



Lawrence Tatiya ole Sempele (Suing on his behalf and on behalf of the Members of Siyiapei Community Group) v National Land Commission & 2 others (Environment and Land Petition 22 of 2017) [2025] KEELC 5597 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5597 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT AND LAND PETITION 22 OF 2017

MN KULLOW, J

JULY 25, 2025

**IN THE MATTER OF SIYIAPEI COMMUNITY LAND
UNDER ARTICLES 40 AND 63 OF THE CONSTITUTION**

-AND-

**IN THE MATTER OF THE UNLAWFUL ALIENATION AND
APPROPRIATION OF SIYIAPEI COMMUNITY LAND WITHOUT
PROMPT, ADEQUATE OR EFFECTIVE COMPENSATION**

-AND-

**IN THE MATTER OF THE ILLEGAL MINING AND EXTRACTION OF ROAD BUILDING
MATERIALS FROM SIYIAPEI COMMUNITY LAND WITHOUT COMPENSATION**

-AND

**-IN THE MATTER OF ENVIRONMENTAL DEGRADATION
AND ENFORCEMENT OF ENVIRONMENTAL RIGHTS UNDER
ARTICLE 70 OF THE CONSTITUTION OF KENYA 2010**

-AND-

**IN THE MATTER OF ARTICLES 22, 23, 40, 48, 60, 63, 67, 70,
159, 258 AND 259 OF THE CONSTITUTION OF KENYA 2010**

-AND-

**IN THE MATTER OF BREACH OF ARTICLE 17 OF THE UNIVERSAL DECLARATION
OF HUMAN RIGHTS (1948) AND IN THE MATTER OF BREACH OF ARTICLES 2, 3,
5 AND 8 OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

-AND-

**IN THE MATTER OF BREACH OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS (1966) AND IN THE MATTER OF BREACH OF THE
RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT – AGENDA 21 (1992)**



-AND-

**IN THE MATTER OF BREACH OF THE REPORT OF THE
INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT**

BETWEEN

**LAWRENCE TATIYA OLE SEMPELE PETITIONER
SUING ON HIS BEHALF AND ON BEHALF OF THE MEMBERS OF SIYIAPEI
COMMUNITY GROUP**

AND

**THE NATIONAL LAND COMMISSION 1ST RESPONDENT
THE KENYA NATIONAL HIGHWAYS AUTHORITY 2ND RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT**

JUDGMENT

A. Introduction

1. This Petition arises from a long-standing land dispute between the Siyiapei Community Group and the Ilmashariani Community Group, both members of the Purko Clan of the Maasai ethnic group in Narok County. The dispute concerns land registered as Title No. Ilmashariani/Morijo/1/Narok, which the Siyiapei Community claims was historically their ancestral land.
2. The Petitioner, Lawrence Tatiya Ole Sempele, filed this Petition in his own capacity and on behalf of the Siyiapei Community Group, asserting that the failure by State agencies to implement the Minister's ruling from Appeal No. 102 of 1972 delivered on 14th April 1985 resulted in unlawful alienation of their land, loss of livelihood, and violation of constitutional rights.
3. The Petition seeks, inter alia, declaratory relief, general and special damages exceeding KShs. 4.7 billion, and compensation for environmental degradation resulting from unauthorized exploitation of natural resources on the disputed land.

B. The Petitioner's Case

4. According to the Petitioner, the Siyiapei Community historically occupied the disputed land for subsistence farming and had exclusive rights over the same. Around 1895, the community embraced Christianity and adopted sedentary agriculture. Meanwhile, the Ilmashariani group, who were pastoralists, requested to graze their livestock on a portion of the land.
5. The Siyiapei Community agreed to the request, permitting the Ilmashariani group to access the land strictly for grazing, but did not confer ownership or possession. This arrangement, based on mutual trust, was not reduced into writing. During land adjudication in the 1970s, the Ilmashariani group was registered as the absolute proprietor of Title No. Ilmashariani/Morijo/1/Narok, comprising the entire disputed area. The Siyiapei Community objected in October 1971. The Land Adjudication Officer ruled in favour of Ilmashariani, prompting the Siyiapei Community to appeal to the Minister.



6. The Minister, acting through the then District Commissioner Narok, Mr. Peter Ndemo, heard Appeal No. 102 of 1972 and on 14th April 1985, ruled that the land be divided between the two communities and 200 acres more to the Ilmashariani group ranch. The ruling was accompanied by a detailed sketch map delineating the boundaries, including road access to the river.
7. The Ilmashariani group challenged the Minister's decision in JR 319 of 1988. The High Court (Owuor and O'Connor JJ) dismissed the application. A subsequent appeal Civil Appeal No. 10 of 1989 was struck out in 1995 for being incompetent. Thus, the Minister's decision remained final.
8. In 1998, the Director of Land Adjudication and Settlement sought legal advice from the Attorney General, who advised implementation of the Minister's ruling. The Siyiapei Community, acting on this, paid KShs.91,400 in survey fees in April 2003 to facilitate the subdivision.
9. The Petitions aver that despite these steps, no title deeds were issued to the Siyiapei Community. Instead, state officers issued titles over the entire land to members of the Ilmashariani group and other third parties, some of whom were contractors such as Maltauro Spa who used the land to extract road construction materials.
10. The Petitioner claims the continued registration and occupation of the land by third parties was carried out without consultation, notice, or compensation, and was contrary to the Minister's decision and Article 40(3) of *the Constitution*.
11. The Petitioner also complains of environmental degradation caused by quarrying, pollution, and dust from construction activities, alleging this breached their rights under Articles 42 and 70 of *the Constitution*.
12. The Petitioner submits that due to the failure to implement the Minister's decision, the Siyiapei Community lost possession and use of their land, suffered loss of income, cultural disruption, health issues, and degradation of their environment, all of which remain unremedied.
13. The Petitioner relies on a valuation report by Acumen Valuers Ltd which estimates the land's worth at KShs.2,850,000,000 and further claims KShs.8,482,400 for valuation fees, plus damages for lost user and restoration of the land.

C. The Respondents' Case

14. The Attorney General, representing the Government, filed a Replying Affidavit sworn by Paul Kiiru Mwangi, Acting Director of Land Adjudication and Settlement. The Respondents admit that the Minister issued a decision in 1985 but assert that implementation became impossible due to third-party titles and occupation.
15. The Respondents argue that the Petitioners failed to act with diligence. They contend that enforcement of the 1985 decision should have been undertaken within 12 years, as stipulated under Section 4(4) of the *Limitation of Actions Act*. The failure to act renders the claim stale and unenforceable.
16. They further argue that the Petition lacks precision and violates the principles set in Anarita Karimi Njeru v. Republic, where the Court emphasized the need for clear and detailed pleadings in constitutional petitions.
17. The Respondents maintain that any land acquired by the state was not taken compulsorily but through legal adjudication. They argue that titles have since been issued to various individuals and entities who



are not parties to this suit, making implementation of the Minister’s decision practically impossible without violating their constitutional rights to property.

18. They also contend that the dispute, if characterized as a historical land injustice, ought to have been referred to the National Land Commission under Article 67(2)(e) of *the Constitution* and Section 15 of the *National Land Commission Act*, which provides the correct framework for such redress.
19. The Respondents emphasize that implementation of the Minister’s decision would involve revoking over 100 registered titles, evicting settled families, and dismantling infrastructure—none of which can be done without procedural safeguards.
20. They submit that the Petitioners have not demonstrated specific harm caused by the Government’s actions or omissions. They also dispute the quantum of damages sought and argue that the valuation report is unsubstantiated and speculative.
21. In conclusion, the Respondents urge the Court to dismiss the Petition with costs, arguing that the Petitioners have not established a violation of any constitutional rights or a legal basis for the reliefs sought.

D. Issues for Determination

22. It is established law that the issues for determination in a suit generally flow from either the parties’ pleadings or as framed by them for the court’s determination; see the Court of Appeal decision in the case of *Galaxy Paints Co. Ltd-vs-Falcon Grounds Ltd (2000) 2 EA 385*.
23. I have carefully considered the Petition dated 2nd July 2025, the responses by the Respondents the affidavits, legal authorities cited, and the written submissions including the issues framed therein. Order 15 Rules 1 and 2 of the Civil Procedure Rules, 2010 (The Rules herein) provide for framing of issues and materials from which issues may be framed in a suit respectively.
24. In the foregone, I am of the considered view that the issues for determination in this suit boil down to-
 - a. Whether the Minister’s Decision in Appeal No. 102 of 1972 remains valid, binding, and enforceable, or whether it has lapsed by operation of law due to delay or laches.
 - b. Whether the Respondents’ failure to implement the Minister’s Decision, and the subsequent issuance of titles to third parties, violated the Petitioners’ constitutional rights, including the right to property, fair administrative action, environmental protection, and community land rights under Articles 40, 47, 63 and 70 of *the Constitution*.
 - c. Whether the Petitioners are entitled to the reliefs sought.

Issue 1: Whether the Minister’s Decision in Appeal No. 102 of 1972 remains valid, binding, and enforceable, or whether it has lapsed by operation of law due to delay or laches

25. This Court is called upon to determine the legal status and enforceability of a decision rendered more than four decades ago, in Minister’s Appeal No. 102 of 1972, which involved a land adjudication dispute between the Siyiapei and Ilmashariani Community Groups. The Petitioner contends that the decision remains valid and binding, while the Respondents have argued that the same is now spent and unenforceable due to lapse of time.
26. It is not in dispute that following objection proceedings lodged by the Siyiapei Community in 1971, the matter was escalated to the Minister pursuant to Section 29 of the *Land Adjudication Act*. The District Commissioner, acting under delegated authority, rendered a decision on 14th April 1985,



- apportioning the disputed land between the two communities, and 200 acres more to the Ilmashariani group ranch.
27. The decision further included a clear demarcation map to facilitate implementation. That decision was challenged through judicial review in Misc. Civil Case No. 319 of 1985, which was dismissed. The matter was escalated further to the Court of Appeal in Civil Appeal No. 10 of 1989, which was struck out as incompetent on 27th June 1995. At no point has the Minister’s decision been overturned on the merits. It stands unvaried to date.
 28. Following that decision, the Attorney General acting in his constitutional capacity under Article 156 of the current Constitution rendered formal legal advice to the Director of Land Adjudication by letter dated 1st April 1998.
 29. The advice was unequivocal: the Minister’s decision having survived all legal challenge, the Director was directed to implement the same and issue title deeds to the Siyiapei Community. That advice has never been withdrawn, vacated, or modified. What followed instead was a litany of correspondence, survey payments, administrative delays, and bureaucratic inertia, with the matter being passed from one public office to another, without concrete action. At the same time, third-party titles were issued over the suit land, even as the Petitioners were made to believe implementation was underway.
 30. The Respondents now argue that the passage of time has rendered the decision stale, citing Section 4(4) of the *Limitation of Actions Act*, which bars the enforcement of judgments after twelve years.
 31. The Court of Appeal in the case of James Kanyiiita -v- Attorney General and Another [2013] eKLR while defining what delay is opined as follows:

“...Laches means the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time.”
 32. On limitation of time for constitutional petitions, the court in the case of David Gitau Njau & 9 others vs. Attorney General (2013) eKLR observed as follows under paragraph 43:

“To my mind, I do not know any law or a particular provision of the Repealed Constitution that provided that a claim based on fundamental rights and freedoms has a limitation period within which the claims ought to be filed. A claim made under *the Constitution* is neither a claim in tort nor contract that would necessitate the application of the *Limitation of Actions Act*, Cap 22 Laws of Kenya...”
 33. While this has been the general view on constitution petitions, the same is not without its qualifications. The qualification is that there must be justifiable reasons that caused the delay. The Court in the case of Joseph Migere Onoo v Attorney General [2015] eKLR on this issue observed as follows:

“39. The principle that emerges from the cases cited above is that a court must always consider whether the delay in filing a petition alleging violation of constitutional rights is unreasonable and prejudicial to a respondent’s defence...”
 34. Guided by these decisions, the court must strike a delicate balance between protecting the respondent’s right not to face stale claims, and the continuing violation of the Petitioners’ rights.



35. With respect, I find this argument legally untenable. The Minister's decision was not a judgment in the civil law sense, but rather an administrative determination rendered under a statutory regime. Even if one were to borrow the limitation principle by analogy, the conduct of the Petitioners, as evidenced by sustained correspondence, survey payments, and repeated attempts to secure implementation between 1998 and 2005, speaks to continuous engagement. This is not a party that sat on its rights.
36. Indeed, it is the state and its agents who, having received formal instructions to implement the decision, chose to ignore them and instead regularized the interests of third parties on land already adjudicated in favour of the Petitioners. That conduct not only undermines the rule of law but borders on calculated evasion of lawful directives.
37. Moreover, the non-issuance of titles to the Siyiapei Community and continued alienation of their land constitutes a continuing violation. Under Article 22 of *the Constitution*, such continuing breaches remain justiciable regardless of when they began.
38. Further still, this Court cannot ignore the principle of equitable estoppel, codified under Section 120 of the *Evidence Act*. Having caused the Petitioners to believe, through official communication and conduct, that implementation was in progress, the Respondents cannot now be permitted to rely on the passage of time to defeat the very expectation they created.
39. Ultimately, the Minister's decision of 1985 remains valid, binding and enforceable in law. It has never been lawfully reversed, nor has it been overtaken by any superseding judicial pronouncement. The state has failed in its obligation to give effect to a decision it was bound to honour.
40. The argument that limitation has extinguished the right to enforce that decision fails, both in law and on the facts. The fault lies not with the Petitioners, but with the Respondents whose dereliction of duty has perpetuated a constitutional wrong under the guise of administrative impossibility.
41. Accordingly, I find and hold that the Minister's Decision in Appeal No. 102 of 1972 remains valid, binding, and enforceable. The failure to implement the same is a breach of both statutory duty and constitutional obligation. The Petitioners' claim is not barred by limitation or laches.

Issue 2: Whether the Respondents' failure to implement the Minister's Decision, and the subsequent issuance of titles to third parties, violated the Petitioners' constitutional rights, including the right to property, fair administrative action, environmental protection, and community land rights under Articles 40, 47, 63 and 70 of *the Constitution*.

42. In determining this issue, the Court must consider whether the inaction, omissions, and conduct of the Respondents principally the National Land Commission, the Ministry of Lands and Physical Planning, and the Office of the Attorney General amounted to violations of the Petitioners' constitutionally protected rights.
43. The Petitioners, a community comprising indigenous Maasai residents of Siyiapei, assert that their historical land rights were unlawfully disregarded, that they have suffered deprivation of property, and that the state's conduct constituted an infringement of their environmental and administrative rights as guaranteed under *the Constitution* of Kenya, 2010.
44. As previously established, the land in question was adjudicated in favour of the Siyiapei Community through Minister's Appeal No. 102 of 1972, which decision was never reversed. Despite this, and despite unequivocal advice from the Attorney General to proceed with implementation, the relevant state agencies failed to take any meaningful action.



45. Instead, land initially decreed to the Petitioners was irregularly subdivided and title deeds issued to third parties, including members of the Ilmashariani Group and other unknown individuals. The evidence on record shows that this occurred during the same period in which the Petitioners were being misled to believe that the implementation process was ongoing.
46. Article 40 of *the Constitution* guarantees every person the right to acquire and own property of any description in any part of Kenya. Article 40(3) prohibits the state from depriving a person of property unless the deprivation is for a public purpose or in public interest, and unless there is prompt payment in full of just compensation.
47. In this case, the Petitioners were adjudicated as the rightful owners of the land in 1985. Despite the state's knowledge of this fact, the land was alienated and distributed to others without reference to the Petitioners, without a lawful process of compulsory acquisition, and without any compensation being offered. This, in my view, amounts to constructive deprivation of property and a violation of Article 40.
48. Further, under Article 63(2)(d), community land includes land that is lawfully held, managed or used by specific communities identified on the basis of ethnicity, culture or similar community interest. The Siyiapei Community is a cohesive indigenous group that has historically occupied, cultivated, and held communal title to the land in question. The actions of the state in allocating the land to other individuals or entities—contrary to a lawful administrative determination and without the community's consent—constituted an infringement of the community's land rights under Article 63.
49. Article 47 guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The record before the Court demonstrates a protracted and systemic failure by various public agencies to act in accordance with the law. From 1998 onward, the Petitioners were kept in a state of uncertainty and misrepresentation.
50. They were directed to pay survey fees, were issued with implementation notices, and were copied into letters indicating that titles would be processed. Yet, during the same period, third-party titles were being created in secret. The state's conduct in this regard was not merely negligent; it was administrative misfeasance and an affront to the dignity and rights of the Petitioners.
51. The Petitioners have also advanced a claim under Article 70 of *the Constitution*, which guarantees the right to a clean and healthy environment. They allege that the Kenya National Highways Authority and its contractor, Maltauro SPA, engaged in extraction of road-building materials from the community's land without consultation or compensation, resulting in environmental degradation.
52. While the claims relating to the contractor appear to have been settled, the environmental harm attributed to the Respondents was neither contested nor rebutted. No Environmental Impact Assessment Report was placed before the Court to suggest that the activities were sanctioned lawfully or with regard to the Petitioners' rights. I find that the unregulated exploitation of the land without community engagement violated the Petitioners' environmental rights as enshrined in Article 42 and enforced through Article 70.
53. Taken cumulatively, the state's failure to implement the Ministerial determination, its issuance of competing titles, and its disregard for court orders and constitutional protections amount not merely to maladministration, but to a sustained violation of the Petitioners' constitutional rights. These include: The right to property under Article 40; The right to community land under Article 63; The right to fair administrative action under Article 47; and The right to a clean and healthy environment under Article 42, enforceable via Article 70.



54. I find the argument advanced by the Respondents that the rights were ill-defined or speculative to be without merit. The rights in question are grounded in clear and binding decisions of the Minister and the courts. The Petitioners have provided uncontroverted evidence of title, usage, and deprivation. The state cannot rely on its own inaction to deny the existence of violations.
55. Accordingly, this Court finds and holds that the Respondents' conduct violated the Petitioners' constitutional rights under Articles 40, 42, 47, and 63 of *the Constitution* of Kenya. The Petitioners are therefore entitled to redress as contemplated under Article 23(3) of *the Constitution*.

Issue 3: Whether the Petitioners are entitled to the relief sought

56. This Court is now tasked with determining the appropriate relief arising from the Respondents' sustained failure to implement the Minister's Decision in Appeal No. 102 of 1972—a decision that conclusively adjudicated the dispute over land between the Siyapei and Ilmashariani Community Groups. Having already found that the said decision remains valid and enforceable, and that the Respondents' conduct violated the Petitioners' constitutional rights, the question that follows is whether the Court should compel its implementation, and if so, in what manner.
57. I begin by restating that *the Constitution* of Kenya, 2010, in Article 23(3), empowers this Court to grant appropriate relief, including declarations, judicial review remedies, and orders of enforcement. The purpose of such remedies is to uphold the rule of law, to vindicate constitutional rights, and to secure compliance with the law.
58. In the present case, the Petitioners are asking for justice in the form it was first promised: that the lawful decision made in their favour by a competent public authority, upheld by courts of law, and endorsed by the principal legal adviser to the Government, be respected and implemented in full.
59. The state's argument that the decision has been overtaken by events or rendered impracticable by the passage of time cannot stand. No legal principle supports the notion that an administrative decision, duly made under statute, affirmed by judicial proceedings, and unrevoked to date, can be ignored simply because public officers have chosen not to act on it. The state cannot be allowed to defeat justice by its own unlawful inaction.
60. Furthermore, the Respondents have not placed before this Court any legal bar or statutory provision that would prevent the implementation of the Minister's Decision. On the contrary, the evidence shows that the Attorney General, by letter dated 1st April 1998, expressly advised that the decision must be implemented and title deeds issued to the Petitioners. That legal directive remains valid to date.
61. I am acutely aware that titles may have been issued to third parties over parts of the land in question. However, this Court has not been asked to adjudicate the validity of those titles, nor have the purported beneficiaries come forward to assert competing claims. The land in question was lawfully adjudicated in favour of the Petitioners. The decision conferring rights upon them was lawful, final, and binding. It must be obeyed.
62. In a constitutional democracy governed by the rule of law, no organ of state however powerful may choose when and how to obey the law. If court-sanctioned administrative decisions are to mean anything, then they must be treated with the same force as judgments. The government cannot shelter behind claims of practical difficulty when the hardship was created by its own disregard of the law.
63. It is therefore the finding of this Court that the only just, lawful and effective remedy in the circumstances is to order the full implementation of the Minister's Decision in accordance with the demarcations and directives as outlined therein.



64. Although the Petitioners urged this Court to award them compensation in the sum of Kshs.2,850,000,000 as equivalent monetary value for the 7,915 acres allocated to them under the Minister’s Decision, this Court declines to grant such relief. The constitutional and statutory framework under which this dispute arises envisages the enforcement of lawful adjudication outcomes, not their substitution with monetary remedies, especially where the underlying administrative decision remains intact and capable of implementation.
65. The Petitioners’ rights were not extinguished but unlawfully deferred. The more just and proportionate remedy in this case is restitution in kind that is, the return of their land as determined by law not damages. An award of monetary compensation in lieu of implementation would not only be premature but may also validate the state’s unlawful failure to act. It is not for the government to choose, by inaction, to convert land rights into financial liabilities. The Petitioners are therefore entitled to the implementation of the Minister’s decision in its original terms—not to its monetization.

Final Disposition

66. Having carefully considered the pleadings, evidence, and the applicable constitutional and statutory framework, and upon finding that the Minister’s Decision in Appeal No. 102 of 1972 is valid, binding, and enforceable; that the Respondents’ failure to implement that decision has resulted in a violation of the Petitioners’ constitutional rights; and that the appropriate remedy lies in the enforcement of the said decision, the Court issues the following final orders:
- a. It is hereby declared that the Minister’s Decision in Appeal No. 102 of 1972 is valid, lawful, and enforceable.
 - b. It is further declared that the Respondents’ failure to implement the said decision, and the alienation of the land to third parties in disregard of that decision, violated the Petitioners’ rights under Articles 40, 47, 63, and 70 of *the Constitution*.
 - c. An order of mandamus is hereby issued, compelling the Respondents, either jointly or severally, to take all necessary administrative steps to implement the Minister’s Decision, including:
 - i. Identifying and confirming the area of land measuring approximately 7,915 acres awarded to the Siyiapei Community Group in the Ministerial decision dated 14th April 1985;
 - ii. Surveying and demarcating that land in accordance with the judgment map attached to the decision;
 - iii. Facilitating the registration and issuance of title documents in the name of the Siyiapei Community Group, or their lawful representatives, in respect of the said land;
 - iv. Making such registry corrections or entries as may be necessary to give full effect to the implementation of the Minister’s Decision, subject to applicable law and due process.
 - d. Each party shall bear its own costs of the Petition.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 25TH DAY OF JULY, 2025.

MOHAMMED N. KULLOW

JUDGE



Ruling delivered in the presence of: -

Mr. Sempele for the Petitioner

N/A for the Respondent

Philomena W. Court Assistant

