REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

CONSTITUTIONAL PETITION NO. E010 OF 2024

ERICK KIPLANGAT ARAP BETT & 21 OTHERS…….PETITIONERS

VERSUS

THE CABINET SECRETARY, MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT……1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT……. …2ND RESPONDENT

CABINET SECRETARY FOR ENVIRONMENT CLIMATE CHANGE AND FORESTRY……3RD RESPONDENT

DIRECTOR OF SURVEYS KENYA.....4TH RESPONDENT

INSPECTOR GENERAL OF POLICE……5TH RESPONDENT

THE NATIONAL LAND COMMISSION……..6TH RESPONDENT

KENYA WATER TOWER AGENCY……7TH RESPONDENT

NYAYO TEA ZONES

DEVELOPMENT CORPORATION……..……..8TH RESPONDENT

THE ATTORNEY GENERAL……..9TH RESPONDENT

RULING

A. Introduction

1. What is before the Court for determination is the ***Notice of Preliminary Objection*** dated ***24th November 2025,*** filed by the ***1st, 2nd, 3rd, 4th, 5th and 9th Respondents*** filed in response to the Petition herein dated ***26th November 2024.***

2. The objectors contend that the petition herein as pleaded is ***res judicata*** contrary to ***Section 7*** of the ***Civil Procedure Act***, as the issues raised were litigated and determined in the case of ***Mapelu & 13 others v Cabinet Secretary, Ministry of Lands & Physical Planning & 164 others; Nyayo Tea Zones Development Corporation & 2 others (Interested Parties) (Environment & Land Petition 12 & 13 of 2018 (Consolidated)) [2022] KEELC 13468 (KLR) (13 October 2022) (Judgment),*** hereinafter referred to as the ***'Mapelu Case'***.

3. Further, the ***1st, 2nd, 3rd ,4th, 5th, & 9th Respondents*** contend that the petition herein is an abuse of the court's process and valuable judicial time, and ought to be dismissed with costs.

B. The Petitioners' case

4. Vide their petition filed in their personal capacity and on behalf of individual land owners in the former group ranches of ***Reyio,***

Enakishomi, Sisiyan, Nkaroni, Enosokon and CCM, the Petitioners contend that the land within the said group ranches had been earmarked by the Government of Kenya for grazing, farming, and settlement. Further, that the group ranches were subsequently dissolved between the years ***1990 and 1995,*** following which the land was subdivided into equal holdings and allocated to over ***15,000 petitioners***, who are now the registered proprietors of land parcels within ***Cis-Mara/Koben/34***, ***Cis-Mara/Ololulunga/110***, ***Cis-Mara/ Ololulunga/115***, ***Ilmotiok Registration Section/375***, *and* ***Osupuko Ololulunga Adjudication Section (Map Sheet A, part of 132/III, 146/1, 131/IV)***, measuring approximately 20,000 hectares.

5. The Petitioners further aver that they have ***peacefully occupied*** the suit parcels of land until the ***year 2020,*** when they were forcefully evicted by the Respondents in the guise of removing persons who had allegedly encroached onto forest land. They claim that the alleged evictions were carried out in an inhumane manner, characterized by loss of lives and property and as a consequence, their rights under ***Articles 10, 22, 23, 26, 27, 28, 29(d), (f), 40 and 47*** of the ***Constitution*** were violated and the provisions of ***Section 152G*** of the ***Land Act*** flouted. They seek a permanent injunction barring ***1st to 6th Respondents*** from ***interfering*** with their ***occupation*** in the suit parcels, compensation for unlawful eviction among other orders.

6. The ***6th to 8th Respondents*** did not participate in these proceedings.

7. The Preliminary Objection was canvassed by way of written submissions.

Parties Submissions

The 1st, 2nd, 3rd, 4th, 5th and 9th Respondents Submissions

8. The Objectors, being the ***1st, 2nd, 3rd, 4th, 5th & 9th*** Respondents through ***Martin Mwandeje, Principal State Counsel*** at the ***Attorney General's Chamber,*** filed their submissions dated ***13th February 2026*****,** and set out one issue for determination being;

i) Whether the suit is res judicata, rendering the court to lack jurisdiction to entertain the matter.

9. It was their submissions that this Court has no jurisdiction to hear this matter as the suit is ***res-judicata*** as envisaged under ***Section 7*** of the ***Civil Procedure Act***. They point out that in the ***Mapelu Case***, the petitioners therein sought a total of twelve orders including declarations that their rights under the Constitution of Kenya had been violated, orders of prohibition, permanent injunction and compensation against the Respondents from any interference with the subject matter in the said suit, which encompassed five former ranches namely: ***Reiyo, Enakishomi, Sisiyan, Enoosokon and Nkaroni.*** Further, that a three-judge bench comprising of ***Justices JM Mutungi, MN Kullow and GMA Ongondo*** heard the petition, which was consolidated with ***Petition 13 of 2018*** and they rendered their judgment on ***13th October, 2022***.

10. To buttress their averments, the 1st , 2nd , 3rd, 4th, 5th and 9th Respondents relied on the following decisions: ***John Florence Maritime Services Ltd& another vs Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) (2021) KEWSC 39 (KLR) (Civ) (6th August) (Judgment)***, ***Independent Electoral and Boundaries Commission v Maina Kiai & 5 others [2017] eKLR, Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR1*** *and* ***Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696.***

The Petitioners' submissions

11. On their part, the Petitioners filed their submissions through **Kipkoech *Terer & Associates Advocates,* dated *17th February 2026,*** and set out two issues for determination being;

i. ***Whether the Preliminary Objection dated 24/11/2024 is merited;***
ii. ***Who should bear costs of this application.***

12. On whether the ***Preliminary Objection*** herein can be sustained, the petitioners submit that ***Section 7*** of the ***Civil Procedure Act*** as interpreted in the decisions of ***Independent Electoral & Boundaries Commission v Maina Kiai & 5 others [2017] eKLR*** and ***Njue Ngai v Ephantus Njiru Ngai & another [2016] eKLR***, creates a subjective test that must be proved for a plea of ***res judicata*** to be successful. Further, that the substantive test is that the matter needs to have been heard and finally determined by a competent court. To this end, they argue that when the instant petition is considered alongside the

***Mapelu Case*,** it is apparent that the two suits are fundamentally different since the parties, subject parcels, the factual matrix and the issues for determination bear no resemblance.

13. The petitioners also submit that the Respondents have not provided pleadings in the previous suit for the court to analyze whether the two suits are similar.

14. In addition, they cite the case of ***Okiya Omtatah Okoiti & another v The Attorney General and another Petition No.593 of 2013[2014] eKLR*** to submit that the doctrine of res judicata ought to be invoked sparingly in constitutional litigation thus the preliminary objection has no merit.

Analysis and Determination

15. We have keenly considered the objection raised through the Notice of Preliminary Objection dated ***25th November 2025*** by the ***1st, 2nd, 3rd, 4th, 5th and 9th Respondents*** herein, the rival written submissions, authorities cited, and the relevant provisions of statute and discern the following issues for determination:

- ***Whether the Notice of Preliminary Objection dated 25th November 2025 meets the threshold of what amounts to a proper preliminary objection.***
- ***Whether the instant suit is res judicata.***

16. Before delving into the issue of whether the instant ***Preliminary Objection*** meets the threshold of what amounts to a preliminary objection or not, we will first address the issue raised that an objection on ***res judicata*** ought to be invoked sparingly in constitutional petitions. It is evident that this being constitutional petition, its prosecution is governed by the specific procedural regime set out in the Constitution of Kenya ***(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, famously known as the Mutunga Rules.***

17. The Objectors herein have invoked the provisions of ***section 7*** of the ***Civil Procedure Act***, which Act governs ordinary litigations of civil in nature. However, this is a constitution petition, and the question for our determination is whether the provisions of the ***Civil Procedure Act and Rules*** are applicable in constitution petitions.

18. We have reviewed several decisions coming from superior courts and were are convinced that though the ***Civil Procedure Act, and Rules*** do not apply directly to petitions, they may be invoked in certain circumstances to fill in the ***lacuna***, where the ***Mutunga Rules*** are silent on specific procedural issues.

19. The preliminary objection herein is on the issue of ***res judicata,*** which is not provided for in the ***Mutunga rules.*** Therefore, we are of the considered view that the ***Mutunga Rules (2013***), are the primary procedural guide for constitutional petitions, and

where there is a lacuna, courts can invoke the provisions of the ***Civil Procedure Act and Rules***, and thus ***section 7*** of the ***Civil Procedure Act,*** is applicable herein, and was properly invoked.

20. It is well settled that a ***Preliminary Objection*** must be on a pure point of law and cannot be raised if any fact has to be ascertained. The preliminary objection must also stem from the pleadings, and must be capable of disposing of the suit preliminarily. This principle was captured in the case of ***Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*** as follows:

> ***"So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the*** **parties are bound by the contract giving** ***rise to the suit to refer the dispute to arbitration".***

21. The Supreme Court of Kenya(SCOK) reiterated this principle in the case of ***Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others [2015] Eklr,*** where it stated thus:

"Thus a Preliminary Objection may only be raised on a 'pure question of law'. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts."

22. Further, in the case ***of Catherine Kawira v Muriungi Kirigia [2016] eklr;*** the court held as follows

"***I do not want to reinvent the wheel on the legal threshold for Preliminary Objection. It is now well-settled principle that a preliminary objection should be a point of law that is straight-forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this I am content to cite the case of Mukisa Biscuit Manufacturing Company Limited West End Distributors Limited (1969) EA 696 where it was*** stated as follows: "***So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."***

23. The ***1st, 2nd, 3rd, 4th, 5th and 9th*** Respondents' preliminary objection is premised on the ground that this suit is ***res***

judicata as the issues raised herein were determined in ***Mapelu & 13 others v Cabinet Secretary, Ministry of Lands & Physical Planning & 164 others; Nyayo Tea Zones Development Corporation & 2 others (Interested Parties) (Environment & Land Petition 12 & 13 of 2018 (Consolidated)) [2022] KEELC 13468 (KLR) (13 October 2022) (Judgment).***

24. Can objection on ***res judicata*** be raised as a pure point of law? Having analyzed and considered the law on ***res judicata*** and the various decided cases, we are of the considered view that an objection on ***res judicata*** is generally a pure point of law, which means that it can be raised through a Preliminary Objection, just like the instant one, if the facts are clear from the pleadings. However, it becomes a ***mixed question of law and fact*** and not suitable to be raised as a Preliminary Objection, but as Notice of Motion Application, if it requires deeper factual inquiry, such as examining evidence of identity of parties/subject matter. See the case of ***Shah v Kenya Canvas Limited & another (Civil Suit E252 of 2022) [2023] KEHC 25428 (KLR) (Commercial and Tax) (17 November 2023) (Ruling).***

25. Further, we are of the view that the objection on ***res judicata*** becomes pure point of law when the previous judgment and the case in question are clearly identical in parties, subject matter, and cause of action, which is evident from the pleadings. Further, when no extensive factual investigation or evidence

beyond the pleadings is needed to determine if the matter is the same as before.

26. The Court of Appeal has taken the position that an objection on ***res judicata*** can be properly addressed in liminine. The said Court stated as follows in ***Independent Electoral and Boundaries Commission v Kiai & 5 others [2017] KECA 477 (KLR)***:

> ***"Res judicata is a matter properly to be addressed in limine as it does possess jurisdictional consequence because it constitutes a statutory peremptory preclusion of a certain category of suits. That much is clear from Section 7 of the Civil Procedure Act, 2010."***

27. We have considered what has been raised by the Objectors herein, and we do not find it being a mixture of law and facts, but only a pure point of law, and thus the objection herein meets the threshold of what amounts to a preliminary objection as described in the ***Mukisa Biscuits case(supra)***.

On whether the suit is res judicata.

28. Res judicata is anchored on Section 7 of the Civil Procedure Act which provides that:

> *"**No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or***

between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

29. The ***Civil Procedure Act*** provides explanations with respect to the application of the *res judicata* rule. Explanations 1-6 states thus:

''Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. —(4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. —(5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. —(6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.''

30. In ***Mulla, Code of Civil Procedure, 18th Ed 2012*** at page 293, it describes res judicata as follows:

*'**The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision."***

31. ***Black's law Dictionary 10th Edition*** defines "res judicata" as follows:

> ***"An issue that has been definitely settled by judicial decision…the three essentials are(1) an earlier decision on the issue,(2) a final judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties…"***

32. It is trite that the doctrine of ***res judicata*** exists to ensure finality in ***litigation, judicial efficiency, and public policy***, by preventing endless lawsuits, and by stopping parties from re-litigating matters already decided by a competent court, thus conserving court resources and granting conclusive closure to disputes. It is in the public interest that there be an end to litigation and prevents ***vexatious re-litigation***, ensuring judicial integrity and timely resolution. See the case of ***Kamunye & others vs Pioneer General Assurance Society Ltd [1971]EA 263.***

33. This ***doctrine of res judicata*** therefore prevents a situation where there are ***multiplicity of suits***, since it stops endless re-filing of the same claims, which would otherwise clog courts and increase costs. The doctrine also acts as a protection from harassment, by protecting individuals from being repeatedly harassed by the same legal claims.

34. We will borrow from the holding of the court in the case of ***Njangu Vs Wambugu and another Nairobi HCCC No. 2340 of 1991,*** where the court held;

> ***"if parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata.''***

35. Our courts have considered the import of ***Section 7*** of the ***Civil Procedure Act*** and Judicial opinion on this matter has been consistent that the test in the said provision must be demonstrated before a declaration of res judicata is made. In this regard, the Supreme court stated as follows in ***Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR):***

> ***"(317) The concept of res judicata operates to prevent causes of action, or issues from being relitigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent*** **proceedings….*****There are conditions to the application of the doctrine of res judicata: i. the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be***

directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title..."

36. The same court stated as follows in ***Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR:***

> ***"59. For res judicata to be invoked in a civil matter the following elements must be demonstrated: a. There is a former Judgment or order which was final; b. The Judgment or order was on merit; c. The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and d. There must be between the first and the second action identical parties, subject matter and cause of action."***

37. In the ***Mapelu case*** the petitioners sought for the following Orders:

i. A declaration that within the intendment of article 10 of the Constitution the respondents are bound by the key national values and principles, to have regard to human dignity, equity, social justice, inclusiveness, equality and human rights.

ii. ***A declaration that within the intendment of article 28 of the Constitution the respondents are bound to respect and protect the inherent dignity of the petitioners and individual owners of property in Reiyo, Enakishomi, Sisiyan, Enoosokon and Nkaroni Group Ranches.***

iii. ***A declaration that within the intendment of article 35(1) of the Constitution the respondents are bound to release all documents pertaining to the legal justification for the forceful eviction, alienation and destruction of private property in the ranches.***

iv. ***A declaration that within the intendment of article 40(3) of the Constitution the respondents cannot deprive the petitioners of their right to own property.***

v. ***A declaration that within the intendment of article 47(1) of the Constitution, the respondents are bound to provide administrative action that is lawful, reasonable and procedurally fair.***

vi. ***A declaration that within the intendment of article 47(2) of the Constitution, the respondents are bound to provide reasons for failure to provide written reasons for the forceful evictions.***

vii. ***A declaration that within the intendment of articles 63(4) & (5) of the Constitution, the***

respondents cannot alienate and illegally acquire property in the group ranches without proper regard to the law.

viii. A declaration that the forceful evictions and alienation of the group ranches to all the land comprising the group ranches, is inconsistent with the provisions of articles 10, 27(4), 28, 35(1), 47, 63(4) & (5) and 67(2)(f) of the Constitution, and is illegal, null and void.

ix. An order of permanent injunction be issued to restrain the respondents, their agents and persons acting under the authority of the respondents from interfering with the property rights of the petitioners and other residents who have acquired title deeds from the Government of Kenya in respect of the following former group ranches:

- ***a. Reiyo Group Ranch***
- ***b. Enakishomi Group Ranch***
- ***c. Sisiyan Group Ranch***
- ***d. Enoosokon Group Ranch, and***
- ***e. Nkaroni Group Ranch***

x. An order of prohibition against the respondents, their agents or persons acting under their authority and command, from evicting or in any manner whatsoever interfering with the petitioners' and other residents' ownership and quiet possession of

their property comprised in the following former group ranches:

a. Reiyo Group Ranch

b. Enakishomi Group Ranch

c. Sisiyan Group Ranch

d. Enoosokon Group Ranch, and

e. Nkaroni Group Ranch

xi. An order for compensation for:

a. General damages for infringement of rights of the petitioners under articles 10, 28, 35, 40, 47 and 63 of the Constitution.

b. Special damages for the destruction of property

c. Interests on (a) and (b) above at court rates.

xii. There be an order as to costs.

38. While in the instant petition they sought for the following Orders:

a) A declaration that the actions of Respondents are in violation of constitutional rights of the Petitioners and individual residents of land parcels within Cis-Mara/Koben/34, Cis-Mara/Ololulunga/ 110, Cis-Mara/ Ololulunga/115, Ilmotiok Registration Section/375, Osupuko Ololulunga Adjudication Section Map Sheet A, part of 132/III, 146/1 & 131/IV, allocated to members of the former Group Ranches; Reyio Group Ranch, Enakishomi

Group Ranch, Sisiya Group Ranch, Nkaroni Group Ranch, Enosokon Group Ranch and CCM Group specifically in violation of Articles 10,22, 23, 26, 27, 28, 29(d) and (f), 40 and 47 of the Constitution of Kenya.

b) An order that the Petitioners and individual owners of parcels within Cis-Mara/Koben/34, Cis-Mara/Ololulunga/ 110, Cis-Mara/ Ololulunga/115, Ilmotiok Registration Section/375, Osupuko Ololulunga Adjudication Section Map Sheet A, part of 132/III, 146/1 & 131/IV be compensated by the Respondents for violation of their constitutional rights and their illegal actions of threat to life, mass destruction of property and forceful evictions.

c) A declaration that actions of the Respondents have been discriminatory, inhuman and degrading against the Petitioners contrary to Articles 10, 27, and 28 of the Constitution of Kenya.

d) A declaration that 1st,2nd,3rd,4th,5th and 6th Respondents violated Articles 10, 27, 28, 35 and 47 of the Constitution in the manner in which they evicted ,demolished houses and business structures and other possessions belonging to the Petitioners, arrest and detention of the Petitioners without being charged and a declaration that the 1st,2nd,3rd,5th and 9th Respondents have abdicated

their constitutional and legal mandate and are therefore escapists.

e) An order of permanent injunction restraining the 1st,2nd,3rd,4th,5th and 6th Respondents by themselves, agents or servants, hirelings from invading, interfering with, or continuing to interfere with the quiet and peaceful enjoyment of the property rights of Petitioners and residents of land parcels within Mara/Koben/34, Cis-Mara/Ololulunga/ 110, Cis-Mara/ Ololulunga/115, Ilmotiok Registration Section/375, Osupuko Ololulunga Adjudication Section Map Sheet A, part of 132/III, 146/1 & 131/IV.

f) An order directed at the 1st, 3rd, 4th and 6th Respondents to forthwith, and in any event not later than 365 days from the date of judgement, to establish the existing boundaries of Petitioners, the 7th and 8th Respondents and clearly mark the same by erecting a fence to separate the forest from the excised land.

g) An order that upon clearly marking the boundaries as per prayer (f) above, the 1st and 6th Respondents to issue a 6 month notice of vacation to persons found to have illegally occupied part of the forest which has not been degazetted and or excised.

h) An order directed at the Respondents to initiate settlement of persons affected by prayers (f) and (g) herein above.

i) Compensation for all the Petitioners for unlawful eviction, denial of user and breach of fundamental and constitutional rights of the Petitioners assessed at kshs.10,000 per acre per year from the year 2020 until the date of the judgement.

***j) An order for costs of the petition*.**

39. We have carefully read and appraised the judgment of this Court in *'**Mapelu Case',*** wherein a three (3) judge bench on 13th October 2022 held as follows:-

"We are satisfied that the cross petition by the Cabinet Secretary, Ministry of Land and Physical Planning, Cabinet Secretary, Ministry of Interior & Co-ordination of National Government, County Commissioner, Narok County Commandant, Administration Police and the Attorney General ("the cross petitioners") has been proved on a balance of probabilities. Thus, we allow the same and we make the following consequential orders: -

1. A declaration is hereby issued that the subdivision of Reiyo, Enakishomi, Sisiyian, Enoosokon and Nkaroni Group Ranches beyond the initial acreage at the time of adjudication and first registration was irregular, unlawful, null and void and of no consequence and did not

confer to the respondents to the cross petition any proprietary rights over the land.

2. ***A declaration be and is hereby issued that the subdivided land that was over and above the initial registered acreage of the Group Ranches Land parcels comprised part of Maasai Mau Forest reserve and the same should be restored to the forest.***
3. ***An order is hereby issued that the land titles created following the subdivisions of Reiyo, Enakishomi, Sisiyian, Enoosokon and Nkaroni Group Ranches as set out under prayer (b) in the cross petition were obtained illegally, unlawfully and unprocedurally and hence a nullity ab initio, and constitute unlawful encroachment into the Maasai Mau Forest Reserve, and the said titles are hereby ordered nullified, cancelled and revoked.***
4. ***The respondents in the cross petition who may still be in the forest land (suit properties) are ordered to vacate with immediate effect and in any event within 90 days from the date of the judgment failing which an order of eviction shall issue against them.***
5. ***The respondents /cross petitioners in conjunction with the County Government of Narok are ordered and directed to carry out ground survey with a view of delineating and establishing the Maasai Mau Forest boundary by***

fixing beacons and/or permanent features designating the extent of the forest having specific regard to the initial acrearages of the registered adjudicated land to Reiyo, Enakishomi, Sisiyian, Enoosokoni and Nkaroni Group Ranches within a period of twelve months from the date of this judgment to ensure the forest is protected and conserved for posterity.

6. ***That once the Maasai Mau Forest boundary is established as under order (5) above, the respondents/ cross petitioners in order to protect and conserve the forest shall erect a perimeter fence on the portion of the forest abutting the land adjudicated to Reiyo, Enakishomi, Sisiyani, Enoosokoni and Nkaroni Group Ranches within 24 months from the date of the judgment and such fence once erected, shall be maintained by the Kenya Forest Service, the 9th respondent herein".***

40. In a nutshell, the court in the aforementioned consolidated petitions held that the aforesaid five (5) group ranches had unlawfully expanded their original adjudicated acreage into forest land. The court therefore revoked titles issued over excess land that was found to have been excised from the Maasai Mau forest and held that evictions from land that had extended to Maasai Mau forest were justified thus no compensation was awarded.

41. As noted at paragraph 3 herein, the petitioners in the instant petition filed the suit in their personal capacity and on behalf of individual landowners in the former group ranches of ***Reyio, Enakishomi, Sisiyan, Nkaroni, Enosokon*** and ***CCM***. There is commonality in this suit and the former suit in the subject matter, being the aforementioned five (5) former group ranches. However, CCM group ranch appears as an additional entity in the present proceedings.

42. We note the petitioners actually admit at paragraph 3 of their supporting affidavit to the instant petition as follows:-

> ***"That Petitioners land had been clearly earmarked for grazing, farming and settlement by the government and allocated the said land through the former group ranches: Reyio Group Ranch, Enakishomi Group Ranch, Sisiyan Group Ranch, Nkaroni Group Ranch, Enosokon Group Ranch and CCM Group Ranch formed and registered under the now repealed Land (Group Representatives) Act, 1968 and comprising of over 15,000 members. The ranches held the said land in trust of their members".***

43. We note that at paragraph 36 of the instant petition, the petitioners also plead as follows:

> ***"That the Petitioners are not occupiers of any forest block, Mau Narok or Maasai Mau or***

otherwise, they are behind a clear cutline established by Tea Zones managed by the 8th Respondent and beacons placed by the 1st and 4th Respondents."

44. Additionally, we view the inclusion of ***CCM group ranch*** as a minor variation, done to intentionally obviate the doctrine of res judicata. We hold this view, with consideration that as pleaded, the said group ranch is in the same block as the rest of the five (5).

45. In the case of ***ET vs Attorney General & another (2012) eKLR,*** it was held that:

> ***"The courts must always be vigilant to guard litigants evading the doctrine of res- judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a*** **court of competent jurisdiction.** ***In the case of Omondi s NBK & Others (2001) EA 177 the court held that "parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit". In that case the court quoted Kuloba J, (as he then was) in the case of Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991***

(unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of doctrine of res judicata…..". *emphasis added*

46. While the petitioners contend in their submissions that the parties in the two suits are different, we note that the petitioners herein describe themselves as representatives of landowners within the same group ranches that formed the subject matter of the earlier proceedings. Further, in the earlier proceedings, the 157 Petitioners were representing land owners in the impugned ranches. We therefore do not find it difficult to hold that while the Petitioners' names in this suit may be distinct from those in the former proceedings, they all litigate under the same title. See the case of ***Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another [2016] eKLR*****,** where the Supreme Court stated that:-

"The doctrine of* res judicata, *in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog

the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively". *Emphasis Mine.*

47. Finally, the petitioners contend that the doctrine of *res judicata* does not apply to constitutional petitions. In ***Kamunye & others v Pioneer General Assurance Society Ltd [1971] EA 263****,* the Court of Appeal found that the doctrine of res judicata is applicable to constitutional litigation just as in other civil litigation as it is a doctrine of general application with a rider however, that it should be invoked in constitutional litigation in '*rarest and in the clearest of cases*'.

48. In this context, the Supreme court defined '*rarest and clearest*' of cases in ***John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment)*** and stated thus:-

"84. Just as the Court of Appeal in its impugned decision noted that rights keep on evolving, mutating, and assuming multifaceted dimensions it may be difficult to specify what is rarest and clearest. We however propose to set some parameters that a party seeking to have a court give an exemption to the application of the doctrine of res judicata. The first is where there is potential for substantial injustice if a court does

not hear a constitutional matter or issue on its merits. It is our considered opinion that before a court can arrive at such a conclusion, it must examine the entirety of the circumstances as well address the factors for and against exercise of such discretionary power.85. In the alternative a litigant must demonstrate special circumstances warranting the court to make an exception."

49. Flowing from the above decision, we have examined the entirety of the issues raised herein, including the Judgement in the ***Mapelu Case,*** we therefore conclude that as far as the subject matter in both suits is concerned, save for inclusion of a group ranch christened ***CCM*** in these proceedings, the rest of the five (5) group ranches in issue herein were in issue in the former suit. We hasten to add that the cause of action herein is similar to that in the former suit, where the Petitioners challenged their forceful eviction and other private owners of individual property of all that land comprising the ***Reiyo, Enakishomi, Sisiyan, Enoosokon*** and ***Nkorani Group ranches***. Further, that the reliefs sought in both suits are similar and as earlier mentioned, they include declarations of constitutional violations compensation for alleged illegal evictions, injunctive orders among other prayers.

50. We come to the inescapable conclusion that judgement of the Court in the ***Mapelu Case*** was delivered in ***13th October 2022*** while the instant petition was filed in 2024 after ***evictions*** are said to have taken place in the year 2020. We opine that the Court cannot deal with issues that were dealt with in the former

suit, but purportedly issues said to have arisen post judgment are in our view a tactic to frustrate the Respondents from enjoying the fruits of the judgment. To our mind, the petitioners cannot litigate in piecemeal and expect to find audience in this court.

51. Based on the facts before Court, while associating ourselves with the decisions cited as well as the legal provisions quoted, and applying them to the circumstances at hand, we find that the fulcrum of the dispute herein is similar to the two previous petitions. We note from the Petition, that they seem to seek to restore the status quo ante, before ***Mapelu*** judgement, but we opine that since a court of competent jurisdiction already heard and determined the issue of the boundaries in respect to the aforementioned group ranches, they cannot turn around to claim proprietary rights on the suit properties so as to re litigate on its title. We hence find that the parties in both the ***Mapelu Case*** and the instant Petition were litigating under the same title.

52. Further, we find that ***a competent court*** heard the matter in issue. To our mind, we find that the Petitioners cannot purport to bring forth another suit on the issues that the representative parties had litigated upon and now seeks to direct their wrath upon different parties. It is my trite that Litigation must come to an end and the Petitioners should not be allowed to bring forth another suit on the same title, whose validity had been dealt with.

53. It is against the foregoing that we find that the instant Petition is indeed res judicata, and cannot be allowed to proceed.

54. In the circumstances, we find the instant Notice of Preliminary Objection ***merited,*** finds the ***Petition*** herein *Res judicata*, and will proceed to ***strike it out*** entirely.

55. Since this is a matter of public interest, we direct that each party to bear their own costs.

It is so ordered.

Date Signed and Delivered Virtually at this 23rd day of April, 2026

LUCY N. GACHERU
JUDGE

CHRISTINE A. OCHIENG
JUDGE

CHARLES G. MBOGO
JUDGE

Delivered online in presence.
Elijah Meyoki - Court Assistant
Mr Mwandaje for the Objectors (1st, 2nd ,3rd, 4th, 5th & 9th Respondents)
KKC for the Petitioners present on the platform, but not responding.
N/A for 6th & 8th Respondents