

**IN THE COURT OF APPEAL
AT NAKURU**

**[CORAM: WARSAME, MATIVO & GACHOKA
JJ.A] CIVIL APPEAL NO. NAK E013 OF 2026**

BETWEEN

**RESOLUTE COMMUNITY BASED
ORGANIZATION**

.....
APPELLANT

AND

**LIVINGSTONE KUNINI NTUTU.....1ST RESPONDENT
COUNTY GOVERNMENT OF NAROK.....2ND
RESPONDENT
THE HON. ATTORNEY GENERAL.....3RD RESPONDENT**

*(Being an appeal from the judgment and decision of the
Environment and Land Court of Kenya at Narok (C.
Mbogo, J.) dated 6th March 2025*

in

ELC Case No. 21 of 2021)

JUDGMENT OF MATIVO, JA

1. This appeal seeks to overturn the judgment rendered by Mbogo, J. on 6th March 2025 in **Ntutu vs. County Council of Narok & 2 Others (Environment & Land Case 21 of 2021) [2025] KEELC 1064 (KLR) (6 March 2025) (Judgment)**. On 27th January 2026 when this appeal came up for hearing, this Court drew the parties' attention to **Civil Appeal No. E052 of 2025**, which was also coming up for hearing the same day in which the appellant was also seeking to overturn the same judgment. However, the

Court's suggestion to the parties in the two appeals that the appeals be consolidated was resisted

by the parties in both appeals, except the appellant in this appeal. I therefore heard the two appeals separately notwithstanding the fact that they arose from the same judgment and the issues involved are substantially identical.

2. Consolidation of suits saves costs, time and effort and makes the conduct of several actions more convenient by treating them as one action. The rationale behind the consolidation of matters is to avoid conflicting judgments, save time and money by clubbing together matters involving common questions of fact and law. Consolidation of suits assists in achieving the overriding objective of expeditious and proportionate disposal of cases.
3. I have nevertheless addressed our minds to the issues urged by all the parties in this appeal which is basically substantially a replica of the arguments advanced in E052 of 2025. Therefore, rehashing the same arguments here will add no value because the outcome will not be different. The upshot of the foregoing is that the judgment of this Court rendered in **E052 of 2025** and the orders issued in the said judgment shall apply to this case. Consequently, I

hereby issue similar orders as follows:

- a) ***The judgment rendered by Mbogo, J. on 6th March 2025 in Ntutu vs County Council of Narok & 2 others (Environment & Land Case 21 of 2021) [2025] KEELC 1064 (KLR) (6 March 2025) (Judgment) all is hereby set aside in its interest together with all the consequential orders arising from the said judgment.***
- b) ***Civil Suit No ELC 21 of 2021, Livingstone Kunini Ntutu vs County Council of Narok and 2 others is hereby remitted to the ELC for hearing and determination by any other judge other than Mbogo, J. in line with the Supreme Court Decision in Narok County Government vs Ntutu & 2 Others (Petition No. 3 of 2015) [2018] KESC 11 (KLR) (11 December 2018) (Judgment). We direct that the case shall be heard on priority basis.***
- c) ***For avoidance of doubt, the stay of execution orders issued by this Court on 16th July 2025 is hereby vacated in its entirety and the parties are returned to status quo prior to the impugned judgement. Effective from the date of this judgment, the control of the land in dispute shall revert to the appellant until the hearing and determination of the suit. Further, the 1st respondent should account and refund all the monies that it has collected during the pendency of the stay order.***
- d) ***Each party shall bear its own costs.***

4. This judgment is delivered pursuant to Rule 34 (4) of the Court of Appeal Rules, 2022 since Warsame, JA (who had concurred with this opinion) was elevated to the Supreme Court before the delivery of this judgment and has therefore ceased to be a member of this Court. Nonetheless, because Gachoka, JA also

agrees with this opinion, this shall be the judgment of the Court.

Dated and delivered at Nakuru this 8th day of May, 2026.

J. MATIVO

.....
JUDGE OF APPEAL

*I certify that this is a true copy of the original.
Signed.*

DEPUTY REGISTRAR.

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CONCURRING JUDGMENT OF GACHOKA, JA

I have had the privilege of reading the erudite judgment authored by my learned brother, *Mativo, JA*. I am in complete agreement with the reasoning and the ultimate outcome of this appeal. I have nothing useful to add.

Dated and delivered at Nakuru this 8th day of May, 2026.

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

Signed.

DEPUTY REGISTRAR.