

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC MISC. APPL. NO. E015 OF 2024**

**BETTY RONO**  
*(Suing as the Executrix of the estate of the late*  
**DAVID**

**RONO**-----

**APPLICANT**

**VERSUS**

**ALMER FARM LIMITED**-----  
**RESPONDENT**

**AND**

**JOSEPH KIMUTAI CHEROP**-----**1<sup>ST</sup>**

**INTERESTED PARTY**

**DANIEL KIPKOECH BIWOTT**-----**2<sup>ND</sup>**

**INTERESTED PARTY**

**PHILLIP KIPKOECH KIMITEI**-----**3<sup>RD</sup>**

**INTERESTED PARTY**

**PAUL KHAMISI SHIBAYANGA**-----**4<sup>TH</sup>**

**INTERESTED PARTY**

**JONATHAN KIBIWOT RUTTO**-----**5<sup>TH</sup>**

**INTERESTED PARTY**

**JOSEPH NAMANDA WEKHULO**-----**6<sup>TH</sup>**

**INTERESTED PARTY**

**MAGUTU MOSE-----7<sup>TH</sup>**

**INTERESTED PARTY**

**BENARD KIMALEL-----8<sup>TH</sup>**

**INTERESTED PARTY**

**PRISCAH JELAGAT BUIGUT-----9<sup>TH</sup>**

**INTERESTED PARTY**

**CHRISTOPHER KIPRONO CHIRCHIR-----10<sup>TH</sup>**

**INTERESTED PARTY**

## **JUDGMENT**

**1. What is before the court is a notice of motion dated 7/11/2024, in which the applicant seeks:**

**(1) ...spent**

**(2) Adoption of an award by the National Land Commission Land Injustice Committee dated 7/2/2019 and gazetted on 1/3/2019 as an order of this court.**

**(3) Orders that the Land Registrar and County Surveyor Trans Nzoia, on behalf of the Chief Land Registrar and the Director of Surveys, carve out the 400 acres from L.R. No. 8940 within Cherangany Sub-County.**

**(4) Officer in Charge of Police Station Kitale or any other police station where the suit land is situated to provide security during the curving out exercise and to help the applicant take vacant possession.**

2. The application is based on the reasons on its face and in a supporting affidavit of Betty Rono, sworn on **7/11/2024**. The applicant as the executrix of the estate of the late Daniel Rono, says that she lodged a historical land injustice complaint with the National Land Commission Committee against the respondent claiming a share of the land that her late husband was entitled to but which the respondent had refused to surrender, while upon hearing all the parties and their witnesses, it rendered an award on **7/2/2019**, directing that **400** acres be hived off from L.R. No. **8940**, situated in Charangany. Attached is the award marked **BR-(1)**.
3. The applicant deposes that the award was subsequently gazetted on **1/3/2019**, and the Chief Land Registrar and the Director of Surveys were directed to excise the **400** acres, while the Cabinet Secretaries Ministries of Lands & Interior, as well as the National Land Commission, were directed to assist her in getting the land. Annexed is the gazettelement and marked **BR-(2)**.
4. The applicant deposes that the respondent being dissatisfied with the award, filed **JR Application No. 4 of 2019**, which was subsequently, struck out on

**1/12/2020** as per annexed decree marked **BR-(3)**, whose appeal to the Court of Appeal by the respondent was dismissed in **Civil Appeal No. 5 of 2021**, as per annexed ruling marked **BR-(4)**.

5. The applicant deposes that as it stands, the award by the National Land Commission Committee in her favour has never been set aside, upon successful challenge, yet she has been unable to take possession of the land due to hostility from the agents and or individuals hired by the respondent to frustrate the process.
6. The applicant deposes that in **December 2021**, she tried to excise and take possession of the **400** acres but was met with serious resistance from the goons who prevented her from doing anything on the land, which altercation led to criminal charges against some individuals as per the annexed charge sheet marked **BR-(5)**.
7. The applicant deposes that it is only fair and just in the circumstances for this court to assist her and all the beneficiaries to get back the subject land in a peaceful manner from the respondent.
8. The application is opposed through a preliminary objection dated **13/11/2024**, that it is *res judicata* in

view of the ruling delivered on **1/10/2024**, an abuse of the court process, an invitation to sit on appeal of the foresaid decision, bad in law as it seeks to relitigate a similar application dated **11/10/2023** and that the court is *functus officio* in view of the ruling of **1/10/2024** in **JR No. 4 of 2019**.

- 9.** The application is also opposed through a replying affidavit sworn by Patrick Kiptanui on **3/7/2025**, who describes himself as the administrator of the estate of Abraham Kiptanui, a director of Almer Limited, pursuant to a limited grant ad litem dated **8/11/2021**, annexed as **PK-(1)**.
- 10.** It is deposed that the application herein is the third one by the applicant, seeking execution of the National Land Commission determination dated **1/2/2019**, the first one being dated **23/7/2019**, which she withdrew on **29/6/2022** and paid costs as per the application and proceedings attached as **PK-(1)**, pages **2-4**, and **5-9**.
- 11.** The respondent deposes that a third application dated **11/10/2022** was filed and later was dismissed, as per annexure marked **PK-(1)** at pages **10-15, 16-22**. The respondent deposes that in paragraph **12** of the ruling, it was clear that the estate of the late

David Rono was only among the many shareholders of the Chebiss Group, which the applicant did not appeal against, but instead has purported to file a fresh application, which is *res judicata*.

- 12.** The respondent deposes that under **Section 15(10)** of the National Land Commission Act, a redress recommended shall be done within **3** years, and therefore, with effect from **7/2/2019**, the applications for execution made after the statutory deadline on **7/2/2022** are time-barred.
- 13.** The respondent urges the court to find the application scandalous, frivolous, vexatious, and otherwise an abuse of the court process.
- 14.** The respondent deposes that whereas time can be extended under **Order 49** of the Civil Procedure Rules, that procedure cannot be availed for the extension of time that is limited by statute, especially in this case, the National Land Commission Act, which has no provision for extension of time.
- 15.** Further, the respondent deposes that **Section 15(10)** of the National Land Commission Act is couched in mandatory terms, and the court cannot act beyond the express provisions of the law, or extend the period of filing suit out of time for which

the law does not allow, or where the requirements which are specifically set out have not been satisfied.

- 16.** The respondent deposes that this is a fresh application filed **2** years after the statutory deadline, and after the expiry of the three-year limitation, making it an abuse of the court process. The respondent deposes that, though **Section 15** of the National Land Commission Act has since been repealed, in construing a statute, the court should adopt liberal construction based on what the provision says.
- 17.** As to the status of L.R. No. **8940**, the respondent confirms that it has been sold to over **300** people, subdivided, and hence ceased to exist as per the annexed copy of the certified registry index map, official receipt from the Surveys of Kenya, and the area list, attached as annexure **PK-(1)**, at pages **23-34**. The respondent deposes that the suit property is fully occupied by the current owners.
- 18.** Further, the respondent deposes that Almer Ltd was formed by Abraham Kiptanui, Nicholas Biwott, and Kipngeno Arap Ngeny for the purpose of assisting several community members who had been displaced from Uasin Gishu to acquire land. The

respondent deposes that Almer Ltd facilitated a loan from the Kenya Commercial Finance Co. Ltd, which was paid entirely, and the price of each acre was computed based on the outstanding loan, requiring each member to deposit the price to Kenya Commercial Finance Co. Ltd. The initial promoters of the company got no single share of the land.

- 19.** The respondent deposes that L.R. No. **8940**, pursuant to an agreement of sale dated **14/11/1981**, was purchased measuring **1198** acres, from Per Bogelund Jensen at **Kshs. 5,838,000/=**, a copy attached as **PK-(1)**, pages **35-38**, which title was transferred to the respondent on **2/12/1982** and charged with the bank as per annexure marked **PK(1)** at pages **39-44**.
- 20.** The respondent deposes that on **26/1/1983**, the property was charged to Agricultural Finance Corporation, to secure a loan of **Kshs. 4,400,000/=**, to settle the earlier loan with Kenya Commercial Finance Co. Ltd, as per annexures marked **PK-(1)**, pages **45-64**.
- 21.** Equally, the respondent deposes that at the time of acquisition, there were three directors, with **87** purchasers or members. The respondent deposes

that having agreed, it started disposing portions of the property immediately to its members whose list kept on changing from time to time, hence divided, and distributed the same among its members with each initial member getting a portion of the property according to how one would mobilize adequate number of potential members and contribute to the company's account meant to pay off the charged sum.

- 22.** The respondent deposes that its secretary issued a letter dated **9/1/1992** to the District Commissioner, Trans Nzoia, asking for approval to subdivide the land by the Land Control Board to **87** agricultural portions and three portions for public utilities, as per application for subdivision attached as **PK(1)** at pages **65-68**, and further as per approval of the application dated **21/1/1992** vide consent letter dated **24/1/1992** annexed as **PK(1)**, pages **69-71**.
- 23.** The respondent deposes that during the process of subdivision, Daniel Meto gave the late David Rono **Kshs. 300,000/=**, to be deposited into that account, only for the deceased to remit **Kshs. 150,000/=**, entitling him to **25** acres of the property as per the

affidavit of Daniel Meto Rono marked as **PK(1)**, pages **72-73**.

- 24.** Further, the respondent deposes that it was under the belief that the **Kshs. 150,000/=** was paid on behalf of his shareholders, but unfortunately, the said Daniel Meto had been assured by the deceased that he would transfer to him **120** acres of land. The respondent deposes that the said David Rono was in fact charged, convicted, and sentenced in **Criminal Case No. 4557 of 1989** for obtaining by false pretenses, as per the judgment attached as **PK(1)**, pages **74-95**.
- 25.** The respondent deposes that it further emerged that the late David Rono had obtained amounts of money from 12 other persons in the guise that he would transfer from his share as a member of the company, various parcels of land, but which he never remitted to the company account.
- 26.** The respondent deposes that the issue was referred to the then District Commissioner, Trans Nzoia, Mr. Mberia, and resolved through the only amount remitted was **Kshs.150,000/=** equivalent to **25** acres, as per a letter dated **17/12/1991**, annexed as **PK(1)**, page **96**.

- 27.** Further, the respondent deposes that the late Abraham Kiptanui sole duty was to manage the property on behalf of the company as one of the directors and that the late David Rono was never a director at all, nor did he have any agreement with the other directors to share equally the property upon its purchase, or to be entitled to **400** acres as per a letter attached as **PK(1)** at page **97**.
- 28.** It is deposed that following the inability to offset the loan to Agricultural Finance Corporation, the initial members of the company and subsequent buyers, on **28/8/2004**, resolved that due to the waiver granted by the government, the company's debt be reduced by **Kshs.5,400,000/=**, to **Kshs.1,162,631/=**, and therefore repayment would be on the number of acres owned by each member. **Kshs. 700/=** apportioned to each member based on the number of acres, to be cleared together with the previous debt of **Kshs.1,710/=** per acre.
- 29.** The respondent deposes that the loan repayment was later completed, and the title was given back to the company as per annexure marked as **PK(1)** at pages **98-100**, leading to further subdivision of the property to accommodate new membership to **306**

members, which application was duly approved and authorization given vide letter of consent dated **24/6/2010**, attached as annexure marked **PK(1)** at pages **101-103**.

- 30.** Again, the respondent deposes that before the complaint by Betty Rono at the National Land Commission vide affidavit dated **5/10/2017**, the National Land Commission Coordinator had made a report dated **1/8/2017**, confirming that the late David Rono had not made any contribution, a copy attached as **PK(1)** pages **104-115**.
- 31.** The respondent deposes that the suit property is already fully subdivided and each portion has a separate title deed as per annexures marked **PK(1)**, pages **23-34**, hence L.R. No. **8940** does not exist in law. Further, the respondent deposes that **Section 15(7)** of the National Land Commission Act recognises instances where restoration of land may be impossible, and in this case, where the land has been sold, subdivided, and titles deed issued to the respective owners.
- 32.** Similarly, the application is opposed by the interested parties through a replying affidavit sworn by Priscah Jelagat Buigut, sworn on **10/8/2025**,

pursuant to the authority to plead marked **PJB-(1)** at pages **1-2**.

- 33.** The interested parties depose that they were part of the group of people that bought the subject land alongside the late Abraham Kiptanui, Nicholas Biwott, and Kiprono Arap Ngeny, for purposes of assisting community members displaced from Uasin Gishu to acquire land.
- 34.** The interested parties confirm the assertion by the respondent on how the former group leaders assisted in facilitating a loan from Agricultural Finance Corporation through a special vehicle known as Almer Limited. The interested parties depose that the late David Rono was never a director or shareholder of the respondent.
- 35.** The interested parties further confirm that the former owner of the land was Per Bogelund Jensen, who sold it to the respondent, after which it was charged with the Agricultural Finance Corporation. Annexed are copies of the title, sale agreement, loan approvals dated **16/12/1982**, and correspondence, marked **PJB(1)** at pages **3-8, 9-12, and 13-22**. Further, the interested parties depose that they are purchasers of the land as per the payments made to the

Agricultural Finance Corporation, to liquidate the loan as per annexure marked **PJB(1)**, pages **23-32**.

- 36.** The interested parties depose that they also obtained letters and an application for Land Control Board Consent and the Consents through the respondent marked as annexure **PJB(1)**, pages **33-39**. The interested parties confirm that the late David Rono as per an affidavit sworn on **9/4/2025** by Daniel Metto, had swindled some third parties, yet he had no shares to the same as per judgment attached as annexure **PJB(1)**, pages **40-41, 42-63, and 64, 65-67, 68-70, and 71-82**.
- 37.** The interested parties depose that the award and the gazette notice sought to be implemented on L.R. No. **8940**, is incapable of execution since the land does not exist, it has been sold to over **306** members, who duly paid for their respective portions, which has now been subdivided, as per annexed certified Registry Index Map, official receipts from Surveys of Kenya and the area list marked **PJB(1)** at pages **105-116**.
- 38.** On the other hand, the respondent relies on written submissions dated **1/9/2025**. It is submitted that the claim offends **Section 15(10)** of the National Land Commission Act as it is statute-barred. Reliance is

placed on **M'aitumitu Kamau -vs- District Land Adjudication & Settlement Officer & Another [2021] KEELC 911 [KLR], Wilson Osolo -vs- John Ojiambo Ochola & Attorney General [1995] eKLR, Republic -vs- Council for Legal Education & Another Exparte Subina Kasamia & Another [2018] eKLR, and Republic -vs- Land Disputes Tribunal Committee & Another; Njagi (Interested Party), Karanja (Interested Party), JR No. 2 of 2023.**

- 39.** On indolence, the respondent submits that equity favours the vigilant, and in this case, the applicant has filed multiple similar applications, hence abusing the court process.
- 40.** On *res judicata*, the respondent submits that in the application dated **11/10/2022** in **ELC JR No. 4 of 2019**, the application was dismissed on **5/2/2025**, touching on the capacity of the applicant to file the application. Reliance is placed on the **Communication Commission of Kenya & Others -vs- Royal Media Services Ltd & Others [2014] eKLR.**
- 41.** Regarding the effect of **Section 15** of the National Land Commission Act, the respondent submits that,

though the Section was repealed, the filing of a fresh application after the substantive law was repealed is time-barred and lacks statutory underpinning.

- 42.** With regards to the status of the suit land, the respondent submits that, going by the attached **PK(1)**, pages **23-34**, and the confirmation by the applicant on who presently occupies the land, L.R. No. **8940** does not exist to be capable of restoration to the applicant in line with **Section 15(7)** of the National Land Commission Act.
- 43.** The interested parties rely on the written submission dated **23/9/2025**. They submit that the interested parties have been in occupation of the suit land since **1992**, which has already been subdivided and respective titles issued to third parties. The interested parties submit that they had been on the suit land for over **20** years as owners, who were therefore necessary parties to the hearing before the National Land Commission for the effect of the determination; therefore required the court to first cancel their titles before any land could become available to the applicant. Under **Article 50** of the Constitution, the interested parties submit that they were condemned unheard, yet the right to a fair

hearing is sacrosanct. Reliance is placed on **Onyango Oloo -vs- Attorney General 1986-89 EA 456, Sangram Singh -vs- Election Tribunal, Kotah AIR 1955 SC 664,** and **Frigoken Ltd -vs- Value Pak Food Ltd HCCC No. 424 of 2010.**

- 44.** On a statute-barred claim, the interested parties rely on **Section 15(10)** of the National Land Commission Act, **M'aitumitu Kamau (supra), Wilson Osolo (supra), Republic -vs- Council of Legal Education (supra), Republic -vs- and Disputes Tribunal Committee (supra).**
- 45.** The interested parties reiterate that the applicant has not only been indolent, but has also abused the court process by filing multiple applications. It is submitted that the application is *res judicata* in view of the ruling in **PK(1)**, pages **16-22**. Reliance is placed on **Communications Commission of Kenya -vs- Royal Media Services (supra).**
- 46.** On the repeal of **Section 15** of the National Land Commission Act, the interested parties submit that a fresh application after the repeal of the Section is time-barred and lacks statutory underpinnings. The interested parties submit that L.R. No. **8940** is no longer in existence to be restored to the applicant.

- 47.** Learned counsel for the respondent in the process of ventilating the written submissions in open court submitted that there was no pending appeal against the decision of the Court of Appeal. Learned counsel reiterated that the doctrine of *res judicata* was applicable herein, in view of the previous ruling on **11/10/2022**, especially regarding the applicant's capacity to seek the reliefs sought before seeking a review of the court's finding in that ruling.
- 48.** Learned counsel, Mr. Okoth, for the interested parties, submitted that the National Land Commission award affects the interested parties who were not parties to the complaint, and hence, this is the right forum to ventilate their issues.
- 49.** The court has carefully gone through the application, the preliminary objection, the replying affidavits, and the written submissions. The issues calling for my determination are:
- (1) *Whether there are statutory limits on the implementation of a determination by the National Land Commission based on a historical land injustice complaint.***
  - (2) *If the application before the court is res judicata, an abuse of the court process, vexatious, frivolous, statute-barred, and lacking merits.***

**(3) If the applicant has the capacity to file the application and is in the right forum to do so.**

**(4) If the interested parties were condemned unheard by the National Land Commission.**

**(5) If the award by the National Land Commission and the reliefs sought by the applicant are academic, mute, and incapable of implementation in view of the change of substratum by 1993.**

**(6) What is the order as to costs?**

**50. Article 67(2)** of the Constitution grants the National Land Commission power to investigate and determine historical land injustice complaints and to recommend any appropriate redress or remedies as per **Section 16(9). Section 15(3)** of the National Land Commission Act defines what a historical land injustice claim is.

**51. Section 15(10)** of the National Land Commission Act provides that upon determination of a historical land injustice claim, any authority mandated to do so must act within **3** years. What the applicant has brought before this court is a request to have the award by the National Land Commission, which the respondent had unsuccessfully sought to be quashed by this court and later at the court of appeal adopted as a decree of this court for execution purposes.

52. Both the respondent and the interested parties have termed the filing of the present application, as well as the previous ones, as both incompetent in procedure and substance, for it is not only statute-barred, *res judicata*, an abuse of the court process, and lacking merits otherwise, but any application for execution should have been filed by **7/2/2022**.
53. *Res judicata* is raised in view of previous similar applications by the applicant on **23/3/2019** and withdrawn on **29/6/2022**, and the second application dated **11/10/2022**. The elements to sustain a plea of *res judicata* were set out in **Maina Kiai & Others - vs- Electoral and Boundaries Commission (2017) eKLR, Kenya Commercial Bank & Another -vs- Muiri Coffee Estate Ltd [2016] KESC 6[KLR] (19<sup>th</sup> May 2016)**.
54. In **ET -vs- Attorney General & Another [2012] eKLR**, the court held that it has to be vigilant to guard against litigants evading *res judicata* by introducing new causes of action to seek the same remedy. In **Omondi -vs- National Bank of Kenya Ltd [2001] CA 177**, the court held that parties cannot evade *res judicata* by merely adding other parties or causes of action in a subsequent suit.

- 55.** In *John Florence Maritime Services Ltd & Another -vs- CS Transport and Infrastructure & 3 Others [2021] KESC 39 (KLR)*, the court said that the doctrine is a public policy doctrine in the administration of justice, to guard against a party seeking a second bite of the cherry by opening already litigated issues. The burden is on he who alleges the existence of certain facts. In this case, the respondent and the interested parties have attached annexures in support of the plea of *res judicata*.
- 56.** In the application dated **11/10/2022**, the court had been asked to order the County Surveyor to survey and carve **400 acres** out of the **1198** acres from L.R. No. **8940** and for the police to supervise the exercise. The applicant was the 3<sup>rd</sup> respondent in **JR No. 4 of 2019** alongside the National Land Commission and the Chief Land Registrar as the 1<sup>st</sup> and 2<sup>nd</sup> respondents, where they had been sued by the respondent herein as the ex parte applicant. The application had been filed after the ruling in **Eldoret Civil Appeal No. 5 of 2021**. The court in paragraph **8** of the ruling termed the application as drafted in an interlocutory manner, yet the court was already

*functus officio* after delivering its judgment on **1/12/2020**.

- 57.** The court noted that the judgment of **1/12/2020** was with respect to a judicial review Application dated **9/4/2019**, seeking to quash the National Land Commission award made on **7/2/2019** in Case No. **NLC (HLI/112/2017)** and published on **1/3/2019**. The court observed in paragraph **12** of the ruling that, following the dismissal at the Court of Appeal, the National Land Commission decision remained intact and that the failure of the judicial review case did not give rise to seeking other execution orders, save for costs.
- 58.** The court further said that the ruling only opened the way for a successful party in the National Land Commission to move the appropriate forum to effect the excision of the **400 acres** as decided on **7/2/2019**. The respondent has raised a premium on the words used by the court, “but not in favour of one individual, as the 3<sup>rd</sup> respondent wished the court or anyone to believe, since the estate of the late David Rono was only one among many shareholders of the Chebiss Group”. The court, based on that finding, is urged to find that the applicant lacks the

capacity to institute this application, and the court cannot sit on appeal of its predecessor's decision on a similar application.

- 59.** As a starting point, the instant application seeks three reliefs. The first prayer to have the award adopted as an order of this court. This prayer had not been raised in the previous application dated **11/10/2022**. It had, however, been raised in the application dated **27/2/2019** in **ELC Misc. Application No. 6 of 2019**. The record of **11/5/2020** shows that the said application was withdrawn with no objection by the respondent.
- 60.** *Res judicata* only applies where there is a determination on the merits. It does not apply where a suit is withdrawn before it is heard and determined on its merits. In **Kahoro & Others -vs- Kanyamwi Trading Co, Ltd [2025] KECA 541 [KLR]**, the court emphasized that *res judicata* applies where parties are trying to approach the court in different shades, while remaining the same parties like a chameleon.
- 61.** In **Kenya Commercial Bank Ltd -vs- Muiri Coffee Estate (supra)**, the court said that *res judicata* applies once the legal rights of parties have been

judicially determined to ensure that such a decision stands as a conclusive statement as to those rights. In **John Florence Maritime Services Ltd & Another -vs- CS Transport and Infrastructure**, (*supra*), the court held that the test is whether the plaintiff in the second suit is trying to bring before the court in another way and in the form of a new cause of action, to seek the same remedy, which has been resolved by a court of competent jurisdiction.

- 62.** In the ruling of **11/10/2022**, the court merely stated it was *functus officio*, that the application was badly drafted, incompetent, and should have been brought in the appropriate forum. The context is that the applicant was coming to the court, which was then *functus officio*, after its decision was confirmed by the Court of Appeal.
- 63.** The instant application, in my considered view, cannot suffer the plea of *res judicata* since the court on the two occasions did not hear and determine the question of whether, after the National Land Commission award remained intact in view of the holding of the Court of Appeal should be adopted or not for the same to be implemented in law. To interpret the law on *res judicata* in the circumstances

would be tantamount to denying the applicant the right to access to justice and to have the claim heard and determined on its merits. There can be no right without a remedy. This is the reason why the court held that the applicant should move to the appropriate forum for redress.

- 64.** As to the question of capacity to sue, and the words used by the court in the former ruling, *obiter dicta*, are statements which are not necessarily for the purpose in hand. They have no binding authority over another court. The passing remarks of a judge are called *obiter dictum*. They are not part of the *ratio decidendi*. See **Mwai Kibaki -vs- D.T. Moi [2000] 1 EA 115**. A statement is an *obiter dictum* if made on an issue that did not strictly and ordinarily call for a decision.
- 65.** In **Rai -vs- Rai [2013] eKLR**, the court said that such a statement is one that is not vital to the outcome set out in the final decision of the case. The upshot is that I find the plea of res judicata, abuse of court process, vexatious, and frivolous, lacking merit.
- 66.** Coming to the question of time limitation, and if the claim by the applicant fits the description of a historical land injustice complaint, it is trite law that

parties are bound by their pleadings and issues; courts cannot determine issues that are not pleaded. See **Raila Odinga -vs- Independent Electoral and Boundaries Commission & Others [2013] eKLR.**

- 67.** The respondent and the interested parties aver that the subject matter had dissipated by **1993**, and at the hearing and determination of the historical land injustice claim in **2019**. The court has looked at the letter dated **9/8/2017** by the National Land Commission County Coordinator, Trans Nzoia, an uncertified map, whose maker, as the Director of Surveys, has not authenticated it. The area list has overwriting. It does not contain the Land Reference Numbers of the alleged **306** members.
- 68.** The custodian of survey maps in Kenya is the Director of Surveys. Subdivision of large scale farm is normally carried out by licensed surveyors.
- 69.** The documents appearing on pages **23-24** of the replying affidavit of the respondent lack vital details as per the Surveys Act, especially on who did the survey works and submitted the report to the Director of Survey in line with **Rules 4, 7, 9, 11, 12, 14, and 15** of the Legal Notice No. **132 of 2020** as

read together with **Sections 10, 22, 23, 24, 25, 30 and 32** of the Surveys Act Cap **299**.

- 70.** In **Barmasai -vs- Rono & Others Civil Appeal No. E062 of 2023 [2025] KECA 1489 [KLR] (19<sup>th</sup> September 2025) (Judgment)**, the court said that the Registry Index Map is a crucial cadastral document used in the land registration, to visually represent the location and boundaries of land parcels, and that it is the official record maintained by the Surveys of Kenya as an integral part to the land registration and ownership system under the Land Registration Act.
- 71.** The court held that, unlike a title deed, which certifies ownership, a Registry Index Map provides a geographical context, mapping onto the physical existence and the precise location of a property relative to its surroundings. The court said a Registry Index Map is a comprehensive tool that complements other ownership documents like title deeds and green cards, offering a detailed layout of land parcels, their shapes, and their boundaries.
- 72.** The burden is on he who alleges the existence of certain facts, for the court to find in favour of his rights.

- 73.** A Registry Index Map is the definitive document for the registration and demarcation of land. other than the application for Land Control Board consent the consents referred to in the replying affidavit of Patrick Kiptanui on page **186** and Priscah Jelagat Buigut, there are no copies of green cards, title deeds, official search certificate and subdivision plan showing that L.R. No. **8940** ceased to exist by **1992** or was non-existence by **2017** or **2019** and currently as of the swearing of the replying affidavits on **30/7/2025** and **10/8/2025**.
- 74.** Evidence that the Land Control Board consent dated **24/6/2010** that L.R. No. **8940** was subdivided among **306** members is lacking. The seven steps of land subdivision include conducting a title deed search, obtaining a Registry Index Map, preparing a subdivision scheme, meeting the Land Control board, placing beacons to mark the boundaries, signing a mutation form, and subdividing the land to assign new plot numbers to the subdivided plots.
- 75.** The respondent and the interested parties have not ascertained the above elementary steps, yet they want the court to believe that the application before the court is unmerited, and by dint of **Section 15(7)**

of the National Land Commission Act. It is impossible to restore the land as recommended by the National Land Commission, since L.R. No. **8940** was surrendered, subdivided, and the Registry Index Map amended to reflect the subdivided portions.

**76.** Surrender of title for subdivision scheme is governed by **Section 55(2)** of the Physical and Land Use Planning Act, **Sections 102 to 105** of the County Governments Act, **Article 67** of the Constitution on the National Land Commission, and the Land Registration Act. An application to subdivide has to be made under **Rule 16** thereof. Proof of payment of subdivision fees is lacking. Evidence of a filled **PPA(1)** is lacking. The court's finding is that the respondent and the interested parties have failed to substantiate the impossibility of the implementation of the award by the National Land Commission due to the non-availability of L.R. No. **8940**.

**77.** The claim is also attacked as indicated above on account of being stale, hence making the court lack jurisdiction to entertain it outside the statutory limits set by the National Land Commission Act. The law on limitation of actions is aimed at legal certainty, encouraging timely action, and the protection of the

defendants. The respondent and the interested parties have urged the court to use a literal construction of the provision.

- 78.** In **Zehrabanu Janmohammed (SC) & Another - vs- Nathaniel K. Lagat & Others, Petition No. 17 [E021] of 2022,** as consolidated with **Petition No. 24 [E027] of 2022,** the court held that though there are no limitations of time in respect to violation of rights of freedoms, the principle is not absolute. The court said that **Section 7** of the Limitation of Actions Act applied to a cause of action in the original claim at the Environment and Land Court, founded on a claim to right or title to land.
- 79.** The court held that the limitation of actions under **Article 22** of the Constitution, as regards the right to institute court proceedings, since it seeks to limit the time within which a right under **Article 22** may be exercised, and that **Cap 22** was one of the laws envisaged in **Article 24** on how a right or freedom may be limited.
- 80.** The court said that the argument that the Constitution automatically ousts the provisions of the Limitation of Actions Act is not legally tenable. **Section 4(4)** of the Limitation of Actions Act

provides that an action may not be brought after **12** years from the date on which the judgment was delivered.

- 81.** The respondent and the interested parties have termed the previous applications and the instant as one seeking enforcement of the award as time-barred under the law, which this court has no mandate to extend or to entertain the same out of time. Reliance is placed on **M'aitumitu Kamau -vs- District Land Adjudication & Settlement Officer** (*supra*).
- 82.** In **Pentagon Commission Ltd -vs- National Land Commission Civil Appeal No. E035 of 2025 KECA 1304 [KLR] (18<sup>th</sup> July 2025) (Judgment)**, the court cited **Kenya Revenue Authority -vs- Menginya Salim Murgani [2010] eKLR**, that decision-making bodies other than courts, whose procedures are laid down by statute, are masters of their own procedure. The court said that any party aggrieved by an award of the National Land Commission should file a reference under **Section 128** of the Land Act, which section has no cap on the time to lodge the reference. The court said that under **Article 162(2) (b)** of the Constitution, the

court is not precluded from admitting and hearing matters under **Sub-Sections (1) and (2)**, on its appellate jurisdiction over local tribunals or subordinate courts, and to make appropriate orders or reliefs.

**83.** Further, the court said that an award by the National Land Commission had emanated from a hearing on an inquiry. As to the objection on jurisdiction to hear the appeal filed out of time, the court cited **Section 16 A(2)** of the Environment and Land Court Act, on admission of an appeal out of time only if there is a good and sufficient cause for not filing it on time. The court said that the appellant, having filed the appeal and not a reference almost a year down the line, and having not invoked **Section 16 A** of the Environment and Land Court Act, the court had no jurisdiction to hear an appeal that never was.

**84.** The court cited **County Executive of Kisumu -vs- County Government of Kisumu & Others [2017] KESC 16 [KLR] (12<sup>th</sup> April 2017)**, that by filing an appeal out of time, before seeking extension of time, was tantamount to moving the court to remedy an illegality.

- 85.** In this application, there is no dispute that the award by the National Land Commission was made on **7/2/2019** and gazetted on **1/3/2019**. The applicant filed an application dated **27/2/2019** in **ELC Misc. Application No 4 of 2019**, seeking to adopt the award as an order of the court. The said application was later on voluntarily withdrawn on **29/6/2023**. Another application was later filed on **1/10/2022**, but did not include a relief for the adoption of the award.
- 86.** Just like in **Pentagon Commission Ltd -vs- National Land Commission** (*supra*), the court in **ELC No. 4 of 2019** found that the decision by the National Land Commission was made under Regulation **29** of the National Land Commission (Investigation of Historical Injustices Regulations), and the appeal ought to have been filed within **28 days**, and what was before the court was a judicial review notice of motion.
- 87.** The applicant instead waited until **29/6/2022** to withdraw the application and pay costs to the respondent. It is unbelievable that the applicant chose that route and waited for almost another year to file the application dated **11/10/2022**, upon whose ruling on **1/10/2024**, decided to file the

instant application dated **7/11/2024**, where she deliberately omitted to mention any of the foregoing previous attempts to seek similar reliefs from the court.

- 88.** The applicant was also silent in her application as to why she did not seek to have the award adopted as a decree of the court soon after its gazettelement through her own suit, assuming that she realised that she had fallen into the same jurisdictional error as the respondent.
- 89.** The role of the National Land Commission regarding historical land injustices is defined by **Article 162(e)** of the Constitution and **Sections 5** and **15** of the National Land Commission Act. The procedure to follow is governed by the National Land Commission (Investigation of Historical Land Injustices Regulation, Gazetted on **6/10/2017**).
- 90.** The statutory time frame within which to have handled such a claim was **1/5/2022**. Conclusion of the matters is what was to be done within **3** years. This court is aware of the **High Court Petition No. 6349 of 2021**, where the High Court affirmed that Parliament cannot enact legislation to limit or impede the continuous and unrestricted mandate of the

National Land Commission under **Section 15(3) (e)** of the National Land Commission Act.

- 91.** The court ruled that **Section 15(10)** of the National Land Commission Act, restricting any authority mandated to act on the National Land Commission recommendations for redress of historical land injustice within **3 years**, is valid under the Constitution, to encourage expeditious actions.
- 92.** The court held that any repeal of **Section 15(11)** of the National Land Commission Act, as has been done, is incapable of affecting the mandate of the National Land Commission as it executes its constitutional mandate.
- 93.** In **Wambega & Others -vs- Attorney General & Others Civil Appeal E028 of 2020 [2024] KECA 445 [KLR] (12<sup>th</sup> April 2024 (Judgment)**, the court held that it is the National Land Commission, which under **Section 15(2)** and **(3)** of the Act, determines that the threshold has been met to admit, register, and process such a complaint.
- 94.** In this application, the interested parties have faulted the National Land Commission, claiming that the applicant's complaint did not meet the threshold, and that they were necessary parties to the claim who

were condemned unheard, contrary to **Communications Commission of Kenya -vs- Royal Media Services** (*supra*).

- 95.** The court has looked at the application dated **24/9/2024**, seeking a stay of delivery of the ruling in the earlier application dated **11/10/2022**. In the ruling of the Court of Appeal dated **9/7/2021**, the appellant had mentioned the interested parties as being in occupation of the suit land.
- 96.** Joseph Rotich and Joseph Yego, who have signed the area list on paragraph **34 of PK(1)**, were parties in the award dated **7/2/2019**. To say that they were denied an opportunity to participate in the National Land Commission proceedings is far from the truth.
- 97.** Equally, between **2019** and **2024**, when the respondent filed **JR No. 4 of 2019** and when the interested parties sought to join it, it is not clear what prevented them from seeking to set aside the award to safeguard their alleged purchasers' rights. Evidence of sale agreements, transfer forms, and payments for any consideration is also lacking before this court to show what stake they hold in the suit land.

- 98.** The court takes notice of the supporting affidavit and further affidavit of Joseph Yego dated **11/2/2025** and **5/3/2025**, where he deposed that the orders would evict over **1000** residents on suit property, without fair hearing and stating that the decree of the court was to the effect that occupants be evicted from the land despite no such fact in the National Land Commission decision, but rather ordered for compensation of the applicant's estate. The court record does not reflect such a decree. Equally, the National Land Commission decision did not allude to any compensation at all, *in lieu* of the excision of **400** acres.
- 99.** A party that comes to court should make a full and frank disclosure of all facts. See **Pentagon Commission Ltd -vs- National Land Commission & Others Civil Appeal No. 210 of 1997**. Failure to substantiate the existence of facts claimed by companies with evidence, and instead using written submissions, was held in **D.T. Moi -vs- Mwangi Stephen Muriithi & Another [2004] eKLR**, as inappropriate.
- 100.** A false affidavit may lead to an offence of perjury under **Section 114** of the Penal Code. See

**Simon Mugo Rutere -vs- Republic [2021] KEHC 2612 [KLR]**. An affidavit based on information must disclose the source of the information and belief, showing the sources and grounds thereof, as held in **Premchand Raichand Ltd. and Another -vs- Quarry Services of East African and Others [1972] EA 162.**

**101.** **Order 19 Rule 3(1)** of the Civil Procedure Rules is clear that an affidavit must confine itself to facts as the deponent is able, on his own knowledge, to prove. See **Salama Reach Hotel Ltd -vs- Mario Rossi [2015] eKLR**, and **K.M.D Pattni -vs- Nasir Ibrahim Ali, CA No. 354 of 2004.**

**102.** As to whether the applicant is entitled to the reliefs sought, I wish to tie this with the issue alluded to above, but not concluded on whether the law caps implementation to **3 years**. The court takes notice of the National Land Commission Amendment Act No. **22 of 2025**, which came into force on **4/11/2025**. It reopens the ability of the National Land Commission to accept and consider historical land injustice claims, which had been closed in **September 2021**. The new law mandates the authority tasked with

implementing the National Land Commission recommendations to do so within **3** years.

**103.** In this application, the Chief Land Registrar and the Director of Surveys were the ones directed to excise the **400** acres and to register them in the name of the claimant. The Cabinet Secretaries' Lands and Interior were to assist the estate to get the land back. The court notes that the National Land Commission; it was one of the implementing authorities by dint of Section **15** of the National Land Commission Act.

**104.** In **East African Railway Corporation -vs- Anthony Sefu [1973] CA 237**, the court said that it is a well-established principle that no statute shall be construed as to oust or restrict the jurisdiction of the superior courts in the absence of clear and unambiguous language to that effect.

**105.** **Article 159 2(c)** of the Constitution recognizes the use of an alternative dispute resolution mechanism. The doctrine of exhaustion of administrative remedies arises as held in **William Odhiambo Ramogi & Others -vs- Attorney General & Others [2020] eKLR**, when an aggrieved party seeks redress from a court of law

without pursuing available remedies. It ensures that a party is diligent in the protection of their own interest within the mechanism in place for resolution outside court. Exceptions arise where there is a lack of capacity or adequate remedies before a forum that is created by a statute, proportionate to the interests of a party who wishes to advance in court. See **Republic -vs- Independent Electoral and Boundaries Commission (IEBC) Ex parte National Super Alliance (NASA) & Others (2021) eKLR** and in the **Nicholus -vs- Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR)**.

**106.** In **Judicial Service Commission -vs- Michael Kizito Oduor & Others Petition No. 18 (E025) of 2021**, the court said that lapse of time was not a factor contributing towards the interpretation and or application of the Constitution when the jurisdiction is properly invoked.

**107.** **Section 14** of the National Land Commission Amendment Act **2025** has now clarified that all parties affected must be heard. The Commission is

now mandated to make rules for better carrying out of its mandate, by inter alia giving adequate notice to affected parties. The Commission has also acquired the mandate to direct the Registrar to revoke a title that is irregularly acquired upon notice of the defect to the aggrieved party. The Commission must, however, be guided by **Article 47** of the Constitution in its activities.

**108.** **Section 14(9) and (10) thereof** has clarified that a person may register a determination of the National Land Commission before the High Court and enforce the same in the manner provided in the Civil Procedure Act. Review of the award is now governed by **Section 7** of the Fair Administrative Action Act.

**109.** **Section 15(9) and (10)** regarding **Article 67(2)(e)** of the Constitution maintains the time limitation or action by the authorities on the recommendation for a period of **3 years**.

**110.** Coming to whether the applicant should have engaged and did engage the authorities named in the decision to act, **Rule 26(3)** of the National Land Commission Investigation of Historical Land Injustices Regulations **2017**, provides that upon making a determination, the Commission shall, within **21**

**days**, furnish the authorities responsible for redress recommended with a copy of the determination for appropriate action.

- 111.** **Rule 27** relates to the publication of the decision and recommendations. **Rule 30** provides that the Commission may seek the assistance of the National Police Service or any other office of the National and County Government to facilitate its work and enforce its decision.
- 112.** The respondent and the interested parties attack the applicant for lack of capacity to seek the court's redress by way of the instant application in view of the *obiter dictum* in the ruling of **11/10/2021**. *Locus standi* is defined by Black's Law Dictionary as a right to bring an action or to be heard in a given forum. See also **Alfred Njau & Others - vs- City Council of Nairobi [1982] KAR 229**. **Article 47** of the Constitution grants every person a right to a fair administrative action that is expeditious, efficient, lawful, reasonable, and fair.
- 113.** The applicant herein had made her historical land injustice complaint to the National Land Commission pursuant to **Article 67 (3) (e)** of the Constitution, and **Section 15(3)** of the National Land

Commission Act, which was admitted, heard, determined, and action recommended for implementation by the Chief Land Registrar and the Director of Surveys. The finding of the National Land Commission affirmed that the applicant had established a historical land injustice claim. The award, as held by this court and the Court of Appeal, was not appealed against within **28 days** under the relevant Rules.

**114.** The alleged failure of the National Land Commission in exercising its mandate under **Section 15(5) and (6)** of the Act to involve the interested parties has not been challenged in any other forum or court by the interested parties. The appropriate remedies set out in **Section 15(9)** of the Act, in general and in particular, the restoration of the land on account of unavailability, surrender, or alienation before the award was made, have not been challenged before this court or elsewhere in line with the National Land Commission Act and the Rules made thereunder.

**115.** The capacity of the authorities mandated by the National Land Commission in its recommendation and their failure to adhere to **Article 47** of the

Constitution, which binds all state organs or agencies, has not been challenged by the respondent or the interested parties through the available avenues in law, save for the application for judicial review which this court and the Court of Appeal found inapplicable.

**116.** **Section 2** of the Fair Administrative Action Act defines administrative action as including the powers, functions, and duties exercised by authorities or quasi-judicial tribunals in any act, omission, or decision of any person, body, or authority that affects the legal rights or interests of any person to whom such action relates. An administrator is defined as one who takes administrative action or who makes administrative decisions.

**117.** In **Judicial Service Commission -vs- Mutava Civil Appeal No. 52 of 2014**, the court said that among the pillars of justice is the right under **Article 50(1)** of the Constitution, to have a dispute resolved by the application of law in a public and fair hearing before a court or another forum.

**118.** The right to have the decision implemented under **Section 15** of the National Land Commission

Act within **3 years**, in my view, does not limit the applicant's right to access justice before courts of law if and when the authorities mandated to do so after **3** years have failed.

**119.** The court notes that part of the reasons for the delay was attributable to the respondent's pending judicial review application and an appeal at the Court of Appeal. It is therefore not true that the delay in moving the court is wholly attributable to the applicant.

**120.** The respondent and the interested parties urge the court to find the delay inordinate and capable of interfering with their rights in law if the court were to grant the reliefs sought. The right to fair hearing and fair trial is one of the listed non-derogable rights under **Article 25(c)** of the Constitution. It cuts both ways.

**121.** In **Evans Kidero & Others -vs- F.N. Waititu & Others [2014] eKLR**, the court said that the right must be construed expansively and inclusively to give a right its full effect. **Article 259** of the Constitution provides that the court is to interpret the Constitution in a purposive manner to advance its purposes, values, and principles, which promote the

development of the law, contribute to good governance, and ensure that every provision of it is seen that the law is always speaking.

**122.** **Article 259(8)** thereof is specific on prescribed timelines as long as there is no inordinate delay. I therefore reject the submissions by the respondent to construe that the provisions of **Section 15** of the National Land Commission Act to limit the right to access justice by the applicant generally and in particular, make any recommendations for appropriate redress by a constitutional commission such as the National Land Commission pursuant to **Article 67(2)(e)** in operational or ineffective. A constitutional provision cannot be read in isolation. It has to be interpreted in context, which includes its history and background.

**123.** The absence of the Rules, as held in **Republic - vs- National Land Commission Ex parte Holborn Properties Limited [2016] eKLR,** cannot stop the National Land Commission from exercising its functions. There is evidence that there was a notice before the administrative action was made, as indicated above, which was made to the interested parties, as the names of some of the members of the

interested parties are captured in the area list appear in the proceedings of the National Land Commission. The interested parties have not disputed those facts.

- 124.** As held in **Republic -vs- Chief Justice of Kenya Exparte Ole Keiuwa, Nairobi HC No 1298 of 2004**, a fair hearing may be given individually or collectively; otherwise, a departure from the rules of natural justice may be presumed to have been intended by the legislature. The respondent was aware of the stake of the interested parties as of **2019**, if at all they had been parties of the shareholders and purchasers of the suit land since **1982**. The respondent chose only to involve or inform the interested parties over the matter in **2021**.
- 125.** From **2021**, the interested parties only made an attempt to join the judicial review at the very last minute when there was a pending ruling due for **11/10/2021**. The respondent knew of the historical land injustice claim in **2017**.
- 126.** The respondent at the time did not find it necessary to demand that the National Land Commission summon or notify the interested parties as necessary parties before the award was made and

published in 2019. See **E.T. Gaturu & Another -vs- Naiposha Co. Ltd & Others [2017] eKLR**.

127. As held in **Kenya Revenue Authority -vs- Menginya Salim Murgani Civil Appeal No. 108 of 2009**, decision-making bodies whose procedures are laid down by statute are masters of their own procedures so long as they achieve fairness. The law is not that a party must be heard in every case so long as an opportunity is availed to it. In **Joseph Kariuki & Mutuanjari -vs- National Irrigation Board & Others [2016] eKLR**, the court held that once an opportunity is given and not utilised, the only point on which a party not utilising the opportunity can be heard is why it did not utilize the opportunity.

128. In the matter of the **National Land Commission Advisory Opinion Ref. No. 2 of 2014 [2015] eKLR**, the Supreme Court held that the words recommend, advise, research, and investigate are all actions that provide a facilitative role rather than a primary one. The court said that the context presumes that there is another body or organ to whom such recommendations shall be sent for implementation.

**129.** In this application, the respondent and the interested parties did not seek to join the authorities who are supposed to act on the recommendations as parties. The two, therefore, cannot arrogate to themselves the mandate to speak for and on behalf of the authorities mandated to act on the recommendations within **3 years**, who, despite service with the recommendations and publication of the same, have not acted to the detriment of the right of the applicant under **Article 47** of the Constitution.

**130.** Administrative bodies must act within the tenets of **Article 47** of the Constitution. See **Supreme Court Petition No. E035 of 2023**. To hold that the applicant has a legal right without a legal remedy in view of the inaction by the authorities mandated to do so within **3 years** is tantamount to denying her the fruits of her historical land injustice claim. As held in the **Speaker of the National Assembly -vs- Njenga Karume [1990-1994] EA 546**, courts, as the bastion of justice, sit back and watch such an institution ride roughshod on the rights of citizens.

**131.** In the premise, I find the application has merits. The Chief Land Registrar and the Director of Surveys

are directed to implement the National Land Commission award as gazetted within **6 months** from the date **hereof**, taking cognizance of **Section 152 A-F** of the Land Act.

**132.** Costs to the applicant.

**133.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **4<sup>th</sup>** day of **February 2026**.

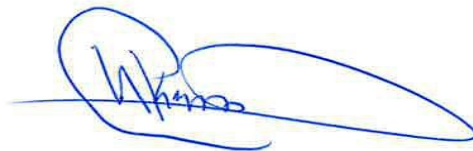
**In the presence of:**

Court Assistant - Dennis

Mr. Okoth for the Interested parties - present

Mr. Obuya for the respondent - present

Lichuma for Gemenet for the applicant - present



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