



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIROMENT AND LAND COURT AT NAROK

ENVIRONMENT AND LAND PETITION NO E003 OF 2025

**HON. DR. MEITAMEI OLE
DAPASHA.....PETITIONER/RESPONDENT
GEMA WATHO ASSOCIATION.....PROPOSED
PETITIONER**

VERSUS

**MARRIOT INTERNATIONAL.....1ST
RESPONDENT
RITZ-CARLTON HOTEL INC.....2ND
RESPONDENT
LAZIZI MARA LIMITED.....3RD
RESPONDENT
COUNTY GOVERMENT OF NAROK.....4TH
RESPONDENT
NATIONAL ENVI'T MANAGEMENT
AUTHORITY(NEMA).....5TH
RESPONDENT**

AND

**EAST AFRICAN WILDLIFE SOCIETY.....1ST INTERESTED
PARTY
LAW SOCIETY OF KENYA.....2ND INTERESTED
PARTY**

RULING.

1. The proposed Petitioner herein **GEMA WATHO ASSOCIATION**, brought this **Notice of Motion under Certificate of Urgency** on **18th December 2025**, on the ground that the Petition herein raises serious **constitutional** and **statutory questions** relating to environmental protection, land use, conservation and sustainable development within **Narok County**; that since the original Petitioner filed a **Notice to Withdraw** the entire petition, thus seeking to discontinue the petition, before the issue raised therein are heard and determined, then **GEMA WATHO ASSOCIATION**, intends to take over the prosecution of this **public interest litigation** and ventilate the issues raised fully to logical conclusion.

2. For the above reasons, the applicant filed a Notice of Motion Application even dated pursuant to **Rule 19, and 27(3) of the Constitution of Kenya (Protection of Human Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** and **all enabling provisions of law**; and sought for these orders
 - i) **Spent;**
 - ii) **GEMA WATHO ASSOCIATION be joined in this petition as a Petitioner in substitution of the original petitioner;**
 - iii) **That the applicant be granted leave to take over the prosecution of this petition to its logical conclusion, notwithstanding the Notice of Withdrawal filed;**
 - iv) **Spent**

v) **Such further or other orders be made that this court may deem fit to grant in the interest of justice and public interest.**

3. The grounds in support of the application are; the petition raises **weighty issues** concerning environmental protection, conservation, land use, planning and sustainable development within **Narok County**; that the matter raised in the petition are of **public interest** and **implicates present and future generations**; that the original petitioner has expressed an intention to withdraw the petition prior to its determination; that if the withdrawal is allowed without substitution, it would defeat the constitutional mandate of the court under **Article 42, 69, 70** of the **Constitution**; that **GEMA WATHO ASSOCIATION** being a duly registered Society under the **Society Act Cap 108**, Laws of Kenya which comprises of over **3000 advocates** of the High Court of Kenya is committed to constitutionalism, human dignity and non-discrimination, and has requisite **locus standi** and **public mandate** to prosecute this petition; further, that **no prejudice** will be occasioned to the Respondents while refusal to grant the orders sought will occasion grave prejudice to the public interest.
4. The application is further supported by the Affidavit of **Wambugu Wanjohi Advocate**, the Chairman of **GEMA WATHO ASSOCIATION**, who reiterated most of the grounds in support of the application, and further averred that in seeking to take over the petition, the same is done in **good faith** and purely for **public interest**.

5. The application is opposed by the 1st and 2nd Respondents, who though did not file any response to the application or file any written submissions, they informed the court through their advocates **Mr Munyu**, that they wholly associate with the Response and written submissions by **3rd Respondent - Lazizi Mara Limited**, thus in opposition to the instant application for joinder.
6. The 3rd Respondent, **LAZIZI MARA LTD**, opposed the application for joinder through the Replying Affidavit of **Shivan Patel**, a director of the 3rd Respondent, who averred that the said application is **misconceived, incompetent**, and has been **overtaken** by events. That this court has already made a ruling declining to withdrawal the petition, and the orders sought by the applicant are spent and incapable of being granted.
7. He further averred that his advocate on record has advised him that substitution of a petitioner in a constitution petition **is not automatic**, and cannot be grounded merely on professional interests or ideological alignment. Further, that the applicant herein which is a Nairobi based Association of legal profession drawn from **Mt Kenya region** has not demonstrated **factual** or **geographical, cultural** or **environmental nexus** to **Maasai Mara ecosystem**.
8. He claimed that since genuine conservation organisations, and statutory bodies are already in the suit, joining the intended petitioner would **unnecessary expand**, delay and complicate the proceedings, and they will not assist the court in any meaningful way.

9. The 4th Respondent also opposed the Application through the Replying Affidavit of **John Mayian Tuya**, the County Secretary of Narok County Government who averred that for a party to be successfully joined in this petition, it must demonstrate the following to the Court:-

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.*
- ii. The prejudice to be suffered by the Intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.*
- iii. A party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.*
- iv. The ultimate order or decree cannot be enforced without his presence in the matter and*
- v. Its presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.*

10. It was his averments that the applicant herein does not have an **identifiable interest** in the matter and it lacks the **locus**

standi to prosecute the petition. Further, the Applicant has failed to demonstrate any **prejudice** and/or **substantial loss** it stands to suffer in the event the orders are sought are not granted.

11. He argued that the applicant has **not established** that it is either a necessary or proper party to these proceedings, and urged the court to use its discretion and dismiss the instant application with costs to the 4th Respondent.
12. **Mr Adier** for the Petitioner did not oppose the application for joinder of the proposed petitioner.
13. Further, **Mr Ochiel Duddley** for the 1st Interested Party also did not oppose the application for joinder, and so was **Mr Gichohi Waweru** for the 2nd Interested party, the **Law Society of Kenya**.
14. The application was canvassed by way of very brief written submissions which this court has carefully read and considered.
15. In its submissions, the applicant raised five issues for determination;
 - i) **Whether a constitutional petition raising public interest environmental questions may be withdrawn as of right without judicial scrutiny;**
 - ii) **Whether the court has jurisdiction and discretion to permit substitution and continuation of the petition;**

- iii) Whether the applicant has the requisite locus standi and public interest mandate;**
- iv) Whether any prejudice will be occasioned to the respondents.**

16. In support of the submissions, the applicant relied on various decided cases and provisions of law; among these cases were:- **Luka vs Narok Bursaries Management Board & 6 others; Narok County Assembly (interested party) Constitutional Petition E016 OF 2023(2024) KEHC) 2523 (KLR); Ratemo vs Senate (2024) KEHC 3915(KLR) ; Angawa vs Cabinet Secretary responsible for matters relating to Basic Education & 7 others; Kenya Private Schools Association & 4 others (2022) KEHC 10286 (KLR),** where the court held; -

“In the circumstances of this case, we find that the substitution of the petitioner with the applicant in this matter would serve the interest of justice in line with the constitutional principles and objectives as set out in this analysis. Furthermore, the applicant’s interest is in line with Article 3(1) of the Constitution which obliges every person to defend this Constitution and Article 22(2)(c) which grants the applicant locus standi in the matter. The impact of the petition goes beyond the current petition. It is only fair and just that the substitution sought be allowed to pave way for a determination of the weighty issues raised in

the petition and which are of great public interest.”

17. Reliance was also sought in the ***Rule 5(c)*** of the ***Mutunga Rules***, and the cases of ***Gabriel Mutava & 2 Others vs Managing Director Kenya Ports Authority & Another (2016) eklr; Peter Ochara Anam & 3 Others vs Constituencies Development Fund Board & 4 others (2011) eklr and Joseph Njogu Njoga vs Lucy Njeri Njogu (2016) eklr***, and submitted that the applicant has ***locus standi*** and ***public mandate*** and should be allowed to take over this petition.
18. ***EAWLS***, the 1st Interested Party, filed its submissions dated ***16th February 2026***, through ***Bond Advocates LLP*** and urged the court to allow the application, since the ***continuous prosecution*** of this petition by the ***original petitioner*** was ***untenable*** and undermines the integrity of the proceedings and the public interest.
19. ***EAWLS*** relied on various provisions of law, and decided cases, which this court has read and considered. Among cases relied on are; ***Ang’awa vs Cabinet Secretary Basic Education & 7 others; Kenya Private Schools Association & 4 others [2022] KEHC 10286 (KLR), Satya Bhama Ganchi vs Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR), Independent Electoral and Boundaries Commission & 4 otherd vs Ndi & 312 others [2021] KECA 363 (KLR), Jovet (Kenya) Limited vs Bavaria NV [2025] KESC 27 (KLR) and Child Welfare Society of Kenya vs***

Republic & 2 others; Law Society of Kenya & 8 others (interested Parties) [2017] KECA 175 (KLR).

20. In opposition to the application, the 3rd Respondent through **Hamilton Harrison & Mathews Advocates** filed its written submissions dated **13th February 2026**, and identified four issues being;

- i) Whether the application has been overtaken by events;**
- ii) Whether the threshold for substitution has been satisfied;**
- iii) Whether the applicant has demonstrated sufficient legal interest to warrant joinder;**
- iv) Whether the intended joinder would assist the court or prejudice the proceedings.**

21. In support of the submissions and opposition to the application, the 3rd Respondent relied on a number of decided cases being; **John Harun Mawu & 3 Others vs AG & 2 Others (2012) KEHC 5438(KLR); Jesse Kamau & 25 Others vs The AG Nairobi Misc App No. 890 of 2004(unreported); Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 others (2014) eklr;** where the court held;

“A suit in court is a ‘solemn process, “owed” solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined(sic) in it. Consequently, where a person not initially a

party to a suit is enjoined(sic) as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

22. Further reliance was sought in the case of **Skov Estate Ltd & 5 others vs Agricultural Development Corporation & Another (2015) KEELC 6549 KLR**); where the court held;

“A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter.”

23. The 3rd Respondent urged the court to dismiss the instant application, with costs to the 3rd Respondent.

24. The 4th Respondent Narok County Government filed its written submissions dated **13th February 2026**, in opposition to this application for joinder of the applicant as the Petitioner herein. The 4th Respondent identified only one issue for determination; ***whether the proposed petitioner ought to be joined in this matter in place of the original petitioner.***

25. Further, the 4th Respondent relied on these cases; - **Trusted Society of human Rights Alliance vs Mumo Matemu(supra) Francis Kariuki Muruatetu 7 Another vs R& 5 Others (2016) eklr; Joseph Njau Kingori vs Robert Maina Chege & 3 others (2002) eklr**, and urged the court to dismiss the instant application since the applicant has failed to demonstrate any prejudice or substantial loss it stands to suffer in the event the orders sought are not granted.
26. It is evident that this application was prompted by the **Notice of withdrawal** of the entire petition which was filed by the Petitioner herein **Hon. Dr. Meitamei Ole Dapasha**. Before the said Notice of withdraw was filed in court, **EAWLS** and the **Law Society of Kenya** had sought to be joined in the Petition as Interested parties, and they were so joined. The **Notice to Withdraw** was canvassed and a ruling was delivered on **18th December 2025**. The court declined to withdraw the entire Petition, and directed the parties to canvass the application for **conservatory orders** expeditiously given that the said application was filed on **8th August 2025**.
27. On the same date, the Applicant **GEMA WATHO ASSOCIATION** sought to be joined in the petition as petitioners. This is the application coming for determination today. This application is premised to be brought under **Rule 19**, and **27(3)** of the **Mutunga Rules**, which provide;
- “19. Formal applications**
A formal application under these rules shall be by Notice of Motion set out in Form D in the Schedule and may be supported by an affidavit.

Withdrawal or discontinuance

The petitioner may—

27(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”

28. This application is opposed by the 1st, 2nd, 3rd and 4th Respondents, but supported by the applicant, the original petitioner, and the two Interested parties.
29. The Applicant, **GEMA WATHO ASSOCIATION** seeks to come in as petitioner in this matter and takes over the prosecution of the same. In a Constitution Petition, who is a Petitioner? It is evident that a petitioner is described as an **individual, group, or organization** whose rights under the **Bill of Rights** have allegedly been **violated, denied, or threatened**. Further, a petitioner may also include **victims** acting on **their own behalf, representatives** of those who cannot act, or **anyone acting** in the **public interest**. The instant petition is anchored under various provisions of the Articles of the Constitution, environmental management and conservation of wildlife.
30. The bone of contention in the instant petition is the alleged construction of a luxury hotel along **Sand River** in **Maasai Mara Game Reserve**, which action is alleged to have affected the ecosystem of **Maasai Mara**, and crossing path of wilder beasts. The Petitioner has alleged that he is a resident of **NAROK COUNTY**, and the said construction of the luxury hotel

was carried out without the input of the **local community**, and thus has violated their right to information, inclusion and will affect their **spiritual** and **cultural heritage** and **history**.

31. Ordinarily, a court dealing with any constitution petition should ask itself;- What is the **nexus** between a petitioner and the petition filed? For any petitioner, he/it must establish the **nexus** or the legal connection between the petitioner and the filed petition. This **nexus** is basically the **locus standi** and precision of the claim. Therefore, petitioner must demonstrate a specific relationship to the issues raised. Though the Constitution 2010 provides that any person can file a constitution petition where bill of rights have been violated, the petitioner must still establish the relationship to the issues raised.
32. When this petition was filed, the Petitioner (**HON. DR. MEITAMEI OLE DAPASHA**) alleged that the said petition touches on the **spiritual, constitutional and legal questions** about the construction of massive luxury hotel within **Maasai Mara Game Reserve**, and this action was going to have far reaching implications on the **culture** of the local community; whose ancestral land has been used for construction of the said hotel without their public participation.
33. It is evident that the luxury hotels being disputed are in **Maasai Mara Game Reserve**, which **Game Reserve** is under the control of **NAROK County Government**. The **Maasai Mara Game Reserve** is officially **a National Reserve**, and not a **National Park**, and is managed by the **Narok County Government** rather than the National Government, and

therefore it is more under the control of the County Government. As a National Reserve, under Narok County Government, though a national heritage, it has a ***symbiotic relationship*** with the local community, which is largely the Maasai Community. The Game Reserve is therefore managed by the County Government in partnership with the local Maasai community.

34. In this petition filed on **8th August 2025**, the petitioner thereon, averred that he is a ***resident*** of ***Narok County***, a ***leader***, an ***environmentalist*** and an ***elder*** in the ***Maasai community***, and he filed the said petition on behalf of the ***local community*** whose rights allegedly have been violated because the Maasai culturally co-exist with wildlife in a harmonious manner, and they see wildlife as part of their ***spirituality***. The petitioner further explained that the Maasai community traditionally conserve and protect wildlife and ensure their survival in ***Maasai Mara Game Reserve***, and the destruction of the wildlife corridors contravenes the Maasai connection to nature and wildlife.
35. The above allegation by the petitioner is therefore the ***nexus*** between the instant petition and the petitioner herein, who is allegedly a resident of ***Narok County*** and a ***Maasai elder***.
36. The applicant herein is ***GEMA WATHO ASSOCIATION***. Who is ***GEMA WATHO ASSOCIATION***? A quick search of this association reveals that; ***The GEMA Watho Association*** is an organization led by Chairperson ***Wambugu Wanjohi***, composed of legal professionals from the ***Gikuyu, Embu,***

Meru, and Akamba (GEMA) communities, which was launched to empower the community and advocate for justice. It engages in legal challenges, such as questioning government panels, and addressing issues like community security. The search further revealed that the **Association** is based in Nairobi.

37. A further search revealed that the purpose of this **Association** serves as a platform for lawyers from the **Mount Kenya region** to unite, advocate for justice, and provide legal direction on regional economic issues such as laws governing **coffee, tea, and milk**, and also ensure fair revenue sharing from agriculture.
38. In its application, the applicant averred and submitted that it represents about **3000 members**, and it engages in **public interest litigations**, and this petition being one of such public interest case, the association should be allowed to prosecute it.
39. However, this court has not seen any **nexus** between **GEMA WATHO ASSOCIATION**, which is based in Nairobi and which comprised legal professionals from **Gikuyu, Embu, Meru and Akamba communities**, and the petition herein which is concerned with the environmental issues touching on **Maasai Mara Game Reserve** which is under **NAROK County Government**. The Association did not describe itself as one of those bodies or associations that deal with environmental conservation issues. Further, the Association is not **Geographically** connected to **Maasai Mara Game Reserve**, where the alleged constructions are being undertaken.

40. In any event, **GEMA WATHO ASSOCIATION** comprises of members of legal profession, who are all members of the **Law Society of Kenya**, which is an Interested party in this petition. Any concern or issues that **GEMA WATHO ASSOCIATION**, would wish to express, will ably be brought out by the umbrella or National Society being **LAW SOCIETY OF KENYA**.

41. The court while declining to allow the **Notice of withdraw** of the petition held that this is a public interest matter, on environmental conservation, but from the description of **GEMA WATHO ASSOCIATION**, environmental conservation is not one of its key pillars, as one of its focus is to acts as a legal service and advocacy group for the **GEMA community**. Being a regional **Association** from **Mount Kenya region**, it lacks "**proximate interest**" in a Narok land and or environmental issues.

42. For the applicants to be allowed to join as petitioners herein, it needed to meet the following test, and satisfy the principles set out in the case of **Francis Karioko Muruatetu(supra)**, which are:

i) Identifiable Stake: what is their personal or legal interest proximate to the matter.

ii) Prejudice: the applicant needed to avail evidence that their rights will be adversely affected if they are left out. What are the interests of **GEMA WATHO ASSOCIATION** that

cannot be advanced by **Law Society of Kenya?**

iii) Novel Value: further, the applicant needed to prove that its evidence and/or submissions is not a mere "replication" of existing parties. There are other parties who are already parties in this petition, and **GEMA WATHO ASSOCIATION**, has not demonstrated that its participation is not a mere duplication of the existing parties.

43. Having failed to meet the threshold of a genuine petitioner, then allowing the applicant herein to participate as the petitioner, risks their participation being labelled as **busy body**, without a direct interest in the matter, and their inclusion may unnecessarily delay the matter.
44. All the concerned bodies and associations that directly interact with environmental issues and conservation joined as interested parties, and did not wait until when it was too late in the day to join as parties. It is the considered view of this court that all the concerned issues raised in the petition will adequately be addressed by the already joined parties herein, and the applicants have the **LAW SOCIETY OF KENYA**, as the umbrella body to represent their interests.
45. For the above reasons, this court finds no good reasons to allow **GEMA WATHO ASSOCIATION** to join this petition as petitioner, and then take over the prosecution of the petition.

46. Consequently, the application dated **18th December 2025**, is found **not merited** and the same is **dismissed** entirely with costs to the 3rd and 4th Respondents herein.

Application is disallowed accordingly.

Dated, signed, and delivered virtually at Narok this 17th Feb 2026,

***L. Gacheru
Judge***

Delivered online in the presence of

Elijah Meyoki -Court Assistant

***Mr. Kiragu Wathuta & Wambugu Wanjohi for the Proposed
Petitioner/Applicant***

Mr. Adier and Mr. Shago for the Petitioner/Respondent

Mr. Munyu for 1st and 2nd Respondents

Mr. Kimani Kiragu and Ezra Makori for 3rd Respondent

Ms Lyona for 4th Respondent

N/A for 5th Respondent

N/A for 1st Interested Party

Mr. Waweru Gichohi for the 2nd Interested Party.

***L. Gacheru
Judge
17/02/2026***