

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ELC CASE NO. 9 OF 2023

KAMBANGA RANCH
PLAINTIFF

=VERSUS=

KOMBOZA NDORO & 146 OTHERS
.....DEFENDANTS

RULING

1. On **31st January 2024**, my bother **Justice S. M. Kibunja** delivered the judgment in this matter arriving at the following finding;

“Based on the above, the court finds the plaintiff has proved that the suit land is lawfully registered in its name, while the defendants have failed to prove title to the 3,753 acres or any other portion of the suit land that they claimed in their counterclaim. However, in view of the finding that defendants, and others were already settled on a portion of the suit land, by the time the land was allocated and registered in favour of the

plaintiff, it would not be just to order for their eviction without giving the National Land Commission an opportunity to investigate the allocation under Article 67 (2) (e) of the Constitution, and make recommendations to the court.”

.....

8. That flowing from the foregoing, the court finds and orders as follows:

a.) That in view of the fact that the defendants' were in occupation of the suit land, before it was allocated and registered in the name of the plaintiff, this suit is hereby referred to the National Land Commission for investigations, under Article 67(2)(e) of the Constitution, and recommendations on the appropriate resettlement of the defendants.

b.) The report by the National Land Commission be filed with ELC Voi in ninety (90) days from the date of this judgement.

c.)”

2. Subsequently thereafter after several mentions, the National Land Commission filed an Affidavit sworn on **2nd March 2026** by **Edmund Gichuru** the Deputy Director of Legal Affairs and Dispute Resolution and the Head of the Historical Land Injustice demonstrating compliance to the judgment and orders issued by the court.
3. When the matter came up for mention on **5th March 2026**, **Learned Counsel Mr. Odongo** for the Plaintiffs who had been served with the said affidavit objected to the same and submitted that there was no compliance with the judgment of the court, no report had been given and the gazette notice was ambiguous. He urged the court to direct NLC to submit the report.
4. **Learned Counsel Mr. Oddiaga** for the Defendants submitted that he was satisfied with the affidavit filed and the recommendations made by NLC in the gazette notice annexed to the said affidavit. He also submitted that the same was clear and it qualified as a report. NLC has done its part and parties need to move to the next step.
5. **Learned Counsel Mr. Kiilu** for the NLC submitted that the end result of a report is the recommendations which are gazetted and made available to the public. He also

submitted that the affidavit filed demonstrates compliance to the court orders.

6. In considering whether or not the National Land Commission (NLC), has complied with the judgment of this Court directing it to investigate the Defendants historical land claims and submit a report to the Court. The facts are not in dispute: Following the Court's judgment, the NLC conducted the requisite historical investigation and subsequently filed an affidavit in Court attaching a Gazette Notice that outlines the outcome of its recommendations.

7. The core issue for determination is whether the filing of an affidavit accompanied by the Gazette Notice constitutes compliance with the Court's directive to "submit its report to court." In resolving this, I shall refer to relevant statutes, regulations, and case law governing the mandate of the NLC and the principles of compliance with court orders.

8. The NLC's mandate to address historical land injustices is enshrined in **Article 67(2)(e) of the Constitution of Kenya, 2010**, which empowers the Commission to "initiate investigations, on its own initiative or on a

complaint, into present or historical land injustices, and recommend appropriate redress." This constitutional provision is operationalized through **Section 15 of the National Land Commission Act, No. 5 of 2012 (the NLC Act)**, which elaborates on the procedure for investigating such claims. **Section 15(1)** reaffirms the NLC's power to investigate, while **Section 15(9)** allows the Commission to recommend remedies such as restitution, compensation, or resettlement.

9. The detailed procedure for handling historical land injustices is set out in the **National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 (Legal Notice No. 258 of 2017)**. **Regulation 5** empowers the NLC to commence investigations, either on its own initiative or upon complaint. **Regulation 11** outlines investigative steps, including site visits, document verification, interviews, and public hearings. Crucially, **Regulation 25** requires the Commission, after concluding investigations, to render a decision within 21 days in writing, containing the nature of the claim, a summary of facts and evidence, the

determination with reasons, and recommendations on remedies.

10. **Regulation 26** provides that a determination made by the NLC shall be extracted and authenticated as a Commission decision. In practice, as established in the Regulations and affirmed in various NLC processes, the Commission's decisions and recommendations on historical land injustices are published in the Kenya Gazette to ensure public notice and finality. This gazettelement serves as the official record of the outcome, aligning with the transparency requirements under **Article 10 of the Constitution**, which emphasizes good governance, integrity, transparency, and accountability.
11. Court orders must be obeyed to uphold the rule of law, as emphasized in **Article 10(2)(a) of the Constitution**, which lists the rule of law as a national value. In **Wildlife Lodges Limited v Narok County Council & 3 others [2011] eKLR (Court of Appeal, Civil Application No. 217 of 2010)**, the Court underscored that "it is essential for the maintenance of the rule of law and good order that the authority and the dignity of our courts are upheld at all times." Disobedience

invites contempt proceedings under **Section 5 of the Judicature Act (Cap. 8) and Order 40 Rule 3 of the Civil Procedure Rules**, but only where there is willful non-compliance.

12. However, compliance need not be hyper technical; substantial compliance suffices where the essence of the order is fulfilled. In **Republic v Attorney General & 4 others Ex-Parte Diamond Hashim Lalji and Ahmed Hasham Lalji [2014] eKLR (High Court, Miscellaneous Application No. 153 of 2012)**, the High Court held that "***some rules are vital and go to the root of the matter... others are only directory and a breach of them can be overlooked provided there is substantial compliance.***"

13. Internationally, the principle of substantial compliance is echoed in **Canada Metal Co. Ltd. v Canadian Broadcasting Corporation (No. 2) (1975) 59 D.L.R. (3d) 430**, where the court noted that "if there has been substantial compliance with the order, even if not complete compliance, the court may exercise its discretion not to find contempt." This aligns with Kenyan jurisprudence, as seen in **Republic v Kenya Bureau of**

Standards & 4 others; Exparte United Millers Limited; Department of Health Services, Nakuru County (Interested Party) [2019] eKLR (High Court, Judicial Review No. 396 of 2018), where the High Court emphasized that procedural requirements should not defeat substantive justice under **Article 159(2)(d) of the Constitution**.

14. The Court's judgment required NLC to investigate the historical land claims of the Defendants and submit a report. The NLC complied by conducting the investigation, rendering a decision with recommendations, and gazetting the outcome as mandated by its Regulations. The filing of an affidavit attaching the Gazette Notice effectively submits the "report" to the Court, as the Gazette represents the authenticated and public record of the NLC's findings and recommendations. This action fulfills the substance of the order: providing the Court with the results of the investigation for oversight or further action.

15. Requiring a separate, standalone "report" beyond the gazetted decision would elevate form over substance, contrary to the principles in **Republic v Attorney General & 4 others Ex-Parte Diamond Hashim Lalji**

and Ahmed Hasham Lalji [2014] eKLR and Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR. There is no evidence of willful disobedience; rather, the NLC has acted within its statutory framework, ensuring transparency through gazettelement. This is consistent with cases like **Karama & 13 others v National Land Commission & 21 others (Environment & Land Petition 13 of 2021) [2022] KEELC 13521 (KLR) (28 September 2022)**, where the Environment and Land Court reviewed NLC decisions on historical claims, noting that gazetted outcomes form part of the official process.

16. In light of the foregoing, I find that the NLC's action of filing the affidavit sworn by **Edmund Gichuru** attaching the Gazette Notice No. 16521 amounts to substantial compliance with the Court's judgment since the gazettelement serves as the official record of the outcome, aligning with the transparency requirements under **Article 10 of the Constitution**, which emphasizes good governance, integrity, transparency, and accountability.

17. It is so ordered.

**Dated, Signed and Delivered Virtually at Voi this 9th
day of March 2026.**

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Odongo for the Plaintiff.

Mr. Oddiaga for the Defendants.

Mr. Kiilu for the NLC.

Court Assistant: Mary Ngoira.