAWM-(10)**, Parliamentary Departmental Committee Report dated **8/6/2011** as **MAWM-(11)**, Parliamentary Hansard Report for **24/11/2015** and **16/3/2017** as **MAWM-(12)**.
- 16.** Further, the petitioners attached copies of correspondence with the Clerk National Assembly as annexure marked **MAWM-(13)** and **(14)**, letters dated **22/8/2019**, **29/5/2024**, and **28/7/2021** as annexures marked **MAWM-(15)**, **(16)**, and **(17)**,

copies of title deed for some of the disputed lands in favour of the 1st and 2nd respondents as annexure marked **MAWM-(18)**, letter dated **21/3/2011** showing commercial loan issued against the said titles and past court decisions as annexures marked **MAWM-(19)** and **(20)**, copy of the National Land Policy on historical injustices as annexure marked **MAWM-(21)**. In the further affidavit, the petitioners annexed a memorandum of understanding and a certificate of electronic evidence as **MAWM-(1)** and **(2)**.

- 17.** The 1st and 2nd respondents opposed the petition through a replying affidavit sworn by Nicholas Ayugi on **27/9/2024**. He insisted that the disputed parcels of land owned by the 1st and 2nd respondents were purchased and transferred in their names for value, before the alleged displacement of the petitioners in **1987**, and have since been utilized by them.
- 18.** The 1st and 2nd respondents depose that they lack the mandate to implement the alleged Hansard Report, or make any decisions in any of the matters raised in the said reports, otherwise, the 1st respondent was a creature of the Agricultural Development Corporation (ADC) Act Cap **444**, with

rights to acquire and dispose assets as per the Act and titles of ownership marked as **NA-(1), (2)** and **3(a) - (f)**.

- 19.** The 1st and 2nd respondents depose that they legitimately own the disputed lands for agricultural use and fulfillment of their mandate under the law, and that there are established parameters and institutions to handle the petitioners' grievances.
- 20.** Further, the 1st and 2nd respondents depose that it is public knowledge that most of its land had been sold out to settle squatters, until **2002**, when the government sought to protect the remaining land for national food security, through the operationalization of the Special Farm Rates, restricting the transfer of any of its parcels of land, as per attached Rules marked **NA-(4)**.
- 21.** The 1st and 2nd respondents deposed that as legitimate owners of the land, they are mandated by law to mortgage such property for any amount and use the ownership documents as collateral to secure the loan and in this case, they complied with the law in charging the titles as per annexures marked **NA-5(a)** and **(b)**, hence there were no irregularities as alleged or at all.

- 22.** The 1st and 2nd respondents denied that there has been any investigation over their ownership of the disputed lands, to warrant the reliefs sought; otherwise, they have operated in line with their mandate, as spelt out in both the enabling Statutes, Rules, and the Constitution.
- 23.** Equally, the 1st and 2nd respondents denied that the historical background set out by the petitioners had given rise to any relationship between them, their ancestors, and the 1st and 2nd respondents' land, nor does it show how the two participated in the alleged historical injustices, given that they were genuine proprietors who acquired the ownership of the suit parcels of land by way of purchase.
- 24.** The 1st and 2nd respondents depose that this is not the first time that the petitioners are instituting court cases against them; otherwise, they have become notorious speculators, who take chances to lay baseless claims, and give false information to attract favours and sympathy from the court.
- 25.** The 1st and 2nd respondents depose that the disputed lands were originally under legitimate ownership, before they purchased them, hence do not qualify for

any claim under ancestral rights or claims to be settled under the historical land injustices.

- 26.** Again, the 1st and 2nd respondents termed the alleged claim that the petitioners have been paying land rent and rates as misinformation or misplaced, in view of their own settlement of the same, as per annexures marked **NA-6** and **8**. The 1st and 2nd respondents depose that the disputed lands were purchased for value, gazetted, and have been recognized by various institutions as per annexed correspondences marked **NA-7**.
- 27.** The 4th respondent relied on a replying affidavit sworn by Brian Ikol on **12/2/2025**, denying the contents of the amended petition and its supporting affidavits. It confirmed that the 1st respondent was in actual possession of the disputed parcels for decades, which they bought for value, as public land, reserved for agricultural use, as part of its statutory mandate under the Agricultural Development Corporation Act **2012**, and the Special Farm Rules **2001**, and which under **Section 12(2)** of the Land act, is not available for allocation.
- 28.** The 4th respondent deposed that under the Special Farm Rules **2001**, which were gazetted and not

objected to by the petitioners, the 1st and 2nd respondents have to undertake their statutory mandates, and cannot deal with the parcels of land, otherwise, as suggested by the petitioner.

- 29.** The 4th respondent deposes that squatters can be resettled anywhere in the country with the discretion of the government and based on the available land; therefore, the petitioners were free to seek settlement elsewhere and not specifically in the disputed parcels of land.
- 30.** The 4th respondent deposes that under **Sections 134** and **135** of the Land Act **2012**, the function of settlement is not within the purview of the 4th respondent, but was a function of the Land Settlement Fund Board, hence the petition lacks merit.
- 31.** Following directions issued on **17/2/2023** and **3/4/2025**, the 3rd, 5th, and 6th respondents were granted leave to put in a replying affidavit by **5/5/2025**. The parties agreed to canvas the petition by way of *viva voce* evidence, based on the affidavits and annexures thereto.
- 32.** At the hearing on **21/10/2025**, the petitioners were represented by **Moses Aineah Wanjala Masinde**,

who testified as **PW1**. He adopted his supporting affidavit and further affidavits sworn on **24/6/2024** and **5/11/2025** as his evidence-in-chief.

- 33.** PW1 produced the annexures to the two affidavits contained in the paginated trial bundle from pages **1-1339**. The documents produced as exhibits included a certificate of registration, Kenya Revenue Authority Personal Identification Numbers, business permit, list of membership, chief's letter, natives certificate, certificates of land rates, memorandum of understanding, bundle of natives' hut poll tax receipts, copies of title deeds, ID Cards, certificates of service, photographs, and Hansard Reports as **P. Exhibit No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11(a),(b), and (c)**.
- 34.** Further, the petitioners produced committee reports dated **8/6/2011**, Hansard Reports dated **24/11/2015** and **15/3/2017**, as **P. Exhibit No. 12, 13(a) and (b)**, forwarding letters dated **23/8/2018**, and **16/3/2018**, by the Clerk National Assembly as **P. Exhibit No. 14(a) and (b)**, committee's report dated **15/3/2017** as **P. Exhibit No. 15**, letters to the Clerk National Assembly dated **22/8/2019** and **29/5/2024** to National Land Commission as **P.**

Exhibit Nos. 16 and **17**, letter dated **29/9/2021** from the Head of Public Service, as **P. Exhibit No. 18**, letter dated **21/3/2011** as **P. Exhibit No. 19**, ruling in **Eldoret ELC No. 19 of 2015** as **P. Exhibit No. 20**, order dated **4/7/2019** as **P. Exhibit No. 20(a)**, and lastly, a copy of the National Land Policy as **P. Exhibit No. 21**.

35. In cross-examination, PW1 told the court that the petition had been brought in a representative capacity as per the minutes on authority to swear as the annexures in the petition dated **24/6/2024**. PW1 said that though the Kenya Forest Service had evicted them from Kiboroa Forest, they had not sued them in this petition. Equally, PW1 said that the claim was captured in all the Hansard reports produced before the court, as containing various families, groups, and whose identities were investigated and ascertained to be genuine claimants, including their membership to the community-based organization, by the office of the Directorate of Criminal Investigations.

36. PW1 told the court that it was the colonialists who had initially displaced them from their ancestral land before the 1st and 2nd respondents became owners of

the land under Cap **444**. PW1 confirmed that they had attempted to stop any sale of some of the 1st and 2nd respondents' parcels of land in the Eldoret case by a preliminary objection in **ELC Petition No. 19 of 2018**, which parcels of land are not among those before the court.

- 37.** Further, PW1 disputed the contents of the Special Farm Rules **2001** as concerns the disputed parcels of land; otherwise, there was no public participation undertaken before the Rules were enacted. PW1 stated that the petitioners were not involved when the disputed parcels of land were converted into private or public land.
- 38.** PW1 insisted that the National Land Commission had a role to play in resettling the historical injustice in their favour, but despite receiving **P. Exhibit. No. 17** and having availed all the Hansard reports or recommendations, failed to act. PW1 said that all the recommendations appearing on pages **1102** and **1200** of the trial bundle were not acted upon by the respondents.
- 39.** PW1 said that the petitioners were in actual occupation of the disputed parcel of land as per the photos before the court, since **1958**, as workers or

employees of the 1st and 2nd respondents. PW1 faulted the assertion of purchase of the disputed land by the 1st and 2nd respondents, since they have not attached any sale agreements or gazette to the replying affidavit.

- 40.** PW1 said that **P. Exhibit. No. 7** was a memorandum of understanding that the petitioners had with the settlers for **999** years, which remains valid. PW1 said that they lodged a historical injustice claim with the National Land Commission as per the letter dated **29/5/2020**, which was not acted upon; otherwise, the chairman of the National Land Commission, who received it, failed to respond or act upon it.
- 41.** Asked a question by the court, PW1 said that he was not aware of the request to lodge a formal historical injustices claim within **5** years, by filing in a statutory form and obtaining a claim number. PW1 said that the petitioners had made an appearance before the National Land Commission and submitted all their documents to them.
- 42.** Further, PW1 said that his claim was also not captured in the Ndungu Report. PW1 said that among the petitioners, about **400** were former workers of the 1st and 2nd respondents, who are still occupying

the suit parcels of land despite the expiry of their contracts of employment. PW1 told the court that the petition lacked the particulars of each petitioner, portion on the ground, its nature, developments, and details relating to the suit parcel of land owned by the 1st and 2nd respondents. PW1 said that the photographs before the court do not indicate who occupies what portion of the land on the ground.

43. Nicholas Ayugi testified on behalf of the 1st and 2nd respondents as **DW1**. He adopted the replying affidavit, sworn on **27/9/2024**, as his evidence-in-chief. DW1 produced a copy of the incorporation of the 1st respondent issued on **26/7/1958** as **D. Exhibit No. 1**, copies of title deeds belonging to the 1st respondent for **L.R. No. 8855/2, 5346, 5345/3, 5345, 9078/2, 2943/2, 2992**, as **D. Exhibit No. 3(a), (b), (c), (d), (e), (f), and (g)**, copies of Legal Notice **No. 38/2001** and **57 of 2003** as **D. Exhibit No. 4(a) and (b)**, certified copy of charge to Consolidated Bank of Kenya dated **21/10/2007**, as **D. Exhibit No. 5**, certified copy of valuation report dated **7/9/2007** as **D. Exhibit No. 6**, copy of demand for land rent and payment details as **D. Exhibit No. 7**, copy of correspondence between the

1st and 2nd respondents and the County Government of Trans Nzoia as **D. Exhibit No. 8**, and finally copies of notices regarding rates payment as **D. Exhibit No. 9**.

- 44.** In cross-examination, DW1 told the court that the disputed parcels of land were bought for value by the 1st and 2nd respondents and that most, if not all, of them are the ones captured in paragraph **8** of the petition before the court. DW1 said that some of the title deeds he produced before the court do not include **L.R. Nos. 2193/2** and **5722**, though they are gazetted Special Farms. The court noted that DW1 was evading questions posed by the petitioners.
- 45.** DW1 said that though the disputed parcels of land were acquired by the 1st and 2nd respondents in **1969/1970** as per **Section 13** of the Agricultural Development Corporation Act and under the Law of Contract Act, but had no evidence of how they were procured, and the consideration paid to acquire them from the then legitimate owners.
- 46.** DW1 denied that the petitioners were in actual occupation of the disputed parcels of land. DW1 said that page **23** of the 1st and 2nd respondents' bundle showed that the seller was a white settler. DW1 said

that he did not have copies of the memorandum of sale under the repealed Registration of Title Act. Further, DW1 said that due process was followed in acquiring the disputed parcels of land.

- 47.** At the close of the 1st and 2nd respondents' case, Miss Khaoya for the 4th respondent opted not to call her witness and closed their case.
- 48.** The 3rd, 5th, and 6th respondents failed to attend the hearing or call any evidence in opposition to the petition.
- 49.** The petitioners rely on a written submission dated **14/11/2025**, isolating nine issues for the court's determination. It is submitted that the petitioners under **Article 22(2)(d)** of the Constitution, as a registered community-based organization on **5/7/2004**, acting in the interest of its members, are properly before the court through the names of its officials. Reliance is placed on the **Executive Committee of Ngei Estate Phase 11 -vs- Waweru [2022] KEELC 3967 [KLR] (28th July 2022) (Ruling)**.
- 50.** The petitioners submit that the petition is not statute-barred for the human rights violation alleged under **Articles 27, 40, 43, and 63** of the

Constitution is continuing to date, yet the 4th respondent under **Article 67 2(a)** of the Constitution has the mandate to conduct historical investigations, and that neither the Articles nor **Section 15(1)** of the National Land Commission Act has no time limitation for the same.

51. The petitioners submit that whereas **Section 15(1)** of the National Land Commission Act had a time limitation, it was repealed in **2017** and extended by **Section 38(1)** to **2026**. Similarly, the petitioners submit that the National Land Commission Act Amendment **No. 22 of 2025** has now extended the period to **2030**. Reliance is placed on **Calvin Ouma Magare & 18 others -vs- Director of Public Prosecutions & 4 others [2022] eKLR.**

52. The petitioners submit that the petition is not premature for want of exhaustion of alternative remedies, since under **Article 23(3) and 162(3)(b)** of the Constitution and **Sections 13(1), 2, 3 and (3)** of the Environment and Land Court Act, the court has mandate to hear and determine case for redress of a denial, violation and infringement of rights and fundamental freedoms. Reliance is placed on **William Odhiambo Ramogi & Others -vs-**

Attorney General & Others Muhuri & Others (IP) [2020] eKLR.

53. Further, the petitioners submit that where the alternative remedy is not adequate or effective, an aggrieved party may resort to court, more so, given the petition challenges human rights violations of its members. Reliance is placed on **Nicholas -vs- Attorney General & Others [2023] KESC 113 [KLR] (28th December 2023) (Judgment)** and in **Bia Tosha Distributions Ltd -vs- Kenya Breweries Ltd & Others [2023] KESC 14 [KLR] (17th February 2023) (Judgment)**.
54. Further, the petitioners submit that they have demonstrated being the legal and beneficial owners, occupation of the disputed parcels of land, as squatters. The petitioners submit that their definition as squatters is guided by the holding in **Fanikiwa Ltd & Others -vs- Sirikwa Squatters Group & Others Petition 32 and 35 Consolidated [2023] KESC 105 [KLR] (15th December 2023) (Judgment)**.
55. Again, the petitioners submit that as individuals who have occupied the disputed parcels of land for a long time, they have acquired equitable, protectable

rights, despite their lack of title to the property. Reliance is placed on the **Centre for Minority Rights Development (K) & Minority Rights Groups International on behalf of Endorois Welfare Council of (K) -vs- Kenya 276 of 2003** at the African Commission on Human Rights.

56. The petitioners submit that the exhibits produced before the court at pages **753-760, 883, 894, 1080-1102, 119-1320, 1200, 1321-1325**, show the history of the matter, and the efforts made to agitate the same, clearly showing that they have protectable rights on the two farms.
57. The petitioners submit that, as members, they had a legitimate expectation to acquire and be allocated the suit farms. Reliance is placed on **Keroche Industries Ltd -vs- Kenya Revenue Authority & Others [2007] [KLR], Communication Commission of Kenya & Others -vs- Royal Media Services Ltd & Others [2014] KESC 53 [KLR] (29th September 2015) (Judgment) and Fanikiwa Ltd & Others -vs- Sirikwa Squatters (supra)**.
58. The petitioners submit that the evidence by PW1 shows that they had entered into a memorandum of

understanding as per **P. Exhibit. No. 17**, with the departing white settlers and the colonial government, pursuant to the Resident Labourer's Ordinance **1931**, that they would be allocated **5** acres each of the land upon their departure, which promise the independent government took up but reneged on.

- 59.** Further, the petitioners submit that the 1st and 2nd respondents have no good title to the disputed parcels of land and that the alleged Special Farm Rules Legal Notice No. **157** of **2003** is void to the extent that they came in while the petitioners were still in occupation, they cannot apply retrospectively to take away their existing rights and the legitimate expectation of its members and so is the alleged gazettelement of the special farm while they have been in occupation for over **100** years.
- 60.** The petitioners submit that **Article 46(1)(2)** of the Constitution grants them rights to acquire and own property in any part of Kenya, and in this case, the disputed properties fall under what they have traditionally occupied for any decades, acquiring protectable rights, which must be protected by the state, and in purporting to allocate them to the 1st and 2nd respondents not only violated the rights to

property, equality and equity protection of the law fair administrative action, promotion of land policy and their community land rights, which therefore, this court under **Articles 23(3) and 162(2)(b)** as read together with **Section 13(5)** of the Environment and Land Court Act must redress through issuance of appropriate reliefs. Reliance is placed on **Mitu Bell Welfare Society -vs- Kenya Airport Authority & Others [2021] KESC 34 [KLR] and Centre for Minority Rights Development (K) (supra).**

- 61.** The petitioners urged the court to grant the reliefs sought with costs guided by **Rai & Others -vs- Rai & Others [2014] KESC 31 [KLR]** and **MWK & Another -vs- Attorney General & Others [2017] eKLR.**
- 62.** The 1st and 2nd respondents rely on written submissions dated **24/11/2025**. It is submitted that the petition is premature for want of exhaustion of alternative measures of dispute resolution, especially **Section 15** of the National Land Commission Act **2012**, as the first port of call. Reliance is placed on **Speaker of National Assembly -vs- James Njenga Karume [1993] eKLR, Geoffrey Muthinja**

Kibiru & Others -vs- Samuel Mungai Henry & Others [2015] eKLR, Ledidi Ole Tauta & Others -vs- Attorney General & Others [2015] eKLR and Safe Park Ltd -vs- Henry Wambega & Others [2019] eKLR, In the matter of National Land Commission [2015] eKLR, Benson Ambuti Adegga & Others -vs- Kibos Distributors Ltd & Others [2020] eKLR and United Millers Ltd -vs- Kenya Bureau of Standard & Others [2021] eKLR.

- 63.** On legitimate expectation, the 1st and 2nd respondents submit that the same does not apply to the gazetted special farms, **L.R. Nos. 5722, 8855/2, 5346, 5345/1, 5345/2, 5345/3, 2043. 10297, and 5337**, which, unless degazetted, are not available for alienation. The 1st and 2nd respondents submit that the National Assembly touched on matters and parcels where there cannot be an alleged legitimate expectation, hence it overstepped its mandate, exclusively reserved for the National Land Commission under **Article 67(2)(e)** of the Constitution and **Section 15** of the National Land Commission Act.

64. The 1st and 2nd respondents submit that Parliament acted *ultra vires* and could not bequeath the Agricultural Development Corporation Special Farms to the petitioners, especially based on a decision where the 1st and 2nd respondents were not invited to Parliament. Reliance is placed on **Republic -vs- Kenya Revenue Authority & Others Ex parte Five Forty Aviation Ltd [2015] eKLR**, that a legitimate expectation cannot operate against the law or on an action patently illegal.
65. The 1st and 2nd respondents also relied on **Republic vs. Kenya Revenue Authority & Another ex parte Kronos LCS Centre East Africa Limited [2012] eKLR, Republic -vs- Principal Secretary Ministry of Health & Another Exparte Apex Communication Ltd T/A Apex Porter Novella [2015] eKLR, Scott -vs- Brown [1982] 2 QB 724 and Attorney General -vs- Sunderji t/a "Crystal Ice Cream" (Civil Application 20 of 1984) [1986] KECA 3 (KLR) (29 October 1986) (Judgment).**
66. The 1st and 2nd respondents submit that the evidence tendered by the petitioners through PW1 was not enough to substantiate the petition, in terms of availing pre-independence allocation lease or titles

held by the petitioners' forefathers in respect of the disputed land, and to draw a nexus between them and the petitioners and their ancestors to the disputed parcels of land, to be entitled to the reliefs sought.

67. The issues calling for my determination are:

- (1) If the petitioners have locus standi.**
- (2) If the petition should fail on account of non-exhaustion.**
- (3) If the petitioners have substantiated the contents of the petition.**
- (4) If the 1st, 2nd, and 4th respondents are improperly impleaded to this petition.**
- (5) If the petitioners are entitled to the reliefs sought or any appropriate reliefs from the court.**
- (6) What is the order as to costs?**

68. *Locus standi* has been termed as a point of law touching on the jurisdiction of the court to be resolved *in limine*, as held in **Mumo Matemu -vs- Society of Human Rights Alliance & Others [2014] eKLR**. See also **Law Society of Kenya -vs- Communications Commission of Kenya & Others**. It is defined by Black's Law Dictionary, 9th

Edition, page **1026**, as the right to bring an action or to be heard in a given forum.

69. In **Mumo Matemu** (*supra*), the court held that under **Article 260** of the Constitution, a person is defined to include an association, or other body of persons, whether incorporated or unincorporated. The court observed that the Constitution, under **Articles 22 and 258**, had expanded the parameters of **locus standi** to enable every person, whether corporate or non-corporate, in person or in a group or in public interest, to move to court, to ensure access to justice.

70. In **Communication Commission of Kenya & Others -vs- Royal Media Services Ltd** (*supra*), the court said, the purpose of the Constitution is to enlarge *locus standi* in human rights and constitutional litigation was to develop the law, contribute to good governance and to ensure that where claims in the interest of the public are threatened by administrative action, to the detriment of the Constitution, the court has discretion to evaluate and determine the status of the parties before it, to promote the values, purpose and

advances of the rule of law, human rights, and fundamental freedoms.

- 71.** In **Finmax Community-Based Group & Others - vs- Kericho Technical Institute [2021] eKLR**, the court observed that appellants, like in this petition, had been registered as a Community-Based Organization under the Ministry of Gender, Children and Social Development. It had done so through its officials. The court held that proceedings on behalf of or against such a Community-Based Organization can only be maintained or brought against the names of the officials. See **Grace Mwende Munjiri -vs- Trustee of Agricultural Society of Kenya [2014] KEHC 6003 [KLR] (24th May 2024)**.
- 72.** The last law on this issue is the case of **Hiram Bere Kinuthia -vs- Edick Omondi Anyanga & Others Petition E004 of 2025**. The court held that only a party with *locus standi* may competently move the court by disclosing or properly identifying itself in the pleading. The court said that where the identities of the parties are clear and undisputed, the court should administer justice without undue regard to procedural technicalities, which are curable under **Article 159(2)(c)** of the Constitution.

- 73.** In this petition the petitioners have described themselves as Kiboroa Squatters Alliance, registered as a Community-Based Organization on **5/7/2004**, suing through its chairman, comprising of **21,297** members made up of parents, children and grandchildren of majorly Bukusu Community, who were the original settlers on Olinga Tongo Farm and Sabwani Farm, before advent of colonialism and who to date, remain squatters on the said farms, now owned by the 1st and 2nd respondents, some being the 1st and 2nd respondents former workers.
- 74.** The registration certificate issued on **5/7/2004**, Kenya Revenue Authority Personal Identification number, business permit, list of membership, chief's letter, native certificate, land rents payments, memorandum of understanding, native hut poll tax receipts have been displayed as exhibits before this court in the trial bundle. The further affidavit, sworn on **4/11/2025** by the petitioners, attaches the certified copy of the Resident Labourers Ordinance **1937** to Regulate the Residence of Labourers on Farm. The petitioners have sufficiently, in my view, met the constitutional and statutory requirements on *locus standi*. The petitioners have equally pleaded

the petition with specificity, clarity, and given the nexus between the subject matter, their ancestry, nativity, relationship with the ancestral land, the past, and future status, in relation to the subject matter.

- 75.** In the documents relied upon, such as the Hansard reports dated **30/3/2010, 5/4/2011, 15/6/2011, 15/3/2017, 24/11/2015, 16/3/2017**, letters dated **28/8/2018 and 16/3/2017**. It is the same Kiboroa Squatters Alliance that had filed the public petition and the subject to the proceedings, reports, and correspondences regarding historical land injustices, forceful eviction, and the need for resettlement.
- 76.** In the replying affidavits of the 1st, 2nd, and 3rd respondents and generally in particular paragraph **2** of the affidavit of Nicholas Ayugi, the 1st and 2nd respondents admitted paragraphs **1-7** of the petition as to the description of parties to this petition.
- 77.** In my view, the fundamental nexus between the petitioners' alleged ancestral historical, community, and cultural rights to the disputed parcels of land and its constitutional and human rights entitlements and underpinnings was set out in the petition, such that

the respondents were able to respond to the petition without recourse for better particulars.

78. The petitioners have demonstrated their capacity in how they have been affected or have a direct stake in the matter individually, in groups, associations, and in the public interest as squatters.

79. In **Okoiti -vs- Portside Freight Terminal Ltd & 12 Others, Petition E011 of 2024 [2025] KESA 44 [KLR] (30th June 2025) (Judgment)**, the court emphasized that whereas **Articles 22** and **258** of the Constitution grant every person without exception, the *locus standi* on alleged constitutional rights and freedoms violations, in person or in a representative capacity, caution must be had, as expressed in **Kenya Railways Corporation & 2 others -vs- Okiiti & 3 others (Petition 13 & 18 of 2020 (Consolidated)) [2022] KESC 2 (KLR)**, to ensure that the provisions are not abused, by public litigation, unless its aimed to address genuine public interest and not for personal gain or vendetta, or where the litigation is hypothetical, abstract or amounts to abuse of the court process.

80. In this petition, I think the petitioners have met the test by showing the alleged specific rights, as well as

the basis of social justice, rule of law, patriotism, and public participation, which, to achieve as values, there must be unhindered access to justice by the public. The court held that any person acting *bona fide*, having real and genuine public interest, can alone have *locus standi* to approach the court for redress of any alleged violation of fundamental rights and or genuine infraction of the Constitution, including to act for another person who cannot act in their own name.

- 81.** The next question is whether the petition raises constitutional issues or questions that can only be handled by this court and not by any other forum. The respondents have attached the petition and asked this court to decline jurisdiction, and exercise constitutional avoidance since the first port of call under the Constitution and **Section 15** of the National Land Commission Act is the 4th respondent, which alternative forum the petitioners failed to submit to or exhaust, contrary to the decision in **Speaker of National Assembly -vs- James Njenga Karume [1992] eKLR, Geoffrey Muthinja Kabiru & Others -vs- Samuel Munga Henry & Others [2015], Ledidi Ole Tauta (supra),**

Safepark Ltd (*supra*), **In the matter of National Land Commission** (*supra*), **Benson Ambuti** (*supra*), and **United Mothers Ltd -vs- Kenya Bureau of Standard & Others [2021] eKLR**.

82. The petitioners on other hand urge the court to be guided by **Nicholas -vs- Attorney General** (*supra*), and **William Odhiambo Ramogi & Others** (*supra*), where the alternative remedy was not adequate and effective, hence the need for this court to assume its original and unlimited jurisdiction, since the issues relate to breach threats or infringement of rights and fundamental freedoms or whose jurisdiction he court has under **Articles 22, 23(3), 162 2(b)** as read together with **Sections 13(1), (2) and 15** of the Environment and Land Court Act.
83. Jurisdiction is everything; without it, a court has to lay down its tools as held in **Motor Vessel Lillian "S" -vs- Caltex (K) Oil Ltd [1989] KLR 1**. To answer this issue, the starting point is whether the cause of action as pleaded by the petitioners raises a constitutional question or issues of constitutional deterrence or avoidance, which refers to the preference of deciding a case on any other basis

other than one that involves a constitutional issue being resolved.

- 84.** In **Communication Commission of Kenya & Others -vs- Royal Media Services Ltd** (*supra*), the court held that the principle of avoidance means that a court will not determine a constitutional issue when a matter may properly be decided on another basis. In **Sports & Recreation Commission -vs- Sagittarius & Another [2001] 2 KLR 501**, the court held and that courts will not normally consider a constitutional question, unless the existence of a remedy depends upon it, and that though the remedy is available by way of another statute, whether factual or legal, it may still decline to determine whether there has been violation, in addition, a breach and the declaration of rights.
- 85.** A constitutional question determination is therefore a condition precedent to whether the petition is properly before this court. When determining if a petition raises a constitutional question, the court, as held in **CNM -vs- WMC [2018] eKLR**, is not bothered by whether the argument will succeed, but if it does, the court to consider constitutional rights, freedoms, or values. Such a question, as held in

Fredericks and Others -vs- MEC, Education and Training for the Province of the Eastern Cape & Others (92/2000) [2001] ZAECHC 10 (18 June 2001) includes looking into the status, powers, and functions of a state organ, interpretation of any statute, and its constitutionality.

- 86.** In this petition, the issues raised are on the breach of the constitutional rights and freedoms of the petitioners by the respondents in not failing to address, and redress their right to property by resettling them into their ancestral community and cultural land which they were displaced from, by the white settlers, who had assured them of resettlement under the Resident Labourers Ordinance, at the time of their departure, creating a legitimate expectation and which the independent government reneged on and instead gave out the disputed parcels of land to the 1st and 2nd respondents.
- 87.** The 1st, 2nd, and 4th respondents, on the other hand, attack the claim as statute-barred and or misguided and misplaced. From the pleading, the question of non-exhaustion and statute-barred was not raised as a preliminary issue.

- 88.** In *Jan Mohamed SC suing as the executor of the estate of the late H.E. D.N. Moi & Another -vs- District Land Registrar, Uasin Gishu & others [2024] KESC 39*, the question of limitation and the filing of the petition in an ordinary suit had been raised. The court held that the petition, founded on claims of violation of fundamental rights and freedoms, was not subject to limitation of actions. The court observed that, though the principle was not absolute, and should be determined on a case-by-case basis, depending also on whether the petitioners may be riding on a mischief, if the delay is inordinate, or warrants a credible explanation, or was justified.
- 89.** The court said that in constitutional petition, just like in other suits, where a title to land is under challenge, it was not enough to dangle the instrument of title as proof of ownership, and that the burden is not limited to the party whose title was being challenged, but extend to the party claiming infringement of his property rights, to prove his entitlement warranting the constitutional protection sought.

- 90.** In *Chief Land Registrar & Others -vs- Nathaniel Tirop Koech & Others [2018] eKLR*, the court held that the Constitution does not define what a historical injustice is. In *Town Council of Awendo -vs- Nelson O. Onyango [2019] eKLR*, which settled the question of reversionary interests in or pre-emptive rights over compulsorily acquired land.
- 91.** The petitioners in this petition are raising constitutional question issues on disenfranchise of their ancestors, historical land injustice visited upon them as indigenous people or resident, legitimate expectation to revert the disputed parcels of lands to them by the white settlers, the respondents' negligence or inaction to act, rendering them as a community of squatters on their alleged ancestral land, which they continue to reside on, as former workers of the 1st and 2nd respondents.
- 92.** In my view, the question raised transcends an ordinary historical land injustice complaint to be resolved under **Section 15** of the National Land Commission Act by the 4th respondent. The 1st and 2nd respondents, and in particular the 4th respondent, have stated that they have no mandate on

resettlement of squatters under **Sections 134** and **135** of the Land Act.

- 93.** Application for redress for alleged denial, breach, or infringement of rights and freedoms of the petitioners under **Section 13(2)** of the Environment and Land Court Act, as well as **Articles 20, 23, 27, 40, 47, 52, 56,** and **63** of the Constitution, belongs to this court and not the National Land Commission. **Article 63 2(d) (I)** and **(II)** of the Constitution relate to ancestral land and land traditionally vested in community land.
- 94.** The petitioners and the alleged rights fall under the definition of a community under **Sections 2** and **5** of the Community Land Act, whose ancestral lands fall under the definition in **Article 63(2)(d)(1)** and **(11)** and of the Constitution.
- 95.** In **Musila -vs- Thengi & Others Civil Appeal 607 of 2019 [2025] KECA 750 [KLR] (9th May 2025) (Judgment)**, the court said that **Article 47(1)** of the Constitution addresses the fair administration of service to every person, which require an expeditious, official, reasonable and procedurally fair, while **Article 50** of the Constitution addresses the

right to have a dispute fairly resolved by a court or an impartial tribunal.

- 96.** In this petition, the respondents have demonstrated that they have sought redress through the internal parameters available to the respondents for a long time in vain. The efficacy and appropriateness of the National Land Commission to handle the issues before this court were not addressed by both the 1st and 2nd respondents, and the 4th respondent itself. I find the objection to the non-exhaustion doctrine lacking merit.
- 97.** The next issue is whether the petitioners have proved the breach of their constitutional rights to property, fair administrative action, equality, and application of the law. The burden of proof is on he who alleges and wishes the court to find in favour of his rights and freedoms. Tangible and cogent evidence must be availed to sustain a constitutional petition, as held in **Communication Commission of Kenya & Others -vs- Royal Media Services Ltd** (*supra*),
- 98.** The petitioners are alleging displacement from ancestral lands by the colonial government, issuance of their land to white settlers, promise to revert the

land to them at their departure, negligence or inaction by the independent government to resettle them, and a purported transfer of the disputed parcels of land to the 1st and 2nd respondents, contrary to their legitimate expectations.

99. In ***Wambega & Others -vs- Attorney General & Others Civil Appeal E028 OF 2020 [2024] KECA 445 KLR (12th April 2024) (Judgment)***, the court observed that the burden and standard of proof in claims of historical land injustice was on the appellant to set out the Articles alleged to have been violated or threatened with violation, and to state the relevance of those articles to the issues for determination. The court held that generalized lyrics that were mere speculation, impersonal in terms of ownership of the information given, and which were hypothetical in nature and lacking supportive evidence in substantiation, were not enough

100. The court further held that **Section 15** of the National Land Commission Act required a claimant of historical injustice to adduce verifiable evidence that the acts complained of were demonstrated to have resulted in the displacement of the claimant or other form of historical land injustice.

101. Section 15(2)(3) of the National Land Commission Act defines and sets out the description and standard of what a historical injustice is. In this petition, the petitioners' witness, asked by the court, was emphatic that they never filed, registered, or caused any historical land injustices complaint to be admitted, registered, or processed by the 4th respondent, regarding the disputed parcels of land, over events occurring between **15/6/1895** and **27/8/2010**.

102. To be admitted as a historical land injustice claim by the National Land Commission, the claim must be *inter alia* verifiable, incapable of being addressed as an ordinary suit by the court of law, and where the claimant was either a proprietor or occupant of the land, where the claimant's omission or action does not amount to surrender or renunciation of the right.

103. The petitioners allege infringement of their property rights under **Article 40** of the Constitution. None of the petitioners, save for generalized pleadings, has given the court their generational tree to identify their forefathers, the numbers, particulars of where they lived, occupied, and where they were

buried or their remains interred, in relation to the specific parcels of land held or owned by the 1st and 2nd respondents.

104. The petitioners have not given the particulars of which white settler displaced them, the dates, time and period of displacement and which among their forefathers were employed as farm workers on the disputed land, and who their grandchildren or children are alive, were and are former employees or sons or daughters of the initial farm workers, and are currently in occupation as squatters on the disputed land. For instance, **Article 28** of the Constitution deals with the right to dignity.

105. There are no particulars pleaded or evidence that was led to demonstrate when the respondents individually or jointly prevented, denied, stopped, and or blocked the petitioners' forefathers, grandparents, parents, themselves, or others from entering, remaining, utilizing, accessing, using, developing, and or undertaking social, economic, and cultural rights on the disputed parcels of land.

106. The petitioners are also challenging the legality of the land titles held by the 1st and 2nd respondents. The law, as held in **Dina Management Ltd -vs-**

County Government of Mombasa & 5 others [2023] KESC 30 (KLR), Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR, and **Dr. Joseph Arap Ngok - vs - Justice Moiwo Ole Keiwua & 5 Others, Nai. Civil. Appeal No. 60 of 1997,** is that a claimant must show that the process of land title issuance was not legal, procedural, formal and free from any encumbrances, to impeach a title under **Section 26(1)(b) and (2)** of the Land Registration Act, there must be evidence of fraud, illegality, misrepresentation, and issuance of title in an unprocedural or corrupt scheme, where the party holding title was a party.

- 107.** Evidence to sustain fraud must be on a balance higher than in ordinary suits. In **Fanikiwa Ltd & Others -vs- Sirikwa** (*supra*), the court held that a squatter is a person who settles on a property without a legal claim or title. And that there was evidence of alleged members in occupation of any suit parcels or ever taking physical possession, hence there was no proof that they were squatters on the suit parcels of land. In this petition, the petitioners have merely relied on unsubstantiated photographic evidence and Hansard reports. There were no

specific pleadings on the exact portions of the disputed parcels of land, where each of the **21,957** members of the Kiboroa Squatters Alliance is squatting. Evidence of displacement or dispossession of their grandparents or forefather or all the former workers of the white settlers or the 1st and 2nd respondents said to be over **400** former staff is lacking.

108. Evidence of the alleged misrepresentation of facts, fraud, illegality, and procurement of titles to land by the 1st and 2nd respondents while the petitioners were squatting on the land or holding overriding interests thereon is lacking. In **Central (K) Ltd -vs- Trust Bank Ltd & Others [1996] eKLR**, the court held that credible evidence must be availed to prove fraud or illegality. How the 1st and 2nd respondents made false statements to procure the titles to the disputed land and or displace the petitioners is unclear.

109. Regarding legitimate expectation, other than submitting on the issue, the pleadings did not specifically give particulars of when the alleged promise was made, who made it, the capacity and mandate of who made it, and the legality or

otherwise of the promise. In ***Fanikiwa*** (*supra*), the court held that in determining whether a legitimate expectation had been established, primacy must always be given to the requirement of legality which flows from the constitutional principles and the value of the rule of law as articulated in **Article 10(2)(a)** of the Constitution.

110. Again, the court held that legality dictated that an action could only be undertaken if it was authorized by the law. The court said that a representation, promise, practice, conduct, or an action undertaken outside the prescription of the law or undertaken by a person or entity without competent authority was illegal or could not give rise legitimate expectation.

111. In this petition, the petitioners relied heavily on Hansard reports and on the recommendation from the National Assembly. In ***Institute of Social Accountability & another -vs- National Assembly of Kenya & 3 others [2021] eKLR***, the court said that under **Section 60(1)(b)** of the Evidence Act, a court may take individual reference to the Hansard in making its determination.

- 112.** In *Longit Renson -vs- Speaker West Pokot County Assembly & another [2019] KEHC 11669 (KLR)*, the court cited Speaker of the *Senate & Another -vs- Attorney General & others [2013] eKLR*, the courts have the competence to pronounce on the compliance of a legislative body with the Constitution.
- 113.** In this petition, the court has been asked by the 1st and 2nd respondents to find that the National Assembly acted *ultra vires* and usurped the powers, functions, and duties of the National Land Commission, under **Article 67** of the Constitution and **Section 15** of the National Land Commission Act. **Articles 27, 94, 95, and 119** of the Constitution allow Kenyans to lodge a public petition before the National Assembly or the Speaker of the National Assembly. After processing the petition, it may refer it to any committee and refer the report made or decision to the petitioner, and the implementing authority.
- 114.** A petition that has lapsed may also be revived or reintroduced. Petitions to the Parliament are governed by the Petition to Parliament Procedure Act, Cap **7E**. Reports of the public petition committee

are therefore allowed in law. Sanctions may be imposed for failure to implement committee reports under the Committee on Implementation in Parliament, against implementation agencies.

115. In **Okiya Omtata Okoiti -vs- Parliamentary Service Commission & Another [2021] KEELRC 1471 [KLR]**, the court cited **Kenya Vision 2030 Delivery Board -vs- Commission on Administrative Justice & Others [2020] eKLR**, that a recommendation can only be binding when the same is specifically provided for in the constitution or in law.

116. The 1st, 2nd, and 4th respondents have attacked the petition for being improperly joined to it. It is a constitutional principle that the Bill of Rights applies both vertically and horizontally. State and non-state agencies have the capacity to violate human rights. See Doris Matu “Improving Access to Justice in Kenya through Horizontal Application of the Bill of Rights and Judicial Review,” accessed at <http://www.journal.strathmore.edu>.

117. In **Omar -vs- State Department of Housing & Urban Development & Another Petition No. E004 of 2025 [2025] KEHC 17572 [KLR] (28th**

November 2025) (Judgment), the court cited **Amy Kagendo Mate -vs- Prime Bank Ltd & Another [2013] eKLR**, that **Articles 2(1) and 20(1)** of the Constitution provide that it binds all persons and therefore, contemplates both vertical and horizontal application of the Bill of Rights. I accordingly find the 1st, 2nd, and 3rd respondents as proper parties in this petition, since the issues raised and the decisions likely to be made shall affect them one way or the other.

118. On whether the petitioners had pre-emptive or reversionary rights after the white settlers left the country, the burden was on the petitioners to establish that their forefathers were the sole or *bona fide* owners of the disputed parcels of land before the advent of colonialism. The petitioners have not provided any historical record or data to sustain their historical land claims.

119. In **Town Council of Awendo -vs- Nelson O. Onyango** (*supra*), the court held that a pre-emptive right is different from a reversionary interest. The court held that, under **Section 110 (2)** of the Act, the acquiring authority is not necessarily barred from applying the land to other public purposes. The

petitioners did not trace their historical land claim to before the Land Title Ordinance of **1899**, which allowed the British Foreign Jurisdiction Act of **1890** to apply in the territory of Kenya. Kenya became a protectorate in **1895**. From **1891**, the Commissioner for the Protectorate, using the Land Acquisition Act of India (**1894**), appropriated all land on the mainland, situated within one mile of either side of the Kenya-Uganda Railway from Mombasa to Lake Victoria under the Foreign Jurisdiction Act **1890**.

120. The colonial government promulgated the African Land Order in Court of **1897**, empowering the Crown to grant freeholds of the Crown land to white settlers. By virtue of the Crown Land Ordinances **1902**, **1908**, and **1915**, land in Kenya became Crown land, Kenyan Africans became “tenants at will”, even on the land that they occupied, which land could be vacated, sold, or rented to white settlers.

121. The Native Land Ordinance Trust Bill of **1926** reserved certain areas for exclusive use by Africans. The Cater Commission in **1932** fixed the boundaries of the white highlands and removed Africans from there. The **1954** R.J.M. Synnerton Report and the **1955** EA Royal Commission Report formulated a

multi-racial approach to agrarian policy that would demolish barriers to racial land ownership by allowing natives to grow cash crops. The **1956** Native Land Tenure Rules empowered the Minister for African Affairs to put in place machinery for the adjudication and consolidation of those areas of native land.

122. In **1957**, a working party on African Land Tenure was appointed. It led to the Native Land Registration Ordinance **1959**, the Land Control (Native Land Ordinance) which are forerunners of the Registered Land Act **1963** and the Land Control Act **1967**, there was the Resident Native (Squatters) Ordinance **1918**, which compelled of Africans to go and look for work and also enter into definitive agreements, to become permanent farm residents to the white farmers. It allowed them to keep cattle and cultivate designated parts of the farm.

123. Regarding resettlement after independence, the colonial government initiated a settlement plan for the Africanization of the white highlands, on a willing seller, willing buyer basis of land acquisition and redistribution. This was entrenched in the independent constitution. To facilitate this principle,

a Land Development and Settlement Board was established in **1960** to revise and administer a resettlement scheme for all races, through the stabilization of the prices of the European-owned farmlands, and the offering of credit facilities to Africans who wished to purchase farming land in the scheduled areas. The Settlement Fund Trustees were set up to assist in this process through a grant or loan agreement of **£7.5 million** from the United Kingdom, the World Bank, and the Colonial Development Corporation.

124. The programme was handed over to the independent government as the million-acre scheme. It was inaugurated in **mid-1962**. After **1963**, the land purchase functions of the Land Development and Settlement Board (LDSB) were transferred to the Central Board, later to the Settlement Fund Trustees, consisting of the Central Government Minister for Agriculture, Land, and Finance. The government promoted rapid and orderly transfer of ownership of white settlers' farms to Africans and organized co-operatives on each scheme to market settlers' produce and provide extension services. Sessional

Paper **No. 10 of 1965** ensured that the country's wealth would remain in the productive area.

- 125.** Equally, Land Registration and Transfer in the **1964-1970** Development Plan embraced much of the continuity in land management practice, particularly in land registration, for it to remain productive.
- 126.** It is against this historical constitutional and statutory framework that the petition herein, as held in **Dina Management Ltd** (*supra*), that the petitioners had to provide cogent and tangible historical data or evidence, as to the root of their alleged title to the disputed parcels of land. Efforts to raise their historical claims prior to **1963** and soon thereafter are lacking.
- 127.** In **Caroline Awinja Ochieng & Another -vs- Jane Anne Mbithe & Others [2015] eKLR**, the court held that without proof on a balance of probabilities, the court is left in doubt as to the ownership. The history of the disputed parcels of land since pre-colonial times was key.
- 128.** The National Land Commission (Investigator of Historical Land Injustices Registration **2017**), pursuant to **Article 67(2)(e)** of the Constitution,

covers the requisition for information, lodging a claim, register of claims, power to place a restriction, and conduct of hearing, investigations on a claim, conduct of hearings, hearing notice, notice to appear, notification of special needs hearings, disclosure of documents, protection of witnesses, decision of the commission, publication of decision, and appeals.

129. It is unfortunate that the petitioners have no evidence of **Forms NLC (HLI 101, 102, 103, 104, 105, and 106)**. The petitioners, after overlooking this constitutional step, seek appropriate relief for an alleged breach of their constitutional rights and freedoms by the respondents. **Article 22** of the Constitution grants courts the power to grant relief for redress of a denial, violation, or infringement of or threat to a right or fundamental freedom in the Bill of Rights.

130. Constitutional litigation plays a vital role in the protection of rights and the enforcement of the Constitution. Kenyan courts, therefore, have a duty to uphold constitutional rights and freedoms, and to breathe life into constitutional principles. A Constitution does not exist in isolation. As much as the court has a role to uphold the constitution, it

must equally give effect to the integrity of the legal system as a whole. Judicial restraint ensures that the most effective openness to protect and enforce constitutional and statutory, or other rights, whether through constitutional litigation or alternative legal remedies, is safeguarded.

131. In **Geoffrey M. Asanyo & Others -vs- Attorney General, SCOK Petition No. 7 of 2019,** the court cited **Geoffrey M. Asanyo & Others -vs- Attorney General Petition No. 21 of 2015 [2018] eKLR,** that in defending the Constitution of the Kenyan people, the court must always be forward looking, respond to the demands of justice by adjudicating upon issue that tend to bring the interpretation or application of the constitution into question.

132. In **Wamwere & 5 others -vs- Attorney General (Petition 26, 34 & 35 of 2019 (Consolidated)) [2023] KESC 3 (KLR) (27 January 2023) (Judgment),** the court held that the Constitution explicitly envisages redress for historical injustices that occurred during the repressive era generally, and in particular **Article 67(2)(e)**, vests the National Land Commission with the constitutional

mandate to redress for historical land injustices. The court said that in view of **Article 27(1)** of the Constitution on equal protection and equal benefit of the law, all victims of historical injustice must be treated equally and afforded an equal opportunity for redress, and guided by **Hermanus Phillipus Steyn -vs- Giovanni Gnechi-Ruscione 2013 (eKLR)**, all litigants are to be accorded equal rights of access to the court.

- 133.** The court held that the *onus* was on the petitioners to prove a violation of their rights to the required standard; otherwise, there should be no evidential vacuum as held in **Samson Gwen & Others -vs- Kenya Medical Research Institute & Others [2020] eKLR**. As much as the court may take judicial notice under **Sections 59** and **60** of the Evidence Act on forced displacement during colonial times, specific historical accounts relating to the petitioners, to the entitled to the appropriate remedies as envisaged in **Article 22** of the Constitution, are lacking. The reliefs prayed for do not flow from the pleadings and the evidence tendered.

134. Even though, as held in **Chief Land Registrar** (*supra*), what ousts the jurisdiction of the court, from allowing a person to present a petition in relation to a claim founded on historical injustice, and given that the right to a fair hearing and administrative action cannot be emphasized and further that the right to fair hearing of any dispute by an application of law is sacrosanct, I think since the petitioners now admit that the mandate of the National Land Commission has been extended to **2030**, they are still at liberty file a formal historical injustice claim.

135. This court declines to award any other relief as prayed by the petitioners.

136. There will be no orders as to costs.

137. Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **10th** day of **December 2025**.

In the presence of:

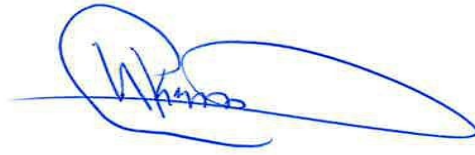
Court Assistant - Dennis

Mukanda holding brief for Manwa for the petitioners
present

Auta for 1st and 2nd respondents present

Khaoya for the 4th respondent present

Chilaka for 3rd, 5th, and 6th respondents absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**

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