



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
MISCELLANEOUS APPLICATION NO. E026 OF 2025

IN THE MATTER OF: AN APPLICATION BY KAKUZI PLC FOR LEAVE TO APPLY ORDERS OF TEMPORARY ORDERS INCLUDING INTERDICT/STAY, RESTRAINING ORDERS, CERTIORARI, PROHIBITION, AND DECLARATORY ORDERS

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION AMENDMENT ACT, FAIR ADMINISTRATION ACTION ACT, AND THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE DECISIONS OF THE NATIONAL LAND COMMISSION DATED 14TH NOVEMBER 2025 AND PUBLISHED ON 17TH NOVEMBER 2025

BETWEEN

KAKUZI PLCAPPLICANT

AND

1. NATIONAL LAND COMMISSION1ST RESPONDENT
2. MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT (DIRECTORATE OF LAND ADJUDICATION AND SETTLEMENT).....2ND RESPONDENT
3. MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 3RD RESPONDENT
4. THE COUNTY GOVERNMENT OF MURANG'A 4TH RESPONDENT
5. KAKUZI DIVISION DEVELOPMENT ASSOCIATION5TH RESPONDENT
6. KITUAMBA KALOLENI IDPS6TH RESPONDENT
7. MILIMANI COMMUNITY7TH RESPONDENT
8. HANNAH NJOKI MWANGI..... 8TH RESPONDENT
9. INSPECTOR GENERAL, KENYA NATIONAL POLICE SERVICE9TH RESPONDENT

RULING

(1)This ruling is on the Chamber Summons dated 19-11-2025. The summons which is by the Applicant is brought pursuant to **Sections 4(3), 7(1) , 2(a), (c), (d), (e), (g), (h), (i), (j), (k), (m), (n) and (o), 9(1), 11(1) and (2)** of the Fair Administrative Action Act, **Sections 15(12)** of the National Land Commission Act, **Articles 10(1), (2) (a) and (c) and 22(1), 22(1), 23(3)**

(a), (c) and (f), 25 (c), 40(1) and (3) , 47 (1) and(2) and 50(1) of the Constitution of Kenya and all other enabling provisions of the law.

(2)The summons seeks the following residual orders.

2. That leave be granted to the Applicant to apply for an order of certiorari and or quashing/cancellation of the recommendations in the Gazette Notice published on 17-11-2025 in respect of Gazette Notice Vol. CXXVII No. 230 dated 14-11-2025 in so far as it relates to NLC/HLI/006/2017, NLC/HLI/168/2018,NLC/HLI/580/2019 and NLC/HLI/3718/2021.
3. That leave granted to the Applicant to apply for an order of prohibition prohibiting the Ministry of Lands, Public works, Housing and Urban Development(Directorate of Land Adjudication and Settlement)and Director of Land Adjudication and Settlement from implementing the recommendations in Gazette notice published on 17-11-2025 in respect of Gazette Notice Vol. CXXVII- No.230 dated 14-11-2025 in so far as it relates to NLC/HLI/006/2017, NLC/HLI/168/2018, NLC/HLI/580/2019 and NLC/HLI/3718/2021.
4. That leave be granted to the Applicant to apply for a Declaratory order that the 1st Respondent's recommendations in Gazette Notice published on 17-11-2025 in respect of Gazette Notice Vol. CXXVII – No. 230 dated 14-11-2025 in so far as it relates to NLC/HLI/006/2017, NLC/HLI/2018, NLC/HLI/580/2019 and NLC/HLI/3718/2021 and unlawful, made in excess of jurisdiction, tainted with illegality for contravening Articles 10(1) (2) (a), 40(1) , 40(3) 47(1), 47(2), 21(1) 25(c) and 50(1) of the Constitution, Sections 4(3) and (4) of the Fair Administrative Actions and Section 15(a) of the National Land Commission Act and are consequently null and void.
5. That the grant of leave does operate as a stay order and or temporary interdict staying the implementation of the Gazette notices mentioned in paragraphs 2,3, and 4 above in as far as it relates to the four determinations by the 1st Respondent's mentioned in paragraphs 2,3, and 4 above pending the determination of these judicial review proceedings.
6. That the 5th-8th Respondents members, representatives, servants and/or agents, and/or, and or assigns and other trespassers be restrained from entering, constructing and structures, farming, using, occupying, surveying, developing, interfering in any manner whatsoever with the parcels of land known as L.R. 11674 and L.R. 19731.
7. That the OCPD and OCS of Makuyu and Kenol Police Stations do forthwith ensure compliance with and enforcement of order Nos. 5 and 6.
8. That the costs of this application be in the cause.

(3)The summons is based on six(6) grounds and is supported by an affidavit by Simon Odhiambo dated 18-11-2025 and a further affidavit dated 16-2-2026. The essence of the six grounds and two affidavits is as follows. Firstly, the 5th -8th Respondents filed historical injustice claims with the 1st Respondent in four claims namely NLC/HL1/006/2017, NLC/HL1/168/2018, NLC/HL1/580/2019 and NLC/HL1/3718/2021; The Applicant filed its response and the claims were heard and 8th Respondent did not file any claim against the Applicant.

(4)Secondly, the 1st Respondent in the Kenya Gazette dated 14-11-2025 issued eight (8) recommendations.

- (i) The Applicant to surrender 3200 acres or approximate land to settle the most vulnerable members of the claimants as a final settlement on any claims against the Applicant.**
- (ii) The Ministry of Lands in consultation with the Ministry of Interior and National Administration to vet and profile to vet, profile and settle the vulnerable members accordingly.**
- (iii) The Director of Land Adjudication and Settlement in consultation with the Applicant and any other relevant Government institution to regularize the settlement schemes within Kakuzi land by enabling titling where pending and conclude the settlement in phase V and any other of the settlement schemes within Kakuzi land.**
- (iv) In consultation with the relevant Government institutions and departments document and regularize public utilities to the relevant institutions and departments.**
- (v) The Respondent Kakuzi PLC to relocate Schools and Public utilities with challenges in access closer to the people and in the alternative provide proper access roads. This to be done in consultation with the public/users as well as other relevant Government institutions and departments.**
- (vi) Kakuzi PLC to regulise and document all surrendered land to the County Government of Murang'a i.e. Market centres and any other public utilities and amenities.**
- (vii) That further and in consultation with the County Government of Murang'a, Kakuzi PLC surrenders at least 50 acres of land in an appropriate location solely for public purpose, for the development of an urban Centre or any**

other public utilities and amenities in exchange of the 5 acres which have been identified.

(viii) The 1st Respondent has despite several requests failed to furnish the Applicant with the determination. This is very concerning behavior and is an outright breach of Article 10 of the Constitution that the 1st Respondent published the recommendations in the Kenya Gazette without furnishing the Applicant with the decisions.

(5) Thirdly, after the Kenya Gazette of 17-11-2025, the 5th Respondent's members invaded the suit property and began to plant bananas on 18-11-2025. The Court should not countenance these illegal actions of impunity. The first Respondent's determination has resulted in anarchy and this will cause irreversible damage to the Applicant by changing the character of the suit property.

(6) Fourthly, the determination ought to be reviewed for the following reasons. One, the 1st Respondent has no jurisdiction under **Section 15(9)** of the **National Land Commission Act** to issue the directive that the Applicant should surrender 3,200 acres. The directive is illegal, null and void as *initio* and a breach of **Article 40(1)** of the Constitution. Two, the Applicant has invested approximately Kshs 11 billion which includes biological assets, land, development, buildings, dams, plant and machinery, furniture, fittings, capital, work in progress etc. The surrender of 3,200 acres will harm the Applicant's 1400 shareholders. Three, the directive by the 1st Respondent creates a negative precedent and risk to the Kenyan economy. Four, the directive contravenes **Sections 4(3) (a) and (b)** of the **Fair Administrative Action Act**. Five, the directive in respect of the documentation and regularization of public utilities, market centres and relocation of schools has no basis and foundation under **Section 15(a)** of the National Land Commission Act. The said directive is vague ambiguous, unreasonable and the 1st Respondent failed to consider relevant evidence adduced by the Applicant in respect to the school. Six, the 1st Respondent has no jurisdiction whatsoever to issue a directive that the Applicant should surrender at least 50 acres to the 4th Respondent. This directive is strange, lacks transparency and is made with ulterior motives because the 4th Respondent never filed any claim for land allocation and was not a claimant. It does not relate to an historical land injustice claim whatsoever and is completely illegal. No hearing was conducted in respect of this directive.

For the above and other reasons, the Applicant urges that the court issues temporary interdicts /stay orders and other necessary temporary orders which should be enforced by the OCPD and OCS Makuyu and Kenol Police Stations.

(7)The summons is opposed by all the Respondents except the 4th and 8th Respondents. The Attorney General (AG) on behalf of the 2nd, 3rd and 9th Respondents has raised five (5) grounds in the notice of preliminary objection dated 5-2-2026. The following are the grounds raised by the Attorney General.

- (a) The chamber summons is frivolous, misconceived and amounts to an abuse of the Court process, as it seeks to re-litigate land ownership issues through an improper procedure.**
- (b) The court lacks jurisdiction to entertain the chamber summons as framed, the impugned findings having been lawfully made by the National Land Commission pursuant to its extended mandate under Section 14 of the National Land Commission Act, Act No. 5 of 2012 read together with Section 6 of the National Land Commission (Extension of Mandate) Act.**
- (c) The Applicant has failed to demonstrate any jurisdictional error, illegality or procedurally impropriety capable of attracting the supervisory jurisdiction of this court.**
- (d) The Applicant's grievances go to the merits, correctness and evidential basis of the findings of the National Land Commission rather than the decision making process.**
- (e) Judicial Review proceedings are concerned with legality, rationality , procedural fairness, and jurisdiction, and not with the re-evaluation of evidence or substitution of the court's views for those of a statutory body. The Attorney General seeks that the Chamber Summons dated 19-11-2025 be struck out and or dismissed with costs.**

(8)In opposing the Chamber summons, the first Respondent has filed a replying affidavit through Brian Ikol, the director legal affairs and dispute resolution. The affidavit which is dated 2-12-2025 is to the following effect. Firstly the 1st Respondent has a constitutional mandate under **Article 67(1) (e)** of the Constitution to deal with complains of historical land injustices and recommend appropriate redress. It was in exercise of this mandate that it received several complaints against the Applicant from the 5th, 6th, 7th and 8th Respondents. Secondly, after conducting its own investigations in regard to the above mentioned matters on various dates

with main hearings on 30-1-2024, 28-2-2024 and 29-2-2024 all parties were granted adequate opportunity to be heard. Thirdly, after extensive investigations, considerations of the complainant's submissions and scrutiny of the documents the 1st Respondent produced a well-informed determination dated 14-11-2025 and gazetted vide gazette notice Vol. CXXVII-No. 230 of 14-11-2025. Fourthly in dealing with the complaints by the four Respondents, the 1st Respondent complied with the provisions of **Articles 40, 47,50,60,64 and 234** of the Constitution, the Fair Administrative Action Act and Section 15 of the National Land Commission Act by conducting its investigations in strict compliance with the provision of the law. Fifthly, the summons herein is premature and raises no cause of action in view of the recommendations and the Applicant should await the onset of the processes towards the realization of the recommendations and raise their objections or issues accordingly.

(9) In opposing the summons, the 5th respondent filed a replying affidavit through its Chairman Daniel Mwangi Kamau. The affidavit which is dated 14-1-2026 is to the following effect. One, the 5th Defendant has a membership of over 3,681 members who are citizens of Kenya and whose ancestors owned LR. No. 10731 and 11674 (21211) within Kakuzi area. These members form the majority of the local community that were historically settled in the area before the white settlers came to Kenya. The colonial administration forcibly grabbed the suit land after burning down the homes of the occupiers of the land and confiscating their livestock. Two, when the colonialists left, instead of the Government of Kenya settling the members of the 5th Respondent on the suit land, it amalgamated over 26,618 acres of the said land under lease No. 10731 in favour of Kakuzi fibre lands limited. This was in 1962. In 1966, a lease of 12,705 acres was issued to Sisal Limited for a period of 941 years (21211). The Government of Kenya knew that this land belonged to members of the 5th Respondents who are the descendants of the original owners of the land. Three, under **Article 67(1) of the constitution**, the 1st Respondent was created with one of its mandates being,

“ to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommended appropriate redress. ”

Four, under the above provision of the Constitution as well as **Section 15 of the National Land Commission Act**, the 5th Respondent filed a claim with the 1st Respondent. Five, the

claim went through pretrial motion and when it was due for hearing, the Applicant filed **Petition No. 255 of 2018** against the Attorney General and the 1st Respondent. Once the Applicant obtained conservatory orders it did not prosecute the petition. The petition was later consolidated with **Malindi ELC Petition No. 11 of 2020** which raised similar issues. In the end, a 3 Judge bench found that Section 15 of the National Land Commission Act did not contravene any provisions of the Constitution and was therefore Constitutional. Six, after the 5th Respondent filed their claim, the Applicant was served and filed a response. The claim was heard on 30-1-2024, 28-2-2024 and 29-2-2024 and all parties were granted adequate opportunity to be heard. There was even a site visit where the Applicant was adequately represented by its management and counsel. All the rights of the Applicant under the Constitution, the Fair Administrative Action Act and the National Land Commission Act were and are still being upheld. It was granted a fair hearing throughout the process and the administrative process has been lawful and above board and all the principles of natural justice adhered to. Seven, Section 15(a) of the National Land Commission Act provides for restitution which is what the 1st Respondent did in awarding 3,200 acres of land to the Respondents. On settlement, it is the Applicant who came up with the issue of having ceded land to the public. There are public utilities on the Applicant's land which the Applicant had declined to surrender to the Government and to grant member of the public access to. **Section 15(a) (1c)** of the Act grants the 1st Respondent power to make any declaratory orders in furtherance of its mandate in administering public land. Even though the 5th Respondent claimed more than 39,000 acres, the 1st Respondent recommended the surrender of only 3,200 acres. The 5th Respondent contends that most of the decisions of the 1st Respondent were in favour of the Applicant which did all that it could to stall the case, try to control how the investigations were carried out, which part of the land would be visited and which installations were to be seen. It hid the unused portions of the land. Finally, no bias has been proved by the Applicant, no invasion by the 5th Respondent has taken place and no cause of action shown and the motion should be dismissed with costs.

- (10) The 6th respondent has sworn a replying affidavit dated 19-1-2026 through its Chairman, Mutavi Matheka, in which the following is deposed. One, the 6th Respondent comprises of a group of approximately 188 members who are currently living at Ndula Settlement Scheme

as internally displaced persons. Two, in the years 1989 and 1990, they were brutally evicted from their ancestral land by security guards action on behalf of the Applicant. They were rendered landless and displaced without compensation, resettlement or any alternative remedy. Three, since their eviction, most of the land that they occupied has remained under the occupation of the Applicant. Finally, the Applicant fully participated in the case heard by the 1st Respondent. The process was transparent inclusive and consistent with the requirements of fairness and natural justice. The current application is an attempt to defeat a constitutionally sanctioned process.

(11) The 7th Respondent has opposed the summons through its Chairman, Samuel Ndata, who has sworn a replying affidavit dated 19-1-2026. In the said affidavit he swears that the 7th Respondent comprises of approximately 2000 families whose forefathers occupied the suit land before colonial alienation. Secondly, the 1st Respondent conducted the investigations fairly and the Applicant was given an opportunity to participate, file responses and to be heard. Its allegations of bias and procedural unfairness and not true.

(12) Counsel for the Applicant filed written submissions dated 13-2-2026 and rejoinder submissions dated 2-4-2026. The only other submissions that I have seen are by the Attorney General and they are dated 4-3-2026 and finally by the 5th Respondent dated 12-3-2026.

The Applicant identified two issues for determination.

(a) Whether the Applicant should be granted leave to file an application for judicial review.

(b) Whether stay/conservatory/temporary interdicts should be issued halting the implementation of the 1st respondent's determination.

The Attorney General identified two issues.

(a) Whether the preliminary objection is proper.

(b) Whether this court has jurisdiction.

The counsel for the 5th Respondent has not identified clear cut issues but the submissions bring up the following issues.

(a) Whether the 1st Respondent acted in excess of jurisdiction under Section 15 (a) of the National Land Commission Act.

- (b) Whether the recommendation were published outside the tenure of the commission.
- (c) Whether the directives to regularize settlement schemes, document public utilities and surrender of 50 acres to the County Government of Murang'a were lawful.
- (d) Whether the 1st Respondent was biased and exhibited bad faith against the Applicant.

- (13) I have carefully considered the summons in its entirety, including the grounds, the verifying affidavit, the statutory statement and the further affidavit all by the Applicant. I have also considered the replying affidavits filed on behalf of the 5th, 6th and 7th Respondents and the notice of preliminary objection by the Attorney General. Finally, I have considered the written submissions by the Applicant; the 2nd, 3rd and 9th Respondent and the 5th Respondent as well as the rejoinder submissions by the Applicant. I find that the issues as identified by the parties will resolve this dispute.
- (14) Starting with whether the 1st Respondent acted in excess of jurisdiction under Section 15(a) of the National Land Commission Act, I find that the 1st Respondent did not act outside its jurisdiction as set out in Section 15 of the Act. The 5th, 6th and 7th Respondent's members' claims were to the effect that their ancestral land was taken away by the colonial government in the early 20th Century. It meets that test set out in subsections 2,3, and 4 (a) of Section 15 of the Act. Again under Section 15(1) and (9) of the Act, the 1st Respondent has the mandate to not only investigate a historic land injustice claim but make various recommendations which include restriction, compensation, resettlement among other redresses.
- (15) Regarding the issues whether this court has supervisory jurisdiction over the 1st Respondent, I find that it has. Under **Section 13(7) (b) of the Environment and Land Court Act (Act No. 19 of 2011)** it is provided as follows-

**“ In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just , including
(b) prerogative orders”**

Since the summons by the Applicant concerns to right to use, occupy and title to land then this is the appropriate court to deal with it. The High Court's jurisdiction is ousted by **Articles 162(2) (b) and 165 (5) (b)** which expressly provide that the High Court has no jurisdiction in environment and land cases.

- (16) Regarding the date of the publication of Gazette notice by the 1st Respondent, Simon Odhiambo states as follows at paragraph 4 of the affidavit dated 18-11-2025.

“ That I am advised by Ms. Esther Kinyenje-Opiyo, a partner with Kaplan and Stratton Advocates, which advice I believe to be true that the recommendations were published on 17-11-2025 which is outside the tenure of the commission which ended on 14-11-2025. The said recommendations are consequently invalid.”

The deponent to the affidavit has not annexed any evidence to prove that the tenure of the 1st Respondent ended on 14-11-2025. He himself does not know and relies on someone else to inform him. I find no proof that the term of the 1st Respondent ended on 14-11-2025. Even if that were the case, the Gazette notice itself is dated 14-11-2025 and there is no evidence that there was no transition period for the 1st Respondent to hand over to the new officials. Since the 1st Respondent is a permanent commission, it would be expected that even after the commissioners left office, the business of the commission would continue. Finally, there was no timeline within which to complete the task by the 1st Respondent. **Article 259 (8)** of the Constitution provides as follows.

“ If a particular time is not prescribed by this constitution for performing a required act, the act shall be done without unreasonable delay, and as often as the occasion arises. ”

Further to this, under **Order 50 rule 3** when time expires on a Sunday or on a day offices are closed, then those days do not count in the reckoning of time. The rule states.

“ When the time for doing any act or taking any proceeding expires on a Sunday or any other day on which the offices are closed, and by reasons thereof, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.”

Since 14th November 2025 was a Friday and next day the offices were open was 17th November 2025, I find that the publication of Gazette Notice on 17-11-2025 was proper and within the Constitution and the Civil Procedure Rules.

- (17) It is my finding that the directives to regularize the settlement schemes, document public utilities and the surrender 50 acres to the County Government of Murang'a were lawful because under Section 15(a) of the Act, the 1st Respondent had jurisdiction to make such a recommendation. Secondly, the 1st Respondent took time to visit the land, interview the parties, hear their evidence, consider their submissions and conduct further investigations by interviewing the relevant government agencies and individuals. The recommendation was well thought out.
- (18) From the evidence filed by the Applicant and the response by the 5th Respondent, I do not find any evidence of bias or bad faith on the part of the 1st Respondent against the Applicant. The determination is about 31 pages 14 of which contain the material by the Applicant. This is a whopping 45% of the entire determination This does not demonstrate bias or bad faith. It demonstrates fair hearing accorded to the Applicant.
- (19) As to whether, the preliminary objection by the Attorney General is proper, I find that it is not proper. It has been held by the Court of Appeal that Judicial review is no longer purely procedural. It allows limited interrogation of the merits. In the case of **Board of Trustees, Telposta Pension Scheme vs. Retirement Benefits Tribunal and 3 Others Civil Appeal No. E767 of 2023** it was held as follows, inter alia, quoting from the case **of Suchan Investment Ltd. Vs. Ministry of National Heritage and Culture 2016 eKLR.**
- “Analysis of Article 47 of the Constitution as read with the Fair Administrative Action Act reveals the implicit shift of judicial review to include aspects of merit review of administrative action. Section 7 (2) (f) of the Act identifies abuse of discretion as a ground for review while Section 7(2) (k) stipulates that an administrative action can be reviewed if the impugned decision is unreasonable. Section 7(2) (k) subsumes the dicta and the principles in the case of Associated Provincial Picture Houses Limited vs. Wednesbury Corp[1948] 1KB223 on reasonableness as a ground for judicial review...”**

Since the Court is not just concerned with the correctness of the procedure, I find **no merit** in the preliminary objection.

- (20) Coming to the Applicant's issues, I find that the Applicant should not be granted leave to file an application for judicial because it has not been able to demonstrate that the procedure laid out in the Fair Administrative Action Act or the National Land Commission Act was not followed in arriving at the determination dated 14-11-2025. Secondly, the Applicant has not shown that the determination was without merit.
- (21) Finally and for the reasons already given, I find that stay/conservatory/temporary interdicts should not be issued halting the implementation of the 1st Respondent's determination because the Applicant has not proved it is entitled to the orders of judicial review.
- (22) In conclusion, I find **no merit** in the summons dated 19-11-2025 which I **dismiss** the costs to the 5th, 6th and 7th Respondents.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 27th day of April, 2026.

**M.N. GICHERU
JUDGE**

Delivered online in the presence of; -

Court Assistant – Anthony
Applicant's Counsel – Mrs Opiyo
1st Respondent's counsel – Absent
2nd, 3rd and 9th Respondents' Counsel – Absent
5th Respondent's Counsel – Miss Maranya
5th Respondent's Counsel – Mr Ambani
6th Respondent's Counsel } Miss Magugu
7th Respondent's Counsel }
8th Respondent's Counsel – None
4th Respondent's Counsel – None