

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET
JUDICIAL REVIEW CASE NO. E001 OF 2025
IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW ORDERS OF MANDAMUS
IN THE MATTER OF ARTICLES
2,3,10,19,20,22,23,24,25,27,28,29,40,43,47,48,50,56,60
,63,67 AND 259 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF THE NATIONAL LAND COMMISSION
ACT
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION
ACT, 2015
AND
IN THE MATTER OF THE CIVIL PROCEDURE RULES, 2010
BETWEEN
REPUBLIC..... 1ST
RESPONDENT

-VERSUS-

THE KENYA FOREST SERVICE.....1ST

RESPONDENT

THE DIRECTOR OF SURVEY KENYA.....2ND

RESPONDENT

NANDI COUNTY GOVERNMENT.....3RD

RESPONDENT

AND

THE NATIONAL LAND

COMMISSION.....INTERESTED PARTY

AND

JOHN AMUSIBWA.....1ST EXPARTE

APPLICANT

JOHN SONGOK.....2ND EXPARTE

APPLICANT

DAVID KIRUI.....3RD EXPARTE

APPLICANT

PHAMANES KHASIALA.....4TH EXPARTE

APPLICANT

**LABAN LUNYASI.....5TH EXPARTE
APPLICANT**

**CHARLES SHIRULI.....6TH EXPARTE
APPLICANT**

**HENRY KIBIWOT.....7TH EXPARTE
APPLICANT**

(SUING ON BEHALF OF THE NGEREK COMMUNITY)

JUDGMENT

1. The Ex parte Applicants (the Applicants herein) through Adoli and Company Advocates commenced an application by way of a Notice of Motion dated 14th March 2025 seeking the following orders;
 - a) That the Honourable Court be pleased to grant the Applicants an order of mandamus compelling the 1st Respondent to act and/or implement the recommendation of the National Land Commission (The Interested Party herein) delivered on the 7th of February, 2-19 and gazzeted on 1st March 2019 vide Gazette Notice number 1995 requiring the Kenya Forest Service to facilitate the degazettement of the excised area from Nandi South

Forest to enable issuance of title deeds to Ngerek and Koibem communities on land for land basis.

b) That the Honourable Court be pleased to grant the Applicants an order of mandamus compelling the 2nd and 3rd Respondents to act and/or implement the recommendation of the interested party delivered on the 7th of February 2019 and gazzeted on 1st March 2019 vide gazette notice number 1995 requiring the Director of Survey together with the Nandi County Government to expedite the excision of the forest area that Kenya Forest Service excised from Nandi South Forest and hand over to the Ngerek and Koibem communities.

c) That costs of this application be provided for.

2. The foundation of the application is the statutory statement as well as the verifying affidavit of twelve paragraphs sworn on even date by the 1st Applicant and copies of the accompanying documents namely authority to sue and plead on behalf of the 244 members of Ngerek Community **(JA-1)**, the interested party's determination dated 7th February 2019 **(JA-2)** and Kenya Gazette Notice number 1995 of 1st March 2019 **(JA-3)** herein.

3. Briefly, the Applicants' lamentation is that in the year 1996, the Ngerek case, a historical injustice case was commenced when the Government of Kenya earmarked Ngerek and Koiben villages as water catchment areas and gazzeted the land occupied by Ngerek Community as such an area. Thereafter, the 1st Respondent launched an exchange program known as Chepkumia Exchange Programme Settlement Scheme that envisioned the Ngerek Community give up their titles in Chepkumia area for an alternative land in Yala and Kapkangani area in Nandi County. However, the alternative land was never handed over to the claimants, Ngerek and Koibem Communities who approached the interested party which is constitutionally mandated to investigate historical land injustices and recommend appropriate redress. The 1st Interested Party heard and determined the matter as per **JA-2** which the Respondents refused to act on. So, the Applicants seek to enforce by the present application.
4. The 3rd Respondent through the Office of the County Attorney, vehemently opposed the application by the replying affidavit of seventeen paragraphs sworn on 16th October 2025 by Jonah Biwott, Chief Officer in charge of

the Department of Lands, Physical Planning, Housing, Environment, Water resources and Climate Change for the 3rd Respondent and prayed for dismissal of the application with costs. He averred, inter alia, that the interested party's recommendations **(JA 2)** affect both the Ngerek and Koibem communities. That the Applicants seek reliefs which extend to the Koibem community who are not represented in these proceedings hence, the Applicants lack locus standi to seek orders on behalf of the Koibem community in the application. That the Koibem Community have petition No. 69 of 2023 before the Thirteen National Assembly where the 3rd Respondent was given an opportunity to make submissions on the matter before the public petitions committee on 23rd September 2025 as disclosed in the annexed to the said affidavit is a letter of invitation to the public petition committee hearing **(JB-1)** herein.

5. Further, the 3rd Respondent averred that the applicants seek orders to compel the Respondents to ensure the implementation of the recommendations **(JA-2)** to degazette a public forest (Nandi South Forest) which process is purely regulated by **section 34 of the Forest**

Conservation and Management Act, 2016 which is then exclusive jurisdiction of Parliament. That the orders sought if granted, would amount to usurping the Legislative and Executive functions. That therefore, the application is misconceived, legally untenable and an abuse of the court process.

6. There are no responses to the application from the 1st, 2nd and 4th Respondents as well as the Interested Party duly served herein. The 4th Respondent only filed a memorandum of appearance dated 21st March 2025.
7. The application was heard by way of written submissions further to directions of the court given on 5th May 2025.
8. In their submissions dated 3rd November 2025, the Applicants set out the background including the orders sought in the application which is seeking to enforce the recommendations of the Interested Party herein made on the 7th February 2019 and that the application is only opposed by the 3rd Respondent despite service upon all the parties. It was submitted in part that the Interested Party is established under Article 67 of the Constitution of Kenya 2010 to, inter alia, initiate investigations on its own initiative or on a complaint into present or historical

injustices and recommend appropriate redress. That the Ngerek case is a historical land injustice having commenced in the year 1996 and the 1st Respondent launched an exchange program referred to Chepkumia Exchange Programme Settlement Scheme that would see the said community give up their titles in Chepkumia area for an alternative land in Yala and Kapkangani area in Nandi County. That the 1st Respondent participated in the hearing as per the determination **(JA-2)** annexed to the Applicants' verifying affidavit and that the 1st Respondent agrees with the Applicants' case.

9. To buttress the submissions, counsel for the Applicants relied on Article 67 (2) (e) of the Constitution of Kenya 2010 on the functions of the interested party, section 15 (2) of **the National Land Commission Act** as regards the meaning of a historical land injustice as well as Section 133 C (1) & (2) of the Land Acquisition Act on the jurisdiction of the Land Acquisition Tribunal. Further, Counsel cited the case of **Republic-vs-Chief Officer, Department of Finance, Migori County & 2 others; Barnabas (Ex parte applicant (Judicial Review Miscellaneous Civil Application E003 of 2023**

{2025} KEELC 6832 (KLR) concerning the essence of an order of mandamus and the case of Timbani Dispensary Project-vs-Abdulrahman Mohamed Abdi

{2021} KEELC 1705 (KLR) on the unchallenged recommendation of the Interested Party **(JA 2)**. That therefore, the respondents have not complied with the said recommendations by a legitimate constitutional agency, are binding and not complied with by the Respondents hence, the application be allowed with costs

10. The Respondents and the interested party did not file submissions in this matter.

11. I have duly considered the application, the 3rd Respondent's replying affidavit and the applicant's submissions in entirety. So, the issues for determination in this application crystalize to; the Applicants' **locus standi** to mount this application, **this Court's jurisdiction** over this matter and if so, the entitlement of the applicants to the orders sought in the application and /or the **orders to issue for the ends of justice herein**.

12. On locus standi, the 3rd Respondent's replying affidavit at paragraph 4 reads;

‘.....that the Applicants before this Honourable Court purport to sue on behalf of the Ngerek Community. However, the reliefs they seek extend to the Koibem Community as well who are not represented in these proceedings. The Applicants therefore lack the requisite locus standi to seek or obtain orders on behalf of the Koibem Community.’

13. **Order 1 Rule 8 of the Civil Procedure Rules 2010** provides for representative suits. **Rule 13** of the same Order governs authority to sue.

14. This Court subscribes to the Court of Appeal decision in the case of **Alfred Njau -Vs- City Council of Nairobi [1983] eKLR** that;

“...Locus standi” literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”

15. It must be noted that the Interested Party’s determination **(JA-2)** affected both Ngerek and Koiben communities. However, the signed authority **(JA-1)** is

confined to Ngerek community members leaving out Koibem community members in the instant application.

16. Plainly, the Applicants were under an obligation as at the time of filing the instant application, to show the written authority entitling them to sue on behalf of Koibem community; see also **Muli & others-vs Kenya Ports Authority & 2 others ((2024) eKLR.**

17. The Applicants did not indicate that they were bringing the action on their own behalf in addition to the Koibem Community not named in the application and must give authority in the matter. It is therefore, my considered view that the applicants lack ***locus standi*** to originate this application and obtain orders sought herein on behalf of the Koibem community.

18. As regards jurisdiction, in the replying affidavit, the 3rd Respondent averred, inter alia, that the exclusive jurisdiction to degazette or excise a public forest is the domain of Parliament, not the Courts or the National Land Commission. That this Honourable Court, established under **Article 162 (2) (b) of the Constitution of Kenya 2010 and the Environment and Land Court Act, 2015 (2011)**, does not have jurisdiction to issue orders of mandamus to degazette a forest, as this would amount to usurping the legislative and executive functions expressly provided for in statute. That the application offends the doctrine of exhaustion.

19. In agreeing with the dicta in **Speaker of National Assembly vs Njenga Karume (2008) 1 KLR 425**, the Supreme Court of the Republic of Kenya in **Albert Chaurembo Mumba & 7 others vs Maurice Munyao & 148 others, Sup Ct. Petition 3 of 2016 (2019) eKLR**, reaffirmed that;

“.....where there exists an alternative method of dispute resolution established by legislation, the courts must exercise restraint in exercising their jurisdiction conferred by the Constitution

and must give deference to dispute resolution body established by statutes with the mandate to deal with such specific disputes in the first instance.....”

20. Clearly, Article 22 of the Constitution of Kenya, 2010 (The Constitution) provides for enforcement of the Bill of Rights. Under Articles 23 (3) (f) and 47 (1) of the Constitution, the Court may grant appropriate judicial review orders inclusive of mandamus relief sought in the application.

21. In the case of **Republic-vs-Kenya Revenue Authority Ex Parte Yaya Towers Ltd (2008) eKLR**, it was held that judicial review remedy is concerned with reviewing not the merits but the decision-making process and the legality of the decision-making process itself; see also **Kaluma’s book, Judicial Review, Law Procedure and Practice at page 46.**

22. Besides, **Article 62 (1) (g) of the Constitution of Kenya 2010** stipulates that public land includes government forests and water catchment areas. The process of degazettement of such areas is Legislative and Executive function acquiring parliamentary approval under **section 34 of the Forest Conservation and**

Management Act 2016. Therefore, it is Parliament which is mandated to revoke a forest status through a resolution. So, the orders sought in the application would amount to judicial overreach as it is not the function of the court in the first instance, to degazette a public forest thus, I proceed to exercise judicial restraint accordingly.

23. In the premises, it is the finding of this Court that the instant application generated by way of a Notice of Motion date 14th March 2025 is misconceived and incompetent. The same is hereby struck out.

24. On costs, this is a public interest matter as class (es) of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected; see **also Nubian Rights Forum & 2 others -vs-Attorney General & 6 others; Child Welfare Society & 8 others (Interested Parties); Centre for Intellectual Property & Information Technology (Proposed Amicus Curiae) , Consolidated HC Petition Nos. 56, 58 & 59 of 2019 (2019) eKLR, Kenya Electricity Transmission Co. Ltd (KETRACO)-vs-Instalaciones Inabensa S.A Petition No. 17 (E024) of 2021 (2022)**

eKLR. In that regard, parties to bear their own costs of the instant application.

25. It is so ordered.

DATED and **DELIVERED** at **KAPSABET** this **20th** day of **January 2026**

HON G M A ONGONDO

JUDGE

In the presence of;-

1. Mr D Adoli Learned Counsel for the Ex Parte Applicants
2. Ms Chebet Learned Counsel for the 3rd Respondent
3. Walter, Court Assistant