

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC PETITION NUMBER 27 OF 2021**

**ACTIVE ENVIRONMENTAL TEAM ..... ..**  
**PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup>**  
**RESPONDENT**

**COUNTY GOVERNMENT OF TANA RIVER ..... 2<sup>ND</sup>**  
**RESPONDENT**

**GIRITU RANCHING (DA) COMPANY LIMITED .....3<sup>RD</sup>**  
**RESPONDENT**

**JUDGMENT**

**CROSS-PETITION**

1. The main petition in this case was dismissed on **19<sup>th</sup> December 2025** when the petition failed to comply with court orders to amend the petition and name the officials of the petitioner in the title. What was left was the cross-petition. It is dated **20<sup>th</sup> April 2023**. It has been filed by the County Government of Tana River who were the 2<sup>nd</sup> respondent in the main petition. Although the cross-petition lacks a title, the names the National Land Commission (first respondent,) the County Government of Tana River (2<sup>nd</sup> respondent) and Giritu Ranching (DA) Company Limited (3<sup>rd</sup> respondent) were retained alongside the descriptions assigned them by the original petitioner. One may wonder how the County Government of Tana River can be the cross-petitioner as well as respondent in its own cross-petition or why even after the cross-petition was amended on 10<sup>th</sup> March 2025 the situation remained the same with regard to the parties and their description; all that could have been attributed to

mistake or error of drafting on the part of counsel for the cross-petitioner but for an in-depth examination of the cross-petitioner's supporting affidavit which reveals a deep schism between the deponent thereof, a Governor, on the one hand and the officers under him on the other, the latter who are said to have purported to issue illegal approvals for extension of the lease.

2. The suit property is described as public land. The claim of the cross-petitioner is that the 3<sup>rd</sup> respondent was granted a lease for the subject property being Land Reference Number 13598 CR Number 21903 on 1<sup>st</sup> April 1976 for a term of 45 years but the 3<sup>rd</sup> respondent, described as a private developer, has failed to utilize the land which comprises of 98,209 acres for the period of 45 years from the date it was granted a lease. The cross-petitioner states that the lease lapsed in the year **2021**. The lease is said to have had a number of conditions, **6** of which have been set out in the petition as follows:

- i. To use the land in husbandry and to do all possible to preserve the soil and its fertility;*
- ii. Within 5 years to install adequate water supply and troughs at convenient points for grazing stock;*
- iii. Construct cattle bomas and paddock fencing;*
- iv. Construct a sufficient number of buildings to accommodate herdsmen and other workers to the satisfaction of the Commissioner of Lands*
- v. Within 5 years of registration of the grant stock the land at the rate of one stock unit per 30 acres increasing the rate of one stock unit per 15 acres within 10 years;*

vi. *Pay such taxes, charges, duties, assessment or outgoings of whatever description as maybe imposed charged assessed by any government or local authority upon the land or the buildings erected thereon including any contributions or other sums paid by (sic) the Commissioner of Lands.*

3. It is alleged that the 3<sup>rd</sup> respondent only attempted to comply with the conditions during the sunset years of the lease with intention to hoodwink the National Land Commission and the County Government of Tana River into extension of the same. It is pleaded that before the main petition was dismissed, this court granted injunctive orders restraining the National Land Commission and the County Government of Tana River from renewing the lease pending the hearing and determination of the application before Court.

4. It is stated that on **14<sup>th</sup> March 2023** the court was informed that parties had a consent to record in the file but the 2<sup>nd</sup> respondent's governor's position was that he has never consented or issued instructions to the advocate who was previously on record for the 2<sup>nd</sup> respondent to enter into any consent on the cross-petitioner's behalf. However, the 2<sup>nd</sup> respondents' Chief Officers and the County Executive Committee member responsible for matters relating to land proceeded to issue approvals despite various Departmental Heads having concerns, and some objecting, to the extension of the lease due to the 3<sup>rd</sup> respondent's failure to comply with the terms of the initial lease.

5. It is further stated that the 3<sup>rd</sup> respondent commenced the process of extension of the 45-year-old lease that was set to lapse on 1<sup>st</sup>

April 2021 when the subject property became public land; that the commencement of the process of renewal did not take away the 3<sup>rd</sup> respondents right to apply for renewal of the lease; that the right of renewal, however, is subject to constitutional and statutory procedures and substantive issues that ought to be considered by the National Land Commission and the County Government of Tana River before a decision on extension of the lease is made and a new title issued to the 3<sup>rd</sup> respondent.

6. The cross-petitioner states that under **Article 62(2)** public land is to be held by the county government to be administered on their behalf by the National Land Commission; that **Section 17** of the National Land Commission Act makes it mandatory for the Commission to work in consultation and cooperation with the national and county governments subject to **Article 10** and **232** of the Constitution.
7. It was further stated that the constitutional principles under **Article 10** and **232** extend to state and public officers, that those principles under **Article 75(1)** to require those officers act in a manner that avoids in a compromising of in the public interest or official interest in favour of a personal interest or that demeans the office that it holds. The further averment of the cross-petitioner is that the actions of County Government of Tana River officials together with the National Land Commission officials, in carrying out acts that conferred a private interest on a party, were in direct contravention

of a court order and offend the provisions of **Articles 10, 75 and 232.**

8. It is pleaded that under **Article 249(1)**, the National Land Commission has to protect the sovereignty of the people secure observance by all state organs of democratic values and principles and promote constitutionalism; that the National Land Commission is not subject to any direction or control by any other person including the 3<sup>rd</sup> respondent.
9. According to the cross-petition the County Government of Tana River thinks that it is likely to suffer prejudice from the actions; that pursuant to **Rule 2(4)e of the Land (Extension and Renewal of Leases) Rules (Legal Notice 281 Of 2017)**, one of the vital factors to consider when renewing a lease is evidence whether or not the lessee has complied with the terms and conditions of the existing lease to the satisfaction of the lessor; that the spirit of the said requirement is to determine the lessee's previous conduct and to ensure that a Lessee seeking extension of lease is not likely to breach the terms of the lease once extended, or interfere with the use of the land, any rights or interests or land use planning. Consequently, it is stated that the renewal of the 3<sup>rd</sup> respondent's lease by the National Land Commission is in blatant breach and disregard of the orders that were issued by the court; that breach of a court order is an affront to the rule of law and integrity of the judicial process; that there is need to revoke any documents that

were executed by any of the parties during the subsistence of the court orders issued on 30<sup>th</sup> November 2021.

10. It is further averred that after 1<sup>st</sup> April 2021 the suit property became public land and the provisions of the law and the constitution with regard to public land required to be adhered to strictly. The cross-petitioner states that the 3<sup>rd</sup> respondent has been indolent for close to 45 years and is therefore having unclean hands; that the constitutional principles and citizens' rights to equitable access to public property demands the full compliance with the constitutional principles governing utilization and management of the public land; that the County Government of Tana River as the custodian of public land for the local communities has taken into consideration the land use in the county for maximum economic benefit of the public and the communities and such land use include commercial and industrial use of the land which it intends to promote on the suit land.
11. The cross-petition is supported by the affidavit dated 10<sup>th</sup> March 2025 and further affidavit dated 9<sup>th</sup> December 2025, sworn by **Dhadho Gaddae Godana**, Governor of the Tana River County.
12. The reliefs that the cross-petitioner seeks are as follows:
  - a. *A declaration be and is hereby issued that the 3<sup>rd</sup> respondent has violated the terms of the lease over the land registered as LR Number 13598 (C R Number 21903);*
  - b. *A declaration that the land registered as LR Number 13598 (C R Number 21903) is public land vested in the County Government of Tana River following the expiration of the lease according to Article 62(2)(a) of the Constitution of Kenya 2010;*

- c. *A declaration be and is hereby issued that the decision by the first respondent to issue the 3<sup>rd</sup> respondent with a new lease over the land registered as LR Number 13598 (C R Number 21903) while orders issued by the court on 30<sup>th</sup> November 2021 was (sic) still in force offends the principle of lis pendens and is thus null and void ab initio;*
- d. *A declaration that any title document hereby executed by the first and 2nd respondent and all their agents servants or any other person authorized by them purporting to renew the leaves over the land registered as LR Number 13598 (C R Number 21903) to the 3<sup>rd</sup> respondent while orders issued by the honorable Court on 30<sup>th</sup> November 2021 was (sic) still in force offends the principle of lis pendens and is thus null and void ab initio;*
- e. *An order for the rectification of the register by the Registrar of Lands by directing that any registration made to the land register after 30<sup>th</sup> November 2021 on the land registered as LR Number 13598 (C R Number 21903) be and is here by cancelled;*
- f. *An order for an inhibition, restricting the land registration of any disposition in the register of the land registered as LR Number 13598 (C R Number 21903) in favor of the 3<sup>rd</sup> respondent;*
- g. *A mandatory injunction compelling the 3<sup>rd</sup> respondent to render vacant possession of the land registered as LR Number 13598 (C R Number 21903) to the 2<sup>nd</sup> respondent;*
- h. *An order that the 3<sup>rd</sup> respondent bears the costs of the cross-petition.*

### **3<sup>RD</sup> RESPONDENT'S RESPONSE.**

13. On 27<sup>th</sup> February 2025, Mr. Otara for the 3<sup>rd</sup> respondent notified the court that his client would rely on the affidavit filed in response to the main petition. This court has on perusal of the court record as well as the CTS found no record of such an affidavit. However, a supplementary affidavit by a director of the 3<sup>rd</sup> respondent, one **Buya Wario Mwaini**, dated 8<sup>th</sup> November 2025 was allowed by the court.

14. The response of the 3<sup>rd</sup> respondent is as follows: that on 10<sup>th</sup> June 2020, the 2<sup>nd</sup> respondent conducted a site inspection report

and recommended the following: the ranching company to excise and cede 10,000 acres for the cluster village program upon extension renewal of the lease, and the company should present development proposals to the county government for approval upon renewal of the lease; the company should obtain a license from the National Environment And Management Authority (NEMA); the company should ensure a clear monitoring and evaluation framework for the proposed project activities and land utilization/use; the company should ensure excision of roads and utility wayleaves upon renewal of lease.

15. The 3<sup>rd</sup> respondent also avers that there was a meeting between the Tana River County Clerk the District Land Administrator the District Surveyor and the District Physical Planning Officer whose agenda was *inter alia* extension of the lease for the 3<sup>rd</sup> respondent. At that meeting it was resolved that the lease be renewed. It was also recommended that land dues owed to the Central Government be cleared by the 3<sup>rd</sup> respondent; that the 3<sup>rd</sup> respondent should also seek approval for lease extension and change of user from the Commissioner of Lands and thereafter obtain a consent to sublease.

16. The deponent stated that long before the orders of 30<sup>th</sup> November 2021 the National Land Commission had written to the 2<sup>nd</sup> respondent seeking to confirm whether the 2<sup>nd</sup> respondent had any objection to the renewal of the lease; that the 2<sup>nd</sup> respondent

wrote on **8<sup>th</sup> December 2020** confirming that it had no objection to the renewal.

17. On 24<sup>th</sup> June 2021 the 2<sup>nd</sup> respondent again wrote to the National Land Commission and *“confirmed all the processes stipulated under the 3<sup>rd</sup> schedule”* and proceeded to give a no objection to the renewal of the 3<sup>rd</sup> respondent’s lease.

18. It is further stated that after the 3<sup>rd</sup> respondent complied with all requirements the National Land Commission issued letters of allotment to the 3<sup>rd</sup> respondent on **21<sup>st</sup> October 2021** and the 3<sup>rd</sup> respondent paid allotment fees and it is believed that title processing then commenced.

19. That on the **15<sup>th</sup> May 2025**, the 2<sup>nd</sup> respondent demanded rates from the 3<sup>rd</sup> respondent in the sum of Kenya shillings 198, 604/- which showed that the 2<sup>nd</sup> respondent recognized the 3<sup>rd</sup> respondent’s lease, and it paid the rates which were received by the 2<sup>nd</sup> respondent on 8<sup>th</sup> July 2025; that the deponent in the cross-petition seems to be acting in his own personal capacity over his own personal interest are supposed to the county government interest; that from **prayer number (c)** in the cross-petition, it is apparent that the neither the County Assembly of Tana River nor the County Attorney is aware of the cross-petition; that such a cross-petition ought to have been commenced after public participation involving the people of Tana River; that in contrast, prior to the decision reached on the renewal of the 3<sup>rd</sup> respondent’s lease, several public participation sensitization meetings took place

where the 2<sup>nd</sup> respondent had participated; that only persons of the Pokomo ethnic origin are to be found on the suit land.

**Response By The 1<sup>st</sup> Respondent (National Land Commission)**

20. The 1<sup>st</sup> respondent never filed any response in the matter.

**SUBMISSIONS OF THE PARTIES**

***Submissions Of the Cross-Appellant***

21. The cross-petitioner filed submissions dated 16<sup>th</sup> September 2025 and reiterated the matters in the petition and identified the following issues for determination:

- a. Whether the 3<sup>rd</sup> respondent has complied with the conditions for extension and renewal of lease;***
- b. Whether the suit property is required for public purposes;***
- c. Whether the court should grant the orders sought in the amended cross petition.***

22. Regarding the first issue, **Article 60** was cited for the proposition that land shall be held used and managed equitably, efficiently, productively and sustainably and in accordance with the principle of equitable access to land, security of land rights, sustainable and productive management of land resources since land as a resource is inelastic. **Article 62** was cited as vesting public land in the county government to hold it in trust for the people resident in the county and to be administered by the National Land Commission; that under **Section 17** of the National Land Commission Act, the National Land Commission requires to work in consultation and cooperation with the national and county

governments in accordance with principles in **Article 10** and **232** of the constitution.

23. The cross-petitioner stated that the acts perpetuated by the 1<sup>st</sup> and 2<sup>nd</sup> respondents' officials in carrying out acts that grant private interest on a party is in direct contravention of a court order, and that it offends the provisions of **Articles 10, 232** and **75(1)**; that the procedural aspects on the renewal of leases is governed by **Land (Extension and Renewal of Leases) Rules, Legal Notice Number 281 of 2017**, which outlines the procedures and requirements for extending or renewing existing leasehold titles.
24. **Rule 2(4) (d)** was cited as requiring evidence that the lessor has complied with the terms and conditions of the existing lease to the satisfaction of the lessor. The cross-petitioner also cited the conditions in **Rule 2(7)**. It was submitted that those conditions have been infringed by the 3<sup>rd</sup> respondent in that there was no evidence that there lessee had ever complied with the terms of the lease during the period of time it had held it and the land had remained unutilized for **38** years, and that the 3<sup>rd</sup> respondent had admitted that fact; that attempts to utilize the property began in the year 2014; that issues regarding utilization of the said land were raised by the Sub-County Physical Planner, the Department of Agriculture, and the Public Works Department who recommended that the lease should not be renewed to the 3<sup>rd</sup> respondent due to past underutilization of the land.

25. The case of *Republic Versus National Land Commission and 5 Others Nyamu Applicant 2024 (E019 of 2021) (2024) KEELC 6912 KLR 16<sup>th</sup> October 2024 Judgment* and also the case of *Republic Versus National Land Commission And 5 Others, CEC Land Housing And Physical Planning Uasin Gishu County And 3 Others Interested Parties Ravindra Ratiral Taylor (Suing As The Trustee Of Uasin Gishu Arts Society Of Eldoret) And 5 Others (Ex parte) Suing As The Trustees Of Uasin Gishu Arts Society Of Eldoret (Judicial Review 09 Of 2017 And 04 Of 2016) (Consolidated) (2022) KEELC 3 (KLR) 16<sup>th</sup> February 2022 (Judgment)* were cited as persuasive for the proposition that where a lessee had not complied with the terms of the grant then the lease cannot be renewed. It was submitted that a task force report dated **4<sup>th</sup> May 2023** on land status in the Tana River County raised findings that the subject property was one of **9** ranches in the county that had no tangible activities being undertaken thereon, thus usurping the rights of residents of Tana River County provided for under **Section 27** and **28** of the **Community Lands Act Cap 287** (in connection with grazing rights.) The report also found that the land had lain unutilized for long.

26. It was also urged that besides failure of the purpose for which the land lease was issued, the 3<sup>rd</sup> respondent never paid for the rates and charges assessed for the property and partial compliance was being attempted on **28<sup>th</sup> January 2019** at which date the unpaid rates stood at Kenya shillings **466,510/-**.

27. It is also alleged that the 3<sup>rd</sup> respondent colluded with some of the County Government of Tana River officials to get an approval in a bid to extend the lease that they approvals fraudulently and unprocedurally obtained on 6<sup>th</sup> August 2020 despite there being no evidence that the 3<sup>rd</sup> respondent had complied with the special conditions of its lease, and despite the relevant Departments of the 2<sup>nd</sup> respondent objecting to the extension of the lease. It is stated that after this collusion was discovered, the present cross-petition was filed. Consequently, the CEC Member Lands Physical Planning Agriculture Livestock Fisheries and Cooperatives proceeded to write to the 1<sup>st</sup> respondent - the National Land Commission - to halt any process with regard to the renewal of the lease for the suit property in favour of the 3<sup>rd</sup> respondent. It was alleged that there was disapproval raised against the approval of the change of user in August 2020 due to the effect of underutilization of the Land on the Tana River County residents.

28. **Paragraphs 10** and **11** of the replying affidavit of Buya Wario Mwaini are cited as having made an admission that the land had been underutilized; that it is only at the tail end of the lease period that they sourced for a potential sugar company which could cultivate about 48,000 acres of the suit land, and entered into a lease with Giritu Sugar Limited dated **15<sup>th</sup> February 2019**; that the said sub-lease agreement between the 3<sup>rd</sup> respondent and Giritu Sugar is yet another infringement of the special conditions of the lease as it does not have the consent of the county government of

Tana River or the National Land Commission; that the said sub-lease is also objected to on the basis that its period is longer than the length of the lease period granted to the 3<sup>rd</sup> respondent; that the lease granted to the 3<sup>rd</sup> respondent having expired, under **Section 9 (2)(ii) of the Land Act 2012**, the land reverted to the 2<sup>nd</sup> respondent, and thus the 3<sup>rd</sup> respondent could not enter into any contract with a 3<sup>rd</sup> party without extension of the lease.

29. It is submitted that as at **30<sup>th</sup> November 2021**, the lease had expired and the court had issued conservatory orders restraining the 1<sup>st</sup> respondent from renewing the lease or taking any action that could defeat the purpose of the petition.

30. Regarding the 2<sup>nd</sup> issue, the cross-petitioner submitted that under **Rule 44** where the county or national government needs the land for public purposes in accordance with **Section 131** in of the Act the national or county government shall notify the Commission of need for the land for public purpose and require the Commission to notify the lessee accordingly; that there are two documents showing that the 2<sup>nd</sup> respondent communicated the need for use of the subject property for public purposes; that these are: *the Circulation Form for Development of Applications PPA1 Number DD/001/2020 dated 17<sup>th</sup> March 2020*, and the *Task Force Report Dated 4<sup>th</sup> May 2023*. The case of *Remtone Holdings Company Limited Versus Mashukur Enterprises Limited and Another 2017 eKLR* was cited for the proposition that the land is required to be offered to the immediate past holder of the lease only if it is not

required for a public purpose. With those submissions, the 2<sup>nd</sup> respondent urged the court to grant the orders sought.

### ***Submissions of the 3<sup>rd</sup> respondent***

31. The 3<sup>rd</sup> respondent submitted that it had invested heavily in establishing the ranch by building staff houses making access roads and cattle dips and referred to exhibits **BMW1** in the replying affidavit; that the ranch operated very well for many years as the number of cattle increased in numbers; that from **1978** onwards insecurity affected the business of the ranch when a large number of ranch cattle were stolen and by an allegedly drought in **1979** which killed many animals and human life in the county; that towards the end of the lease period, the 3<sup>rd</sup> respondent sourced for a potential sugar company who could cultivate about 48,000 acres of land and establish a sugar-factory which would improve the license of the people in Tana River and the boost the economy of the county.

32. It is submitted that the 3<sup>rd</sup> respondent submitted an application to the National Land Commission for change of user and extension of the lease for **99** years which application was duly approved with the consent of the 2<sup>nd</sup> respondent and exhibit number **BMW 3** is referred to in that regard.

33. The 3<sup>rd</sup> respondent alleged that it has met all the requirements necessary for extension of lease in that:

- a. *On 30<sup>th</sup> December 2019 an advertisement was placed in the Daily Nation newspaper calling for any objections towards the extension of the lease;*
- b. *Announcements were made on public participation through the local radio station and with a wide network within Tana River vide Amani FM 88.1 on 24<sup>th</sup> and 25<sup>th</sup> July 2019 as per exhibit **BMW 5**;*
- c. *Two sensitization meetings took place on 5<sup>th</sup> March 2019 and 8<sup>th</sup> March 2019 as per exhibit **BMW 6**;*
- d. *Notice of a special public and members meeting was issued on 15<sup>th</sup> June scheduled to take place on 15<sup>th</sup> June 2021 as per **BMW 7**;*
- e. *A public participation meeting held on 15<sup>th</sup> June 2021 as per **BMW8**;*
- f. *Yet another public participation meeting was held in January 2021 attended by the Regional Commissioner, Deputy County Commissioner, Chiefs, Religious Leaders, from communities in Tana Delta Subcounty and the youth. It is alleged that the entire community in Tana River is comfortable with the project and no objections have been received by the 3<sup>rd</sup> respondent so far.*

34. The minutes of County Departmental Heads participation meeting were attached as **BMW 13**; it was urged that on 10<sup>th</sup> June 2020, the 2<sup>nd</sup> respondent conducted a site inspection report and made recommendations. The rest of the submissions reflect what is contained in the further affidavit.

***Submissions Of the First Respondent. (National Land Commission)***

35. The first respondent never filed submissions.

## **ANALYSIS AND DETERMINATION.**

36. For brevity, the lease purportedly issued in 1976 will be referred to as “*the 1976 lease.*” The issues arising for determination of this court are as follows:

- a. Whether the jurisdiction of this court has been properly invoked;*
- b. Whether the 3<sup>rd</sup> respondent violated the terms of the 1976 lease;*
- c. Whether the 3<sup>rd</sup> respondent applied for an extension of the lease;*
- d. Whether the suit land should be declared as public land vested in the County Government of Tana River;*
- e. Whether a new lease was issued by the 1<sup>st</sup> respondent to the 3<sup>rd</sup> respondent over the suit land in violation of a court order and if so whether such lease is thus null and void and ought to be cancelled and the land register be rectified;*
- f. Whether a mandatory injunction order ought to issue compelling the 3<sup>rd</sup> respondent to surrender vacant possession of the suit land to the 2<sup>nd</sup> respondent;*
- g. Who ought to bear the costs of the cross-petition?*

### ***Whether the jurisdiction of this court has been properly invoked;***

37. This court struck out the main petition and was left with the cross petition. As seen herein above the other issues identified by this court for determination are as per **items (b) -(g)** in the list herein above.

38. The issue of whether the 3<sup>rd</sup> respondent applied for extension of lease is a question of facts to be interpreted within the context of the Land Act and the *Land (Extension and Renewal of Leases) Rules (Legal Notice 281 Of 2017)*. Whether the suit land should be declared as public land vested in the county government of Tana River is predicated upon whether or not there was a legally valid

and/or successful application for extension of lease by the 3<sup>rd</sup> respondent that complied with the statutory provisions; whether or not a new lease was issued by the 1<sup>st</sup> respondent to the 3<sup>rd</sup> respondent over the suit land in violation of a court order is a question of fact to be ascertained by examination of *inter alia* the court records; whether or not such lease is thus null and void and ought to be cancelled and the land register be rectified depends on whether the lease was issued during the existence of a court order barring the issuance of the same; whether or not a mandatory injunction order ought to issue compelling the 3<sup>rd</sup> respondent to surrender vacant possession of the suit land to the 2<sup>nd</sup> respondent is predicated upon the answers to all the foregoing questions. Costs are at the discretion of the court. Clearly the answers to all the questions above do not involve an interpretation of any of the provisions of the Constitution.

39. Besides, there are numerous documents that were brought before this court by all the parties and whose context required to be made clear before the court can arrive at the proper answers to the foregoing issues for determination. The dispute as to whether any of the officers under the 1<sup>st</sup> and 2<sup>nd</sup> respondent's office were guilty of misconduct can not be dealt with in a constitutional petition properly where it is only suspected that the 3<sup>rd</sup> respondent's lease has been illegally renewed and no such copy has been brought to light for all to see, besides their specific roles in the fraud needs to be clearly defined in pleadings, to enable rebuttal, also by way of

pleadings, and subsequently substantiation by way of evidence. Also, orders against a lease document which is only suspected to have been issued and not brought before the court, would only be speculative. The unwarranted silence of the 1<sup>st</sup> respondent as well as the duplicity on the part of the 3<sup>rd</sup> respondents counsel, the latter whose utterances before court tactically perambulated between ostensible certainty and uncertainty as to whether or not the 1<sup>st</sup> respondent had renewed the 3<sup>rd</sup> respondent's lease, did not help the court to know if any lease has been issued. For an unknown reason, there is apparently a conspiracy of silence and obfuscation between them 1<sup>st</sup> respondent, and the 3<sup>rd</sup> respondent and its counsel as to the actual status regarding the renewal of the 3<sup>rd</sup> respondent's lease. There is serious doubt raised in the cross-petitioner's case as to whether the 3<sup>rd</sup> respondent ever conducted any development on the suit land. Notably, this is an issue that can not be tried by way of affidavit evidence since it is disputed and cross-examination of witnesses and verification of documentary evidence and possibly site visit verification would become necessary. For now, this court is only able to detect one cattle dip photographed at various angles and several fencing posts in the 3<sup>rd</sup> respondent's annextures.

40. It is trite that petitions are usually filed and entertained in respect of disputes where facts are clear cut and without dispute and where constitutional issues can be distilled from the pleadings and where the court is simply called upon to simply launch into the inquiry as to whether the rights of the claimants or indeed any

provisions of the Constitution have been infringed. That is not the case in the present cross-petition. It would be improper to deal with the above questions non-constitutional questions in this petition. In the case of *Valentini v Farid & 3 others (Environment & Land Petition E005 of 2024) [2025] KEELC 253 (KLR) (30 January 2025) (Ruling)* Neutral citation: [2025] KEELC 253 (KLR) the court stated as follows:

*“The existing legal rule, as espoused in Speaker of the National Assembly Vs Karume 1992 KECA and Crystalline Salt Limited V Kenya Revenue Authority 2019 eKLR is that the procedure for the redress of any grievance prescribed by an Act of Parliament should be strictly followed;”*

41. In *Francis Oyagi Vs Samwel Motari Mangare and 2 Others (2018) eKLR* the court held as follows:

*“The court must guard against improper transmission of normal disputes or ordinary issues of litigation being clothed in constitutional petitions. I am aware that the existence of an alternative remedy or procedure may not oust the jurisdiction of the court. But the court in deciding whether to entertain a suit must take into account the existence of such a remedy and its application to the issues at hand.”*

42. In the case of *Santa Kahindi Mangi Vs Mayungu Real Estates Ltd & Others Malindi ELCL Petition No. E018 OF 2024* this court referred to the decisions in *Mike Rubia & another v Moses Mwangi & 2 others [2014] eKLR* for the same effect.

43. The cross-petitioner’s reaction to the petition was quite reflexive, but in the above context, what was needed for the resolution of this dispute was an ordinary civil suit under the **Civil Procedure Act** and **Civil Procedure Rules** and not a claim by way of a cross-petition. It would have been the most suitable manner of addressing the dispute. The ultimate fate of the original petition,

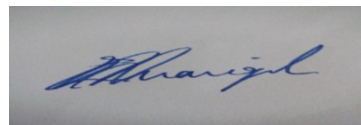
perchance it had been heard, can not be known now that it has been dismissed for want of prosecution, but the fact remains that the filing of the petition did not absolve the cross-petitioner from instituting proceedings through the right forum.

44. As the jurisdiction of this court has not been properly invoked by this cross-petition, the amended cross-petition dated 10<sup>th</sup> March 2025 is hereby summarily struck out for only that reason. However, in view of the weighty matters involved, leave is granted to the cross-petitioner herein to institute proceedings against the respondents to the cross petition and any other relevant parties by way of ordinary plaint **within 60 days** from the date of this order.

45. Also, in view of the fact that the matter before court is one of great public interest, this court orders that each party shall bear its own costs.

**Dated, signed and delivered at Malindi on this 23<sup>rd</sup> Day of April, 2026.**

**MWANGI**



**JUDGE, ELC, MALINDI.**

**NJOROGE,**