

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC PETITION NO. E002 OF 2020

OKIYA OMTATAH OKOITA :::::::::::::::::::::1st PETITIONER
JONATHAN K. LILAH:::::::::::::::::::2nd PETITIONER
JACKSON L. OIPUTA :::::::::::::::::::::3rd PETITIONER
SIMON K. TARAIYA:::::::::::::::::::4th PETITIONER
STEPHEN N. LEKUIK:::::::::::::::::::5th PETITIONER
LAIRUMPE KOMPE:::::::::::::::::::6th PETITIONER
DANIEL K. SUYIANKA:::::::::::::::::::7th PETITIONER
GIDEON P. LILAH:::::::::::::::::::8th PETITIONER
NELSON J. OIPUTA:::::::::::::::::::9th PETITIONER
JAMES P. NKAPAAPA:::::::::::::::::::10th PETITIONER
WILSON N. NANKA:::::::::::::::::::11th PETITIONER
THOMAS T. LEKUIK :::::::::::::::::::::12th PETITIONER

VERSUS

THE MINISTRY OF LANDS & PHYSICAL PLANNING
:::::::::::::::::::1ST RESPONDENT
THE MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES
& COOPERATIVES:::::::::::::::::::2ND RESPONDENT
THE NATIONAL TREASURY:::::::::::::::::::3RD RESPONDENT
THE NATIONAL LAND COMMISSION:::::::::::::::::::4TH RESPONDENT
THE HON. ATTORNEY GENERAL:::::::::::::::::::5TH RESPONDENT
THE KENYA WILDLIFE SERVICE:::::::::::::::::::6TH RESPONDENT
THE COUNTY GOVERNMENT OF MACHAKOS:::::::::::::::::::7TH RESPONDENT

THE KENYA MEAT COMMISSION :::::::::::::::8TH RESPONDENT
AFYA SACCO:::::::::::::9TH RESPONDENT
MAVOKO AFYA HOUSING ASSOCIATION :::::::::::10TH RESPONDENT
SAKANA OLE TURERE SAITEU, WILSON ANKAINI KISEMEI,
SAMUEL SIPOREN OIPUTA, JOSEPH SAPAI JUMA AND JEREMIA
KALOI SAITEU AS THE REGISTERED TRUSTEES OF EMPAKASI
OOLERA TRUST:::::::::::::11TH RESPONDENT
FORTUNE SANDS ENTERPRISES LIMITED :::::::::::12TH RESPONDENT
MANYOTA LIMITED:::::::::::::13TH RESPONDENT
CREDIT BANK LIMITED:::::::::::::14TH RESPONDENT
THE CHIEF LAND REGISTRAR :::::::::::::::15TH RESPONDENT
JAMES MUTHUSI, PERIS NGIGI, MONTHE MUTHUSI, PAUL
MULINGE, BENARD MANTHI & ALICE KALEKYE (IN THEIR
CAPACITY AS REPRESENTATIVES OF A GROUP COMMONLY
KNOWN AS KASUITI SQUATTERS)
:::::::::::::16TH RESPONDENT

RULING

The 13th Respondent raised a preliminary objection dated 4th December 2024 on the following grounds;

1. That the jurisdiction of the Honorable court has not been invoked properly.
2. That the issues raised in the amended petition are in the nature of historical land injustice as defined under section 15(2) of the National Land Commission Act 2012 and consequently the proper avenue to be pursued

would be to lodge a claim of historical injustice with the National Land Commission for admission and investigation.

3. That the amended petition offends the exhaustion doctrine.

Counsel for the 13th Respondent seeks to have the amended petition struck out with costs on the foregoing grounds.

The Amended Petition dated 18th June 2024 relates to a dispute over parcel of land known as LR 10029/2 measuring approximately 2,912 acres and situated in Machakos County. The Petitioners state that the suit property was originally designated for a Sheep Goats Multiplication Project, a community and/or public purpose that ultimately failed. The Petitioners aver that various government agencies and private entities have illegally acquired portions of the Suit Property. The Petitioners seek declarations that these acquisitions were unlawful and thus void ab initio, and orders for the return of the Suit Property to original owners which is the community, along with injunctions against further encroachment. The 13th Respondent has filed this Preliminary Objection, alleging that the issues raised in the Petition relate to historical land injustices, which in their view are not within the jurisdiction of this Court. The Petitioners herein oppose the Preliminary Objection.

This court has considered the Preliminary Objection and submissions therein. According to the Black Law Dictionary a Preliminary Objection is defined as being;

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”

The above legal proposition has been made in the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) E.A. 696 where the court held that;

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”

In the case of Attorney General & Another vs Andrew Mwaura Githinji & another (2016) eKLR the court outlined the scope and nature of preliminary objection as;

(i) A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.

(ii) A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and

(iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.

It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter. I find that the filed preliminary objection by the 13th Respondent herein was properly brought before the court.

In the case of Owners of the Motor Vessel M.V Lillian S. vs Caltex Oil (K) Limited (1989) KLR 1 the court held that without jurisdiction it has to down its tools. The jurisdiction of the ELC court flows from Article 162 (2)(b) of the Constitution of Kenya 2010. Section 13 (2) of the ELC Act vests this court with wide powers over any dispute relating to land it provides that;

In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*
- (b) relating to compulsory acquisition of land;*
- (c) relating to land administration and management;*
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*
- (e) any other dispute relating to environment and land*

The jurisdiction of this court to hear and determine this suit flows from the Constitution and the law. The jurisdiction of court is not conferred upon it by parties nor can the court confer upon itself jurisdiction. The Supreme Court in *Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 others* (2012)eKLR held that;

“A court’s jurisdiction flows from either the constitution of legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for

the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

With regard to historical injustices and the National Land Commission, the Constitution at Article 67 (2) (e) does provide that one of the functions of the NLC is “*to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.*” The function was embodied in Section 15 of the NLC Act. The original Section 15 of the NLC Act, Act No. 5 of 2012, (before amendment in the year 2016) provided as follows :-

“The Commission shall, within two years of its appointment, recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67 (2)(e) of the Constitution.”

Thus, whereas the function to attend to historical injustices was noted, the process of doing so was not elaborated. This was done in 2016 through The Land Laws (Amendment) Act, 2016, which commenced on 21 September 2016. The purpose of this Amendment Act, as noted in its preamble, was to inter alia give effect to Article 67 (2)(e) of the Constitution, which, as we have seen, relates to the function

of the NLC on historical injustices. The Amendment Act deleted the old Section 15 and replaced it with a new Section 15 drawn as follows :-

15. Historical land injustices

1. Pursuant to Article 67 (3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

2. For the purposes of this section, a historical land injustice means a grievance which—

a. was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;

b. resulted in displacement from their habitual place of residence;

c. occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;

d. has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and

e. meets the criteria set out under subsection 3 of this section.

3. A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

a. it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;

b. the claim has not or is not capable of being addressed through the ordinary court system on the basis that—

i. the claim contradicts a law that was in force at the time when the injustice began; or

ii. the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;

c. the claimant was either a proprietor or occupant of the land upon which the claim is based;

d. no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and

e. it is brought within five years from the date of commencement of this Act.

(4) A claim alleging historical land injustice shall be permissible if it was occasioned by—

a. colonial occupation;

b. independence struggle;

c. pre-independence treaty or agreement between a community and the government;

d. development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;

e. inequitable land adjudication process or resettlement scheme;

f. politically motivated or conflict based eviction;

g. corruption or other form of illegality;

h. natural disaster; or

i. other cause approved by the Commission.

(5) When conducting investigations under subsection (1) into historical land injustices the Commission may—

a. request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or

b. by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.

(6) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.

(7) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at

the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

(8) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice.

(9) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies—

a. restitution;

b. compensation, if it is impossible to restore the land;

c. resettlement on an alternative land;

d. rehabilitation through provision of social infrastructure;

e. affirmative action programmes for marginalized groups and communities;

f. creation of wayleaves and easements;

g. order for revocation and reallocation of the land;

- h. order for revocation of an official declaration in respect of any public land and reallocation;
- i. sale and sharing of the proceeds;
- j. refund to bona fide third party purchasers after valuation; or
- k. declaratory and preservation orders including injunctions.

(10) Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.

(11) The provisions of this section shall stand repealed within ten years.

It will be seen from the above, that the NLC has wide jurisdiction on historical injustices. I would say that when it comes to the choice of filing a claim before the NLC or before the Court, one needs to make an assessment of what task is required. If the facts are contested, the number of persons elaborate and not easy to verify them, and where a thorough investigative process is going to be needed, then probably the court would not be the best forum and it would be best that the NLC handles the matter. If a person files such suit in court, the court, on being moved, or on its own volition, can refer the matter to the NLC for determination, rather

than dismissing it outright. However, where facts are clear, the issues uncontested, and what is needed is for the court to determine the rights violated and the nature of redress, or the legal rights of the parties, then a court is at liberty to entertain the suit and determine it on its merits.

The 2nd to 12th Petitioners submitted that, the Suit Property was hived off a larger parcel of land originally known as L.R 10029 measuring 8,912 acres. The area constituting L.R 10029 was named (and to date is still named) Empakasi by the local community. The community currently residing in Empakasi are the Kaputiei Maasai of Empakasi (the Community) and have been in occupation of Empakasi since official records began. The Community also obtained official allocation and ownership of Empakasi following its proclamation vide the Native Trust Ordinance, Kenya Gazette Number 394 of 3rd December 1926 as being part and parcel of the wider Maasai Reserve.

That later after independence, the whole of I-R 10029 was placed under the ownership and administration of Empakasi Group Ranch, a group ranch incorporated under the provisions of the Land (Groups Representatives) Act

Chapter 287 laws of Kenya. Empakasi Group Ranch owned and managed the entire I-R 10029 as trust land for the Community. That in 1982 (as evidenced by Minutes of a Empakasi Group Ranch Committee Meeting in relation to the entire I-R 10029 annexed to the Petition), the Community was prevailed upon by the government to cede part of Empakasi (2,912 acres) for the Project whilst the remaining portion of 6,000 acres was subdivided and distributed amongst registered members of Empakasi Group Ranch. The Petitioners are representatives of the Community that still reside in Empakasi area and own the remaining 6,000 acres under private ownership. The Project on the Suit Property was intended for the benefit of the Community and their counterpart pastoral communities in Kajiado and Machakos, in other words, for public use. Indeed, immediately following hiving off of the Suit Property from Empakasi Group Ranch, a Sheep Goats Station was established on a corner of the Suit Property with funding from FAO/UNEP. The Project did not get the required governmental and stakeholder support in funding and hence it did not take long to become apparent that the Project had failed to achieve its intended purpose. In addition, the government also indicated that an increase in pollution attributable to dust emissions from the neighboring cement factories had impacted on the sustainability of the Project.

When it became apparent that the original purpose had failed, unscrupulous individuals started devising devious means to grab portions of the Suit Property. The Petitioners have adduced evidence of titles held over portions of the Suit Property by governmental agencies and private individuals and the Petitioners aver that none of them hold or can hold a good title as the foundation of the acquisition was marred with violations of the law, human rights and dignity of the Petitioners.

That acting on a petition filed by the Community as corroborated by records on the National Assembly Hansard of 30th June 2025, the National Assembly allocated the matter to its Departmental Committee of Lands for investigation. The Departmental Committee filed its report with the National Assembly on 4th May 2016 with the following findings:

(a) The community land (the Suit Property herein) was converted to public land through compulsory acquisition from the Kaputiei Community to hold ground for sheep and goats waiting to be slaughtered at the Kenya Meat Commission (the 8th Respondent herein).

(b) There are cases of alleged irregular allocations and issuance of title deeds to private individuals, which made the Kaputiei Maasai declare

that their land had allegedly been used for other purposes contrary to the original plans.

The Departmental Committee would then recommend that the Government, through the State Department of Lands and the National Land Commission (the NLC), the 4th Respondent herein, to among others;

- (a) Survey the public land (the Suit Property) to establish the actual acreage;
- (b) Consider reverting the land to the Community since the land was not used for the original intended purpose;
- (c) Investigate all illegal subdivisions with a view to revoking the title deeds issued.

The Departmental Committee further recommended that the Criminal Investigations Department (DCI) and the Ethics and Anti-Corruption Commission (EACC) conduct a forensic investigation on the title deeds in possession by people with a view to recommending prosecution of both public offices and private individuals culpable. That despite the above recommendations, neither NLC, the DCI, the EACC, nor any other organ of the National Government took any action for purposes of securing the Suit Property or any other action provided by law despite requests made by the Community.

NLC was therefore seized of all the issues raised in the Petition following reference by the National Assembly in May 2016 but NLC refused and/or neglected to take any action as required by law. On account of NLC's failure to take any action, the only avenue left for the aggrieved Community was this Court.

That the NLC refusal to take action emboldened more governmental agencies and private entities to continue their land-grab schemes on the Suit Property as evidenced by illegal title documents over portions of the Suit Property that were processed after the May 2016 reference to NLC by the National Assembly. One of the illegal titles includes the title document held by the 13th Respondent (the party which has filed the Preliminary Objection) which was processed in October 2016.

The Petitioners opine that based on the constitutional violations, the Suit Property ought to revert to the Community as original owners and not historical injustices. That in any event this court has the jurisdiction to deal with the same. The 1st Petitioners adopted these submissions.

The Petitioners herein therefore filed the instant petition seeking, amongst others, orders:

- (a) A declaration that the 2,912 acres of Sheep Goats Multiplication Land was taken by the National Government from the Kaputiei Maasai of Empakasi for a public purpose and without the acquiring authority compensating the original owners or their successors in title in any way or manner known in law.
- (b) A declaration that the KWS, the KMC, the Mavoko Afya Housing Association, Manyota Limited, Credit Bank Limited, Empakasi Oolera Trust and any other public or private body or entity be barred from howsoever accessing, occupying, surveying, fencing, occupying or taking possession of any part of the Sheep Goats Multiplication Land.
- (c) A declaration that the NLC should offer the original owners of the Sheep Goats Multiplication Land, or their successors in title, pre-emptive rights to re-acquire the land for use as a community conservancy, without restitution to the acquiring authority since nothing was paid as compensation when the land was acquired.
- (d) A declaration that the County Government of Machakos should commence the legal processes for the recognition, adjudication and

registration of the Kaputiei Maasai of Empakasi as the owners of the Sheep Goats Multiplication Land.

- (e) A declaration that the title deeds issued to the KWS, the KMC, Afya Sacco, Fortune Sands Enterprises Limited, Manyota Limited, and Mavoko Afya Housing Association and any other public or private body over the Sheep Goats Multiplication Land are invalid, null and void.
- (f) The Honorable Court to issue an Order Quashing the title deeds issued to the KWS, the KMC, Afya Sacco, Fortune Sands Enterprises Limited, Manyota Limited, and Mavoko Afya Housing Association over any portion of the Sheep Goats Multiplication Land.
- (g) The Honorable Court to issue an Order Compelling the NLC to offer the Kaputiei Maasai of Empakasi, who are the original owners of the Sheep Goats Multiplication Land, or their successors in title, pre-emptive rights to re-acquire the land for use as a community conservancy, without restitution to the acquiring authority since nothing was paid as compensation when the land was acquired.

On jurisprudence, it is now settled law and affirmed in the Supreme Court of Kenya decision of Benard Murage vs Fine Serve Africa Limited & 3 Others (2015) eKLR that where there exists an alternative remedy through statutory law, then such statutory remedy should be pursued first.

In a more recent decision, the Supreme Court of Kenya in NGOs Co-ordination Board vs EG & 4 others; Katiba Institute (Amicus Curiae) (2023) KESC 17 (KLR) re-emphasised this settled law at paragraph 87 thereof by stating;

“87.This is further firmly rooted in article 159 of the Constitution which requires the courts to promote alternative dispute resolution mechanisms. The moment a storm begins to brew; courts should not be the first port of call but rather the final resort. Before using the court's jurisdiction, it is essential to exhaust any available alternative dispute resolution options. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his interests within the mechanisms in place for resolution outside the courts. The exhaustion doctrine acts as a safeguard to delay judicial consideration of cases to ensure that a party is vigilant in protecting his interests within the channels available for dispute

settlement methods. In this way, the doctrine serves to promote an efficient justice system and an autonomous administrative state.”

The National Land Commission (NLC) is constitutionally mandated by Article 67 (2) of the Constitution to advise, oversee and act as a public watchdog over all public land with an additional responsibility to recommend the correction of historical land injustices concerning public land. In particular, Article 67 (2)(e) of the Constitution, the NLC is mandated *“to initiate investigations on its own or upon a complaint from any person or, other persons or institutions on land injustices both present and historical and ensure appropriate redress.”*

The Court of Appeal in *Chief Land Registrar & 4 others vs Nathan Tirop Koech & 4 others* (2018) eKLR, held that this court does not have to wait for the investigation and recommendation by the NLC before it can entertain a claim founded on historical injustice. The Court of the opinion that;

“...a court has jurisdiction to hear and determine any claim relating to historical injustice whether or not the NLC is seized of the matter. Our conviction stems from our reading of Article 67(2) (e) of the Constitution. The Article provides that the NLC can investigate “present or historical” land injustices. We lay emphasis on the word “present.” If the NLC had an initial and exclusive mandate, it would mean that all present cases on land

injustices can only be handled by the NLC and not courts of law. This would prima facie render the Environment and Land Courts redundant. We do not think this was intended to be so. Our view is fortified by Section 15 (3) (b) of the National Land Commission Act which permit the Environment and Land Court to deal with historical injustice claims capable of being addressed through the ordinary court system.”

In as much as the appellate court has declared this court an avenue for addressing historical land injustices, the same can be heard and determined where the court in its discretion is of the view that justice will be done through the ordinary court system. Sila J in *Henry Wambega & 733 others v Attorney General & 9 others* (2020) eKLR was of the view that, even where the court has jurisdiction it may restrain itself from acting on it. He held that,

“This court has jurisdiction to hear claims even those based on historical injustices. What we need to have in mind here is that just because a court is vested with jurisdiction, does not mean that in all cases the court will proceed to exercise that jurisdiction, especially where there is another body that also has capacity to hear that dispute. In other words, depending on the facts and circumstances surrounding the case, the court can defer jurisdiction to another body, or decline to take up the matter altogether, and this would not be because it has no jurisdiction, but because given the

surrounding circumstances, it would be best for the court not to exercise its jurisdiction.”

I find that the issue of jurisdiction is settled. This court has jurisdiction to hear claims even those based on historical injustices. What we need to have in mind here is that just because a court is vested with jurisdiction, does not mean that in all cases the court will proceed to exercise that jurisdiction, especially where there is another body that also has capacity to hear that dispute. In other words, depending on the facts and circumstances surrounding the case, the court can defer jurisdiction to another body, or decline to take up the matter altogether, and this would not be because it has no jurisdiction, but because given the surrounding circumstances, it would be best for the court not to exercise its jurisdiction.

Clearly, the exhaustion principle is applicable in this petition since where mechanisms exist outside court, the court does not have jurisdiction in the first instance in the matter in question. See *Speaker of the National Assembly v James Njenga Karume* (1992) eKLR and *Geoffrey Muthinja Kabiru and 2 others-vs-Samuel Muguna Henry and 1756 others* (2015) KLR.

I am guided by the Supreme Court of Kenya decision in the case of *Albert Chaurembo Mumbo and 7 others vs Maurice Munyao and 148 others* (2019) eKLR on the exhaustion doctrine where the court held that;

“...even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute...”

In this case, the court is of the view that the petitioners’ grievances can and ought to be heard by the NLC, under Article 67 (2)(e) of the Constitution before they can approach this court. This court resonates with the findings in *Ledidi Ole Tauta & Others vs Attorney General & 2 others* (2015) eKLR, where a three Judge bench held that,

“In our view its the National Land Commission that has the mandate to investigate into historical land injustices and make appropriate recommendations for redress. The court is not the appropriate organ to carry out the investigation and/or inquiry and where the law has made provision for a state organ or institution to carry out a specific function that institution should be allowed to carry out its mandate. The court should not usurp the roles of other state institutions. We therefore are of the view, it was premature on the part of the petitioners to come to court without either exhausting the process of obtaining a degazettment of Ngong Hills Forest as a state forest under the provisions of the Forest Act and/or having the

National Land Commission exercise its mandate under Article 67(2) (e) of the Constitution.”

Section 15 of the National Land Commission Act empowers the Commission with wide jurisdictional powers in dealing with historical land injustices. Where facts are highly contested, the number of persons laying claim unprecedented and need to be ascertained as well as the land being laid claim to in question, the same should be investigated; the best forum for the investigation would be the NLC. This petition lacks specificity, it is general in nature and fails to identify with precision the particular property to which the petitioners lay claim.

I find that in this petition the petitioners claim that this is community land and should be reverted back to them. The facts are contested, the number of persons elaborate and not easy to verify them, and a thorough investigative process is going to be needed, consequently, the court would not be the best forum and it would be best that the NLC handles the matter. This court cannot make a determination on the instant petition before all the facts are established by the National Land Commission.

In conclusion, the court finds that the issues that the Petitioners want addressed ought to be investigated by the NLC as outlined in Section 15 of the National Land Commission Act. I find that this petition has been filed prematurely before this

court and the preliminary objection succeeds. I hereby stay these proceedings and refer the matter to NLC for investigations. NLC is to file a report in this court within the next 6 (six) months from the date of service of this order.

The proviso to section 27(1) of the Civil Procedure Act, chapter 21 laws of Kenya provides that costs follow the event within the discretion of the court. By the character of the petition, this court will not make any orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF FEBRUARY 2026.

N.A. MATHEKA

JUDGE

ORIGINAL