



THE JUDICIARY



**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND DIVISION
ELC PETITION NO. E012 OF 2025**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010;
IN THE MATTER OF: ARTICLES 1,2,3,10(1) & (2),19,20,21,22,23,24,40,47,50(1), 60,61,
62,66,67,68,159(1) &(2), 160(1), 162(2) (b),258&259 AND THE FOURTH
SCHEDULE PART 2 OF THE CONSTITUTION OF KENYA,2010**

AND

IN THE MATTER: VIOLATION OF ARTICLES 40 OF THE CONSTITUION

AND

**IN THE MATTER: THE FAIR ADMINSTRATIVE ACTION ACT, CAP 71, LAWS OF
KENYA**

AND

IN THE MATTER: SECTION 12&14 OF THE LAND ACT NO 6 OF 2012

AND

IN THE MATTER: THE LAND (ALLOCATION OF PULIC LAND) REGULATIONS

AND

IN THE MATTER: THE LAND REGISTRATON ACT, 2012

AND

IN THE MATTER: THE NATIONAL LAND COMMISSION ACT, 2012

AND

IN THE MATTER: THE COUNTY GOVERNMENT ACT. 2012

AND

**IN THE MATTER: SECTION 4 AND 13 OF THE ENVIRONMENT AND LAND COURT
ACT NO.12 OF 2012**

AND

IN THE MATTER: THE PHYSICAL AND LAND USE PLANNING ACT

AND

IN THE MATTER: GAZETTE NOTICE NO.7249 OF 30TH MAY 2025

AND

**IN THE MATTER: NOTICE OF INTENTION TO ALLOCATE LAND IN THE STANDARD
NEWSPAPER DATED 3RD SEPTEMBER 2025**

BETWEEN

**ALI HASSAN ABDIRAHMAN.....1ST PETITIONER/APPLICANT
ABDINASIR MOHAMED DEROW.....2ND PETITIONER/APPLICANT**

VERSUS

**THE NATIONAL LAND COMMISSION.....1ST RESPONDENT
THE COUNTY GOVERNMENT OF MANDERA.....2ND RESPONDENT
HOUSING AND URBAN DEVELOPMENT
COUNTY GOVERNMENT OF MANDERA.....3RD RESPONDENT**

RULING

- 1) This ruling is on the notice of motion dated 3-11-2025. The motion which is by the two Petitioners herein is brought under **Articles 22,23,40,47,60(1), 62,162(2) (b)** and

174 of the Constitution, Rules 19 and 23 of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, **Section 3,13 (1,2,3 and 7)** of the Environment and Land Court Act (**Act No. 19 of 2011**), Sections **2,3,4,5,6,7,11,13 and 14** of the **Fair Administration Action Rules 2024** and all other enabling provisions of the law.

2) The motion seeks the following residual orders.

4. That pending the hearing and determination of the petition herewith, this Court be pleased to issue a conservatory order restraining the Respondents, their agents, servants, employees, or assignees from all further implementation of any actions and decisions relating to the intended allocation/regulation of tenure of land situated at Baragwo, Koromey, Headquarter, Central Business District (CBD), High Density(HD), High Density (HD 2) Neboi, Heleshid, Low Density and Environment Protection Programme localities within Mandera County as communicated through the notice of intention to allocate land published in the Wednesday, 3rd September issue of the standard newspaper.

6. That to facilitate the expedient determination of this application and petition substantively, this court be pleased to issue an order of status quo prevailing at the time of filing pending the hearing and determination of the application and petition.

7. That the costs of this application be provided for.

3) The motion is based on forty(40) grounds and is supported by the affidavit of 1st Petitioner Ali Hassan Abdirahman dated 3-11-25. The gist of the grounds and the supporting affidavit is as follows. Firstly, the petitioners are Kenya Citizens and residents of Mandera County and they are aggrieved by and dissatisfied with the intended allocation/regularization of tenure of public land within Mandera County precisely land situated at Baragwo, Koromey, Headquarter, Central Business District(CBD), High Density(HD2), Neboi, Heleshid, Low Density and Environment Protection Programme localities, the suit land.

4) Secondly, the 3rd Respondent submitted a list of parcels for allocation together with the respective beneficiaries to the 1st Respondent for the purposes of issuance of allotment letters. The 1st Respondent published a notice of intention to allocate the suit land in the Standard Newspaper of 3rd September 2025. The said notice purported to inform the general public and interested parties of the 1st Respondent's intention to

allocate land and/or regularize the tenure of 5,317 parcels of the suit land. The said notice invited comments or objections which were to be submitted to the Chairperson of the 1st Respondent within 15 days from the date of publication. In the absence of any valid objections, allocation was to take place after the expiry of 30 days from the date of the publication.

- 5) Thirdly, the Petitioners fault the said notice for failure to provide a defined and clear framework, timeline or procedure indicating how the objections would be received, concluded or determined and this omission renders the process opaque and contrary to the principles of transparency, public participation and fair administrative action guaranteed under **Articles 10** and **47** of the Constitution.

Nonetheless, the Petitioners submitted their respective memoranda of opinions, complaints and objections against the allocation within the 15 days required by the notice. At the time of filing this petition on 3-11-2025, they had not received any response or communication from the 1st Respondent.

The petitioners contend that the notice to allocate the suit land dated 3-9-2025 contravenes the prescribed legal procedures particularly that the 1st Respondent purports to allocate land after the lapse of thirty(30) days without first issuing the requisite notice of action offering public land for allocation pursuant to **Section 14(1)** and **(2)** of the Land Act. Such a notice ought to specify the terms, covenants, conditions and reservations and the method of allocation pursuant to **Section 12(1)** of the Land Act and Regulation 3 of the Land (Allocation of Public Land Regulations).

The Petitioners aver that it is manifestly illegal for the 1st Respondent to issue and publish the notice under **Section 14(4)** of the Land Act without having first published and dispensed with the consequences arising from the first notice and it is irrational for the 1st Respondent to issue and publish one notice on when Section 14 envisions two(2) distinct notices.

- 6) Fourthly, the marginalized communities and groups residing within the vicinity of the public land that is being allocated are yet to be notified of the allocations in line with **Section 14(5) (a)** of the **Land Act**. The notice did not include the value of the land or describe each parcel with particularity.

Scrutiny of the list of beneficiary allocation revealed the following glaring discrepancies that clearly indicate the intended exercise to be fundamentally flawed.

One, residential plots in Medium Density (MD), High Density (HD), Residential and CBD as per approved land use plan being field plan Nos. 981-1000 have been charged into Green Buffer Zone MD/P/002, Municipal Market-HD/P/008 in the survey plan. In the same vein, plots Nos 987-993 had been charged from HD to Municipal market HD/P/008. This was also the case in CBD parcels numbers 405-436, HD plots 971-974, Jua Kali Centre and other areas.

Two, the Land use Development Plan for Mandera Township was approved by the Mandera County Assembly on 7-2-2022. Instead of relying on this plan, the current County Administration developed its own unapproved land use plan which it purported to blend/integrate with the approved plan without involving the public. This has resulted in discrepancies and confusion as a result of which several parcels of land forwarded to the 1st Respondent for allocation do not fall within the approved Land use Development Plan rendering the process irregular and illegal.

Three, plot No. 678 in Neboi which was allocated to one Mohamed Ali Isaack is now being allocated to one Yunis Ali Dakat who is a high-ranking officer in National Treasury Department in Mandera County. The owner of the said parcel submitted his objection against the said allocation to the 1st Respondent vide a letter dated 12-9-20224 which has not elicited any response to date. Four, Block 10 which is EPP-Block 10 was exclusively allocated to a single family which is that of the current Governor even though the area is for environment protection purposes. The absence of public participation denied the Mandera residents an opportunity to raise this complaint.

- 7) Fifthly, the Petitioners decry that there is misleading information in the first Respondents notice to allocate land because in the survey plans(FRS), there is no such block as High Density (HD2) while in the notice to allocate land, there are two HDs being HD1 and HD2 which is proof that the 1st Respondent did not scrutinize the survey plans and allocations presented to it by the third Respondent. There is therefore genuine fear that parcels that have been excluded for allocation will be sneaked in under the HD2 with non existent beneficiaries.

In addition to the above, the Petitioners contend that there is fraudulent grabbing of part of the public land which the 1st Respondent intends to allocate. For instance the 3rd Respondent, one Salah Alio curved 8.773 hectares from land in Low Density Area set aside for a university through a proxy and submitted to the 1st Respondent as file

number NB6 with parcel No.98, FR No. 599/74 Block 9 under the name Buyut Limited. However, the 3rd Respondent changed the said name to Seville Owners Management Company now with file number to NB6 Block 9 and parcel No. 6 with an area of 8.571 hectares under Neboi area. It is noteworthy that neither Buyut Limited nor Seville Owners Management is in the approved County land in use plan. The 1st Respondent entertains such illegality and still intends to allocate the land.

In addition to the above, the 3rd Respondent changed the status of public land belonging to Manderu Teachers College, subdivided it and created 18 new plots being numbers Sh 195- Sh 212 which are now being allocated to select private individual and which have been submitted to the 1st Respondent for processing of allotment letters. Finally on this score, even though the Manderu Teachers College was relocated to a different place, public assets remain in the old site. The purported allocation of the old site of the Teachers college has taken place without the involvement of the members of the public. It amounts to unlawful conversion of public property to private ownership without due process contrary to **Article 62(4)** of the Constitution, the Land Act and the Public Procurement and Assets Disposal Act, 2015.

- 8) Sixthly, there is lack of public participation and transparency during the verification of parcels and the beneficiaries list. The Respondents failed to employ alternative, practical and accessible means of communication such as barazas, local radio announcements notices in local administrative offices which would have ensured that all the residents were duly informed. When the officials of the 1st Respondent visited Manderu County for four (4) days they only met with the County Land Officers led by the 3rd Respondent and 2nd Respondent failed to hold any consultative meetings with the members of the public and no single resident was engaged.

The Petitioners allege that there are discriminatory practices in the intended allocation because during the presidential visit, the Governor of Manderu announced that 9,000 parcels were ready for titling whereas only 5317 parcels were submitted leaving out 3,683 parcels which are in the approved land use, survey and allocation plans. For the above and other reasons, the Petitioners pray that prayers 4,6 and 7 of the notice of motion dated 3-11-2025 be allowed.

- 9) The motion dated 3-11-2025 is opposed by the 1st Respondent and its director legal affairs and Alternative Justice Systems, Brial Ikol has sworn a replying affidavit dated
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5-12-2025 in which he replies as follows. One, the 1st Respondent is an independent commission established under the Constitution of Kenya and the National Land Commission Act with the mandate of managing public land on behalf of the national and County governments. Two, under regulation 32 of “The Land (Allocation of Public Land) Regulations 2017 gazetted under legal notice No. 284 of 2017, the 1st Respondent is mandated to regularize the existing allocations in urban areas by the defunct local authorities on request by the County Governments pursuant to **Section 162(1)** of the Land Act. Three, in exercise of the above mentioned mandate, the 1st Respondent notified the public of the regularization exercise and requested for objections which were submitted and a public hearing conducted. Four, the Applicants were duly represented at the public hearing sessions and the same issues raised in the instant application were canvassed and the 1st Respondent notified the several public and all interested parties that there were no new allocations were being conducted and that the process was purely for regularization of tenure of already allocated parcels. Finally, the 1st Respondent did not act arbitrarily, illegally or unconstitutionally as alleged by the petitioners and the application should be dismissed.

- 10) In opposing the motion, the 2nd and 3rd Respondents have filed replying and supplementary affidavits sworn by Salah Maalim Alio and dated 3-12-2025 and 5-12-2025 respectively. He states as follows. Firstly, vide legal notice No. 233 of 30-10-2007, the Minister for Local Government gazetted the Township of Mandera and defined its boundaries vide Plan No. 541/111. Secondly, vide gazette notice No. 10407 of 12-10-2018, the then Governor of Mandera conferred the status of Municipality to Mandera town in line with Section 9(1) of the urban and cities Act (Cap 275). The ongoing process of regularization/allotment of 5317 parcels of land by the 1st Respondent relates to the localities of Barwago, Koromey, Headquarters Central Business District (CBD) High Density 1(HD1) and High Density 2(HD 2), Neboi, Heleshid, Low Density and Environment Protection Programme (EPP) all of which are within the present day Municipality of Mandera. Thirdly, the Petitioners annexure AHA-3 shows that the alleged objections by the petitioners, though addressed to the 1st Respondent, were received at the State Department for Lands and Physical Planning and the names of the Petitioners do not appear anywhere as objectors. The Petitioners

did not therefore serve the 1st Respondent and they did not exhaust all the available remedies before filing this petition. All the objections received by the 1st Respondent were heard at a public forum in Mandera town on 4th and 5th November 2025. Fourthly, the 5317 parcels are individual specific plots physically occupied, possessed and/or owned by private citizens and institutions resident within Mandera town having been previously allocated by the defunct Mandera town Council. Section 12 of the Land Act and the 2017 have no application to the process being undertaken because not all the land in Mandera township is affected. As for Mandera Teacher Training College it is not affected by the exercise. The exercise has the support of EPP as per its letter dated 10-9-2025 as well as that of Mandera mosque and Madarassa development forum. Finally, the 1st Respondent has issued 5, 289 letters of allotment as per the letter dated 27-11-2025. For the above and other reasons, the 2nd and 3rd Respondents pray that the current motion be dismissed.

- 11) Counsel for the 2nd and 3rd Respondents in their written submissions dated 15-12-2025 identified two issues for determination.

(a) Whether the Petitioners application for conservatory orders is merited.

(b) Who should bear the costs.

The Petitioner's counsel in his submissions filed earlier and dated 9-12-2025 had also identified the same singular issue as the one calling for determination.

- 12) I have carefully considered the motion in its including the grounds, the supporting affidavit by the petitioners, the replying and supplementary affidavits by the Respondents and the written submissions by learned counsel for the parties. I am in agreement with learned Counsel for all the parties that the single issue for determination is whether the motion dated 3-11-2025 meets the threshold for the grant of conservatory orders sought in prayers 4, 6 and 7.

- 13) I find that the motion dated 3-11-2025 meets the threshold for the grant of the orders sought in prayers 4 and prayer 6 for the following reasons.

Firstly, there is prima facie evidence that suit plots are public land. I say that they are public land because of the involvement of the 1st Respondent in the contested exercise. Under **Article 67(2) (a)** of the Constitution of Kenya, it is provided as follows.

(2) “ The functions of the National Land Commission are

(a) to manage public land on behalf of the national and county governments.”

This involvement of the 1st Respondent in the exercise is proof that the deposition by the 3rd Respondent at paragraph 15 of the affidavit dated 3-12-2025 to the effect that the suit parcels are owned by private citizens and institutions resident in Mandera town may not be correct. It could well be that the suit plots were allocated in the past but the fact that the 1st Respondent is still involved means that the allocation is incomplete.

- 14) Secondly, the notice published in the Standard newspaper of Wednesday 3rd September 2025 clearly states “Notice of Intention to Allocate Land”. The notice expressly mentions Section 14 of the Land Act. It did not mention regulation 32 of The Land (Allocation of Public Land) Regulations 2017. If the notice of 3-9-2025, was issued in error as alluded to by the Counsel for the 2nd and 3rd Respondents while addressing the Court on 8-12-2025, then there should have been a correction of the error through a similar publication expressly stating that the exercise was regularization and not allocation. With the notice as it is, it tells the whole world the exercise that the 1st Respondent was undertaking was allocation in accordance with Section 14 of the Land Act.
- 15) Thirdly, there are serious allegations of unlawful acquisition of land belonging to Mandera Teacher Training College; land previously allocated to one Mohammed AG. Isaack being allocated to someone else; an enclave being created for one family from public land among other irregularities. Further the above, there are allegations of discrepancies between the land use plans for Mandera Municipality approved in the year 2022 and the survey and Allocation Plans for many of the suit plots due for the current regularization. The replying affidavits by the Respondents have not addressed some of the allegations at all.
- 16) Amidst all the above noted shortcomings, it would not be proper to let the exercise proceed before hearing the petition which raises triable issues as well as prima facie evidence of violations of the Constitution and the Land Act.

17) Consequently and for the reasons given, I allow the motion dated 3-11-2025 and order as follows.

- (a) A conservatory order is hereby issued restraining the Respondents, their agents, servants, employees or assignees from all further implementation of any actions and decisions relating to the intended allocation/regularization of tenure of land situated at Baragwo, Koromey, Headquarter, Central Business District(CBD) High Density (HD), High Density(HD 2) Neboi, Heleshid, Low Density and Environmental protection Programme localities within Mandera County as communicated through the Notice of Intention to Allocate published in the Wednesday, 3rd September 2025 issue of the Standard Newspaper pending the hearing and determination of this petition.
- (b) An order of status quo prevailing on 3-11-2025 when this petition was filed.
- (c) Costs in the cause.
- (d) The orders herein to apply in ELC PET/E004 of 2025 of Noor Birik Mohamed and Abdiaziz Airl Dero vs. The National Land Commission and 2 Others.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 19th day of December, 2025.

M.N. GICHERU
JUDGE.

Delivered online in the presence of :-

Mwangi Njonjo - Court Assistant
Petitioner's Counsel – Mr Saka
1st Respondent's Counsel –
2nd and 3rd Respondents Counsel – Mr Wethow