

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELC PETITION NO. 1 OF 2024 & NO. 2 OF 2024**

**RARIEDA ARTISINAL MINERS SAVINGS AND**

**CREDIT CO-OPERATIVE SOCIETY LTD.....1<sup>st</sup>  
PETITIONER**

**GEORGE OWADE MADHARE.....2<sup>ND</sup>  
PETITIONER**

**TOM MBOYA ONYUN.....3<sup>RD</sup>  
PETITIONER**

**VERSUS**

**AMLIGHT RESOURCES COMPANY LIMITED.....1<sup>ST</sup>  
RESPONDENT**

**KITIGU RESOURCE COMPANY LIMITED.....2<sup>ND</sup>  
RESPONDENT**

**CHARLES ODHIAMBO NJAGA.....3<sup>RD</sup>  
RESPONDENT**

**AMOS MABONGA.....4<sup>TH</sup>  
RESPONDENT**

**FREDRICK OCHIENG OGUTU.....5<sup>TH</sup>**  
**RESPONDENT**

**YAO YOUMING.....6<sup>TH</sup>**  
**RESPONDENT**

**YE ZHANFEI.....7<sup>TH</sup>**  
**RESPONDENT**

**ZHO UHONGANG.....8<sup>TH</sup>**  
**RESPONDENT**

**PETER OTIENO OGUTU.....9<sup>TH</sup>**  
**RESPONDENT**

**AND**

**NATIONAL ENVIRONMENTAL**  
**MANAGEMENT AUTHORITY.....1<sup>ST</sup>**  
**INTERESTED PARTY**

**THE CABINET SECRETARY, MINISTRY OF**  
**MINING AND PETROLEUM.....2<sup>ND</sup>**  
**INTERESTED PARTY**

**THE ATTORNEY GENERAL.....3<sup>RD</sup>**  
**INTERESTED PARTY**

**LILIAN ACHIENG OGUTU.....4<sup>TH</sup>**  
**INTERESTED PARTY**

## **JUDGEMENT**

### **INTRODUCTION**

1. The petitioners in ELC EP Petition No. 1 of 2024 (herein Pet 1) dated 2/04/2024 filed against the respondents seek the following orders: -

**a. A declaration that the Respondent's unlicensed mining activities on land parcel Siaya/Ramba /874 are in violation of the Petitioner and its members' constitutional and fundamental rights to a clean and healthy environment which includes the right to have the environment protected for the benefit of present and future generations as envisaged under Article 42 of the constitution.**

**b. A declaration that the Respondent's unlicensed mining activities on land parcel Siaya / Ramba /874 are in violation of the Petitioner and its member's constitutional and fundamental rights to a social and economic rights as envisaged under Article 42 of the constitution.**

**c. A permanent injunction do issue restraining the Respondent by itself, its workers,**

**employees, agents, servants and or whomsoever acting on their instructions from mining, operating a gold mine, or continuing with any form of mining activity, extraction of gold and / or any other mineral ore, their attendant waste on /and from land parcel Siaya / Ramba/874.**

**d. A mandatory order do issue to the 1st and 2nd Interested Parties to take all necessary measures to prevent and / or discontinue any act or omission by the Respondent that is harmful to the environment.**

**e. Costs of the Petition; and**

**f. Any other orders that the Honorable Court may deem just and fit to grant.**

2. Shortly after the filing of the above petition, the petitioners in ELC EP Petition No. 2 of 2024 (Pet 2) in a petition dated 16/04/2024 sued some of the respondents in Pet 1. This Petition was consolidated with Petition number 1 of 2024 on 13/5/2024 with Pet.1 being retained as the lead file. Later in the proceedings Lilian Achieng Agutu was joined as an Interested Party with leave of the court and consent of the

rest of the parties as administrator of the estate of Enoka Njaga the registered proprietor of the parcel No. Siaya/Ramba/874.

### **PETITIONERS CASE**

3. The petitioners contend that the respondents conducted mining activities in land parcel no. Siaya/Ramba/874 (suit property) without requisite licenses and consents thus degrading the environment which had led to a violation of the 1st petitioner's members' rights to a clean and healthy environment and socio-economic rights.
4. It is further alleged that in unclear circumstances, the suit property was acquired by the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> respondents from the 3<sup>rd</sup> respondent which was interrelated with the demise of the 3<sup>rd</sup> respondents family member who was one of its members and also that its membership had suffered grievous harm and death too.
5. It is further averred that at the 1<sup>st</sup> petitioner's complaint on the respondents' conduct, they (respondents) were charged with operating a gold processing factory in Kenya without a valid license contrary to Section 202(1) of the Mining Act and a notice to cease had been issued to the respondents by the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties (IPs) on diverse dates but they had failed to comply.

6. The petitioners in Pet. 2 of 2024 describe themselves as neighbours of the suit property and members of the Lumba community. Apart from suing similar parties as those in Pet.1 of 2024 they also joined **Yao Youming, Ye Zhanfei,** and **Zhou Hong Bang** as respondents. There is also Rose Elizabeth Aketch ,Samson Abor Olenyo and Esaka Oloo Odindo as petitioners 1<sup>st</sup> 2<sup>nd</sup> & 3<sup>rd</sup> Petitioners.
7. It is noteworthy that Pet.1 and 2 are similar including the prayers sought save that in addition, they have sought an environmental restoration order against the respondents.

#### **1<sup>ST</sup>, 2<sup>ND</sup> AND 4<sup>TH</sup> RESPONDENT'S CASE**

8. Through a Replying Affidavit dated 14<sup>th</sup> July 2025 sworn by Amos Mabonga the 4<sup>th</sup> Respondent herein, deponed that the instant Petitions are an abuse of the court process, scandalous, vexatious and merely meant to forestall the mining projects and unlawfully take over the suit property for their selfish use.
9. That the Petitions are a mere invitation by the Petitioners for the Honourable Court to do their dirty work and remove their project as their competitor in the mining space by frustrating them and tying them up in expensive and time-consuming litigation.

10. The suit property, SIAYA/RAMBA/874/872, is registered under Enoka Njaga who is now deceased. The deceased died intestate and the estate is currently undergoing the succession process at Madiany Magistrate court case no. E132 OF 2024, In the Estate of Enoka Njaga Ogutu.
11. That the deceased, Enoka Njaga, was survived by two children who are, Charles Odhiambo Njaga, the 3<sup>rd</sup> Respondent herein and his sister Salome Achieng Njaga, the two are the children of the deceased and are the sole beneficiaries to the estate. He entered into a sale agreement with the 3<sup>rd</sup> Respondent in his capacity as a beneficiary and the administrator of the estate of Enoka Njaga Ogutu for sale of the property, SIAYA/RAMBA/874/872, which is to be fully transferred to them after the conclusion of the succession process.
12. It is averred that the petitioners claim that the respondents have taken over the land without due authority is baseless and a foundation to show that the Petitioners are before this court with half-truths, material non-disclosures and unclean hands with an aim to subvert justice and take the spoils for their unjust enrichment.

13. That the Petitioners are hell bent in infringing article 40 of the Constitution of Kenya, 2010 which grants the right to Property. It is stated that the 3<sup>rd</sup> Respondent is a beneficiary of the property and he has the right to use, enjoy and transfer the property as he deems fit. That the 3<sup>rd</sup> Respondent deems it fit to sell the land in order to enjoy the fruits and the petitioners have no right to interfere in such enjoyment of the property.

14. It is deponed that since the beginning of their mining project, they have endeavoured to conduct their activities under the confines of the law and they have ensured they have adhered to all set standards and complied with all legal requirements as required by law. The suit property, SIAYA/RAMBA/874/872, was legally acquired from the 3<sup>rd</sup> Respondent who is the beneficiary whereupon they were granted physical possession for their use as the process of succession continues in court.

15. It is averred that issuance of licenses is guided by The Mining Act, 2016, CAP 306 Laws of Kenya, whose requirements they have endeavoured to follow to the letter and to the best of their abilities.

16. That the respondents are eligible to hold mining license as provided under section 11 of the Mining Act. That when they

were conducting their due diligence, they realised that there was a company, Shanta Gold Limited, that held a prospecting licence over the suit property which barred them and other miners in the area from submitting their application online as is required by law.

17. That the respondents then wrote to the ministry of mining requesting exclusion from prospecting licence No.PL/2019/226 of Shanta Gold Kenya Limited which was preventing them from making an application for a mining licence over the suit property.

18. In the meantime, they continued with the process of ensuring the mine was up to standard by applying for Environmental Impact Assessment Report and coordinating with the ministry of mines to ensure their operation was above board and in line with the provisions of the law. They submitted their documents and the inspector of mines at the Kisumu regional office, Simon Mgagha, conducted an on-site visit and recommended that the processing of the mining license should proceed.

19. That they then submitted an application in person to the Cabinet Secretary in charge of mining who then wrote back , informing them of the prospecting licence held by Shanta Gold Limited and promised to engage Shanta Gold to find a way forward on the area. The respondents

contend that at all material times relevant to this suit, they have always been in full compliance of the requirements starting with Environmental Management & Coordination Act (EMCA) ,1999, Section 58-Environmental impact assessment (EIA) licence requirements before projects can proceed.

20. That in strict adherence of the law, they engaged the National Environment Management Authority (NEMA) and conducted an environmental impact assessment report, after which they were issued with a license as per the law.
21. That they conducted a series of public participation exercises in conjunction with, members of the local community who welcomed the project and expressed their enthusiasm in their future collaboration and support. Determined to be part of the local community and they did not just conduct the requisite public participation meetings but have maintained close ties to the community including paying school fees for the local students and conferring with the local community from time to time.
22. Further that the respondents continued to seek all relevant licenses and permits while building up the foundational structures and buildings where the personnel would be located as they conducted the business in the mines. It is averred they did not engage in any illegal mining activities

as they were still engaging with the relevant ministries to fully comply before they started mining activities.

23. It is stated that the Petitions dated 2<sup>nd</sup> April, 2024 and 16<sup>th</sup> April 2024, were marred with, material non-disclosures and half-truths as the Petitioners claimed to have mineral rights on the suit property which was the basis of the Petition. That a preliminary investigation conducted by the respondents advocates on record showed that the petitioners do not own any mineral rights over the suit property or any other mineral right or application within the republic of Kenya.

24. It is pointed that the Petitioners have been attacking the suit property and personnel attached therein since 25<sup>th</sup> January, 2024, where they attacked the mine by trying to incite the community against the project. The same altercation led to two fatalities and significant damage to property. They reported the matter to the police station vide OB NO. 06/21/1/2024 where the Director of Public Prosecution recommended an inquest for the incident.

25. It is contended that the Petitioners are themselves engaging in illegal mining activities as they do not have any mineral rights in Kenya or any application in the Republic of Kenya. The Petitioners are further polluting the environment by blasting dynamite as they conduct their mining activities which is still causing pollution to the environment.

26. The deponent adds that on 24<sup>th</sup> March, 2025 the ministry engaged with Shanta Gold mining Ltd asking for relinquishment of the area covered by the suit property to ensure small scale miners and artisanal miners like the petitioners could apply for mining licenses. That on 27<sup>th</sup> March, 2025 Shanta Gold limited wrote back to the ministry of mining confirming that they are due to upload application for renewal for the host license on the suit property. They further confirmed that they intend to relinquish the suit property and other surrounding areas from their application for renewal.

27. The deponent states that on 2<sup>nd</sup> of April, 2025 they were able to submit their application and paid the requisite fee online since Shanta Gold had relinquished the area from their prospecting license. On 22<sup>nd</sup> May, 2025 they paid the requisite licensing fee of Kshs. 50,000 thus accepting the offer of the mineral right by the Ministry and on 27<sup>th</sup> May, 2025 the mining right was registered and presented to them by the Registrar of mines under permit number MP/2025/1018 which is duly registered.

28. The 4<sup>th</sup> Respondent also filed further Affidavit sworn on 22/8/2025 the contents of which the court has noted.

### **3<sup>RD</sup>, 8<sup>TH</sup> AND 9<sup>TH</sup> RESPONDENTS' CASE**

29. The 3<sup>rd</sup> respondents affidavit sworn on 14/7/2025 by the 3<sup>rd</sup> Respondent Charles Odhiambo Njaga and filed on 15/7/2025

was struck out at the instance of Mr. Felix Oketch who came on record for the 3<sup>rd</sup> 8<sup>th</sup> and 9<sup>th</sup> Respondents.

30. Through a Replying Affidavit dated 11<sup>th</sup> December, 2025 sworn by Charles Odhiambo Njaga the 3<sup>rd</sup> 8<sup>th</sup> and 9<sup>th</sup> respondents deny that they gave consent to the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent to enter, occupy and carryout mining activities on Parcel number Siaya/Ramba/874.

31. It is deponed that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents entered the said land without their consent or knowledge, or authority and the occupation amounts to trespass and intermeddling with the deceased property.

32. They reiterate that the mining is without licensing and permits from relevant departments thus illegal.

### **1<sup>ST</sup> INTERESTED PARTY CASE**

33. Through a Replying Affidavit dated 30<sup>th</sup> July, 2025 and Sworn by Rop J. Kipkoech the 1<sup>st</sup> Interested Party state that the respondents' proposed underground gold mining project associated facilities on plots numbers Siaya/Ramba/874 & 875 in Ramba area is classified as 'Medium Risk' under the second schedule of EMCA. The project proponent was therefore required to submit to the Authority an EIA Project report as provided under Part II of the Environmental (Impact

Assessment and Audit) Regulations, 2003 and amended by Legal Notice no. 32 of 2019.

34. That on 09<sup>th</sup> April 2025, Amlight Resources Ltd through an Environmental Impact Assessment registered lead expert submitted an environmental impact Assessment Comprehensive Project report for the proposed underground gold mining project and associated facilities on plot LR numbers Siaya/Ramba/874 & 875 in Ramba Area. The application was assigned reference number NEMA/CPR/SYA/5/2/1100.
35. That though received out of the stipulated time lines, the Authority received a letter of no objection to the project from the Ministry of Mining, Blue Economy and Maritime Affairs vide a letter dated 22nd May 2025.
36. It is stated that the Authority is guided by the project design, Environmental Management Plan, physical site inspection of the proposed site to ascertain the environmental conditions, comments from lead agencies, views from the public participation exercise and the EIA technical decision guiding principles in making a determination as to whether the proposed project poses a risk to the environment, enhances sustainable development and whether or not an EIA License should be issued and the conditions to be attached to a license where it is issued.

37. That accordingly the Authority visited the site on 14<sup>th</sup> May 2025 and during the site visit it was observed that; a) The site is secured with a concrete perimeter wall with a gate manned by a security guard. b) The site neighbours artisanal mining sites and farmland. c) Construction works (office, kitchen block) had commenced during time of the site visit. d) There were no mining activities at the time of the site visit. That the proponent was further directed to suspend all ongoing construction works until a decision is made regarding the application.

38. Additionally, that Chapter 6 of the project report identified the potential environmental impacts associated with the project and proposed mitigation measures which the Authority upon review was satisfied that the same were adequate.

39. It is stated that the Environmental Impact Assessment process embraces public participation centrally, as it gives neighbours and any other parties likely to be affected by the intended project and/or operations a chance to air their views on what they feel about the project. That Chapter 7 of the EIA Project report addressed public participation and public consultation questionnaires were also attached to the report.

40. That thereafter the Authority, after following due process in the review of the EIA Project Report in compliance with the

legal provisions of EMCA and its subsidiary legislations, issued Amlight Resources Co. Limited with an EIA License number NEMA/EIA/PSL/39674 on 19th May 2025 for the establishment of a gold ore mining project on Plot Nos. Siaya/Ramba/ 874 & 875 in Ramba Area with mandatory conditions to be adhered to by the project proponent to ensure environmentally sustainable development. The conditions will also form the premise on which the Authority and other lead agencies can monitor the compliance by the proponent and issue improvement orders where necessary.

41. That moreover in line with section 129 (1) of the EMCA, any party aggrieved by the issuance of a license by the Authority should file an appeal at the National Environment Tribunal. The Authority's license above has not been challenged at the Tribunal as contemplated in section 129 of EMCA.
42. It is further deponed that the 1<sup>st</sup> Interested Party on 1<sup>st</sup> February 2024 had issued an Improvement notice number 4266 to Amlight Resources Company Limited requiring the following steps to be taken; a) Cease all ongoing construction works within the site with immediate effect. b) Prepare and submit an EIA report to NEMA for review and processing.

### **THE 2<sup>ND</sup> INTERESTED PARTY'S CASE**

43. By way of a Replying Affidavit sworn by Gregory N. Kituku dated 14<sup>th</sup> July, 2025 the 2<sup>nd</sup> Interested Party states that on 2<sup>nd</sup>

July 2024, the 1<sup>st</sup> Respondent made an online application for a Mineral Dealers Processing License via the Ministry's Mining Cadastre Portal under Application No. App No/5657, seeking authorization to process gold tailings on land parcels SIAYA/RAM 15A/874, 467, and 466.

44. That upon due evaluation and verification of the application, the 1st Respondent was issued with a Mineral Dealers License DPL/2024/2606, valid until 31st December 2024, in accordance with the Mining Act, Cap 306.

45. Earlier, on 18th January 2023, the 2nd Respondent had similarly submitted an application for a Mineral Dealers Processing License under Application No. App No/3975 through the same cadastre portal, for the processing of tailings.

46. The 2<sup>nd</sup> Respondent was thereafter issued with a Mineral Dealers License DPL/2023/1992, valid for the calendar year 2023, and the same was successfully renewed for the year 2024 upon meeting all the regulatory requirements.

47. It is averred that the 2<sup>nd</sup> Respondent has consistently complied with the terms and conditions of the license, including the payment of royalties on all gold processed and sold under the authority of the said license, in accordance with Section 183 of the Mining Act, 2016.

48. That on 26th January 2024, the 1st Respondent submitted a manual application for a Mining License and disclosed that the

area of interest overlapped with an existing application by Shanta Gold in the Online Mining Cadastre System (OMC). That following due consultations, the State Department for Mining formally engaged Shanta Gold, which subsequently and voluntarily released the area of overlap, thereby making the area available for re-application in the OMC system.

49. That on 2<sup>nd</sup> April 2025, the 1st Respondent submitted formal online applications for two Mining Permits under Application Nos. App No/6743 and App No/6744, in respect of the aforementioned area.

50. That the above applications underwent rigorous technical and legal review and were subsequently recommended for granting by the Mineral Rights Board (MRB) during its sitting held on 15<sup>th</sup> May 2025 and based on the recommendations of the MRB, the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs, exercised his discretion under the Mining Act, cap 306 and issued offer letters to the 1st Respondent on 20<sup>th</sup> May 2025.

51. That the 1<sup>st</sup> Respondent duly accepted the offer by remitting the prescribed first-year annual ground rent of Kenya Shillings Fifty Thousand (Kshs. 50,000) for each application, and was accordingly issued with Mining Permits Nos. MP/2025/1017 and MP/2025/1018 on 22<sup>nd</sup> May 2025. It is confirmed that all the applications' by the 1st respondent were accompanied by all the supporting documents including NEMA License.

52.It is emphasised that the Mining Permits issued to the 1st Respondent are valid for a term of five (5) years, subject to renewal upon compliance with the applicable conditions and are therefore legally and procedurally obtained in full conformity with the provisions of the Mining Act, 2016.

#### **4<sup>TH</sup> INTERESTED PARTY'S CASE**

53.Through a Replying Affidavit sworn by Lilian Achieng Ogutu dated 16<sup>th</sup> December, 2025 the 4<sup>th</sup> Interested Party avers that the suit property known as SIAYA/RAMBA/874 forms part of the estate of her late father, which was registered in the name of Enoka Njaga (deceased). Succession proceedings relating to the estate are pending before the Madiany Law Courts in Succession Cause No. E132 of 2024, wherein she has already commenced objection proceedings against the Petitioner in that cause, Mr. Charles Odhiambo Njaga (the 3rd Respondent herein), who unlawfully petitioned for letters of administration.

54. That the Court at Madiany delivered a ruling where it found that the purported sale or transfer of the suit property by the said Charles Odhiambo Njaga to the 1<sup>st</sup> Respondent (Almight Resources Company Limited) amounted to intermeddling with the estate, the same being illegal, null and void since the estate had not been administered.

55. That the Succession Court further ordered that the Respondents (including the 1<sup>st</sup> Respondent, AMLIGHT

RESOURCES COMPANY LIMITED) do vacate the suit property within 30 days, having found that they were unlawfully occupying estate land without consent and without any colour of right.

56. The deponent states she is in full agreement with the Petitioners' assertion that the Respondents' mining and exploration activities on the land are illegal, conducted without any valid environmental licences, consents, or authority from the rightful beneficiaries or administrators of the estate, and are causing grave environmental degradation, contrary to Articles 42 and 43 of the Constitution. That the Respondents' occupation and mining activities have never been sanctioned by her or any lawful administrator of the estate and constitute trespass, unlawful occupation, and continued intermeddling with the property, in direct disobedience of an existing court ruling.

57. The deponent supports the Petitioners' claims that the land ought to be conserved and protected for present and future generations. However, any reliefs issued by this Honourable Court must take into account and protect her proprietary and succession rights as a lawful beneficiary and objector in Succession Cause No. E132 of 2024.

58. That failure to recognize her interest in the estate may expose the property to further unlawful exploitation and may prejudice

her constitutional rights under Articles 40, 42 and 47 of the Constitution.

## **SUBMISSIONS**

59. The petition was heard by way of written submissions. Parties were also given an opportunity for oral highlighting on 10/02/2026. The petitioners in both petitions filed submissions dated 10/11/2025 (Bruce Odeny & Co. Advocates) and 16/10/2025 (Oreda Akelo & Company Advocates). The firm of Osoro Onyiego & Manyara submissions are dated 13/11/2025 and 5/02/2026. Ms. Akinyi Advocate highlighted on behalf of the petitioners in Pet. 1; Mr. Oreda for the Petitioners in Pet.2; Mr. Osoro alongside Ms Kemunto submitted on behalf of 1,2,4,5,6,7<sup>th</sup> respondents; and Ms. Onyango for 3,8 and 9<sup>th</sup> Respondents and the 4<sup>th</sup> Interested Party relied on the replying affidavit and submissions dated 2/2/2026. Ms. Muyai for the 1<sup>st</sup> Interested party relied on their replying affidavit and did not file submissions.

60. The submissions are summarized hereinbelow.

## **PETITIONERS' SUBMISSIONS**

61. The Petitioner in Pet. 1 of 2024 submitted that the substance of the Petition majorly focuses on the issue of the Respondents herein engaging in mining activities on the suit parcel Siaya/Ramba 874 at Lumba and Ramba(Kanjaga) area of Siaya county without the requisite licenses and consent and as a

result of the same the Petitioners and the public at large have had to bear the adverse effects that the said activities have allegedly had to the environment ultimately threatening the Petitioners right to a clean and healthy environment.

62.It is submitted that other than the major issue of environment degradation, the Respondent's activities on the suit parcel being Siaya/Ramba/874 has also generated bad blood between the members of the Petitioner and the Respondents in that the method used to procure the suit parcel by the Respondents is unclear; a factor which has in turn led to several incidents of deaths, assault and incitement of the Respondents workers against the members of the Petitioner and general unrest of the public within the area.

63.That the petition is grounded under the provisions of Articles 42, 43 & 70 of the Constitution of Kenya, The National Management and Coordination Act, Section 10, 37 & 42(1) of the Mining Act, Section 3 of the Environment Management and Co-ordination Act, Section 58(1) of the Environment Management and Coordination.

64.They identified three issues for determination:-

- a. Whether the threshold for a constitutional petition has been met and whether the Petitioners have the locus standi.

- b. Whether the Respondent's unlicensed activities on parcel Siaya/Ramba/874 & Lamba area are in violation of the Petitioners' constitutional and fundamental rights to a clean and healthy environment as envisaged under Article 42 of the Constitution; and
- c. Whether the Respondent's unlicensed activities on parcel Siaya/Ramba/874 & Lamba area are in violation of the Petitioners' constitutional and fundamental rights to a social and economic rights as envisaged under Article 43 of the Constitution.

65. On the first issue, the Petitioners submitted that Article 42 of the Constitution which guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations through the measures prescribed by Article 69. The right extends to having the obligations relating to the environment under Article 70 fulfilled.

66. It is submitted that in this case a clean and healthy environment within the context of a mining environment would then refer to a safe place where mining operations are conducted in a manner that safeguards human health, conserves natural resources and minimizes adverse impacts on the surrounding ecosystem.

67. It is the petitioners' case that Article 42 of the Constitution grants them the right to a clean and healthy environment,

which includes the right to have the environment protected for the benefit of the present and future generations through legislative and other measures, and to have obligations of the State and its organs relating to the environment fulfilled.

68. That Article 22(1) of the Constitution guarantees the right of every person to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened, meaning that every person has a right of ensuring that their rights in relation to the environment are not violated or threatened by way of litigation. That the Constitution provides that if a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be denied, violated, infringed or threatened, the person may apply to the court for redress, in addition to any other legal remedies that are available in respect to the same. Additionally, Article 70 of the Constitution grants any person the right to commence proceedings for the enforcement of the right to a clean and healthy environment.

69. That the Petitioner need not demonstrate a personal interest or suffered any injury before filing a Petition alleging the infringement of the right to a clean and healthy environment. Reliance is placed in **Joseph Leboo & 2 others vs Director Kenya Forest Services & another (2013) eKLR** and Section **3(4) of Environmental Coordination and**

**Management Act (EMCA), 1999** and the case of **Center for Litigation on Environment and Governance (CLEG) v Tasir & 7 others; Odera (Interested Party) (Environment & Land Petition E001 of 2024) [2024] KEELC 13693 (KLR)**.

**70.** They submit that the instant petition has therefore been filed by the petitioners as representatives of their local community as well as in their own capacity hence have the requisite locus standi.

**71.** On the issue of whether they have met the threshold for a constitutional petition, they rely on the case of **Anarita Karimi Njeru vs Republic (1979) eKLR, Rule (4) (1) and article 10 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the "Mutunga Rules")**. They submit that they have met the threshold of a constitutional petition.

**72.** On whether the Respondent's unlicensed activities on parcel Siaya/Ramba/874 & Lamba area are in violation of the Petitioners' constitutional and fundamental rights to a clean and healthy environment as envisaged under Article 42 of the Constitution. The Petitioner submitted that Section 37 of the Mining Act requires that a person applying for a prospecting and/or Mining right to obtain consent of the land owner in the case of private land and/or the county government in the case

of trust land before they can be issued with a prospecting and/or Mining License.

73.Siaya/Ramba/874 is a private land and that the Respondents despite conducting mining activities on the suit parcel have not obtained consent of the owner of the parcel.

74.It is submitted that the Respondents herein illegally/irregularly obtained the parcel being that the registered owner of the same is one Enoka Njaga who is deceased. That they produced a copy of sale agreement dated the 12.01.2024 on allegations that the same was sold to them by one Charles Odhiambo Njaga (the 3<sup>rd</sup> Respondent herein) who in fact is not the registered owner of the same making the sale agreement void abinitio and not enforceable in law.

75.Further the Respondents made allegations that the estate of one Enock Njaga the registered proprietor of the suit parcel was currently undergoing administration having died intestate and they entered the sale agreement with him on his capacity as the administrator of the estate however the Respondents deliberately failed to annex a copy of the grant of letters of administration which the Petitioners annexed on their further affidavit dated the 22.08.2025 showing that the 1<sup>st</sup> grant was issued on 4th November, 2024 awaiting confirmation on the 7<sup>th</sup> May, 2025.

76.The Petitioner submitted that there is no way that the 3rd Respondent could purport to have entered into an agreement to sell the suit parcel on the 12.01.2024 because he lacked capacity to do so and even then, there was the first grant awaiting confirmation which cannot be used to sell/transfer the deceased property let alone an immovable property like land.

77.It was further submitted that in absence of the consent of the owner of the suit parcel herein the Respondents are not even viable to apply for prospective mining rights on the suit parcel and even if they'd purport to have mining rights on the same the question would still remain how if they already failed on one of the first steps.

78. It is urged that the Respondents are in contravention of Section 10 the Mining Act. At the time of the filing the instant petition the Respondents did not have any mining permit to extract gold or conduct any mining activities on the suit parcel which members of the Petitioner reported to the DCI Kakamega and were charged with operating gold processing factory contrary to Section 202(1) of the Mining Act 2016, Laws of Kenya.

79.It is submitted that the officers from the 2<sup>nd</sup> Interested party had visited the premises (suit parcel) where the Respondents activities had been going on and established that there was significant work progressing as the gold mining shafts were seen on the parcels and further that there was noticeable

extraction of gold minerals ores which the Respondents themselves confirmed that were being transported to the Respondents' other site located in Vihiga County for onward crushing and gold extraction.

80. That the Respondents' unlicensed mining activities on the suit parcel are in violation of the Petitioner and its members constitutional right to a clean and healthy environment as envisaged under Article 42 of the Constitution.

81. On whether the Respondent's unlicensed activities on parcel Siaya/Ramba/874 & Lamba area are in violation of the Petitioners' constitutional and fundamental rights to a social and economic rights as envisaged under Article 43 of the Constitution. The Petitioner submitted that Article 43 provides for the right to persons to socio-economic welfare including the right to the highest attainable standard of health.

82. The firm of Oreda submitted on whether the threshold for constitutional petition has been met. whether the Petitioner have locus to be a party to this suit, whether the respondents are conducting any mining activities and whether the respondents did conduct and Environmental impact Assessment. The submissions in tandem with the other petitioners submissions and I will not rehash them to avoid being repetitive. It was however emphasised that upto this day no Environmental Impact Assessment has been prepared and submitted to the 1<sup>st</sup> Interested Party, nor any licence tabled

before Court. That it is until this petition was filed and conservatory reliefs granted that the 1<sup>st</sup> respondent purportedly commenced the process of acquiring the mining licence. That contrary to Regulation 23(4) (c), 23(5)C6) of the Mining (License and Permit) Regulations the respondents did not actively engage the petitioners through consultation and consultation and participation before commencing the mining activities. That no evidence has been availed in this regard and prior to the filing of this cause.

83. Counsel during oral submissions referred the court to the case of **CCK Vs Royal Media Services & 5 Others** where the Supreme Court of Kenya adopted an expansive view of public participation as a genuine and qualitative exercise. That the issue of the criminal charges has not been controverted.

84. It was further urged that Regulations 6,7,8 as read with 14 and 15 of the Mining (Dealings in Minerals) Regulations bars any person from mining without a licence or permit. In conclusion the court is further referred to Psalms 24:1 emphasising that that everything in the earth belongs to the Lord and Leviticus 25:23-24 pursuant to which the court as Gods instrument was called upon to remember the earth and grant the prayers sought in the petition.

### **1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondent's submissions**

85. The 1<sup>st</sup> 2<sup>nd</sup> and 4<sup>th</sup> respondents submit that they were not carrying out illegal mining activities and assert that any activity in the suit property was merely preliminary works for staff quarters and other amenities as they sought the proper approvals to commence mining legally.

86.They identified three issues for determination: -

- i) whether the petitioners have locus to institute this petition
- ii) whether the respondents are conducting illegal mining activities.
- iii) Whether the respondents have complied with the mining requirements.

87.On the first issue they submit that petitioners have brought this petition to court without standing as they have not demonstrated what mineral rights they have over the property or any other rights they have over the property.

88. That the petitioners came before this court armed with falsehoods and material non-disclosures which they used to obtain an injunctive relief from this court. The petitioners claimed that they had mineral rights, which they did not have and that the Respondents were carrying out mining activities on the suit property. The upshot of the injunction is that they

have frustrated the Respondents who have been unable to enjoy their investment.

89. That the petitioners came to court to eradicate their competition and stifle the Respondents before they had a chance to make good of their investment. The Respondents have submitted extensive proof that they were in the process of following the law to the fullest when they were rudely cut short by the Petitioners who instituted this suit.

90. It is urged that the petitioners are in breach of the principle of equity having approached the court with unclean hands and material non disclosures with an intent to mislead the court. The petitioners were currently enjoying the fruits of their non disclosure as the Respondents suffer due to the injunction placed on the suit property.

91. On the second issue, they submit that Article 40 of the constitution of Kenya, 2010 grants the right to Property. The 3<sup>rd</sup> Respondent is a beneficiary of the property and he has the right to use, enjoy and transfer the property as he deems fit. The 3<sup>rd</sup> Respondent deemed it fit to sell the land in order to enjoy the fruits and the petitioners have no right to interfere in such enjoyment of the property.

92. That the Respondents have provided the agreement duly signed by the beneficiary of the estate and the respondent's granting possession of the land pending succession

proceedings. The Respondents have duly paid for the land and are awaiting transfer once the succession process is complete. They entered the land with express permission from the 3<sup>rd</sup> Respondent.

93. It is submitted that while waiting for the issue of the prospecting license to be resolved, the Respondents took all steps to meet all requirements which include conducting an environmental impact assessment investigation in full compliance with ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT (EMCA) ,1999, Section 58-Environmental impact assessment (EIA) license, which calls for environmental impact assessment before any activities commence.

94. On the 3<sup>rd</sup> issue they submit that they have always followed the law to the letter and have never derogated the environment to the detriment of the community. The Respondents have provided a chronology of their discussions with various agencies showing their sincere commitment to the rule of law and to protect the environment and in extension the community around them. They rely on the case of **Kenya power & Lighting Co.ltd v Benzene Holdings Ltd t/a Wyco paints (2016) Eklr.**

95. Additionally the relevant authorities have conducted their due diligence and issued all requisite licenses to aid in the mining project. The Respondents are keen to proceed with the project on legal terms and in benefit of the surrounding community.

- 96.**The Respondent also filed supplementary submissions and submit that the 3<sup>rd</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents together with the interested party are attempting to expand the scope of the petition before this court to include the issue of the ownership of the land. The petition before this court seeks to protect the right to a clean environment and is not an avenue to solve commercial and succession matters. This court simply lacks the jurisdiction to entertain the question of whether the sale was valid or not.
- 97.**The court is urged to focus on the allegations of infringement to the right to a clean environment as the issue of the ownership and transfer of the land is a commercial issue which should be addressed in a commercial court.
- 98.**Further that the 3<sup>rd</sup>, 8<sup>th</sup>, 9<sup>th</sup> Respondents and the 4<sup>th</sup> Interested Party have been paid a sum of over kshs. 17,000,000 (seventeen million only) by the 3<sup>rd</sup> Respondent for sale of the suit property. The 4<sup>th</sup> Respondent has also invested a lot of money in the initial set up of a mine and getting all requisite licences to conduct mining activities.
- 99.**Additionally during the oral submissions Mr. Osoro propounded that the petition seeks to stop an investor from investing in Kenya and creating employment opportunities which are currently so scarce in Kenya. The court was urged to call the petitioners and the respondents to reason together. That as per the bible land and good things have all been created by

God. The provision of Gods resources can never be exhausted since they are enough for everyone. The court should allow the mining to proceed for creation of job opportunities for the people of Kenya.

**100.**Ms Kemunto added that the land was acquired from a recognised beneficiary. That any issue on the estate falls under the jurisdiction of the probate & Succession court. That the allegations of trespass cannot stand as the respondents entered the land pursuant to a lawful agreement. No charges of forcible detainers were proffered against the respondents.

#### **The 4<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents Submissions**

101.The above parties represented by the firm of Felix Oketch support the Petition and submit that the mining activities complained of are unlawful, environmentally destructive, and founded on illegal dealings with a deceased's estate, contrary to the Constitution, the Mining Act, the Environmental Management and Co-ordination Act (EMCA), and the Law of Succession Act.

102.They have identified two issues for determination namely 1) whether the 3<sup>rd</sup> , 8<sup>th</sup> and 9<sup>th</sup> Respondents had the legal capacity to sell or lease land parcel SIAYA/RAMBA/874 and 2) whether the mining activities carried out on the suit land were lawful and their effect on the neighbourhood and environment.

103. It is submitted that the suit land forms part of a deceased's estate and is subject to pending succession proceedings. That under section 45 of the Law of Succession Act, no person may deal with the free property of a deceased person without authority of a grant of representation. Beneficiaries of an estate, prior to confirmation of grant, have no proprietary interest capable of disposition. Any alleged sale or lease of the suit land by the 3<sup>rd</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents therefore amounts to intermeddling and is null and void.

104. It is further submitted that Mining activities in Kenya are regulated by a comprehensive statutory framework that mandates consent, licensing, and environmental compliance before commencement of any extractive operations. Without satisfaction of these requirements, mining would be unlawful.

105. The 4<sup>th</sup> interested party's submissions are a replica of the 3<sup>rd</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents filed by the firm of Felix Oketch Advocates and which submissions have been captured hereinabove.

### **ANALYSIS & DETERMINATION**

106. I have considered the Petitions, Affidavits in support, responses to the said petitions and submissions by the various parties herein and I find the issues that commend for determination are: -

- 1) Whether the petitioners have locus standi to bring this suit;
- 2) Whether the petitions have met the threshold for a constitutional petition;
- 3) Whether the Respondent is licensed to carryout prospecting or mining activities on parcel number Siaya/Ramba/874;
- 4) Whether there was public participation and environmental impact assessment;
- 5) Whether the orders sought by the petitioners should issue
- 6) What orders commend as to costs.

**Whether the petitioners have locus standi to bring this suit;**

107. A look at the definition of locus standi is pertinent . In the case of **Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, the Court held that ;-

**“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”**. Further in the case of **Alfred Njau and Others ..Vs.. City Council of Nairobi ( 1982) KAR 229**, the Court also held that;-

**“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”**.

108. In **Chrisptopher Mutiembu Machimbo & 3 others v County Surveyor, Trans-Nzoia & 4 others [2022] eKLR** Justice DR. IUR Fred Nyagaka

*17. Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.*

109. Locus standi therefore is the right or power of a person to sue or be sued before a court of law. It also goes to the jurisdiction of the Court to entertain any matter before it.

110. The Respondents aver and submit that the Petitioners have no locus to bring the instant petitions before this Court for the reason that they have not demonstrated they have any right over the mining area or that any of their constitutional rights have been infringed or threatened to be infringed by the Respondents.

111. On the other hand, the Petitioners aver and submit that their rights to a clean and healthy environment have been infringed by the Respondent through their illegal mining in Parcel number Siaya/Ramba/874. That there has been underground shaft mining in the said land without the requisite licences and permits being issued.

112. Article 22 of the Constitution of Kenya is on the enforcement of the Bill of rights and provides: -

**22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.**

**(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—**

**(a) a person acting on behalf of another person who cannot act in their own name;**

**(b) a person acting as a member of, or in the interest of, a group or class of persons;**

**(c) a person acting in the public interest; or**

**(d) an association acting in the interest of one or more of its members.**

113. Additionally, Article 258 of the Constitution on enforcement of the constitution provides: -

**258. (1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.**

**(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—**

**(a) a person acting on behalf of another person who cannot act in their own name;**

**(b) a person acting as a member of, or in the interest of, a group or class of persons;**

**(c) a person acting in the public interest; or**

**(d) an association acting in the interest of one or more of its members.**

114. What then is the effect of the above provisions. This question was answered by the Supreme Court of Kenya in the case of **Matemu v Trusted Society of Human Rights Alliance & 5 others (Civil Application 29 of 2014) [2014] KESC 6 (KLR) (9 December 2014) (Ruling)** where the Apex Court of Kenya stated thus:-

*It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general. In John Wekesa Khaoya v. Attorney General, Petition No. 60 of 2012; [2013] eKLR the High Court thus expressed the principle (paragraph 4):“...the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution in Articles 22*

and 258 of the Constitution which ensures unhindered access to justice...” Emphasis is mine.

115. The petitioner in Petition No. 1 of 2024 aver that they are artisanal miners within Ramba in Rarieda subcounty and that they filed the instant Petition claiming violation of their constitutional rights to clean environment as enshrined under Article 42 of the constitution. The petitioners in petition 2 of 2024 describe themselves as neighbours to parcel number Siaya/Ramba 874 where the mining is carried out by the Respondents. They aver that the illegal mining has caused environmental pollution and degradation thus violating their constitutional rights. The Respondents on the other hand claim that the Petitioners have no locus standi because they have not demonstrated any of their rights have been violated and that they hold any mining rights over the said mining section.
116. It is my understanding that this is a public interest litigation in a bid to protect the public from environmental pollution and degradation through illegal mining activities. In the **Matemu case (supra)** the judges stated that [...] **It is clear to us that the application herein and the Petition of Appeal which the 1<sup>st</sup> respondent had filed earlier, involve constitutional questions which are public in nature. “Public interest” is defined in Black’s Law Dictionary, 9<sup>th</sup> Edition (page 1350) as: “the general welfare of the public that warrants recognition and protection” or “something in which the public as a whole has a stake, especially an**

**interest that justifies governmental regulation". In the appeal, the 1<sup>st</sup> respondent alleges that the appointment of the applicant was not in accordance with the Constitution. Even though the 1<sup>st</sup> respondent was not directly aggrieved, it filed an appeal in this Court on behalf of the public at large.**

117. Moreover even if the Petitioners were not directly affected by the Respondents mining activities, they still have a right to file a representative suit before this court in accordance to Article 22 and 258 of the Constitution 2010 on behalf of the public for any violation of the constitutional rights.

118. Additionally, article 70 of the constitution and section 3 of the Environmental Management and Coordination Act gives right to anyone to bring a suit to the court for environment protection.

Article 70 of the constitution provides: -

**70. (1) If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.**

**(2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate—**

**(a) to prevent, stop or discontinue any act or omission that is harmful to the environment;**

**(b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or**

**(c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.**

**(3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.**

119. Section 3 of EMCA stipulates *inter alia* that :-

**If a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may on his behalf or on behalf of a group or class of persons, members of an association or in the public interest may apply to the Environment and Land Court for redress and the Environment and Land Court may make such orders, issue such writs or give such directions as it may deem appropriate to—**

120. Arising from the foregoing provisions the petitioners therefore do not need to show that they have themselves been directly affected by the mining activities or suffered

personal injuries or that they possess mining rights to have locus to bring the present petitions. See the case of **Joseph Leboo & 2 others v Director Kenya Forest Services & another [2013] KEELC 41 (KLR)**.

121. The Court of Appeal in the case of **Randu Nzai Ruwa & 2 Others Vs. Secretary, the Independent Electoral and Boundaries Commission & 9 Others (2016) eKLR**,

addressing the **issue** of locus standi found that the intention of the framers of the Constitution from which the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 are derived, was to allow any person who genuinely believed that there was a violation of fundamental freedoms and constitutional rights to approach the court for redress as envisaged under Article 22 of the Constitution 2010.

122. Flowing from all the above, it is clear that the Petitioners are exercising their right in protecting the environment as enshrined under the Constitution of Kenya and EMCA. Consequently, this court finds that the Petitioners had locus standi to institute the present petitions

**Whether the petitions have met the threshold for a constitutional petition;**

123. Constitutional litigation serves to protect fundamental rights and freedom both under Article 22 and 258 of the Constitution of Kenya 2010. The filing is regulated under the

Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. Rule 10 (1) sets out the content which includes the facts relied upon, the constitutional provision violated, the nature of the injury caused or likely to be caused.

124. In **Anarita Karimi Njeru Versus Republic [1979] KLR** it was held that a petitioner must set out with a reasonable degree of precision the nature of the alleged violations, the person or institution responsible for the violation, the manner of the violation and the provision of the constitution which creates and gives the constitutional right that is under violation or threatened violation.

125. In the case of **Momanyi v National Police Service & 4 others (Constitutional Petition 23 (E023) of 2021) [2024] KEHC 1869 (KLR) (29 February 2024) (Judgment)**, it was held that

*“From the foregoing, it is not enough for a Petitioner to merely cite constitutional provisions. There has to be some particulars of the alleged infringements to enable the Respondents respond to and/or answer to the allegations or complaints.*

126. Arising from the above it is not enough for the Petitioners to throw around Articles of the constitution claiming violation of their rights, they must endeavor to explain with precision

how those rights were infringed upon to afford the Respondent an opportunity to respond to the said infringement.

127. The Petitioners submit that the petition is brought under article 42, 67 and 70 of the constitution. It has been submitted that the petition is hinged on the infringement of Article 42 of Constitution. Article 22(1) of the Constitution which guarantees the right of every person to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened, meaning that every person has a right of ensuring that their rights in relation to the environment are not violated or threatened in any way.
128. Furthermore, the Petitioners have stated in their petitions that the Respondent illegal activities have negatively affected the community, there has been unease from community members who have resented the said illegal mining. Further, they claim that the Respondent have engaged in mining without the requisite permits and licenses from the relevant authority. That the illegal mining activities have degraded the environment. Finally, they aver that as a requirement, before issuance or grant of mining and/or prospecting license on a private land, a consent from the land owner must be acquired. It is their contention that the

Respondent could not get the impugned consent since the land owner had died.

129. I think the above suffices for purposes of the threshold of precision required of a party and served as adequate notice of the petitioners grievances as it is evident the petition specifies the provisions of the Constitution that are alleged to have been violated, the particulars of the rights infringed, and by whom, and the remedies sought.

130. It is my finding that the petitions have met the threshold of constitutional petitions.

**Whether the Respondent is licensed to carry out prospecting or mining activities on parcel number Siaya/Ramba/874.**

131. The petitioners allege that the Respondents have been carrying out mining activities on parcel number Siaya/Ramba/874 without the mandatory requisite licenses and permits contrary to the Mining Act. They further allege that there was no public participation as envisaged under Article 67 of the Constitution. That the Respondent have violated, Article, 42, 67, and 70 of the Constitution and Section 10, and 37 of the Mining Act.

132. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties on the other hand claim that they have complied with all the legal requirements and as such they cannot be accused of violation of the mining Act and the Constitution. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent aver that, they have never started any mining and what they only did was the initial preparation of the mining area as they waited for the licenses from various government offices.

133. Section 10 of the Mining Act 2016 provides: -

**‘A person shall not search for, prospect or mine any mineral, mineral deposit or tailings in Kenya unless that person has been granted a permit or licence in accordance to this Act.’**

134. My review of Section 10 of the Mining Act 2016 clearly shows that it is couched in mandatory or obligatory terms by dint of the use of the word ‘shall’. It is a command and not a request to prospective prospectors and gold miners. What I understand it to provide is that “you must not and will not start mining or prospecting without a license.’ The question which begs answer is whether the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent started prospecting or mining in parcel number Siaya/Ramba/874 without licence.

135. The Respondents submit that they had never started prospecting for minerals or mining but were only doing

preliminary preparations before they were rudely interrupted by the Petitioners through the instant proceedings and the Court orders which granted conservatory orders which the Petitioners have used to harass and intimidate them.

136. I have perused the documents/evidence relied upon by the parties. The Respondent states that they were not mining but were at the initial stages of preparation awaiting licensing. The Respondents kickstarted the process, they had secured the mining site with perimeter wall, they were in the process of building staff houses and equipment house.

137. The 4<sup>th</sup> respondent Mr. Mabonga annexed a report dated 21<sup>st</sup> May 2024 by the inspector of mines at the Kisumu Regional office as AMB5 to indicate that there is no processing being carried out on the site. This was upon a site visit. The court has seen the observation made at clause 2 *'There is no processing being carried out on the site'*. In my view processing and Mining cannot mean one and the same thing. Black's Law Dictionary 11<sup>th</sup> Edition defines mining as **'the process of extracting ore or Minerals from the ground'**. It is therefore the removal of mineral from the ground or underground. Processing would then be the refining or extracting the minerals from the mined soil. The report does not state that mining is not in progress.

138. Moreover, the 2<sup>nd</sup> Interested Party by a Replying Affidavit dated 20<sup>th</sup> May, 2024 sworn by Gregory Kituku at paragraph

8 depones that the 2<sup>nd</sup> Interested Party issued a cease and desist order to the 1<sup>st</sup> Respondent to stop any mining for failure to acquire the requisite mineral rights. The Interested Party has attached the said cease and desist letter as annexure GK1. He also states that two supervisors of the 1<sup>st</sup> Respondent's were arrested and charged for operating illegal mining activities and the charge sheets annexed together with photographs that show mining shaft.

139. The 1<sup>st</sup> Respondent through their Response to the petition allege that the Petitioner have instigated its members who have attacked and vandalized their mining machinery. This coincides with the charge sheets that make reference to 'installed a mining shaft with equipment'. This in my view corroborate there were mining operations.

140. It is therefore, clear from the above that as at the time of filing this Petition and as at the time of inspection by the 2<sup>nd</sup> Interested party's official, mining was ongoing and without the requisite mining licence or permit.

141. Clearly from the foregoing mining activities aforementioned cannot be termed as legal. In my view the mining would be legal only if it was undertaken within the confines of the regulatory framework.

142. I must now address the issue of the suit property parcel Siaya/Ramba/874 being one of the parcels upon which the

respondents are undertaking the activities. The Petitioners allege that the Respondent are in violation of the provisions of Section 37 of the Mining Act 2016. That they did not have consent from the owner of parcel Siaya/Ramba/874 since the said proprietor had died. This is infact the 4<sup>th</sup> Interested Party's case.

143. Section 37 of the Mining Act provides: -

**37. (1) A prospecting and mining rights shall not be granted under this Act with respect to private land without the express consent of the registered owner, and such consent shall not be unreasonably withheld.**

**(2) For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the owner of private land has entered into -**

**a. a legally binding arrangement with the applicant for the prospecting and mining rights or with the Government, which allows for the conduct of prospecting or mining operations;  
or**

**b. an agreement with the applicant for the prospecting and mining rights concerning the payment of adequate compensation.**

**(3) Where consent is granted prior to any change in land ownership, such consent shall continue to be valid for as long as the prospecting and mining rights subsists.**

144. The above provisions therefore makes it a condition precedent that mining rights shall not be granted in respect of private land without the owners' consent. The Respondent sought mining rights over parcel number 874 which was a private land in the name of Enoka Njaga Ogutu. According to the death certificate attached herein for Enoka Njaga Ogutu, he died on 20<sup>th</sup> June, 2002. A grant of letters of administration intestate was issued to Charles Odhiambo Njaga on 4<sup>th</sup> November, 2024. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> Respondents claim that they entered into a land sale agreement for parcel number 874 on 12<sup>th</sup> January, 2024. They submit that the 3<sup>rd</sup> Respondent being one of the only two beneficiaries, he had the right to sell the land to them.

145. Firstly, contrary to the Respondent's submissions, the 3<sup>rd</sup> Respondent had no authority to sell the said land without a grant of letters of administration and a certificate for confirmation of grant, without which any attempt to sell would amount to intermeddling which is a criminal offense. - see section Section 45 of the Law of Succession Act

146. Whether the 3<sup>rd</sup> Respondent obtained grant later in the year is immaterial. In my humble view, a grant of letters of

administration issued after the fact cannot cure the defect or intermeddling committed prior to that issuance.

147. In the case of **Virginia Mwari Thurania -vs- Purity Nkirote Thurania [2017] eKLR**, the court nullified the sale agreement under Section 82(b)(ii) of the Law of Succession Act, for the seller had not become a legal representative with authority to deal with the estate, since dealing with the land amounted to intermeddling with the property, hence was an illegality or a nullity.

148. Section 82 provides thus'-

**82. Powers of personal representatives Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—**

**(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;**

**(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best: Provided that—**

**(i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and**

**(ii) no immovable property shall be sold before confirmation of the grant;**

149. The 4<sup>th</sup> Interested Party has annexed to her supporting affidavit as one of the known beneficiaries a copy of a ruling delivered in Madiany Law Courts in Succession Cause No. E132 of 2024. The ruling is on all fours with the above position and therefore this court is only reinforcing what has already been decided by a lawful court of law. The 3<sup>rd</sup> Respondent has not produced any evidence to show that the same ruling has been overturned by any judicial process.

150. The 2<sup>nd</sup> Interested Party submits that they granted the respondent mining permits upon fulfilling the requirement as per the law. I respectfully disagree. Based on the case law discussed it follows that as long as the land sale agreement was illegal then it cannot serve as consent as envisaged under the provisions of Section 37(2)(1)(a) of the Mining Act. If the consent was invalid in the first place, then it was not capable of giving rise to a valid mining license. The licensing process was tainted by illegality and can therefore not stand. See the case of **Kenya Airways Limited v Flora (Civil Appeal 54 of 2005) [2013] KECA 545 (KLR) (19 July 2013) (Judgment)**.

151. The court is also emboldened by the case of **D. Njogu & C. Advocates -vs- National Bank of (K) Ltd [2016] eKLR,**

where the court observed that any contract that contravenes a statute is illegal ab initio and unenforceable.

152. It has been urged that this court has no jurisdiction to comment about the validity of the sale agreement which is a commercial matter. I respectfully disagree with this suggestion for the reason that firstly as long the sale agreement has been submitted pursuant to the provisions of section 37(2)(1)(a) of the Mining Act then this court has jurisdiction to that extent to comment on it.

153. Having pointed the above , it is my finding that the Respondents do not have valid licence to carry out mining on the suit property and any purported mining on account of the defective and illegal license is itself unlawful.

### **Whether there was public participation**

154. Article 10 of the constitution state public participation as one of the national values. Section 17 of the Environmental Management and Coordination Act (EMCA) provides

#### **155. 17. Public participation**

**(1) During the process of conducting an environmental impact assessment study under these Regulations, the proponent shall in consultation with the Authority, seek the views of persons who may be affected by the project.**

**(2) In seeking the views of the public, after the approval of the project report by the Authority, the proponent shall—**

**(a) publicize the project and its anticipated effects and benefits by—**

**(i) posting posters in strategic public places in the vicinity of the site of the proposed project informing the affected parties and communities of the proposed project;**

**(ii) publishing a notice on the proposed project for two successive weeks in a newspaper that has a nationwide circulation; and**

**(iii) making an announcement of the notice in both official and local languages in a radio with a nationwide coverage for at least once a week for two consecutive weeks;**

**(b) hold at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments;**

**(c) ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient for the affected communities and the other concerned parties; and**

**(d) ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for onward transmission to the Authority.**

156. The petitioners claim that the Respondents did not hold public participation fora before the mining activities commenced and neither was environmental impact

assessment conducted. The Respondents on the other hand state that not only did they conduct the public participation and environmental impact assessment but they are heavily involved in the activities of the community like paying school fees for school going children.

157. Section 58 of EMCA provides;-

**(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 a project shall undertake or cause to be undertaken at his own expense an environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the**

**intended project may or is likely to have or will have a significant impact on the environment, so directs.**

158. I have perused the documents produced herein and the submissions on this issue. According to the 1<sup>st</sup> Interested Party (NEMA), states that on 9<sup>th</sup> April, 2025 the 1<sup>st</sup> Respondent through an Environmental Impact Assessment Registered Lead Expert submitted an Environmental Impact Assessment Comprehensive Project report for the proposed underground gold mining project and associated facilities on plot LR numbers Siaya/Ramba/874 & 875 in Ramba Area and on 9th May 2025 a licence was issued. It is worthy noting, as I have indicated hereinabove, that mining had started by the time of filing this Petition in April, 2024. The Environmental Impact Assessment Report therefore came over one year after filing of this matter.

159. As regards the issue of public participation, Section 17 of EMCA provides that public participation must be held at least three times. According to the Respondents documents as attached in their Replying Affidavit, only one public participation forum was held on 14<sup>th</sup> February, 2024 contrary to Section 17. See the chief's letter dated 24<sup>th</sup> June, 2025, the attendance list for the meeting held on 14<sup>th</sup> February, 2024 and minutes of the said meeting.

160. Public participation forms one of the National values prescribed under Article 10 of the Constitution of Kenya. The values and principles bind all state organs, state officers and all other persons in applying or interpreting the Constitution, enacting or applying any law or implementing policy decisions. This has been echoed in a number of court decisions including the case of **Peter Makau Musyoka and Award of Mining Concessionary Rights to Mui Coal Basin Deposits [2015] eKLR**, where the court made the following observations regarding the significance of public participation;

“We will begin, happily, by stating what is not contested by the parties: They all agree that the precepts of article 10 of our Constitution are established rights which are justiciable in Kenya. Hence, if any of the allegations made by the Petitioners is factually proven, it would lead to an appropriate relief by the court.

88. As our case law has now established, public participation is a national value that is an expression of the sovereignty of the people as articulated under article 1 of the Constitution. Article 10 makes public participation a national value as a form of expression of that sovereignty. Hence, public participation is an established right in Kenya; a justiciable one- indeed one of the corner stones of our new democracy.”

161. Such is the high pedestal upon which public participation has been raised. The bar and or standard has been set very high and the court must always guard this threshold.
162. The law relevant to this case is section 17 of EMCA that prescribes mandatory three sessions of public participation that must be publicized widely to the people that will be affected by the project. The Respondent have provided no proof of having held three public participation meetings and neither have they demonstrated that they publicized the three meetings to the people of Ramba including the petitioners.
163. Therefore, in the absence of compliance with statutory provisions then there is no adequate public participation.
164. It is my finding that the public participation meeting held fell short of the statutory requirement and therefore it is my finding that there was no public participation.

**Should the orders sought issue?**

165. In the case of **Joseph Leboo & 2 others v Director Kenya Forest Services & another [2013] KEELC 41 (KLR)** the court had this to say

*“As to irreparable loss, which cannot be adequately compensated by an award of damages, I stated earlier that the demonstration of loss is not a requirement in a suit of*

*this nature. The loss is really to the environment and all of the Kenyan citizenry (probably even the whole world) is to be affected. But if I am to fit the issues herein to the contemplation of the principles in Giella v Cassman Brown, then I can say that , if the forests being cut are not the proper trees, and that there is no management plan in place, then there is no doubt that there is danger of irreparable loss.'*

166. Any environmental degradation real or threatened will affect not only the Petitioners but all the members of the Ramba community and Kenyan citizenry at large and future generation. It cannot be compensated with money or money's worth. The duty of this court is to now step in and protect the environment from illegal mining activities. Moreover, this court cannot sanction an illegality and therefore the orders of injunction must issue until such a time that valid licences are issued in compliance with all the relevant laws herein. I have qualified this for the reason that the orders sought are those of a permanent injunction and the same could have the effect of locking out the respondent from undertaking future mining activities on the suit property. I say so because there is still an opportunity for the proponent/respondents to comply with the requirements of licence including resolving matters surrounding their presence on the suit property with the beneficiaries.

167. The court has been urged to let the mining activities continue for the sake of the investors and job creation for the youths. I have already noted the shortcomings in the licenses. It is trite that nothing can come out of an illegality see the case of **McJoy vs Africa co. Ltd (1961) 3 ALL ER 1169 AT 1172.** As long as there was no full legal compliance the court cannot sanitize the licenses and or even allow any operations until such a time the same are validated. The rule of law must be protected and upheld.
168. This judgement would be incomplete if I do not make observations on the instances of violence described in this petition including vandalism and loss of lives. The court has noted from the communication from the 2<sup>nd</sup> Interested Party there are indications that there are areas set apart for artisanal miners as well as commercial operators meaning there is room for everyone to partake of the mineral resources subject to the law. The court was reminded that the earth is the Lords and everything in it. It is therefore wrong for anybody including the artisanal miners and the community neighboring the suit property to take the law into their hands. The law enforcement agencies must be left to do their work and they too must be seen to do their work.
169. The upshot of the foregoing is that the petitions have merit and the following orders hereby issue to dispose of the same

- 1) A declaration that the Respondent's unlicensed mining activities on land parcel Siaya/ Ramba /874 are in violation of the Petitioners and its members' constitutional and fundamental rights to a clean and healthy environment which includes the right to have the environment protected for the benefit of present and future generations as envisaged under Article 42 of the constitution.**
- 2) An injunction hereby issues restraining the Respondents by themselves, their workers, employees, agents, servants and or whomsoever acting on their instructions from mining, operating a gold mine, or continuing with any form of mining activity, extraction of gold and / or any other mineral ore, their attendant waste on /and from land parcel Siaya / Ramba/874.**
- 3) Provided that the orders in 2) above shall subsist until such a time as valid licences compliant with the law are issued to the Respondents.**
- 4) A mandatory order hereby issues to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties to take all necessary measures to prevent and / or discontinue any act or omission by the Respondents that is harmful to the environment.**

**5)As to costs I'm aware by dint of Section 27 of the Civil Procedure Act costs follow the event. However costs are also granted at the discretion of the court. Due to the public interest nature of the petitions herein I will order that each party shall bears its own costs.**

Orders accordingly.

**Signed, Dated and Delivered** virtually at **Siaya** this **17<sup>th</sup>** day of **March, 2026**

**HON. JUSTICE E. A. DENA**

JUDGE

17.3.2026

**Judgment Delivered in the presence of;**

**Plaintiff's/Counsel -**

Ms. Akinyi for Petitioners in Petition 1

Mr. Oreda for Petitioners in Pet.2

Ms. Kemunto appearing alongside Hon. Osoro for 1<sup>st</sup> 2<sup>nd</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> & 7<sup>th</sup> Defendants

Mr. Oketch for 9<sup>th</sup> Respondent and 4<sup>th</sup> Interested Party

Ms. Essendi for 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties

Ms Kemunto Holding Brief for Ms. Muyai for 1<sup>st</sup> Interested Party

Court assistant - Ishmael Orwa

ORIGINAL