REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND PLANNING DIVISION

ELCEPCC NO. 3 OF 2023

(PREVIOUSLY LE083 OF 2023)

IN THE MATTER OF DANDORA DUMPSITE WASTE PARKERS, AIR POLLUTION COMPENSATION AND ENVIRONMENTAL RESTORATION CLAIM

ABIGAEL ALIMA NAMANYI…….....1st PLAINTIFF

BERYL AUMA AWUOR…..…….....2nd PLAINTIFF

PHANICE TABU OKELLO..…..…….....3rd PLAINTIFF

LEAH KAYANGE.…..…….....4th PLAINTIFF

DAVID OCHIENG.…..……...…..….....5th PLAINTIFF

(Suing for themselves and on behalf of the entire body of waste parkers who are the most affected victims of the air pollution at Dandora Dumpsite)

-VERSUS

NAIROBI COUNTY GOVERNMENT…….....DEFENDANT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY ……..……..…..INTERESTED PARTY

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JUDGMENT

1. Vide a Plaint dated the 18th September, 2023, the Plaintiff seeks the following reliefs:

   a. ***That this court finds and so declares that the Defendant and Interested Party have jointly and severally been responsible for continued denial/violation/infringement of the Plaintiff's rights and fundamental rights in the bill of rights under Articles 10(2)(b), 26(3), 29(f), 42, 43(1)(d), 47, 69 and 232(1)(c) of the Constitution.***

   b. ***That this court finds and so declares the Defendant liable for the continued denial/violation/infringement of the Plaintiff's rights and fundamental rights in the bill of rights under Articles 10(2)(b), 26(3), 29(f), 42, 43(1)(d), 47, 69 and 232(1) (c) of the Constitution.***

   c. ***That this court be pleased to issue permanent conservatory orders compelling the Defendant to implement permanent rehabilitation and restoration of the Dandora Dumpsite measuring about 47 Hectares.***

   d. ***That this Court be pleased to compel the Defendant and/or otherwise the interested party to ring fence funds that would be used***

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to implement permanent rehabilitation and restoration of the Dandora dumpsite area measuring about 47 hectares.

e. That this Court be pleased to award the Plaintiffs compensation for breach of their fundamental rights in the bill of rights.

f. That this court be pleased to award the Plaintiffs damages.

2. On the 7th November, 2023, the Defendant filed a Notice of Preliminary Objection alleging that the suit violated the doctrine of *res judicata* as set out in **Section 7** of the **Civil Procedure Act,** the issues herein having been fully addressed in **Isiah Luyara Odando & Anor vs National Management Environmental Authority & 2 others: County Government of Nairobi & 5 Others (Interested Parties) [2021] eKLR.**
3. Vide the Ruling of 20th June, 2024, the court found the objection to be partly merited and found prayers (a)-(d) to be *res judicata*. As such, the only issue for determination by this court is whether the Plaintiffs are entitled to compensation for breach their constitutional rights and damages.
4. The Plaintiffs have instituted this suit on their own behalf and on behalf of the body of waste pickers operating at the Dandora Dumpsite, who constitute the informal solid waste management sector. They contend that they play a critical role in waste collection, segregation and recycling, thereby supporting industrial demand for recyclable materials and reducing

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the volume of waste destined for landfills. This work is undertaken under harsh and deplorable conditions and remains their sole source of livelihood.

5. They aver that they work with bare hands, without protective clothing, boots or gloves, while handling raw and decomposing waste containing sharp plastics, broken glass and medical refuse. They operate in an atmosphere polluted by smoke and fumes from burning waste. Their earnings are extremely low, averaging between Kshs. 17 per kilogram of recyclable material, while a bag of plastic fetches between Kshs. 50 and 55 depending on size. Despite the economic value of their labour, they remain unregulated, unsupported and unprotected.
6. The Plaintiffs further state that they are unable to access adequate healthcare despite suffering frequent medical complications. Their children lack access to clean water and basic education and live in conditions of persistent exposure to pollution. They rely on a report prepared in December 2006 by the National Environment Management Authority (NEMA), ITPFN and the World Bank, which found that residents of Dandora and Korogocho face serious health risks arising from exposure to lead and other toxic pollutants.
7. According to the Plaintiffs, waste at the dumpsite is not segregated and has become the main source of elevated lead levels found in children's blood.

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The site is also a source of persistent air pollution, causing respiratory illnesses and breathing difficulties. Leachate from the dumpsite contaminates soil and nearby water sources, including shallow wells and rivers relied upon by surrounding communities. They contend that despite longstanding knowledge of these dangers, the Government has failed to take adequate mitigation or rehabilitation measures.

8. They assert that the environmental harm caused by the dumpsite is continuing, cumulative and irreversible in nature, with impacts that are capable of affecting large populations over extended periods of time. Owing to their impoverished living conditions, the waste pickers also suffer mental health challenges, which have contributed to substance abuse, including marijuana, glue and fuel inhalation. Exposure to burning plastic further subjects them to neurological and systemic illnesses.
9. The Plaintiffs maintain that waste pickers form the backbone of Kenya's recycling economy under a framework that has existed for over three decades. Despite this, the Defendant, which is constitutionally mandated to manage waste, has failed to establish any framework to ensure a safe working environment or to integrate them into a regulated and ecologically sustainable waste management system.

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10. They anchor their claim on the constitutional and statutory framework governing environmental protection. They rely on **Article 42** of the **Constitution**, which guarantees every person the right to a clean and healthy environment, read together with **Article 69(1)(g),** which obligates the State to eliminate processes and activities that endanger the environment. They also invoke **Article 28** on the right to dignity and **Articles 186(1)** and **(2)** read with **Part 2** of the **Fourth Schedule**, which assign county governments responsibility for waste management, pollution control and public health nuisances.

11. It is the Plaintiffs' case that, when read together with the right to life, the Constitution prohibits intentional or negligent exposure of persons to life-threatening environmental conditions. Environmental degradation that imperils human survival or health, they contend, cannot be constitutionally justified.

12. The Plaintiffs place reliance on the Environmental Management and Coordination Act (EMCA) as the principal statutory framework for environmental governance. They cite **Section 7**, which mandates the State to establish standards for water quality, effluent discharge and ecosystem protection. They further rely on provisions requiring formulation of air quality standards, emission thresholds and occupational exposure limits, as

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well as pollution control measures. They contend that EMCA incorporates the precautionary principle and requires proactive management of hazardous substances and waste.

13. They also rely on **Section 3** of **EMCA**, which entitles every person to a clean and healthy environment and grants standing to seek redress where that right is threatened or violated. They submit that in exercising this jurisdiction, the court must be guided by the principles of sustainable development, including the precautionary and polluter-pays principles.

14. The Plaintiffs further contend that Kenya's international obligations reinforce these domestic guarantees. They invoke **Article 3** of the **Universal Declaration of Human Rights** and **Article 6** of the **International Covenant on Civil and Political Rights on the right to life,** as well as **Article 12** of the **International Covenant on Economic, Social and Cultural Rights on the right to health**.

15. They rely on empirical studies conducted by JICA and Nairobi City County identifying Dandora Dumpsite as a major source of environmental contamination affecting Korogocho, Baba Ndogo, Mathare and Dandora settlements. These studies revealed high concentrations of heavy metals including lead, mercury and cadmium in soil and water, as well as methane

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and toxic gas emissions. Medical research associated prolonged exposure with respiratory disease, developmental disorders in children and increased cancer risk.

16. Despite this data, the Plaintiffs contend, no adequate remediation, relocation or rehabilitation has been undertaken. Waste pickers continue to operate without protective equipment, institutional support or regulatory safeguards, thereby compounding both health and environmental risks.

17. They allege that the Defendant and Interested Parties have breached Articles **26(3), 29(f), 42, 43** and **69** of the **Constitution** and **Section 86** of **EMCA** by failing to properly manage waste at the Dandora Dumpsite and to rehabilitate the site in a manner that protects human health and the environment. They particularize the breaches as including exposure to reproductive disorders, miscarriages and stillbirths; exposure to heavy metals and toxins causing neurological, respiratory and systemic illnesses; contamination of drinking water with high lead levels; persistent air pollution; failure to provide fair administrative action under Article 47; and failure to engage waste pickers as stakeholders in waste management.

18. These inactions, they assert, also breach International Human Rights instruments to which Kenya is a signatory *to wit* **Article 25** of the **Universal**

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Declaration of Human Rights 1948 which provides for the right to adequate standard of living, **Part 3 Article 6** of the **International Covenant on Civil and Political Rights 1966** which provides for the right to life and **Article 12** of the **International Covenant on Economic, Social, and Cultural Rights 1966** which provides for the right to health.

19. They further allege that NEMA has failed to exercise its statutory mandate under **Sections 9** and **86 of EMCA** by neglecting to monitor activities at the dumpsite, enforce rehabilitation measures and ensure compliance with air quality and emission standards.

20. They contend that comparative jurisprudence from India and South Africa which supports strict environmental responsibility where public authorities fail to act, and the application of the precautionary principle even in the absence of complete scientific certainty. They also rely on decisions of the National Green Tribunal of India awarding substantial environmental compensation of approximately Kshs 211, 716,000/ as against the Maharashtra Government and approximately Kshs 39, 379, 176,000 as against the Delhi Government both with respect to improper solid and liquid waste management.

21. In the premises, the Plaintiffs urge the court to find that the Defendant and Interested Party have breached their constitutional and statutory duties,

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to grant appropriate reliefs to protect the environment, and safeguard public health and vindicate the rights of present and future generations.

22. In response to the Plaint, the Defendant filed a statement of Defence dated the 11th July, 2024. In it, the Defendant denied the assertions set out in the Plaint stating that vide a Ruling delivered on the 20th June, 2024, claims a -d of the reliefs sought in the Plaint were declared *res judicata*

23. According to the Defendant, apart from the foregoing, the Plaint does not disclose any cause of action against it, being repetitive of constitutional and statutory provisions and/or otherwise incapable of grounding liability. Further, none of the Plaintiffs, nor the persons they purport to represent, have ever been its employees, and that it therefore owes them no duties in that capacity. It further maintains that the pleadings do not disclose any legal or factual basis upon which liability can be attributed to it, offend the provisions of **Order 2 Rule 3** of the **Civil Procedure Rules, 2010**, for want of a reasonable cause of action and should be dismissed.

HEARING & EVIDENCE

24. The hearing first commenced on the 29th July, 2025. PW1 was Abigael Alima Namayi. She adopted her witness statement dated the 21st September, 2023 as her evidence in chief and adduced the documents dated 18th

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September, 2023 as PEXHB1-13. She produced the further list of documents dated the 21st September, 2023 as PEXHB 14 & 15.

25. Ms. Namayi's evidence, as contained in her witness statement, substantially reiterated the Plaintiffs' case as pleaded in the Plaint. In her oral testimony, she stated that she has been duly authorized by 1,032 waste packers to testify on their behalf. She clarified that the waste packers are not employees of Nairobi City County. Their work consists of sorting out items such as bottles and carrier bags, which they sell to recycling companies. According to her, the forty-two employees of the County are only responsible for ensuring that dumping does not occur on the road.

26. She further testified that by removing bottles from the dumpsite, the waste packers contribute to environmental protection, even as they earn a livelihood from the sale of the recyclable materials. She disputed the Defendants' assertion that there has been no a disease outbreaks at the dumpsite, stating that this was untrue. Personally, she stated, she has suffered irregular menstrual periods and added that there have been cases of tuberculosis and asthma among those working at the site. She also explained that many of the waste packers are illiterate and, although their names did

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not appear on the filed list, they nonetheless appended their signatures in support of the case.

27. During cross-examination, she testified that she is not an employee of the Defendant. She stated that they had previously approached the Defendant seeking to be considered for employment, but no engagement resulted. She further testified that certain structures constructed by the County were later removed by the youths, who sold the iron bars.

28. She acknowledged that she had not lodged any formal complaint with the Defendant prior to filing the suit. She also stated that she was unaware of the contents of PEXHB 6 and 7 and confirmed that she had not initially produced any medical report in support of her allegations. According to her testimony, the bottles collected from the dumpsite are sold to middlemen, who in turn sell them to recycling companies. She confirmed that whereas the photographs produced depicting them at the dumpsite were taken using a mobile phone, no certificate of electronic evidence was produced.

29. Upon re-examination, she produced the medical report (PEXHB 14).

30. PW2 was Beryl Auma Owuor. She adopted her witness statement dated the 19th September, 2023 as her evidence in chief. In brief, it was her evidence vide the statement that she is the 2nd Plaintiff in the suit and is testifying with the authority of all the claimants, who at the time of her testimony numbered

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about one thousand and thirty-two and were still increasing. She stated that they are all victims of air pollution at the Dandora Dumpsite and that they collectively seek compensation as well as restoration and rehabilitation of the dumpsite as a matter of urgency. She further stated that all the waste pickers at Dandora Dumpsite adopt the statement of the 1st Plaintiff, Abigail Namayi, as accurately reflecting the issues they had raised against the Defendant and the Interested Party.

31. PW2 explained that she is twenty-three years old and has been working at the dumpsite for about two years, it being her only means of livelihood and through which she is able to provide for her one-year-old child. She stated that her work involves scavenging for used pampers and washing them before recycling. This is carried out using dirty water and, in an environment, constantly strewn with broken glass, it exposes her to frequent cuts and bleeding without access to proper medical treatment.

32. She further stated that, due to lack of financial means, she is unable to seek medical care and cannot not even speculate on the diseases she might have contracted. She is surviving on the grace of God. She regularly experiences unexplained swelling of her legs, as well as persistent stomach cramps and stomach pains, which are part of her daily life while working at the dumpsite.

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33. During cross-examination, she conceded that she is not an employee of the Defendant and has never applied to be one. She stated that she has never been shown how to lodge the risks they are exposed to at the site. Further, it was her evidence that she has been going for treatment at Gomongo Sub-County Hospital and they can be called to confirm.

34. PW3 was Phanice Taabu Okello, she adopted her witness statement dated the 19th September, 2023 as her evidence in chief. She stated that she is the 3rd Plaintiff in the suit and testifies with the authority of the other claimants, who currently number about 1,032 waste pickers affected by air pollution at the Dandora Dumpsite.

35. She told the court that she is twenty-six (26) years old and has worked at the dumpsite for about five years. It is her only source of livelihood and the means through which she supports her two children. She stated that her work involves scavenging for plastics and washing them before recycling, a process she carries out using dirty water in an environment littered with broken glass, exposing her to frequent cuts and bleeding without access to proper medication.

36. According to PW3, she regularly suffers from coughs, chest congestion and breathing difficulties which also affect her young children.

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Hardly a month passes without her having to buy over-the-counter medication, particularly amoxicillin, for her child.

37. She further stated that she has persistent eye problems, which also affect her children. She explained that, due to lack of money, she is unable to seek proper medical attention and therefore cannot accurately identify the specific diseases she may have contracted, surviving instead by what she described as the grace of God.

38. She further stated that her legs often swell inexplicably and that she experiences frequent stomach cramps and persistent stomach pains. She told the court that she suffers from irregular and extremely painful menstrual periods, and that during her visits to the government hospital at Dandora she was informed that these problems were caused by the chemicals present at the dumpsite, with which she comes into daily contact.

39. She concluded by stating that her experiences are not unique but are replicated among the other waste pickers, since they all work under the same dirty conditions and breathe the same pungent and toxic air at the dumpsite

40. It was her evidence during cross-examination that she is not an employee of the Nairobi City County. She stated that she has not produced a medical report but the diseases affecting persons in the area are the same.

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41. PW4 was David Ochieng. He adopted his witness statement dated 19th September, 2023 as his evidence in chief. In his oral testimony, he stated that he is a community health volunteer attached to the dumpsite in Korogocho Ward, having been trained in first aid by AMREF in 2020 and was initially stationed at Gomongo Level 2 Hospital.

42. He further testified that he routinely advises persons working at the dumpsite to seek medical care because of their constant exposure to toxic fumes. According to him, most of the waste pickers present with similar medical conditions. He stated that he referred twenty-three (23) such persons for treatment and they were informed by medical personnel that their illnesses were attributable to the nature of their work at the dumpsite. He added that dumping activities continue unabated and that the claimants remain engaged in waste sorting for sale.

43. It was his evidence during cross-examination that he did not produce the certificate issued to him upon completion of his training. He stated that, as a community health volunteer, he receives a stipend from the County Government. He testified that he commenced his duties in 2022 but was not formally registered. He further stated that he could call a doctor to testify if

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required. He also confirmed that he has never visited Kawangware Congo, but that he knows the persons depicted in the photographs.

44. DW 1 Walter Onwenga. He adopted his witness statement dated the 21st January, 2025 his evidence in chief and produced the documents dated 21st February, 2025 as DEXHB1-8. It was his evidence vide the statement that he serves as the Deputy Director of Environment in charge of Final Disposal and Intermediate Treatment within the Defendant and therefore well versed with the matters in issue.

45. According to Mr. Omwenga, the five Plaintiffs and the alleged 1,032 waste packers are complete strangers to the Nairobi City County Government as they are not registered employees of the County. He explained that, from the County's perspective, these persons are illegally occupying the dumpsite and none of them has demonstrated that they are employed by the County. He further stated that the County is under no legal obligation to provide personal protective equipment (PPE) to them since they are not County employees and are not budgeted for, adding that doing so would result in wastage of public funds.

46. He testified that the County has only forty-two salaried staff deployed at the Dandora dumpsite. Their primary responsibilities are to ensure the smooth flow of garbage trucks, oversee proper disposal of waste, and ensure

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that all trucks delivering waste are weighed. These forty-two officers, he stated, are regularly supplied with adequate PPE, uniforms, and work tools, all of which are budgeted for, accounted for, and provided by the County, with records maintained accordingly.

47. Mr. Omwenga further stated that there has never been any reported health hazard or disease outbreak attributable to the Dandora dumpsite since independence, both before and after devolution. He explained that the dumpsite occupies approximately seventy acres within Embakasi North Sub-County and operates as a gazetted dumpsite. He added that although attempts had previously been made to close, decommission, or relocate the dumpsite, none had materialised, and that it remains the only gazetted dumpsite within Nairobi City County.

48. He explained that, upon the advent of devolution, the County resolved that in the absence of suitable alternative public land and given the complexities of relocation, it would be more feasible to rehabilitate the existing dumpsite through a waste-to-energy conversion model. He stated that the concept was first developed during the tenure of Governor Evans Kidero between 2013 and 2017, but the project did not materialize before the 2017 general

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elections. After the election of Governor Mike Sonko, efforts were made to revive the project, but these too failed.

49. According to Mr. Omwenga, subsequent challenges facing the County administration culminated in the signing of a Deed of Transfer in February 2020, through which certain functions, including planning, development, and environmental management, were transferred to the national government. This led to the establishment of Nairobi Metropolitan Services (NMS), which took over the project. He stated that NMS, in collaboration with Kenya Electricity Generating Company (KENGEN) and the Ministry of Energy and Petroleum, initiated a fresh procurement process aimed at establishing a waste-to-energy conversion plant to facilitate the eventual decommissioning of the dumpsite.

50. He further explained that a feasibility study was conducted and recommended the use of part of the Ruai Sewerage Ponds land for the project. However, before implementation could proceed, the 2022 general elections were held and Governor Johnson Sakaja assumed office, after which NMS transferred its functions back to the County Government. Owing to the limited two-year tenure of NMS, the procurement process could not be fully concluded.

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51. He explained that the procurement process was restructured in February 2023 and adopted as a public–private partnership model due to the County's financial constraints. An expression of interest was issued in January 2023, attracting eighteen companies, of which only three submitted proposals. He stated that China National Electric Engineering Company Limited was subsequently awarded a tender on 25th July 2023 to design, finance, build, operate, maintain, and transfer a waste-to-energy processing plant at the Dandora dumpsite.

52. He also referred to **Milimani Environment and Land Petition No. 4 of 2023, Advin Muthoni Mbae vs Nairobi City County Government**, in which the court dismissed the petition on the basis that it was premature, noting that the County was already undertaking steps towards establishing the waste-to-energy plant. He stated that the court further found that some of the issues raised were partly *res judicata*, having been addressed in an earlier petition, and that the dispute was in substance a procurement matter disguised as an environmental claim.

53. Mr. Omwenga testified that, in 2024, the County approached the National Treasury for approval to implement the project as a specially permitted project, which approval was granted. He stated that the procurement process

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was substantially complete, save for a few outstanding issues, and that only a small portion of the dumpsite would be occupied by the plant, with the remainder rehabilitated and converted into a green recreational park for the benefit of residents of Dandora and Nairobi at large.

54. He stated that the Plaintiffs' allegations are wholly unsubstantiated. He questioned the authenticity of the list of alleged waste packers, observing that the names and signatures appeared similar and lacked key identifying details such as mobile numbers and places of residence. He further testified that the documents produced in court did not support the allegations made and disclosed no cause of action against the Defendant. He also challenged the probative value of the photographs produced, stating that they did not establish that the persons depicted were the Plaintiffs or that the images were taken at the dumpsite.

55. Finally, Mr. Omwenga stated that the community health referral forms produced by the 5th Plaintiff did not demonstrate any causal link between the alleged illnesses and the dumpsite. He further testified that the 5th Plaintiff is not a registered medical practitioner and therefore lacks the competence to issue referrals, and that none of the alleged patients had produced medical reports from qualified medical professionals to substantiate the claims.

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56. It was his evidence on cross-examination that there are approximately 1000-2000 informal waste pickers and they are an integral part of the integrated waste management system. He conceded that he has read the report on the effects of mercury and lead on women's menstrual cycles. He stated that the dumpsite has not been de-commissioned and the waste to energy at the dumpsite has not taken off. The harm to the public sought to be prevented by the earlier judgment still persists.

57. He explained that the waste to energy transition is due for ground breaking in March, 2026. The transition process includes, construction of the plant which will take two years and thereafter continuous operations for 25-30 years before it is handed over to the government.

58. Upon being cross-examined by the court, he explained that at the county level, they do not undertake sorting. The same is done at the sub-county level at the dumpsite by the informal sector.

SUBMISSIONS:

59. The Plaintiff filed submissions on the 17th September, 2025. Counsel submitted that the Dandora Dumpsite, falls within the corpus of the public trust, as it is state-owned and held in the sovereign capacity of government for the common benefit of the public, including the 1,032 waste pickers. As

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such, the responsibility for its regulation and control lies with the State, and in this case the County Government of Nairobi, by virtue of the constitutional allocation of functions under **Schedule 4 Part 2(3)** and **2(10)(a)** of the **Constitution,** read together with **Section 5(2)(c)** of the **County Governments Act**, and **Sections 30(1)** and **(2)** of the **Nairobi City County Solid Waste Management Act, 2015**.

60. Counsel explained that as per the Nairobi City County Solid Waste Management Act, 2015, the county is obligated to establish a disposal site conforming to internationally recognised standards, including clear demarcation and fencing. Against that legal framework, it was averred that the Plaintiffs demonstrated they play a central operational role in solid waste management at Dandora through the informal processing of waste by sorting, recycling and composting functions essential to the recycling economy and of direct economic benefit to waste pickers, especially given that the proposed waste-to-energy plant is yet to take off. This, it was stated was conceded by DW1 during his cross-examination.

61. Counsel contended that the Defendant's refusal or failure to regulate emissions at Dandora presents a risk of harm that is both actual and imminent, and that the causal connection between the emissions and the

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injuries complained of means the Defendant's regulatory inaction has, at minimum, contributed to the Plaintiffs' injuries, thereby entitling them to damages.

62. Counsel cited Wayne L. Christian's discussion of the doctrine of public trust and relied on ***LaCoste v Department of Conservation, 263 U.S. 545 (1924)*** for the proposition that certain natural resources are held by the State in its sovereign capacity for the common benefit of all its people, with the responsibility of regulation and control placed upon the State. Reference was also made to **Erin Ryan, Public Trust Principles and Environmental Rights: The Hidden Duality of Climate Advocacy and the Atmospheric Trust, in the Harvard Environmental Law Review (Vol. 49).**

63. Counsel further urged that environmental management decisions by public agencies must be tethered to the statutory question of whether pollution may reasonably be anticipated to endanger public health or welfare, and cited ***Massachusetts vs Environmental Protection Agency, 549 U.S. 497 (2007)*** to argue that a regulator cannot decline to act for reasons divorced from the governing statutory text, and must instead ground action or inaction on the endangerment inquiry and relevant statutory considerations.

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64. Also cited was the International Court of Justice Advisory Opinion on Climate issued on 23rd July 2025, which affirmed the duty of States under customary international law to prevent significant harm to the environment, drawing from the ICJ's pronouncements in Pulp Mills on the ***River Uruguay (Argentina v Uruguay), Judgment, I.C.J. Reports 2010,*** including the obligation to use all means at a State's disposal to avoid activities causing significant environmental damage, the requirement of due diligence encompassing both adoption of appropriate rules and measures, and a sufficient level of vigilance in enforcement and administrative control, and the need for heightened vigilance and prevention in the context of climate change.

65. Turning to proof of violations, Counsel submitted that the Plaintiffs called four witnesses (PW1–PW4) who, through adopted statements and oral testimony, narrated their working conditions at the Dandora dumpsite and how it has led to various medical conditions. It was urged that these injuries amount to threats of serious or irreversible harm, for which lack of full scientific certainty should not be used to postpone cost-effective measures to prevent environmental degradation. Reliance in this regard was placed on ***SC Petition No. E019 of 2023 (as consolidated with Petition E021 of 2023 – Export Processing Zone Authority & 11 others v NEMA & 6 others.***

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66. Counsel highlighted the evidence of the first three witnesses, all female, who testified to irregular menstrual cycles punctuated with heavy bleeding, which they attributed to hazardous waste at the dumpsite. It was urged that the Defendant did not tender scientific evidence to impeach the scientific findings produced by the Plaintiffs. Counsel urged the court to be guided by the scientific materials exhibited by the Plaintiffs, including reports by The Endocrine Society and IPEN (International Pollutants Elimination Network), UNEP's report titled "Implications of the Dandora Municipal Dumping Site in Nairobi, Kenya", and reporting by The Fuller Project on women waste pickers at Dandora. Also cited was ***ELC Milimani Petition No. 43 of 2019 – Isaiah Luyara Odando & another v NEMA, County Government of Nairobi & 7 others*****.**

67. Counsel also referred to the testimony of PW4, a Community Volunteer based at Korogocho, who testified that the dumpsite constantly billows with heavy smoke and that he routinely led affected persons to Gomongo Level II Hospital. He produced twenty-three health referral forms for persons referred and treated at the facility, and asserted that the illnesses were attributed by doctors to the Dandora dumpsite.

68. On remedies and liability, Counsel submitted that the Defendant, as a state agency, bears responsibility for failing to exercise due diligence and to

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take necessary regulatory measures to limit harmful emissions caused by private actors operating within its jurisdiction at Dandora. It urged the court to find that the Defendant breached **Articles 42** and **69** by improper management of solid waste at Dandora; and violated **Article 47** by failing to provide fair administrative action that is efficient and expeditious. With respect to the Interested Party, Counsel similarly urged findings that it failed to effectively exercise its mandate under EMCA.

69. Ultimately, Counsel urged the court to award compensation for breach and violation of rights and damages as pleaded. It was contended that, given the continuing exposure and the Defendant's failure to recognise and compensate the waste pickers who drive the informal solid waste management economy at Dandora, a fair award would be Kshs 500,000 for each of the 1,032 Plaintiffs, amounting to Kshs 516,000,000.

70. The Defendant filed submissions on 28th October, 2025. Counsel submitted that any party alleging a constitutional violation must plead and prove the claim with precision in line with the principles set out in ***Anarita Karimi Njeru v Republic [1979] KEHC 30 (KLR)***, and urged that the Plaintiffs did not meet this standard.

71. Counsel explained that, at the commencement of the hearing on 29th July 2025, the court itself sought clarity on the nexus between the Plaintiffs and

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the Defendant, to understand the cause of action being advanced. It was contended that the Plaintiffs' own testimony confirmed that none of the Plaintiffs or the persons they represent, are employees of the Defendant, and none produced any evidence of having applied for employment and been rejected. As such, no causal link, as explained in ***Diana Katumbi Kiio v Reuben Musyoki Muli [2018] KECA 860 (KLR)***, ***Ord v Upton***, ***Read v Brown (1888) 22 QBD 128***, *and* ***Letang v Cooper [1964] 2 All ER 929***, and ***Miano v County Government of Nyeri (Cause E018 of 2022) [2022] KEELRC 13261 (KLR)***, was established.

72. Counsel contended that the Plaintiffs' evidence was materially deficient. It was submitted that the 1st Plaintiff alleged she had worked at the dumpsite for eight years but did not prove that assertion, and further admitted she was unaware of, and had not bothered to inquire into, the Defendant's rehabilitation plans. Counsel argued that she could not explain the relevance or applicability of several annexures (including those marked PEXB-2, PEXB-3, PEXB-4, PEXB-6, PEXB-7, PEXB-8, PEXB-9, PEXB-10, PEXB-12 and PEXB-13), admitting under cross-examination that she did not understand them. In any event, they are not official government reports and do not relate to the Dandora dumpsite.

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73. On health claims, Counsel argued that no medical doctor was called to provide expert opinion linking any alleged ailments to the dumpsite or to any act or omission of the Defendant, and that unsubstantiated allegations, including a reference to a deceased person identified only as "Sarah", could not establish liability. As for the 5th Plaintiff, Counsel noted that while he claimed to be a trained, licensed and registered Community Volunteer trained by AMREF, he tendered no documentation to support his qualifications. Counsel also attacked the probative value of the referral documents produced (marked PEXB-14(i)–(xxi)), arguing that they lacked essential authentication details, including the name of the medical officer, the Community Health Volunteer particulars, and official stamp and signature, and did not attribute the illnesses to the Defendant.

74. Also challenged were the photographs relied upon by the Plaintiffs on the basis that they had no time stamp, geographical coordinates or location identifiers, and did not identify the persons depicted. Most significantly, Counsel submitted that the Plaintiffs failed to comply with the mandatory requirements of **Section 106B(4)** of the **Evidence Act** by not filing a certificate of electronic evidence. In support, Counsel relied on ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & Others, Civil Appeal Nos. 17 and 18 of 2015 (Consolidated) [2015]***

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eKLR, emphasising that the certificate requirement safeguards authenticity and integrity of electronic evidence and protects courts from manipulated records. It was urged that, absent compliance, the images could depict any persons at any dumpsite in Kenya.

75. Nonetheless, Counsel stated, the Defendant has demonstrated having taken practical steps, despite setbacks towards rehabilitating the dumpsite through a Design, Finance, Build, Operate, Maintain and Transfer Waste-to-Energy model. Counsel further argued, as a matter of judicial notice, that counties rely heavily on national allocations, loans and grants to discharge devolved functions, and submitted that solid waste management is a matter of progressive realisation, not instantaneous fulfilment. In support, Counsel cited the Supreme Court Advisory Opinion, ***In the Matter of the Principle of Gender Representation in the National Assembly and the Senate (Advisory Opinion Application No. 2 of 2012) [2012] KESC 5 (KLR)***, to ground the proposition that progressive realisation entails phased attainment of rights through supportive legislative, policy and programme measures.

76. Counsel also submitted that the Nairobi City County Solid Waste Management Act, 2015 was enacted as the County's first devolution statute on solid waste management, and that its framework contemplates gradual improvement over time in pursuit of constitutional obligations. Reference

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was made to **Section 16** of the **Act** as recognising that the County may not have resources to undertake collection solely through its own machinery and may implement the function directly or indirectly through private sector participation.

77. On the question of damages, Counsel submitted that the same are discretionary and must be guided by comparability of injuries and consideration of inflation and passage of time, citing ***Retco East Africa Limited v Wycliff Kennedy Makori [2021] KEHC 5761 (KLR)*** and ***Morris Mugambi & another v Isaiah Gituru [2004] eKLR***. In this case, however, in the absence of any injuries or harm attributable to it, the same are to be rejected.

78. In conclusion, Counsel urged that the suit be dismissed with costs, maintaining that the Plaintiffs failed to prove their case while the Defendant demonstrated the steps being taken to rehabilitate the dumpsite. On costs, Counsel relied on **Section 27** of the **Civil Procedure Act** and the Supreme Court decision in ***Rai & 3 others v Rai & 4 others (Petition No. 4 of 2012) [2014] KESC 31 (KLR)*** for the principle that costs follow the event and are compensatory rather than punitive.

ANALYSIS AND DETERMINATION:

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79. Having considered the Plaint, Defence and submissions and noting the record of the court and in particular the ruling of 20th June, 2024, the sole issue for determination is:

    i. **Whether the Plaintiffs are entitled to compensation and/or damages for breach of their fundamental rights in the Bill of Rights?**

80. The Plaintiffs instituted this suit on their own behalf and on behalf of the entire body of waste pickers operating at the Dandora Dumpsite. Their case is that they play a critical role in the waste management ecosystem through the collection, sorting and recycling of waste materials. They contend that despite this role, they work and live under harsh, unsafe and degrading conditions characterized by exposure to toxic fumes, unsorted waste, medical refuse, contaminated water and persistent burning of garbage.

81. They assert that such exposure has caused them serious physical and psychological harm, including respiratory ailments, reproductive disorders, stomach complications and other chronic illnesses, thereby violating their rights under Articles **26, 28, 42** and **43** of the Constitution.

82. On its part, the County Government maintains that the Plaintiffs are not its employees and that it therefore owes them no duty in that capacity. It asserts that the Plaintiffs are unlawfully occupying the dumpsite and that the

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County's only obligation is towards its forty-two salaried employees deployed at the site, who are provided with personal protective equipment. The County further contends that there has never been any disease outbreak attributable to the dumpsite and that it has taken steps towards rehabilitating the site through a waste-to-energy project, whose implementation has been delayed by logistical and financial constraints.

83. In its Ruling of 20th June, 2024, this court found that the Plaintiffs' prayers seeking declarations that the Defendant violated their rights under **Articles 10(2)(b), 26(3), 29(f), 43(1)(d), 47, 69** and **232(1)(c)** of the **Constitution,** together with their prayers for permanent conservatory orders compelling rehabilitation of the dumpsite and ring-fencing of funds for that purpose, were *res judicata,* the same having been conclusively determined in **Isaiah Luyara Odando & another vs National Environment Management Authority & 2 others; County Government of Nairobi & 5 Others (Interested Parties) [2021] eKLR**.

84. In the said decision, **Kossy Bor J**., held *inter alia* that the County Government had failed to eliminate the processes and activities that caused air pollution in Korogocho and Mukuru kwa Reuben slums attributable to the Dandora Dumpsite and in so doing for violated the Petitioners' rights to a clean and healthy environment under **Article 42** of the **Constitution** and

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the right to the highest attainable standard of health and to clean and safe water under **Article 43** of the Constitution.

85. The court in that matter therefore determined, in the affirmative, that constitutional rights had been violated as a result of the operation of the Dandora Dumpsite, and consequently issued structural interdicts ordering the decommissioning of the dumpsite and the adoption of remedial measures to ensure environmentally sound waste management

86. The Plaintiffs herein, though describing themselves as waste pickers, fall within the category of "the public" as contemplated in the ***Isaiah Luyara*** decision, being persons who reside in, work at, or are otherwise affected by the operations of the Dandora Dumpsite and its attendant environmental consequences. Their interests are therefore directly aligned with, and substantially identical to, those of the petitioners in the earlier suit. It is on this basis that I found that a substantial part of the present claim is barred by the doctrine of *res judicata.*

87. Having found that constitutional breaches were established, the only remaining issue for determination is whether the Plaintiffs' claim for compensation is merited. The Supreme court in ***Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area,***

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Mombasa) v National Environment Management Authority & 3 others (Petition E021 of 2023) [2024] KESC 75 (KLR) (6 December 2024) (Judgment) rendered itself on the question of compensation in constitutional matters. The court held:

> **"This court has in various cases addressed itself to the apportionment of compensation as a remedy to constitutional violation. In *Wamwere & 2 others v Attorney General* SC Petition No 34 & 35 of 2019 [2024] KECA 487 (KLR), this court held that the crafting of remedies in human rights adjudication goes beyond the realm of compensation for loss as it is principally for vindicating rights. In that case, the court further held that though the appellants did not lead any evidence of the loss they may have suffered due to the violation of their right and freedom from inhuman treatment, it was important for the court to vindicate and affirm the importance of the violated rights. In *CMM (Suing as the next friend and on behalf of CWM) & 6 others v Standard Media Group & 4 Others*, [2023] KESC 68 (KLR) this court equally addressed itself to what a trial court should do in its assessment of an award of compensation in constitutional rights violation claims when it held;"…All the trial court was expected**

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to do in considering this prayer was to assess what, in the circumstances of the case would be the appropriate compensation, or what other relief would vindicate the appellants' contravened rights. Examples of factors the court would have taken account of include the fact that the violations related to children; that some of the children had to transfer from the school; some were ridiculed, and being minors they were bound to suffer distress, trauma, anguish, fear and lowered self-confidence. On the other hand, exculpatory factors to consider would be the fact that some of the respondents, upon learning of the complaints about their publications immediately pulled down the offending story.[100]In the result, it was erroneous for the two courts below to ignore settled principles for the award of compensation in constitutional rights violation claims; namely, that once the burden of proving a violation was discharged, it was not necessary for the appellants to prove any damage or loss so as to be entitled to any of the reliefs contemplated in article 23(3)…"

134.In *Musembi & 13 others v Moi Educational Centre Co Ltd & 3 others* SC Petition No 2 of 2018 [2021] KESC 50 (KLR), this Court in overturning the decision of the Court of Appeal held that

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the questions and issues that a court has to consider in order to make an award of damages with regards to constitutional violation is manifestly different to what the court would consider in say, tortious or civil liability claim. The court distinguished the same as follows;"…In the latter, the issues are clear cut and quantification of the appropriate award is in most instances, straight forward. The same, however, is not true of constitutional violation matters, such as the instant one. Quantification of damages in such matters does not present an explicit consideration of the issues; other issues such as public policy considerations also come into play. A court obligated and mandated in evaluating the appropriate awards for compensation in constitutional violations does not have an easy task; there is no adequate damage standard that has been developed in our jurisprudence that recognizes that an award for damages in constitutional violations is quite separate and distinct from other injuries. In this regard, the Court of Appeal was unclear of what other material that the Petitioners needed to present before the trial court to establish that there was a violation of their constitutional rights by the respondents, and that the court

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therefore abused its discretionary powers in issuing the award of damages. In the event and following our reasoning in *Martin Wanderi & 106 Others v Engineers Registration Board & 10 others*, SC Petition No.19 of 2015 [2018] eKLR we must overturn the appellate court's decision on this issue….."

135.In *The Matter of African Commission on Human And Peoples' Rights v Republic of Kenya* Application No. 006/2012 Judgment (Reparations) 23 June 2022 (the Ogiek case) the African Court of Human and People's Rights in paragraphs 88 and 90 held;"The court confirms, therefore, that international law requires that the determination of compensation for moral damage should be done equitably taking into account the specific circumstances of each case. The nature of the violations and the suffering endured by the victims, the impact of the violations on the victim's way of life and the length of time that the victims have had to endure the violations are among the factors that the court considers in determining moral prejudice…….While it is not possible to allocate a precise monetary value equivalent to the moral damage suffered by the Ogiek, nevertheless, the court can award compensation that provides adequate reparation to the Ogiek. In

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determining reparations for moral prejudice, as earlier pointed out, the court takes into consideration the reasonable exercise of judicial discretion and bases its decision on the principles of equity taking into account the specific circumstances of each case…."

136.From the above authorities, it is clear that there is a distinct difference between damages in tort and damages for constitutional violations. The parameters to be examined in both are different. In a tortious claim, the fundamental principle guiding the court's quantification of damages is to restore the injured party to the position they would have been in had the tort not occurred. The damages awarded are compensatory, aimed at covering financial losses, personal injury, and sometimes pain and suffering caused by the tort. The goal is to address the harm by providing monetary compensation that reflects the actual damage suffered.

137.On the other hand, in constitutional claims, where fundamental rights have been violated, the court takes a broader approach to the assessment of damages. It considers various factors including; a. the nature of the violation. b. the length of

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time the alleged violation has taken. c. impact on the victim and whether there is a direct harm. d. the broader implications of the case, including the need to deter future violations, uphold the rule of law, and ensure that public authorities or private parties respect constitutional rights.

138.These differences in the approach between tortious claims and constitutional claims reflect the varying nature of the harm and the different objectives of each type of claim. While tortious claims are primarily about compensating specific losses, constitutional claims often aim to address broader issues of justice and the protection of fundamental rights.

139.The Court of Appeal in this case took the same trajectory as it took in Musembi (*supra*) where it had cited that there was no evidence placed before the trial court to enable it assess damages, and further, that in the circumstances of the case, it was incumbent upon the 2nd to 11th appellants to place material before the court on the basis of which the court would undertake an enquiry to ascertain the extent of loss so as to arrive at a reasonable amount in compensation.

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140.We have already outlined above that under the provisions of article 70 (3) of the *Constitution*, an applicant does not have to demonstrate that he/she has incurred loss or suffered injury. From the decisions cited it is clear that even in the absence of clear evidence to quantify the damage caused by the breach, courts may still award remedies based on the principle that the violation of constitutional rights itself warrants redress. These remedies can include a declaratory relief, nominal damages, or compensatory damages assessed on a more general basis, particularly in cases where the nature of the harm is difficult to quantify precisely. This ensures that the breach does not go unaddressed, upholding the integrity of the constitutional rights framework and providing some measure of justice to the aggrieved party." (underline mine for emphasis).

88. Under the doctrine of stare decisis, this court is so guided.

89. The Plaintiffs, through their oral testimony, described in considerable detail the inhumane and hazardous conditions under which they work at the Dandora dumpsite and the medical challenges they experience as a consequence thereof. In support of these assertions, they produced

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documentary material including, *inter alia,* a United Nations Environment Programme (UNEP) report on environmental pollution and its impacts on public health, and the Fuller Project report titled "The Trash Site in Kenya is Making Women Sick." They also tendered what they described as medical documentation, in the form of community health referral forms, indicating the reasons for referring affected persons for treatment.

90. In addition, PW4, a community health volunteer attached to the Korogocho area, testified that he routinely referred waste pickers from the dumpsite for medical attention and that medical personnel attributed their illnesses to the nature of their work environment.

91. Taken together, this body of evidence establishes that the working and living conditions at the dumpsite are hazardous and that the Plaintiffs are routinely exposed to substances and processes capable of causing serious harm to human health.

92. However, while the Plaintiffs have shown that they operate in a polluted and dangerous environment, they did not tender direct medical expert evidence establishing a specific causal link between the individual ailments complained of and their exposure to pollutants at the dumpsite. No qualified medical practitioner testified to connect, in definitive terms, the Plaintiffs'

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particular illnesses to air or water contamination emanating from the dumpsite. In that sense, the Plaintiffs did not strictly prove, that their respective medical conditions were directly and exclusively caused by the Respondent's acts or omissions.

93. Ordinarily, where a party seeks monetary compensation founded on personal injury, such a causal nexus must be demonstrated by cogent and expert medical evidence. The court therefore agrees with the Defendant to the extent that the evidence presented does not meet the threshold for proof of individualized bodily harm attributable to a specific source of pollution.

94. However, the present claim is anchored in the enforcement of constitutional environmental rights. **Article 70(3)** of the **Constitution** expressly provides that an applicant does not have to demonstrate personal loss or injury in order to obtain redress for a violation or threatened violation of the right to a clean and healthy environment. The constitutional inquiry is therefore not confined to whether each Plaintiff has proved a medically verified injury, but whether there exists a violation of environmental rights capable of justifying remedial intervention by the court. As was underscored by the Supreme Court in ***Export Processing Zone Authority & 10 others v National Environment Management Authority & 3 others [2024] KESC 75***

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(KLR), remedies in constitutional litigation serve not merely to compensate loss but to vindicate rights and uphold constitutional values.

95. Accordingly, while the Plaintiffs have not established a strict causal connection between their individual illnesses and the pollution at the dumpsite for purposes of conventional personal injury damages, in view of the violations as affirmed in the ***Isaiah Luyara case***, the situation that the Defendant conceded still subsists, they are entitled to compensation. The claim for damages however fails.

96. It is trite that where proceedings are instituted in the public interest or in a representative capacity, the court must clearly identify the persons on whose behalf relief is sought and to whom any monetary award is payable. In the present case, an authority to act executed by 1,032 waste pickers was presented to the court, and the Plaintiffs testified in a representative capacity on behalf of the waste pickers. It is therefore this defined group of 1,032 waste pickers to whom any award made by the court shall relate.

97. The Plaintiffs have sought an award of Kshs. 500,000 for each of the 1,032 waste pickers, amounting to Kshs. 516,000,000. Guided by the principles articulated by the Supreme Court and comparative jurisprudence, and taking into account the duration of exposure, the vulnerability of the affected group,

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and the nature of the established violations, the court finds that the sum of Kshs 25,000/= each is warranted.

98. In the end the Petition partly succeeds and the court grants the following orders:

i. **The court awards the Plaintiffs and the 1032 persons claiming through them the sum of compensation of Kshs.25, 000/= each against the Defendant**

ii. **The Plaintiffs are awarded half the costs (on account of the partial success), to be borne by the Defendant.**

iii. **A stay of execution of the judgment is granted for a period of 30 days from today.**

Dated, signed and delivered at Kisii, virtually this 5th day of February, 2026.

A. OMOLLO

JUDGE

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