



Dapash v Marriot International INC & 4 others (Environment and Land Petition E003 of 2025) [2025] KEELC 18462 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18462 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND PETITION E003 OF 2025
LN GACHERU, J
DECEMBER 18, 2025**

BETWEEN

HON.DR JOEL MEITAMEI OLOL DAPASH PETITIONER

AND

MARRIOT INTERNATIONAL INC 1ST RESPONDENT

RITZ-CARLTON HOTEL COMPANY 2ND RESPONDENT

LAZIZI MARA LIMITED 3RD RESPONDENT

COUNTY GOVERNMENT OF NAROK 4TH RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 5TH RESPONDENT

RULING

1. The Petitioner herein Dr Joel Meitamei Olol Dapash, filed this Constitutional Petition dated 8th August 2025, against the Respondents herein and alleged violations of various Articles of *the Constitution*, among them articles 10, 11, 19, 21, 40, 42, 56, 60 and 69.
2. He alleged that the petition raises fundamental moral, spiritual, constitutional and legal questions about the construction of massive luxury hotel within Maasai Mara ecosystem on the bank of the Sand River Wildebeests migration and crossing area.
3. Further, that the petition raises concerns about the constitutionality and legality of such a commercial construction in an ecologically significant part of the national reserve, which is a natural habitat to large population of lions, Cheetahs, elephants African buffalos and Rhinos, which animals are not found in most places on earth.



4. He contended that the construction of the luxury hotel was an outright violation of Article 69 of *the Constitution*, which places an obligation on the state to ensure sustainable exploitation, utilization, management and conservation of the environment and the natural resources including wildlife.
5. The petitioner also contended that the construction of the said luxury hotel had far reaching implications on the culture of the Maasai community, whose ancestral land has been used for the said construction, without due process, and without their public participation as enshrined in Articles 11, 69, 118, 196 and 232, of *the Constitution*, despite the glaring adverse impact the construction has on the Maasai Community, and their conservation to land.
6. Ultimately, the Petitioner urged the court to make a declaration that the construction of the said Luxury hotel and Safari Camp by the Respondents was in contraventions of Articles 10, 42, 56, 60, 69, and 70 of *the Constitution*. He also sought for an order that the court do compel the Respondents to immediately bring down all the buildings, structures and constructions constituting the Ritz-Carlton Maasai Mara Safari Camp, erected within Maasai Mara National Reserve, among other prayers.
7. Simultaneous to the Petition, the petitioner sought for Conservatory orders to restrain the opening of the said Luxury hotel, and an order to suspend any and/or all activities including the advertisement, publication on the schedule re-opening of the said hotel. Further, the petitioner sought for an order of empanelling of uneven bench of judges not less than three to determine the matter under Article 165(4) of *the Constitution*.
8. The petition and the Notice of Motion Application were vehemently opposed by the 3rd, 4th and 5TH Respondents herein.
9. The 3rd Respondent, Lazizi Mara Ltd, averred that though they were not served with the petition, they learnt about the petition and the proceeding herein through the social media posts, and it also contended that it is a reputable company, which operates over 150 luxury hotel chains worldwide, with its presence in over 9000 locations, in 30 countries, and in Kenya, they operate four hotels with capacity of 700 Rooms, and has employed about 1500 Kenyans , who remit taxes to the government.
10. It further contended that as a reputable Company running several local and international luxury hotels, it carried out due diligence before acquiring and constructing the hotel in question, and obtained all the approvals from the government agencies, and this petition is a misrepresentation of facts.
11. Further, that by publishing false allegations that the 1st and 3rd Respondents have unlawfully constructed the said luxury hotel, and are operating a tourism establishment without approvals and calling for its closure, and all other businesses operated by the 3rd Respondent within the Safari Camp, the petitioner has arbitrarily interfered with, and threatened the 3rd Respondent's right to property, under Article 40 of *the Constitution*, and has undermined the 3rd Respondent's legitimate expectation to enjoy peaceful and unfettered use of its investment.
12. The 3rd Respondent filed a Cross-Petition dated 10th November 2025, and prayed for several orders against the petitioner, among them an order compelling the petitioner to publish an unconditional and unequivocal apology to the Respondents on a prominent page of the daily newspaper of nationwide circulation.
13. The 5th Respondent through David Ongare, the Director of NEMA, opposed the petition and averred that in regard to the current petition, it requested for relevant comments from the lead agencies, and an inspection team of the 5th Respondent visited the site on 30th April 2024, to verify the appropriateness of the proposed site, and that appropriate public participation was carried out, with the affected persons to assist in decision making.



14. The deponent further averred that this petition and application are an afterthought, since the 3rd Respondent holds a lawful obtained Environmental Impact Assessment Licence No NEMA/EIA/PSL/32348, issued on 14th May 2024.
15. Consequently, the 5th Respondent opposed the petition and urged the court to dismiss it for lack of merit.
16. The 4th Respondent, Narok County Government, opposed the Petition through the Replying Affidavit of John Mayian Tuya, the County Secretary of the 4th Respondent, who challenged the jurisdiction of this court, and also averred that the petitioner did not provide any evidence to show how the construction of the said Safari Camp has affected the peaceful migration of the wildebeests, which occur all year round.
17. It was his averment that the petition is frivolous, vexatious, and an abuse of the court process, and he urged the court to dismiss it with costs, since the order sought to stop the operation of the Safari Camp or the luxury hotel has been overtaken by events, as the camp is now in operation.
18. The 4th Respondent also filed a Notice of Preliminary Objection, which challenges the jurisdiction of this court to hear and determines the petition.
19. The matter came up before this court severally, and there were allegations that the petitioner had not served the 1st and 2nd Respondents with the instant petition and the Notice of Motion Application.
20. Further, the petitioner was accused of prosecuting the petition through social media posts, and the 3rd Respondent filed an application to restrain further publication or prosecution of the petition through social media posts and publications. Several annexures were attached to the said application.
21. On 10th November 2025, the court did encourage the petitioner to avail the available evidence through the right channel, by availing the said evidence in court for the sake of preventing prejudice against any party, and for purposes of fair hearing.
22. However, the 3rd Respondent further alleged, that the petitioner continued with the prosecution of this petition through the social media posts and publications, despite not having served the 1st and 2nd Respondents with the petition in question. The 2nd Respondent attached more documentary evidence to prove its allegations, of publication of the case through social medial posts, and subsequently filed an application for contempt of court orders against the petitioner.
23. The court gave directions on the prosecution of the application for contempt, which was slotted for hearing on 17th December 2025. Prior to 17th December 2025, East Africa Wildlife Society (EAWLS), through Bond Advocates LLP, filed an application dated 7th December 2025, and sought to be joined in the suit as in Interested Party, on allegation that this petition is a public interest litigation, and as an NGO, which is mandated to protect biodiversity, promote sustainable management of natural resources, and combat environment degradation, then its presence in this petition is necessary.
24. The Law Society of Kenya, through Mr Gichohi Waweru, alleged that it filed its Application dated 16th December 2025, which sought to be joined in the suit as an Interested party, on allegation that this being a public interest litigation, then its presence is also necessary.
25. The Law Firm of Iseme Kamau & Maema Advocates, also filed an Application dated 16th December 2025, on behalf of the 1st and 2nd Respondents and sought for striking of the 1st and 2nd Respondents from the proceedings on allegations that they have not been served with the petition and other



pleadings, and they only learnt about these proceedings through social media publications and thus they entered appearance under protest.

26. Further, that the 1st and 2nd Respondents are neither owners nor operators of the Safari Camp, and have no involvement in the acquisition, construction, licensing or operation of the Safari Camp. In particular, the 1st and 2nd Respondents were not responsible for obtaining permits nor were they involved in the process of conducting an environmental or social impact assessment related to Safari Camp.
27. On 16th December 2025, the petitioner through his counsels filed a Notice of withdrawal of the entire suit, which was instituted vide the petition herein dated 8th August 2025, with no orders as to costs. The Notice of withdrawal was premised to be brought under Order 25 rule 1 of the Civil Procedure Rules 2010, which provides; Withdrawal by plaintiff :Order 25, rule 1,

“At any time before the setting down of the suit for hearing, the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.”
28. From the above provisions of law, it is clear that a withdraw of any claim is not a defence to any subsequent action.
29. However, this is a Constitution petition, which is not governed by the provisions of the Civil Procedure Act and Rules, but by the Rules contained in Legal Notice No.17: THE CONSTITUTIONAL OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013) famously known as Mutunga Rules.
30. Though the petitioner cited the wrong provisions of law, this court will consider the intention of the petitioner is to have the entire petition withdrawn, with no orders as to costs. The court will be guided by Article 159(2)(d) of the Constitution, which obligates the court to decide the issues before it without undue regard to technicalities.
31. Under the Mutunga Rules, the issue of withdrawal and discontinuance of a petition is provided for in Rule 27, which provides;
Withdrawal or discontinuance
 - (1) The petitioner may—
 - (a) on notice to the court and to the respondent, apply to withdraw the petition; or
 - (b) with the leave of the court, discontinue the proceedings.
 - (2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision.
 - (3) Despite sub rule (2), the Court may, for reasons to be recorded, proceed with the hearing of a case petition in spite of the wish of the petitioner to withdraw or discontinue the proceedings.
32. In the above Rule, it is evident that rule 27(1) allows a petitioner to apply to withdraw its petition by notifying the court and the Respondent, or to discontinue proceedings with the court's permission; further rule 27(2), provides that the court will decide whether to allow the withdrawal or not after



- hearing the parties and also determines the legal consequences of the decision; and rule 27(3), allows the court, with recorded reasons, to continue hearing a petition even if the petitioner wishes to withdraw or discontinue.
33. Therefore, it is trite that withdrawing a Constitutional Petition is not automatic upon filing a notice of such withdrawal, as such withdrawal requires court's approval, and consideration of all parties, especially due to the public interest involved. Such practice is intended to prevent misuse of the court process, and also ensures that important constitutional matters can still be decided on their merits.
 34. When this matter came for hearing on 17th December 2025, Mr Adier, Counsel for the petitioner informed the court that he had received instructions from the petitioner to withdraw the entire petition, the petitioner having had a conversation with the parties, and was satisfied that the concerns raised in his petition had been addressed, and thus he wished to withdraw the entire petition. He submitted that the Notice of Withdrawal takes precedence, and he wished to have the matter marked as withdrawn.
 35. Mr Munyu, Counsel for 1st and 2nd Respondents, who had come on record under protest, and who had filed an application to have the petition struck out, did not have an objection to the withdrawal of the entire petition.
 36. Mr Kiragu Kimani, Counsel for the 3rd Respondent vehemently opposed the withdrawal of the entire petition, on the ground that new parties had sought to be joined in the petition on allegation that this is a public interest litigation, and that under Rule 27 of the Mutunga Rules, the court has discretion to decide whether the petition should be withdrawn or continue, and thus the court is in control, and has the ultimate say, on the withdrawal.
 37. Mr Kiragu further submitted that this matter has been debated publicly in the social media posts, Local and international media, and the 3rd Respondent has been vilified locally and internationally, and it is the wish of the 3rd Respondent to continue with the petition and application for conservatory orders, so that at the end of it, the court may either vilify(condemn) it for its action or vindicate(exonerate) it, because in the eyes of the national and international populace, the 3rd Respondent has constructed the luxury hotel within the Maasai Mara Game reserve without approvals or disregard of wildlife conservation.
 38. Therefore, the 3rd Respondent opposed the Notice of withdrawal, as it wished to be either vindicated, condemned and/ or otherwise, as the allegations against it are all over the media.
 39. Mr Maina Ngaruiya for the 4th Respondent did not have any objection to the withdrawal of the entire Petition, while submitting that in the event that similar suits are filed in future, the doctrine of re-judicata will cater for that.
 40. The office of NEMA, was not represented, and there was no position taken by the 5th Respondent.
 41. Mr Ochieng Duddley for the intended Interested party, (EAWLS), opposed the withdrawal of the entire petition on the ground that this is a public interest litigation, which cannot be withdrawn at the whims or will of the petitioner, given the averments and concerns raised in the said petition. He urged the court to make a finding on whether the petitioner is abusing the process of court or not.
 42. Mr Gichohi for the Law Society of Kenya, which intends to be joined as an Interested party also opposed the withdrawal of the entire petition, and submitted that this being a public interest litigation, the Law Society of Kenya, was interested in prosecuting it to the end.



43. In rejoinder, Mr Adier for the Petitioner submitted that the petitioner approached the court with genuine concerns, which have been addressed, and he is satisfied with the way the concerns have been addressed, and would not wish to continue with the petition. He denied that his concerns amounted to an abuse of the court process, and that he also submitted that it was not in good faith to have any party defeating the Notice of withdrawal.
44. Mr Adier further submitted that if the other parties are interested, they can file their own petition, but allow the petitioner to withdraw the entire petition herein.
45. Mr Kiragu Kimani, in rejoinder submitted that his client, the 3rd Respondent has been in news and scrutiny for last 4 or 6 months, and it is ready to face the music, by either been condemned for its actions or vindicated, through calling of evidence.
46. Mr Ngaruiya for the 4th Respondent, opposed the joinder of the interested parties, but Mr Gichohi submitted that under Rule 7(1) &(2) of the Mutunga Rules, an interested party, may make an oral or written application to be joined as interested party; further the Court may on its own motion join any interested party to the proceedings before it.
47. This court will address the issue of joinder of Interested parties depending on the outcome of this application on the Notice to withdraw or not to withdraw the entire petition.
48. The court has considered the Notice of withdraw, which Notice has been opposed by the 3rd Respondent and the Intended Interested parties, and it is evident that though the said Notice was anchored under Order 25 rule 1 of the Civil Procedure Rules, instead of Rule 27 of the Mutunga Rules, the court will still consider the said Notice as provided by Article 159(2)(d) of *the Constitution*, which states;
- 2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
- (d) justice shall be administered without undue regard to procedural technicalities;
49. Rule 27 of the Mutunga Rules grants the petitioner discretion to withdrawal a petition, upon giving notice to court and the respondents. Such withdrawal is done with the leave of court, and is not automatic. With reasons, the court may disallow the withdrawal.
50. Mr Kiragu Kimani, for the 3rd Respondent submitted that despite having complied with all the requirements before constructions of the luxury Safari Camp, the 3rd Respondent has been in the news nationally and internationally painted on bad light, and would wish to proceed with the matter to its logical conclusion, so that, at the end of it all, it is either vilified and/or condemned, or vindicated. The 3rd Respondent is ready to face the music.
51. The intended 1st and 2nd Interested parties submitted that this being a public interest litigation, and given the concerns raised in the petition, the said concerns cannot be wished away through withdraw of the entire petition.
52. Given that Rule 27(3) of the Mutunga rules grants the court discretion to proceed with the petition despite the wish by the petitioner to withdraw; then under what circumstances can the court direct the petition to proceed despite such Notice of withdrawal having been filed?



53. The concerns raised by the petitioner herein which involved blocking of the wildebeests migration are indeed concerns or matters of public interest , and as submitted by Mr Kiragu Kimani, for 3rd Respondent, the said concerns have created national and international interests.
54. Before allowing withdrawal of such public interest matter, the court must be satisfied that, there will be no prejudice occasioned to any party, or to the public interest. Therefore, such withdrawal should not harm the public cause initially presented, or cause any prejudice to any party.
55. It was the submissions of the 3rd Respondent that it has been vilified and condemned both locally and internationally, and withdrawing the petition without any decision on whether the 3rd Respondent's actions are in violation of any law or not, would be prejudicial to the 3rd Respondent's reputation and business.
56. Secondly, the court should consider whether withdrawal is made in good faith. The petitioner has alleged that he is satisfied that the concerns raised by himself in his petition have been satisfied. In the said petition, the petitioner had alleged that he brought the petition on behalf of the Maasai community, whose ancestral land is affected by the construction of the luxury Safari camp. How have these concerns that were raised in the petition been satisfied?
57. The court must also be satisfied that there is no abuse of the court process: The petition herein was filed in August 2025, and there are allegations that the 1st and 2nd Respondents, were never served with the said petition, and that they only learnt of the proceedings through the social media posts. Did the petitioner file the instant petition with intention of prosecuting it to the end, or just to bring out the allegations through social media posts and other public news.
58. This court finds and holds that given that the petition herein was filed on 8th August 2025, which brought out grave concerns on the blocking of the migratory corridor of wildebeests within the Maasai Mara Game reserve, and other wild life, and thus it is a public interest litigation, the court will not allow its withdrawal as per the Notice of Withdrawal dated 16th December 2025, which is anchored under Order 25 of the Civil Procedure Rules, instead of Rule 27 of the Mutunga rules, though that is not the reason for ordering the petition to proceed for hearing.
59. This court is persuaded by the findings and holdings of the Court in the Const Petition No.E017 of 2022;Ngoro Kayuga &Others vs Mike Sonko Mbuvi Gideon & Others, where the court held;
- “ A casual reading of the instant Petition leaves no doubt that it raises public interest issues and therefore the plea to withdraw must be weighed against the tests laid down in Peter Makau Musyoka & 19 others (Suing on their own behalf and on behalf of the Mui Coal Basin Local Community) v Permanent Secretary, Ministry of Energy & 14 others(supra) which are: -
- a. That the public interest initially presented in the case will not suffer as a result of the withdrawal.
 - b. That is there is no abuse of the process of the law.
 - c. That the case at hand is not an exercise in futility
- The applicant did not address the above tests. It's my finding that the reasons cited for the withdrawal do not surmount the above tests. On this ground alone, the application collapses.”
60. In a nutshell, the court declines to allow the Notice of withdrawal and directs as follows;



- i. Since the matter has been heavily discussed both in the social and print media, and has mutated to a public interest litigation, let the same proceed for hearing and be determined on merit,
- ii. Under rule 7(1)&(2) of the Mutunga Rules 2013, any interested party can make an oral application for joinder as an interested party, and the court on its own motion can join the interested party in the proceedings. Consequently, this court uses its discretion as provided in Rule 7(2) of the Mutunga rules 2013, and join the 1st and 2nd Interested Parties to this proceedings.
- iii. There is an application dated 8th August 2025, for conservatory orders and empanelling of an uneven bench of judges, to hear and determine this matter. For that reason, the court directs the said Application be heard expeditiously, through written submissions. The court will give timelines for filing such written submissions.
- iv. Given that this matter has been in public domain, and in social media as per the annexures attached by the 3rd Respondent, and also in the print media both locally and internationally as per the submissions of Mr Kiragu Kimani, for 3rd Respondent, the court urges the 3rd Respondent to abandon the application for contempt of Court orders, and instead concentrate on the substantive suit.
- v. The court will set timelines for filing of written submissions on the pending application, which entails a prayer for empanelling a bench of uneven number of judges
It is so directed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DECEMBER 2025

L. GACHERU

JUDGE

Delivered virtually in the presence of;

Elijah Meyoki – Court Assistant

Mr Adier, Shago and Opere for the Petitioner

Mr Martin Munyu, Ms Weru for 1st and 2nd Respondents

Ms Lyona H/B for Mr Maina Ngaruiya for the 4th Respondent

Mr Kiragu Kimani & Ezra Makori for 3rd Respondent

Mr Amos Shiundu, & Ochieng Duddley for Proposed Interested Party.

Mr Gichohi Waweru for Law Society of Kenya, 2nd Interested Party.

Mr Kiragu, Wambugu & Wangeshi for a Proposed Petitioner.

L. GACHERU

JUDGE

