

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC PETITION 13 OF 2022

RUMBA MATANO BEJA & ANOTHER
PETITIONERS

VERSUS

CABINET SECRETARY MINISTRY OF LANDS & 9 OTHERS
RESPONDENTS

RULING

1. The Notice of Motion dated 8th May 2025 is seeking the following orders:

- a. That Ali Ndoro Weda, Henry Mwangome Tsuma, Evans Mpate Mbaru, Emmanuel Ndoro Dida and Faraj Mwangome be joined as interested parties to the present petition;*
- b. The County Surveyor and the Land Registrar do conduct boundary demarcation in respect to GL15A and Nyika Reserve showing any encroachment or illegal demarcation in Nyika Reserve based on a declaration for settlement in GL5A as per the 1987 government approval for settlement of residents on GL15A;*
- c. That this court do vary/review and/or set aside the judgment delivered on 3rd April 2025 and all consequential orders and the respondents be granted leave to file the necessary evidence that was not available at the time of determination or delivery of the judgment.*

2. The application is supported by the affidavit of **Ali Ndoro Weda** dated 8th May 2025. Save the additional ground of that the proposed interested parties are members of the committee in respect of the Nyika Reserve, and that this court dissolved the committee without according them an opportunity of being heard, all other grounds for the application are

similar to those in the application dated 6/5/25 in **Malindi Petition No 19 Of 2021**. (For ease of reference the common grounds in both applications are as follows: that there is an error apparent on the face of the record; that Nyika Reserve is not part of GL15A, that the approval for the settlement of the occupants of Nyika Reserve was done in 2020; that the demarcation exercise of GL15A in the 1980s overflowed into the Nyika Reserve without any authorization, not the encroachment on the new car Reserve was eventually cancelled by Court, that there is necessity to review the judgment by allowing the Survey Department to identify and show the boundaries between GL15A and the Nyika Reserve to ascertain the encroachment and illegal allotment in the Nyika Reserve, if any; that the petitioners are not community members or occupants of the Nyika Reserve and there was no committee that was formed in respect of the Nyika Reserve and later disbanded as alleged by the petitioners; that there is no evidence that the committee constituted in respect of the GL15A was disbanded against the wishes of the occupants of that land; that Nyika Reserve and GL15A are distinct plots of land with different committees and occupants/residents with equal rights to form committees in respect to their own land; that this court was misled in material facts in coming to the conclusion that the petitioner's rights were infringed; that as a result of purported illegal allocation to the Petitioners of portions of land in the Nyika Reserve based on the 1987 approvals regarding GL15A the rights of the respondents and the occupants of the Nyika Reserve

were violated and their portions taken away by the petitioners; that the orders issued by this court are being enforced against the Nyika Reserve Committee which is not party to GL15A affairs.)

The Response

3. The petitioners filed their jointly sworn Replying Affidavit dated 2nd October 2025 in opposition to the motion. The gist of that response is that no loss will be occasioned to the applicants if the judgment of the court is implemented; that the first applicant and members of his immediate family own plots in the area adjudicated in the 1980s that there is no new material presented before Court vide the application and no errors on the face of the record have been identified; that the County Government Of Kilifi (6th respondent) has commenced a survey of public utilities on the ground to prevent encroachment thereon; that such an application under Order 1 Rule 10, Order 45 Rules 1 2 and 3 and Order 51 is not contemplated by the *Constitution of Kenya (Protection Of Rights And Fundamental Freedoms Practice and Procedure) Rules 2013* which are the procedural rules applicable in determination of constitutional petitions; that the *Mutunga* Rules allow for joinder of a party to proceedings before it, yet this matter was concluded on 3rd April 2025 and judgment delivered and no party preferred an appeal; that there no proceedings before Court; that court is *functus officio* and so the court cannot grant prayers in the

application; that the prayers number 4 and 5 in the motion are attempts to reopen litigation by persons who were not party to the petition in the first instance; that their 177 plots are now insulated from further litigation by virtue of the judgment in this court; that if the area claimed by the applicants is not covered by the judgment they are at liberty to file a separate case; that the court's decision was not premised on any boundaries, whether administrative, cultural or tribal, but on the existence of 177 plots and the petitioners' possession thereof and the official records thereof; that the judgment has not been appealed; that this court allowed for a committee to be chosen in order to deal with any emerging issues in its judgment;

4. The application is also opposed by the Attorney General who, through Mr Martin Munga, Principal State Counsel, filed his grounds of opposition the 9th October 2025 stating as follows:

- a. The application is devoid of merits since it does not meet the threshold for the setting aside of judgment as envisaged under the provisions of Order 10 rule 11 CPR;*
- b. There are no grounds to warrant the setting aside of the judgment delivered on 3rd April 2025 and the applicants are indeed inviting the court to sit on a pill against its own judgment;*
- c. The application is devoid of merit since it does not satisfy the necessary conditions for review envisaged under the provisions of Order 45 Rule 1 of the Civil Procedure Rules;*
- d. The applicants have shown indolence in establishing their claim to the suit property and the reliefs sought are equitable and therefore not available to the applicants in the circumstances;*
- e. The orders sought by the applicants for boundary demarcation cannot issue since the court is functus officio after delivering its judgment on the matter;*

- f. The prayer for joinder is devoid of merit as the application is filed is frivolous for having been filed after inordinate delay;*
- g. The application as filed is an abuse of the court process.*

Submissions of the parties.

5. The applicant filed submissions dated 13th November 2025 while the petitioners filed the submissions dated 1st December 2025. I have considered those submissions in the preparation of this ruling.

Analysis and determination.

6. The main issues arising for determination in the present application are as follows:

- a. Whether the application is a non-starter for being brought under Order 1 Rule 10, Order 45 Rules 1 2 and 3 and Order 51 is not contemplated by the Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure) Rules 2013 which are the procedural rules applicable in determination of constitutional petitions;*
- b. Whether the 1st -7th proposed interested parties should be joined in the suit;*
- c. Whether the judgment of the court should be varied reviewed or set aside to allow the respondents to file the necessary evidence that was not available at the time of determination of the judgment;*
- d. Whether the court should order the County Surveyor in the Land Registrar to conduct a boundary demarcation in respect of GL15A and the Nyika Reserve to show any encroachment of the Nyika Reserve;*

7. This is an application that, save for the extra prayer for joinder of the applicants as interested parties to the already concluded petition, is on all fours with the application dated 6/5/2025 in *Malindi Petition No 19 Of*

2021 which this court has recently determined and in which the present 3rd -7th proposed interested parties participated as substantive parties as respondents to the main petition therein. In addition, the said petition and the present petition were dealt together but yielded separate judgments have nexus by virtue of several common issues. I will therefore first determine **issue no. (b)** before I deal with the rest of the issues.

Whether the 1st -7th proposed interested parties should be joined in the suit;

8. Under the Constitution of Kenya, the principle of equality of all persons before the law ought to be observed when the rights and duties of any person are being determined by a court of law or any independent tribunal. Again, the principle of fair hearing must also be observed.

9. Article 50 (1) of the Constitution provides as follows:

(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate another independent and impartial tribunal or body."

10. In respect of the present issue as to whether the 1st -7th proposed interested parties should be joined in the suit, first, it is the case that they must be seeking joinder, not for mere fun but to be heard on their grievances relating to the issues surrounding the GL15A and the Nyika Reserve as those two parcels of land are the subject matter of this case.

11. Secondly, it must be noted that they were joined as substantive parties in a sister petition, being *Malindi Petition No 19 Of 2021*, which was heard alongside the present petition and their respective judgments

were issued on the same date. It is inconceivable that the 3rd -7th proposed interested parties were not aware of the present petition even as they participated in *Malindi Petition No 19 Of 2021*. They engaged the same counsel in both petitions, and have done so in respect of the current applications. It is noteworthy that the 4th proposed interested party filed his replying affidavit sworn on 8/10/21 in opposition to the application dated 23/8/21 in *Malindi Petition No 19 Of 2021* prepared by the same advocate now representing the applicants in the present application. It is at that interlocutory juncture that the application for joinder to the present petition, if necessary, ought to have been made. As further evidence that the parties were aware that the two petitions are related, counsel present in court on 20/11/2024 admitted so, and the court ordered that the orders made that day in *Malindi Petition No 19 Of 2021* should apply to the present petition. The same directions were issued by the court on 26/9/2024 in *Malindi Petition No 13 Of 2023* stating that the directions made that day would apply to *Malindi Petition No 19 Of 2021*. On 12/2/2024 the court, after a submission by Mr. Ngari for the petitioners, ordered that the two files should be brought up together for directions on 22/4/2024. Another petition, *Malindi Petition No E003 Of 2023* was also thought by Mr. Munga, the State Counsel, to be related to these two files according to the proceedings of 22/4/2024. The two files herein *Malindi Petition No 13 Of 2023* and *Malindi Petition No 19 Of 2021* have been coming up together before this court ever since. To have the

applicants seek at this juncture to be joined as interested parties in *Malindi Petition No 13 Of 2023* is in this court's view an abuse of the court process.

12. In the present application, the applicants seek to reopen the proceedings as though they have learnt of them only recently. I find that in the light of the above analysis regarding what happened in both petitions, the application is not justified and it ought to fail for the very reason that the same has been brought too late in the day and the effect of granting that order would be to backpedal this litigation while the applicants have been aware of it for a lengthy period.

Court's decision in respect of issues no (a), (c) and (d) above

13. This court commenced the analysis herein by drawing the attention to the similarity of the issues raised in the present application and the application dated 6/5/2025 in *Malindi Petition No 19 Of 2021*.

14. In the application dated 6/5/2025 in *Malindi Petition No 19 Of 2021* the court did the following:

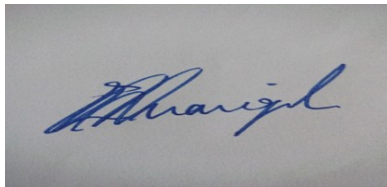
- a. Found that the application of the Civil Procedure Rules to the application was not fatal to the application;*
- b. Dismissed the prayer seeking that the judgment of 3/4/24 be varied, reviewed or set aside to allow the respondents to file the necessary evidence that was not available at the time of determination of the judgment;*
- c. Dismissed the prayer seeking that the County Surveyor and the Land Registrar be ordered to conduct a boundary demarcation in respect of GL15A and the Nyika Reserve to show any encroachment of the Nyika Reserve.*

15. Since the two applications are in respect of the same land, the court can not afford to come to different findings other than those made in the

application dated 6/5/2025 in *Malindi Petition No 19 Of 2021* on issued no**(a), (c) and (d)** listed herein above. In the interests of saving much needed judicial resources, this court will also not reiterate verbatim the same reasons it gave for its ruling in the application dated 6/5/2025 in *Malindi Petition No 19 Of 2021* on issued no**(a), (c) and (d)**. This court finds that the reasoning in that case on those issues is applicable in the present ruling, and it hereby adopts the said reasoning in the said ruling in respect of issues nos **(a), (c) and (d)** listed herein above.

16. The upshot of the foregoing is that the application dated **8th May 2025** in the present petition lacks merit and the same is dismissed with costs to the petitioners.

Dated, signed and delivered at Malindi on this 5th day of March, 2026.

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**