

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAIROBI**

**ELC PETITION NO E003. OF 2025**

**IN THE MATTER OF:**

**ARTICLES 2, 10, 19, 20(1-4), 21(1), 22(1) & (2)(b) &(c), 23(1) & (3), 27, 35  
(1), 40 (1) (2) (3) & (6), 42 (a&b), 47, 48, 60, 62 1(g) 3&4, 66, 69, 70, 71, 159,  
162(2)(a), 258(1) &(2)(b) &(c) AND 259(1)**

**AND**

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT &  
COORDINATION ACT, NO. 8 OF 1999**

**AND**

**IN THE MATTER OF THE FOREST CONSERVATION AND  
MANAGEMENT ACT, NO 34 OF 2016**

**AND**

**IN THE MATTER OF CONTRAVENTION OF NATIONAL VALUES  
AND PRINCIPLES OF GOVERNANCE UNDER ARTICLE 10, AND  
OBLIGATIONS IN RESPECT OF THE ENVIRONMENT UNDER  
ARTICLE 69 OF THE CONSTITUTION OF KENYA, 2010**

**THE LAW SOCIETY OF KENYA.....PETITIONER**

**VERSUS**

**KARURA GOLF RANGE LIMITED .....1<sup>st</sup> RESPONDENT**

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY.....2<sup>nd</sup> RESPONDENT**

**KENYA FOREST SERVICE.....3<sup>rd</sup> RESPONDENT**

**KENYA PIPELINE CORPORATION.....4<sup>th</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF ENVIRONMENT**

**CLIMATE CHANGE AND FORESTRY.....5<sup>th</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....6<sup>th</sup> RESPONDENT**

**AND**

**KATIBA INSTITUTE.....1<sup>st</sup> INTERESTED PARTY**

**NGONG ROAD FOREST ASSOCIATION.....2<sup>nd</sup> INTERESTED PARTY**

**JUDGMENT**

1. Vide the Petition dated the 7<sup>th</sup> January, 2025, the Petitioners seek the following reliefs:

- a. **A DECLARATION be and is hereby made that the issuance of special use licence LIC005/2023 to Karura Golf Range Limited for the development, operation and management of a golf range, restaurant and mini golf park within Miotoni Block in Ngong Road Forest contravene and violate Articles 1, 2, 10, 27, 35 (1), 40 (1) (2) (3) & (6), 42 (a&b), 47, 48, 60, 62 1(g) 3&4, 66, 69, 70 and 71 of The Constitution of Kenya as read together with Section 3, 8, Part IV, V, VI, and VII and Section 73 of the Forest Management and conservation Act and Regulation 7 &**

**21 of The Forests (Participation in Sustainable Forest Management) Rules and the decision and action thereto contained in the Letter dated 14th June 2023 Ref No. LIC005/1/KFS/VOL.XXVII is invalid, null and void ab initio.**

**b. A DECLARATION be and is hereby made that the issuance of NEMA EIA License NEMA/EIA/PSL/3643 to Karura Golf Range Limited for the development, operation and management of a golf range, restaurant and mini golf park within Miotoni Block in Ngong Road Forest contravene and violate Articles 1, 2, 10, 27, 35 (1), 40 (1) (2) (3) & (6), 42 (a&b), 47, 48, 60, 62 1(g) 3&4, 66, 69, 70 and 71 of the Constitution of Kenya as read together with Section 3,3A, 7, 64, PART V, VI, VII & X of the Environmental Management and Coordination Act and Regulation 11, 28 & 42 of Environmental (Impact Assessment and Audit) Regulations, 2003 and the decision and action thereto contained in the Letter dated 28<sup>th</sup> November 2024 is invalid, null and void ab initio**

**c. AN ORDER OF JUDICIAL REVIEW BY WAY OF CERTIORARI be and is hereby issued calling into this Court and quashing NEMA EIA License NEMA/EIA/PSL/3643 issued to Karura Golf Range Limited.**

**d. AN ORDER OF JUDICIAL REVIEW BY WAY OF CERTIORARI be and is hereby issued calling into this Court and quashing special use licence LIC005/2023 to Karura Golf Range Limited**

**e. AN ORDER OF PROHIBITION be and is hereby issued restraining the Respondents either by themselves, agents or officers/persons acting under their instructions from implementing and/or reinstating NEMA Environmental Impact Assessment License NEMA|EIA|PSL|3643.**

**f. AN ORDER OF PROHIBITION be and is hereby issued restraining the Respondents either by themselves, agents or officers/persons acting under their instructions from implementing and/or reinstating the KFS Special Use License No. LIC005/2023. g. Any other relief and/or order(s) the Honourable Court deems appropriate, just and/or fit to grant pursuant to Article 23(3) of the Constitution of Kenya, 2010.**

2. The present Petition has been instituted by the Law Society of Kenya (LSK), in the public interest and in furtherance of its statutory mandate to uphold the Constitution, assist the courts in the administration of justice, and protect members of the public in matters relating to the law. The Petition is supported by the affidavit of Florence W. Muturi, the Chief Executive Officer of the LSK.

3. The Petitioner asserts that it is aggrieved by the issuance of Environmental Impact Assessment Licence No. NEMA/EIA/PSR/36483 dated 28<sup>th</sup> November 2024 by the National Environment Management Authority (NEMA) and Special Use Licence No. LIC005/2023 issued by the Kenya Forest Service (KFS) to Karura Golf Range Limited, authorising the construction of a restaurant and golf range within Miotoni Block of Ngong Road Forest Station in Nairobi County.
4. According to the Petitioner, Ngong Road Forest is a gazetted Central Government Forest Reserve established through Proclamation No. 44 of 1932 and originally comprised more than 2,000 hectares, though it has since been reduced to approximately 1,224.4 hectares due to both lawful excisions and alleged illegal encroachments. This comprises of 886.72 hectares of natural forest and 337.68 hectares of plantation forest.
5. The forest is largely indigenous and is presently managed by the Kenya Forest Service in collaboration with the Ngong Road Forest Association, a Community Forest Association. It is deponed that the forest is divided into various blocks, including Miotoni Block, which is the subject of the impugned licences.
6. The Petitioner avers that the public only became aware of the proposed commercial development upon publication of the EIA licence in November 2024, despite the fact that a Special Use Licence had earlier

been issued on 14<sup>th</sup> June 2023 directing the Nairobi County Forest Conservator to facilitate full access to the site for commercial activities while stipulating that no trees would be affected by the project.

7. The Petitioner further avers that one of the express conditions attached to the Special Use Licence required submission and approval of architectural plans and a compliant Environmental Impact Assessment report, including meaningful public participation. However, in a letter dated 18th December 2024, the Respondents allegedly admitted that the project proponent had failed to satisfy these mandatory conditions, including undertaking comprehensive ecological assessments and proper public participation.
8. The Petitioner states that the EIA licence nonetheless approved construction within a gazetted forest and over a pipeline wayleave belonging to the 4<sup>th</sup> Respondent, in clear contravention of the Environmental (Impact Assessment and Audit) Regulations, 2003. It is further deponed that the Respondents acknowledged that in-depth ecological studies and environmental safeguards had been omitted or bypassed during the approval process, thereby exposing a sensitive biodiversity area to imminent harm.
9. The Petitioner asserts that public uproar following disclosure of the licences led to their temporary suspension rather than outright revocation,

raising concerns that the suspension was merely cosmetic and intended to facilitate eventual reinstatement. It is deponed that on 17<sup>th</sup> December 2024 the Cabinet Secretary for Environment, Climate Change and Forestry issued public directives via his official social media platform ordering suspension of the licences and requiring a detailed report within seventy-two hours, an action the Petitioner characterises as irregular and lacking procedural grounding.

10. According to the Petitioner, the 1<sup>st</sup> Respondent acted in concert with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to secure approval through a haphazard process that abdicated statutory responsibilities imposed upon environmental regulators, thereby undermining constitutional principles of transparency, public participation and environmental stewardship.

11. It is the Petitioner's case that the impugned actions contravene **Articles 10, 35, 42, 60, 62, 69 and 70** of the **Constitution**, particularly the right to a clean and healthy environment and the obligation of state agencies to ensure sustainable use of natural resources.

12. The Petitioner depones that it sought access to information regarding the Special Use Licence and the EIA Report pursuant to **Article 35** of the **Constitution**, but its requests were ignored, reinforcing concerns regarding opacity in the decision-making process.

13. The Petitioner fears that failure to revoke the licences will enable the project proponent to proceed with commercial development within a

protected forest area, thereby converting a public ecological sanctuary into a commercial enterprise without adherence to constitutional and statutory safeguards.

14. On that basis, the Petitioner maintains that the licences are illegal, unprocedural and unconstitutional, and seeks declaratory relief together with interim conservatory orders to prevent irreversible environmental harm while the Petition is pending determination.

15. The 1<sup>st</sup> Respondent, through its director Harpal Choda, swore a Replying Affidavit dated 13<sup>th</sup> March 2025. He deponed that the 1<sup>st</sup> Respondent had obtained an Environmental Impact Assessment (EIA) Licence dated 28<sup>th</sup> November 2024 as well as a Special Use Licence No. LIC005/2023 issued by the Kenya Forest Service on 14<sup>th</sup> June 2023.

16. According to him, both approvals were granted following due regulatory process and scrutiny, including consideration of environmental safeguards and stakeholder engagement. He asserted that the project had been designed in compliance with sustainable land use principles and that relevant regulatory bodies had been consulted throughout the approval process.

17. The deponent denied allegations that the 1<sup>st</sup> Respondent intended to unlawfully acquire land within Ngong Road Forest, maintaining instead that the proposed development was a legally sanctioned golf range facility rather than a full golf course. He explained that a golf range is a

limited recreational facility requiring significantly less land use and environmental modification compared to a golf course. He further averred that misinformation circulating on social media had mischaracterised the nature of the project.

18. He contended that the EIA process was conducted in accordance with the Environmental (Impact Assessment and Audit) Regulations, 2003 and that public participation had been undertaken prior to issuance of the licence. He referred to the EIA report and satellite imagery annexed thereto, asserting that the indigenous trees cited by the Petitioner were not located within the proposed project site. He further stated that the Special Use Licence issued by the Kenya Forest Service did not grant unfettered access to the forest but merely facilitated regulated entry for compliance purposes.

19. With respect to subsequent regulatory actions, the deponent averred that the suspension of the 1<sup>st</sup> Respondent's licence was initiated by the relevant authority on its own motion and was later influenced by misinformation and public pressure. He asserted that the suspension was procedurally unfair, having been affected without notice or a hearing, contrary to the Fair Administrative Action Act, 2015 and principles of natural justice. It sought reinstatement vide the correspondence dated 14<sup>th</sup> February 2025 through which the 1<sup>st</sup> Respondent sought reinstatement of the licence.

20. The 1<sup>st</sup> Respondent further maintained that the Petitioner had failed to demonstrate any environmental harm or statutory breach arising from the project. He stated that the project formed part of the Ngong Road Participatory Forest Management Plan 2024–2028, which involved multiple stakeholders and promoted responsible conservation and ecotourism initiatives. According to him, inclusion of the project within that framework confirmed that it had been subjected to stakeholder engagement and institutional oversight.
21. He denied any allegations of collusion with regulatory agencies and asserted that approvals were issued lawfully and procedurally. He added that no development had commenced due to the suspension of licences and that the 1<sup>st</sup> Respondent had suffered financial and reputational harm arising from the controversy surrounding the project.
22. The 2<sup>nd</sup> Respondent responded vide a Replying Affidavit dated 29th July, 2025 through Mr David Ong'are, the Director in charge of environmental compliance at the 2<sup>nd</sup> Respondent, the principal instrument of the government established under **Section 7** of the **EMCA** to exercise general supervision and co-ordination over all matters relating to the environment.
23. He explained that the 2<sup>nd</sup> Respondent derives its statutory mandate from **Section 9** of **EMCA** with the main objective being to exercise general supervision and co-ordination of all matters. Pursuant to **Section 58** of

**EMCA**, a project proponent is required to undertake an environmental impact assessment and submits a report to the Authority.

24. Pursuant to **Section 58** of the **Environmental Management and Coordination Act, 1999 (EMCA)**, the 1<sup>st</sup> Respondent applied for an Environmental Impact Assessment (EIA) licence to establish a restaurant and golf range within the KFS–Ngong Road Forest Station off the Southern Bypass in Lang’ata Sub-County. In compliance with **Article 10** of the **Constitution** and the statutory requirements on public participation, the 2<sup>nd</sup> Respondent forwarded the submitted EIA report to various lead agencies for review prior to consideration of the proposed project.

25. In response to the project report, the 2<sup>nd</sup> Respondent requested further documentation from the proponent to facilitate proper evaluation of the application. These included approved building site plans, a no-objection letter from the Kenya Land Development Authority (KLDA), and a Water Resources Authority (WRA) pegging permit.

26. Thereafter, on 18<sup>th</sup> November 2024, the 2<sup>nd</sup> Respondent conducted a site inspection at the proposed facility and issued several recommendations, including the need for approvals from Nairobi City County Government, authorisation from Kenya Pipeline Company for development along the wayleave, proper storm-water and wastewater management, effective traffic control measures, strict adherence to the Environmental

Management Plan and licence conditions, and the preservation of all mature trees during construction.

27. Following the review process, an EIA licence was issued on 28<sup>th</sup> November 2024 pursuant to **Section 58** of **EMCA**, its issuance being expressly contingent upon compliance with conditions imposed by NEMA to ensure sustainable development and sound environmental management. It was further deponed that EIA Licence No. NEMA/EIA/PSL/36483 was subsequently suspended on 18<sup>th</sup> December 2024 pursuant to **Sections 64(1)(b)** and **67(2) of EMCA**.

28. The primary reason, it was explained being that the project site lay within an existing forested area and required a comprehensive compatibility assessment and quantitative risk assessment to address potential risks to pipeline infrastructure, adjacent properties and public safety. The suspension was stated to have been guided by the precautionary principle, aimed at preventing serious or irreversible environmental harm in circumstances of scientific uncertainty.

29. According to the deponent, the precautionary principle entails a shift in the burden of proof to the project proponent, who must demonstrate that the proposed activity is not harmful to the environment even after issuance of a licence. It was therefore asserted that the suspension was

necessary to safeguard the environment, protect public safety, and ensure compliance with the environmental regulatory framework established under EMCA and its subsidiary regulations. The deponent denied the Petitioner's allegations that the Authority failed to ensure equitable, efficient and productive environmental management were unfounded.

30. The 2<sup>nd</sup> Respondent further deponed that the EIA licence remained subject to ongoing monitoring, environmental audit and re-evaluation processes under **Sections 68 and 69 of EMCA**, which could be undertaken at any stage of the project. It was also stated that the Authority remained willing to comply with any lawful orders issued by the court and had consistently remained open to addressing public concerns regarding licensed projects. The 2<sup>nd</sup> Respondent therefore urged that the Petition be dismissed for lack of merit.

31. The 3<sup>rd</sup> Respondent opposed the Petition through a Replying Affidavit sworn on 3<sup>rd</sup> March 2025 by Alex L. Lemarkoko, EBS, 'ndc' (K), the Chief Conservator of Forests at the Kenya Forest Service (KFS).

32. He deponed that the Kenya Forest Service issued Special Use Licence No. LIC005/2023 to the 1<sup>st</sup> Respondent pursuant to **Section 56 of the Forest Conservation and Management Act, 2016**, which permits non-forestry activities within a gazetted forest subject to statutory safeguards and conditions.

33. The deponent explained that the proposed golf range contemplated under the Special Use Licence was intended to be an eco-friendly facility designed to utilise portions of the forest in a manner that would generate revenue for the Government while maintaining environmental sustainability.

34. He further averred that the licence expressly restricted activities to non-permanent developments, meaning that any structures or installations associated with the golf range were to be temporary in nature and capable of removal without causing damage to trees, the surrounding environment or the broader forest ecosystem. According to the 3<sup>rd</sup> Respondent, these safeguards were incorporated to ensure that the development remained compatible with conservation objectives under the Forest Conservation and Management Act, 2016. He maintained that the Petition is misconceived, lacking merit and amounts to an abuse of the court process.

35. The 4<sup>th</sup> Respondent opposed the Petition through a Replying Affidavit sworn on 3<sup>rd</sup> March 2025 by Eng. John Chege, the Chief Pipeline Wayleaves Officer. He explained that the 4<sup>th</sup> Respondent is a wholly owned state corporation mandated to transport refined petroleum products from Mombasa to the hinterland and, in the execution of that mandate, routinely acquires easements and wayleaves over land for purposes of installing and maintaining pipeline infrastructure.

36. He averred that the 4<sup>th</sup> Respondent has existing pipeline infrastructure traversing Ngong Road Forest and maintains a thirty-metre-wide wayleave over the suit property for purposes of safety and operational integrity of the pipeline. According to him, this wayleave was established pursuant to a Special Use Licence issued by the 3<sup>rd</sup> Respondent.

37. By a letter dated 11<sup>th</sup> March 2021, he stated, the 1<sup>st</sup> Respondent approached the 4<sup>th</sup> Respondent seeking a no-objection consent to establish an eco-friendly golf range facility within Ngong Road Forest. In that correspondence, the 1<sup>st</sup> Respondent indicated that it had engaged in discussions with the 3<sup>rd</sup> Respondent and the Chairperson of the 2<sup>nd</sup> Interested Party regarding the proposed development and acknowledged that a section of the proposed golf range would fall within the 4<sup>th</sup> Respondent's pipeline corridor.

38. Eng. Chege deponed that the 4<sup>th</sup> Respondent issued a conditional no-objection letter dated 28<sup>th</sup> June 2021 setting out strict safety and operational requirements. These conditions included the need for the 1<sup>st</sup> Respondent to obtain all necessary approvals from the 3<sup>rd</sup> Respondent, submit design and safety documentation for review, conduct all works under supervision to identify and mark pipeline locations, obtain daily work permits, comply with pipeline safety regulations, and refrain from erecting any structures or placing equipment within the thirty-metre-wide wayleave.

39. He clarified that the consent was strictly limited to a portion of the golf range within the wayleave and did not extend to the entire suit property or to any restaurant development as alleged by the Petitioners. He emphasised that the area covered by the wayleave is largely open with minimal forest cover and that the 4<sup>th</sup> Respondent did not find any safety or environmental basis to decline the conditional no-objection, provided the stipulated requirements were observed.
40. The deponent further stated that the licences challenged in the present proceedings, namely Special Use Licence No. LIC005/2023 and NEMA Environmental Impact Assessment Licence No. NEMA/EIA/PSL/3643, were issued by independent regulatory bodies whose statutory mandates are governed by the Forest Conservation and Management Act, 2016 and the Environmental Management and Co-ordination Act, 1999 respectively, and that the 4<sup>th</sup> Respondent played no role in their issuance.
41. He therefore contended that the reliefs sought in the Petition improperly target the 4<sup>th</sup> Respondent despite its limited involvement, which was confined to granting a conditional no-objection within its pipeline wayleave for safety purposes. The 4<sup>th</sup> Respondent maintained that its actions were lawful, limited in scope, and consistent with its statutory mandate to safeguard critical pipeline infrastructure.

42. The 2<sup>nd</sup> Interested Party opposed the Petition through a Replying Affidavit sworn on 12<sup>th</sup> June 2025 by Simon Kamau Kage, the Chairman of the Ngong Road Forest Association.

43. He stated that the Ngong Road Forest Association was established and registered with the Registrar of Societies in 2012 and comprises over 300 members drawn from communities and institutions surrounding Ngong Road Forest. According to the deponent, the Association's core mandate is the conservation, protection and sustainable utilisation of Ngong Road Forest, and in furtherance of that mandate it entered into a Forest Management Agreement with the Kenya Forest Service (the 3<sup>rd</sup> Respondent) for the co-management of the forest.

44. Mr. Kage averred that sometime in 2021 the 1<sup>st</sup> Respondent, Karura Golf Range Limited, presented to the management committee of the 2<sup>nd</sup> Interested Party a proposal for development of a golf range within Ngong Road Forest. During the presentation, the 1<sup>st</sup> Respondent explained that the proposed golf range would be situated along the existing pipeline wayleave belonging to the 4<sup>th</sup> Respondent, which traverses the forest, and assured the Association that the project would not adversely affect the forest ecosystem but would instead benefit surrounding communities.

45. He further deponed that the 1<sup>st</sup> Respondent subsequently undertook an Environmental Impact Assessment and prepared an EIA report which captured the concerns raised by the Association and proposed mitigation

measures. Thereafter, the 1<sup>st</sup> Respondent obtained approvals and licences from the relevant government authorities.

46. The deponent emphasised that the 2<sup>nd</sup> Interested Party neither participated in nor controlled the licensing and approval process, as it lacks statutory authority to issue licences or grant regulatory approvals within the forest. According to him, all approvals were obtained directly from the competent government agencies, and the Association's involvement was limited to stakeholder engagement within its role as a community forest association under the co-management framework with the Kenya Forest Service.

47. The Petitioner filed a Supplementary Affidavit sworn on 24<sup>th</sup> October 2025 by Florence W. Muturi, the Chief Executive Officer of the Law Society of Kenya. Ms. Muturi averred that although the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had initially denied requests for information regarding the Environmental Impact Assessment (EIA) Report, the said report was eventually produced by the 1<sup>st</sup> Respondent through its affidavit sworn by Harpal Choda on 14<sup>th</sup> March 2025.

48. The Petitioner maintained that the conditions imposed by the 2<sup>nd</sup> Respondent did not demonstrate lawful and meaningful public participation nor a comprehensive ecological assessment as required under the Environmental (Impact Assessment and Audit) Regulations,

2003, and relied on the letter dated 18<sup>th</sup> December 2024 and the suspension of the licence as evidence of those shortcomings.

49. It was stated that although the Special Use Licence No. LIC005/2023 issued on 14<sup>th</sup> June 2023 stipulated that no trees were to be affected, subsequent actions by the regulatory agencies, including suspension of the licences and directives for additional quantitative risk assessments demonstrated that broader ecological impacts had not been adequately assessed. It was asserted that the licences were issued without due process, extensive regulatory scrutiny or lawful public participation, thereby rendering them irregular and inconsistent with the Environmental Management and Co-ordination Act.

50. Ms. Muturi stated that the 4<sup>th</sup> Respondent's no-objection letter did not absolve the 1<sup>st</sup> Respondent from compliance with environmental obligations and that, by facilitating access to a gazetted forest, the Respondents failed to ensure compliance with constitutional and statutory safeguards. She further contended that the suspensions of the licences by both NEMA and the Kenya Forest Service evidenced real environmental risks rather than mere public misinformation.

51. In addition, the Petitioner challenged reliance on the Ngong Road Participatory Forest Management Plan 2024–2028, arguing that its inclusion of the project as an ecotourism activity occurred after issuance

of the impugned licences and could not cure earlier procedural deficiencies.

52. The suspension of the EIA licence and the requirement for further compatibility and quantitative risk assessments confirmed that the initial EIA process lacked meaningful public participation and inclusivity. It was further alleged that payments made by the 1<sup>st</sup> Respondent towards licensing fees did not regularise a project that had allegedly failed to comply with statutory environmental standards. The Petitioner also asserted that the 4<sup>th</sup> Respondent's no-objection letter facilitated the project's commencement without ensuring compliance with environmental law and that the 4<sup>th</sup> Respondent failed to apply the precautionary principle under **Section 3(5)** of the **Environmental Management and Co-ordination Act**.

53. The Petitioner disputed the 4<sup>th</sup> Respondent's position that its consent was limited to the thirty-metre pipeline wayleave, contending that the conditions imposed therein indirectly facilitated the broader development, including the restaurant component. It was further alleged that the meetings between the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondent and the 2<sup>nd</sup> Interested Party did not amount to lawful public participation as envisaged under **Articles 10** and **69** of the **Constitution**.

54. It was maintained that the proposed golf range is neither eco-friendly nor sustainable, as it would entail land modification, water usage and human activity likely to affect the forest ecosystem beyond mere tree removal. It was urged that the Petition is grounded in legitimate legal concerns regarding breach of licence conditions, lack of meaningful public participation and non-compliance with environmental law, and that the court's intervention was necessary to uphold constitutional principles of environmental conservation and public accountability.

### **Submissions**

55. The Petitioner filed written submissions dated 24<sup>th</sup> October 2025, in which Counsel contended that the issuance of the Special Use License LIC005/2023 and the Environmental Impact Assessment (EIA) License NEMA/EIA/PSL/3643 violated constitutional rights guaranteed under **Articles 42, 47, 35**, and the public-trust principles anchored in **Article 62** of the **Constitution of Kenya, 2010**.

56. It was submitted that the Respondents failed to adhere to the precautionary principle embodied in **Article 70** of the **Constitution** and **Section 3(1)(h)** of the **Environmental Management and Co-ordination Act (EMCA)**. Counsel relied on the reasoning in *Mbaazi Avenue Residents Association & another v Metricon Home Nairobi Company Limited & 2 others (Civil Appeal E1010 of 2024) [2025] KECA 1593 (KLR) (3 October 2025)*, which cited *Peter K. Waweru v Republic [2006]*

*eKLR*, to underscore that the right to a clean and healthy environment is indispensable to the survival of present and future generations and that courts must apply the precautionary principle where environmental harm is threatened.

57. Reference was also made to international environmental law principles contained in the Judicial Handbook on Environmental Law (UNEP, 2005) by Dinah Shelton and Alexandre Kiss, to support the argument that project proponents bear the burden of demonstrating absence of environmental harm.

58. Counsel further submitted that the licensing process violated the national values and principles of governance under **Article 10** of the **Constitution**, particularly public participation, rule of law and sustainable development. It was argued that **Regulation 11** and **17** of the **Environmental (Impact Assessment and Audit) Regulations, 2003**, together with **Article 69(1)(d)** of the **Constitution**, impose mandatory requirements for meaningful public participation prior to issuance of environmental licences.

59. According to the Petitioner, no such participation occurred, as evidenced by unanswered requests for information, public uproar only arising after disclosure of the NEMA licence in late November 2024, and the 3<sup>rd</sup> Respondent's own admission that the 1<sup>st</sup> Respondent had failed to undertake detailed public participation. Counsel relied on *Mohamed Ali*

*Baadi & Others v Attorney General & 11 Others [2018] eKLR.*

Additional reliance was placed on *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another [2019] KENET 98 (KLR)*, and *Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others, Constitutional Petition No. 305 of 2012.*

60. It was submitted that as explained in *Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya (JR Misc. Application No. 374 of 2012)*, failure to disseminate environmental information undermines participatory governance. Further the Supreme Court in *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party) [2019] KESC 15 (KLR)*, held that public participation is a substantive constitutional requirement rather than a procedural formality.

61. Counsel additionally argued that the Special Use License was issued ultra vires the Forest Conservation and Management Act and the Forests (Participation in Sustainable Forest Management) Rules, which limit such licences to activities whose primary purpose yields public benefit in transportation, communication, energy, research or education. It was submitted that the 1<sup>st</sup> Respondent's golf range and restaurant constituted a

private commercial enterprise and therefore fell outside the statutory scope of a Special Use License. Reliance was placed on *M'rinjiru (Replaced by Bernard Gituma M'Rimberia) v National Land Commission & 3 others [2025] eKLR.*

62. It was asserted that the proposed project posed significant environmental risks, including the clearing of shrubs and vegetation within gazetted forest land, which allegedly contradicted licence conditions stating that no trees would be affected. It was argued that such actions undermined the public-trust doctrine governing protected forest areas and violated principles of environmental conservation.

63. Counsel further contended that the approvals granted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents failed to meet the threshold of fair administrative action under **Article 47** of the **Constitution** and **Section 4(3)** of the **Fair Administrative Action Act, 2015**, as the process was said to lack transparency, meaningful stakeholder participation and compliance with statutory procedures such as public notices and consultative meetings under Regulation 17. Reliance was placed on *Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company Limited & another [2013] eKLR* to support the argument that non-disclosure of environmental information can amount to a constitutional violation.

64. Counsel further submitted that the subsequent suspension of the impugned licences did not cure the alleged illegality, arguing that

constitutional violations crystallised at the point of issuance. It was maintained that only an order of certiorari quashing the Special Use Licence LIC005/2023 and the EIA Licence NEMA/EIA/PSL/3643 would vindicate constitutional supremacy and prevent reliance on an unlawful administrative foundation. In support, Counsel cited **Judicial Service Commission v Speaker of the National Assembly & 8 others [2022] eKLR.**

65. The 1<sup>st</sup> Respondent filed written submissions dated 27<sup>th</sup> January 2026, addressing primarily the legality and regularity of the licences issued to it in respect of the proposed golf range project within Ngong Road Forest.

66. It was submitted that the impugned licences were issued following full compliance with statutory procedures and after engagement with all relevant stakeholders, including the 2<sup>nd</sup> Respondent, the 3<sup>rd</sup> Respondent, the 4<sup>th</sup> Respondent, and the 2<sup>nd</sup> Interested Party.

67. Counsel argued that the Petition was premature and constituted an abuse of the court process, as regulatory compliance was ongoing and the Petitioner had failed to disclose that no development activity had commenced. Counsel submitted that any challenge to the grant, conditions or suspension of an EIA licence ought properly to have been pursued before the National Environmental Tribunal pursuant to Section 129(1)(a), (b) and (c) of the Environmental Management and Co-ordination Act, 1999 (EMCA). Reliance in this regard was placed on the

decision of the Court of Appeal in *Kibos Distillers Limited & 4 Others v Benson Ambuti Adega & 3 Others (2020) KECA 875 (KLR)*.

68. With regard to the Special Use Licence, Counsel urged that the same was issued lawfully by the 3<sup>rd</sup> Respondent pursuant to **Section 56** of the **Forest Conservation and Management Act, 2016**, authorising specified non-forestry activities within gazetted forests subject to strict conditions. Counsel pointed out that the licence required submission and approval of an EIA report within six months and therefore did not permit immediate development.

69. Counsel further argued that the Petitioner had failed to disclose that other eco-tourism licensees operate within designated areas of the forest under similar regulatory frameworks, and that the allegation that the project constituted a land-grabbing scheme was unsupported by evidence. It was submitted that the licensing documents expressly provided that no trees were to be affected and that the controversy surrounding the project arose from misinformation circulated through social media and certain media outlets. Counsel maintained that the licensing process was lawful, transparent and procedurally regular, and urged the court to dismiss the Petition.

**Analysis and Determination:**

70. I have carefully considered the pleadings filed in support of and against the Petition dated 7<sup>th</sup> January, 2025, together with the submissions filed.

Flowing from my reading, I adopt the questions raised by the Petitioners in their submissions, which have been responded to by the 1<sup>st</sup> Respondent's submissions. The said questions are:

- a. Whether the issuance of the Special Use License LIC005/2023 and the EIA License NEMA/EIA/PSL/3643 violated the Petitioner's and the public's fundamental rights under Articles 42, 47 and 35 of the Constitution.**
- b. Whether the said licenses were issued in contravention of the national values and principles of governance under Article 10.**
- c. Whether the project, being a private commercial venture, qualifies for a "Special Use License" intended for activities defined under the Forest Conservation and Management Act.**
- d. Whether the subsequent suspension, rather than revocation, of the licenses is sufficient to remedy the constitutional and statutory violations, or whether the licenses must be quashed?**

71. The Petitioners laid out the legal and factual foundations of their case as summarised hereinabove. It submits that the actions of the Respondents have violated their and the public rights provided for in the Constitution,

and that these rights have been set out. Therefore, the Petitioners urged the Court to grant the reliefs sought.

72. The Court's duty is to determine whether or not the Petitioners have discharged the burden of proving their case. This is in line with the provisions of sections 107-109 of the Evidence Act, Cap 80 of the Laws of Kenya. In particular, section 109 provides that;

**“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”**

73. There is no dispute that Article 42 of the Constitution grants every person the right to a clean and healthy environment. This right is inextricably linked to the State's duty, under Article 69, to ensure sustainable exploitation, utilization, management, and conservation of the environment for the benefit of the people of Kenya.

74. The Petitioners argued that Section 58(2) of EMCA requires project proponents to submit comprehensive EIA reports addressing all potential environmental risks. The 2nd Respondent's failure to ensure such assessments shifts the burden to the 1st Respondent, unmet here, as no evidence demonstrates the absence of harm to the forest ecosystem or pipeline wayleave.

75. They anchored this submission by citing the *Judicial Handbook on Environmental Law by Dinah Shelton and Alexandre Kiss*, published by the United Nations Environment Programme in 2005, which elaborated on the meaning of the precautionary principle, inter alia, that those engaging in a potentially damaging activity should have the burden of establishing the absence of environmental harm.

76. It is not disputed that the impugned licenses were issued to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, respectively. As already stated, Section 58 of EMCA imposes an obligation on project proponents to undertake an environmental impact assessment. Section 58(1) and (2) states that:

**“(1) Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.**

**(2) The proponent of any project specified in the Second Schedule shall undertake a full environmental impact assessment study and submit an environmental impact assessment study report to the Authority prior to being issued with any licence by the Authority:**

**Provided that the Authority may direct that the proponent forego the submission of the environmental impact assessment study report in certain cases.”**

77. The subsidiary legislation provides the methodology to be applied while undertaking this assessment and, in this case, the Environmental (Impact Assessment and Audit) Regulations, 2003. The relevant part is Regulation 17(1) (proponent to **seek the views of the persons likely to be affected**) and 17(2) (**proponent to publicise the project and its anticipated effects and benefits**), whose provisions were not complied with.

78. The 1<sup>st</sup> Respondent asserted that it complied with all the requirements and supported the argument by annexing the EIA report. Chapter 7 of the report discussed the purpose of public participation as essential to good governance and as a means of empowering local communities. The report stated that the results of the public consultation in respect of the proposed restaurant and golf range development are attached at the back of the report.

79. I have perused all the annexures produced by the 1<sup>st</sup> Respondent but I did not find any evidence speaking to public consultations. The EIA report did not specify any dates scheduled for such public meetings or for the distribution of questionnaires. The only evidence of public consultation is the admission by the 2<sup>nd</sup> Interested party that the 1<sup>st</sup> Respondent had, in the year 2021, made a presentation to its management about the proposed golf range project.

80. The presentation to the 2<sup>nd</sup> Interested Party, based on their replying affidavit, was limited to the proposed golf range project, and no mention was made of a restaurant, which was included in the EIA report. Both the NEMA EIA licence issued on 28.11.2024 and the Special Use Licence (SUL) agreement dated 8<sup>th</sup> June 2024 permitted the construction of a restaurant, a golf range and a mini golf park.

81. This clearly shows that even the limited public participation undertaken by the 1<sup>st</sup> Respondent, referring only to the golf range, did not meet full disclosures hence does not meet the threshold of purposive and meaningful public participation as held by the Supreme Court in the case of **British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party) (Petition 5 of 2017) [2019] KESC 15 (KLR) (26 November 2019) (Judgment).**

82. In the case of **BAT supra**, the Supreme Court laid out the components to be fulfilled inter alia;

- a. clarity of the subject matter for the public to understand;**
- b. structures and processes (medium of engagement) of participation that were clear and simple;**
- c. opportunity for balanced influence from the public in general;**
- d. commitment to the process;**
- e. inclusive and effective representation;**
- f. integrity and transparency of the process;**
- g. capacity to engage on the part of the public, including that the public had to be first sensitized on the subject matter.**

83. The consequence of non-compliance with section 58(2) of EMCA and the attendant Regulation by the 1<sup>st</sup> Respondent violated the rights of the Petitioner (and persons likely to be affected by the project) as guaranteed under articles 10 and 42 of the Constitution. The 2<sup>nd</sup> Respondent, nonetheless issuing the EIA licence without confirming that the 1<sup>st</sup> Respondent had complied with the law, also breached the Petitioner's rights under Article 47.

84. The Petitioner also pleaded that their right under article 35 was violated by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, who they say ignored their request for information regarding the EIA Report and the special use licence granted to the 1<sup>st</sup> Respondent. Neither of the Respondents gave any response to

contradict this allegation in their replying affidavits filed in opposition to the Petition.

85. The third question raised is whether the proposed project, being commercial, qualifies for the Special Use License under the Forest Act. Under section 2, Special Use License is defined as **“authorization issued to a person to undertake an activity whose primary purpose is to yield public benefit in transportation, communication, energy, research or education.”**

86. The impugned SUL agreement states that it was made under the provisions of section 56 of the Forestry Act, which states thus under subsection (1);

**“The Service may, whenever circumstances make it necessary or appropriate to do so, invite the private sector to participate in the sustainable management of forests under their jurisdiction.”**

87. Section 56(2) identifies the SUL as one of the ways the 3<sup>rd</sup> Respondent can invite the private sector to participate in the sustainable management of the forests. Sustainable management of forests is defined by Forest Europe and adopted by the UN Food and Agriculture Organization (FAO) as;

**"The stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity,**

**regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems."**

88. In this instance, the burden was on the 3<sup>rd</sup> Respondent that their decision to grant the 1<sup>st</sup> Respondent the Special Use License was aimed at achieving the purpose of section 56(1) of the Act. It averred that the proposed golf range is eco-friendly, non-permanent, and will not in any way affect the trees, environment, or ecosystem in place. The 3<sup>rd</sup> Respondent added that licensing is a means of raising revenue for the government.

89. The 3<sup>rd</sup> Respondent addressed only the issue of the golf range being non-permanent but did not address the nature of the restaurant and mini-golf park which was also part of the project to be put up under the SUL. According to the agreement executed between the 1<sup>st</sup> and 3<sup>rd</sup> Respondent, clause 4 provided that the 1<sup>st</sup> Respondent was to submit architectural drawings and EIA license within six (6) months of the signing of the license.

90. Hence, the 3<sup>rd</sup> Respondent could not speak with certainty that all the structures to be put up pursuant to the license would not be permanent in nature. Indeed, the agreement allowed for a possibility of putting up permanent structures under **Clause 11(a)(iii)**, which provided thus, “**keep**

**all buildings and facilities constructed under the terms of this agreement in good and substantial repair.”**

91. The second reason offered to justify the impugned SUL is that it is for raising revenue for the government. The 3<sup>rd</sup> Respondent does not go further to explain if there was a need to raise the revenue towards the sustainable management of the forest. The statement was dropped like a coin and left the court to guess the purpose of raising the revenue.

92. It is my considered view, and I so hold, that the 3<sup>rd</sup> Respondent failed to demonstrate that the impugned SUL issued was in accordance with the provisions of the governing law. The default by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents violated articles 1, 60(e), 62(4) and 69 of the Constitution as the 3<sup>rd</sup> Respondent exercised authority outside the mandate conferred to it by the Constitution and Statute.

93. Lastly, the Petitioners contended that the failure to revoke the two licences creates an avenue for the Respondents, through dubious means, to reinstate the suspended licences and proceed with developments that would effectively transform the Ngong Road Forest Sanctuary into a concrete jungle, without compliance with the law and without any meaningful public participation.

23. The 2<sup>nd</sup> Respondent deposed that the suspension was occasioned by the fact that the project site lies within an existing forested area, whether densely or sparsely vegetated. It further averred that, under the

Environmental Management and Coordination Act (EMCA), it may be necessary to undertake a comprehensive compatibility assessment and a Qualitative Risk Assessment (QRA) to evaluate potential risks to the pipeline infrastructure, adjacent properties, and public safety. The 2<sup>nd</sup> Respondent also maintained that the EIA licences were issued subject to conditions which, if properly complied with, would sufficiently address and alleviate the Petitioners' concerns.

94. This reasoning by the 2<sup>nd</sup> Respondent in my view is approbating and reprobating. Before an EIA license is granted, the project proponent must prepare a report, or undertake an EIA study depending on the magnitude of the project. It is this report/study that informs whether the 2<sup>nd</sup> Respondent would issue the EIA license or not.

95. Therefore, the 2<sup>nd</sup> Respondent, having observed that there was a need to carry out a comprehensive qualitative risk assessment, ought to have revoked a license that was granted without the risk assessment being undertaken. The concerns of the Petitioner are not farfetched since one of the issues raised was lack of adequate public participation when the impugned EIA license was issued. The suspension letter dated 18<sup>th</sup> November, 2024 gave the observations of the field inspectors inter alia,

***“The proposed site, being a public forest of high biodiversity conservation value, needs in-depth ecological impacts and risk assessment undertaken through a wider participatory approach to***

*ensure inclusivity and meaningful public participation and acceptance.”*

96. However, the suspension letter does not give timelines to the 1<sup>st</sup> Respondent to comply. The section relied upon by the 2<sup>nd</sup> Respondent gave it power to revoke/cancel the license to allow the restarting of the process but it chose suspension instead. I also find the positions of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to conflict, as the 3<sup>rd</sup> Respondent had described the area licensed to have no trees that would be cut down and that it was an open area.

97. On the hand, correspondence from the 2<sup>nd</sup> Respondent state there are no mature trees that would be cut meaning there are some trees in the concerned only they are not mature. Further, the 2<sup>nd</sup> Respondent's field offices said the area being leased was on the 4<sup>th</sup> Respondent's wayleave hence the need to carry out the QRA to quantify project risks impacts and exposure to project affected persons.

98. The Petitioner annexed a post on social media where the 5<sup>th</sup> Respondent directed for the suspension of the two licenses pending being provided with a detailed brief. The 5<sup>th</sup> Respondent did not file any pleadings in this case to give its official position hence it is not clear if the SUL still stands suspended. It is in light of the uncertainty that entitles the petitioner for orders of cancellation so as to ensure compliance with the law by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents.

99. In light of the foregoing analysis, I find that the Petitioner has made a case as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and by extension the 5<sup>th</sup> Respondent (as the line ministry of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents). I hold that the 4<sup>th</sup> Respondent had no role to play in the issuance of the impugned licenses and therefore I discharge them from these proceedings.

100. Consequently, I enter judgment for the Petitioner against the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents as follows:

- i. A DECLARATION be and is hereby made that the issuance of special use licence LIC005/2023 to Karura Golf Range Limited for the development, operation and management of a golf range, restaurant and mini golf park within Miotoni Block in Ngong Road Forest contravene and violate Articles 1, 2, 10, 35 (1), 42 (a&b), 47, 60, 62 1(g) 3&4, 66, and 69 of the Constitution of Kenya as read together with Section 3, 8, PART IV, V, VI, and VII and Section 73 of the Forest Management and conservation Act and Regulation 7 & 21 of The Forests (Participation in Sustainable Forest Management) Rules and the decision and action thereto contained in the Letter dated 14th June 2023 Ref No.**

**LIC005/1/KFS/VOL.XXVII is invalid, null and void ab initio.**

**ii. A DECLARATION is hereby made that the issuance of NEMA EIA License NEMA/EIA/PSL/3643 to Karura Golf Range Limited for the development, operation and management of a golf range, restaurant and mini-golf park within the Miotoni Block in Ngong Road Forest contravenes and violates Articles 1, 2, 10, 35(1), 42(a & b), 47, 60(1)(e), 62(4), 66, and 69 of the Constitution of Kenya, as read together with Section 3, 3A, 7, 64, PART V, VI, VII & X of the Environmental Management and Coordination Act, and Regulations 11, 28 & 42 of the Environmental (Impact Assessment and Audit) Regulations, 2003, and that the decision and action thereto contained in the Letter dated 28th November 2024 are invalid, null and void ab initio.**

**iii. AN ORDER OF JUDICIAL REVIEW BY WAY OF CERTIORARI is hereby issued, calling into this Court and quashing NEMA EIA License NEMA/EIA/PSL/3643, issued to Karura Golf Range Limited.**

**iv. AN ORDER OF JUDICIAL REVIEW BY WAY OF CERTIORARI is hereby issued, calling into this Court**

and quashing the special use licence LIC005/2023 granted to Karura Golf Range Limited.

v. AN ORDER OF PROHIBITION is hereby issued restraining the 2<sup>nd</sup> and 5<sup>th</sup> Respondents, whether by themselves, their agents or officers, or persons acting under their instructions, from implementing and/or reinstating NEMA Environmental Impact Assessment License NEMA|EIA|PSL|3643.

vi. AN ORDER OF PROHIBITION is hereby issued restraining the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, whether by themselves, their agents or officers, or persons acting under their instructions, from implementing and/or reinstating the KFS Special Use License No. LIC005/2023.

vii. Each party to bear their costs of the petition.

Dated, signed and delivered at Kisii through CTS this 26<sup>th</sup> of February, 2026

A. OMOLLO  
JUDGE

ORIGINAL