



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

PETITION NO. E001 OF 2025

IN THE MATTER OF: - A petition by **SUSTAINABLE DEVELOPMENT INITIATIVE (SDI) (CBO) and STEPHEN WAWERU KAMAU** (Suing on his own behalf and on behalf of 75 others residents and/or inhabitants of Nguthuru village, Kandara Sub-County, Murang'a County).

IN THE MATTER OF:-A class-Action Lawsuit in respect of Rights over improper Discharge of Wastewater and Solid Waste and Generation of Excessive Vibration into The Environment, Leading to Severe Environment Pollution, Land and property Degradation. Contrary to the Provisions of the Constitution of Kenya and Relevant Environmental Laws, Treaties and Regulations.

IN THE MATTER OF:-The right to a Clean and Healthy Environment, the Obligation to Protect and Conserve the Environment, and the Right to Seek Legal Redress in Case of Environmental Degradation and Pollution.

IN THE MATTER: - **The Constitution of Kenya: Article 10, 22(1) ft. (2).3(3) a), ft (f), 25(a), 28, 29(f)**

IN THE MATTER OF:-The Environment Management and Coordination Act (EMCA) NO.5 of 2015: Sections 3, 71(1), 72, 73, 74, 75, 84,86,87,93 and 111.

IN THE MATTER OF:-The Environment and Land Court Act, 2011: Section 18(a)

IN THE MATTER OF:-Environment Management and Coordination (Water Quality) Regulations of 2006.

IN THE MATTER OF:- Environment Management and Coordination (Air Quality) Regulations
of 2014.

IN THE MATTER OF: - The Environment Management and Coordination (Noise and Excessive Vibration Pollution (Control) Regulations (2009).

IN THE MATTER OF:-The Environment Management and Coordination (Waste Management) Regulations of 2006.

IN THE MATTER OF:-The Public Health Act: Sections 115,116 and 118(1) (e) and (o).

IN THE MATTER OF: - The African Charter on Human Right (Banjul Charter): Article 24

IN THE MATTER OF: - The Rule in Rylands Fletcher.

BETWEEN

SUSTAINABLE DEVELOPMENT INITIATIVE (SDI) (CBO).....1ST PETITIONER

STEPHEN WAWERU KAMAU Suing on his behalf and

On behalf of 75 others and /or inhabitants of

Nguthuru Village, Kandara Sub-County, Murang'a County.....2ND PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL1ST RESPONDENT

THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT,

CLIMATE CHANGE, AND FORESTRY.....2ND RESPONDENT

THE CABINET SECRETARY, MINISTRY OF HEALTH3RD RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....4TH

RESPONDENT

COUNTY GOVERNMENT OF MURANG'A.....5TH RESPONDENT

PERSEA OILS AND ORCHARDS LIMITED.....6TH

RESPONDENT

JUDGMENT

(1)The 76 Petitioners in this petition seek the following reliefs against the Respondents.

1. That a declaration be and is hereby issued that the Respondents' actions by way of improper discharge of wastewater and solid waste and generation of excessive vibration pollution and air pollution are in violation of the Petitioners' right to a clean and healthy environment.
2. That an order be issued compelling the 6th Respondent to immediately and without further delay cease the improper discharge of wastewater and solid waste and generation of excessive vibration pollution beyond its property boundaries until appropriate waste and pollution management systems are put in place and approved by the 4th Respondent.

- 3. That this Court do direct that the 4th and 6th Respondents do immediately, and in any event within ninety(90) days from the date of judgment herein, come up with, and effect, a comprehensive action plan towards restoration and rehabilitation of the Petitioners' polluted and degraded land, waterbody and property to their original stated.**
- 4. That an order be issued for compensation of the Petitioners for special damages to their crops and lost harvest for the year 2024 being Kshs 4,660,499/= as per the Muruka Ward Agricultural Officer's report dated 24-7-2024.**
- 5. That on order be issued for compensation to the Petitioner for general damages to their environment, property and health.**
- 6. Any other or further orders that this court shall deem fit and just to grant.**
- 7. That there be order as to costs.**

This is as per the petition dated 9-1-2025.

(2)The Petitioners' case is as follows. Firstly in the year 2019, the 6th Respondent established an avocado processing and oil extraction factory at Nguthuru village, Makenji area, Kandara Sub-county, Murang'a County on L.R. No. Loc. 4/Nguthuru/1553 which measures 2.262 hectares and comprises of two godowns where the avocado processing takes place. The factory's main activity involves the buying of avocados from neighbouring farmers and societies within and beyond Murang'a County, sorting and grading, packing, oil extraction and exportation of the products to various parts of the world. Secondly, over the time, the factory's operations have been generating large amounts of wastewater and solid waste effluents which contain large amounts of organic free fatty acids such as oleic, linoleic, stearic, palmitic and palmitoleic acids and toxic emissions from the avocado pulp material and refining process. This waste from the factory is not segregated by type and disposed in an environmentally acceptable manner. The factory has no air pollution equipment for the treatment of the large amounts of wastewater and solid waste effluents that it generates. It also does not have hazardous substance control systems and/or emergency response plans that would include quick and safe clean up of spills. It has no lagoons or artificial wetland for proper disposal of the effluents. The other failures are as follows.

- (i) Not adopting practicable and effective systems on safe and healthy management of both solid and liquid effluent.**
- (ii) Not constructing and maintaining drains, sewers and other works for intercepting, treating and disposing both solid and liquid effluent to prevent pollution of water resources within the neighbourhood despite there being various reports and recommendations to it to act immediately to remedy the damage to the residents.**
- (iii) Not treating the solid wastewater before realizing it to the environment.**
- (iv) Not ensuring minimal emission from the factory and timely collection of waste to prevent foul smell emanating therefrom.**

(3)The 6th Respondent has done the following to the detriment of the Petitioners.

- (i) Turned the Petitioners' land into a waste disposal site, an open dump and landfill which is harmful to human comfort, safety, health and the condition existing there constitutes a nuisance constituting disposal of a hazardous waste without a license in violation of Rule 10 of the Environment Management and Coordination (Waste Management) Regulations 2006.**
- (ii) Developed a disingenuous method of wastewater and solid waste disposal by intermittently releasing illicit and contaminated discharge at night and during the rainy season to disguise it as open channel storm drain all in an effort to escape tracking of the discharge to its source.**
- (iii) Generated excessive vibrations which have in turn created numerous cracks in and caused damage to the house of the immediate neighbour Mary Mungai, the 76th Petitioner .**

(4)An assessment of the damage was carried out by the agricultural officer of Muruka Ward one Josphat Maina Kinyuru. It is dated 24-7-2024. It specifies the damages to be paid to each of the Petitioners. The Petitioners continue to suffer harm and loss resulting from the said violations.

(5)It is the Petitioners' case that the actions of the 6th Respondent violate their right to a clean and healthy environment guaranteed under Article 42 of the Constitution and other provisions of the law.

(6) In support of their case, the Petitioners filed the following evidence.

- (a) Supporting evidence by Stephen Waweru Kamau dated 9-1-2025.**
- (b) Copies of title deed for land parcels numbers Loc.4/Nguthuru/1784, 1544, 1783, 1782, 624, 946, 230, 1548 and 276.**
- (c) Copy of register for L.R. No. Loc.4/Nguthuru/235.**
- (d) Copy of register for L.R. 4/Nguthuru/22.**
- (e) Copy of Mutation form for L.R. No. 4/Nguthuru/22 dated (at page 1) 16-1-2018.**
- (f) Copy of certificate of official search for L.R. No. Loc.4/Nguthuru/277.**
- (g) Aerial photographs of the factory (2 in number)**
- (h) Copy of report dated 5-11-2024 from the Department of Chemistry, Jomo Kenyatta University of Agriculture and Technology.**
- (i) Twelve(12) photographs of the polluted land before, during and current status.**
- (j) Copy of demand letter by the Petitioners' Counsel dated 11-9-2024.**
- (k) Copy of reply by counsel for the 6th Respondent dated 16-9-2024.**
- (l) Copy of complaint form to the 4th Respondent by Daniel Karugi Gaceri dated 21-10-2024.**
- (m) Copy of land damage assessment report by the Sub County Agriculture office, Kandara County dated 24-7-2024.**
- (n) Flash disc.**

(7) The 1st, 2nd and 3rd Respondents filed a reply to the petition dated 10-2-2025. The response can be summarised as follows. One, the petition as drawn does not disclose any cause of action against the three Respondents. Two, the allegations by the Petitioners are directed towards the 6th Respondent.

(8) The 4th Respondent filed a replying affidavit dated 12-3-2025 sworn by Sarah Waruo, who was the Murang'a County Director of Environment at the material time. The response is as follows. One, on 19-8-2024, the 4th Respondent received a complaint from the residents of Nguthuru stating that there was some crop failure during the rainy season caused by a

spillover from the 6th Respondent. This complaint was also aimed aired on local TV Stations (Kameme and K24) on 21st and 22nd August 2024 because the residents of Nguthuru had undertaken to hold protests. Two, following the protests, a multi-agency stakeholders meeting was convened by the local leaders on 21-8-2024. At the meeting, the 4th Respondent was required to do the following.

- (i) Monitor the operations of the factory and report to the Deputy County Commissioner (DCC).**
- (ii) Liase with the Water Resources Authority (WRA) to address the issue of the blocked River Makindi.**

The 6th Respondent was to adopt measures to avert the possibility of storm water mixing with wastewater from the factory.

(9) On 29-8-2024 the 4th Respondent conducted an inspection of the 6th Respondent's facility and made the following recommendations. The 6th Respondent was to undertake the following measures.

- (a) Acquire a waste transportation license for all vehicles transporting waste from the factory to external disposal sites.**
- (b) Ensure that its waste does not spill into the storm drainage.**
- (c) Prepare drains on both sides of their boundaries to ensure storm water is drained to the river or the wetland.**
- (d) Ensure that no raw solid waste is accumulated at the premises and mitigate any source of foul smell including but not limited to application of bio-enzymes or effective micro-organisms.**

The 4th Respondent also wrote a letter dated 23-9-2024 to WRA informing it of the Makindi River population and requesting its intervention in accordance with the Water Resources Act, Cap 372.

(10) On 7-11-2024, the 6th Respondent's facility was re-inspected and the following was noted.

- (a) Wastewater was being disposed through licensed exhausters to Kang'oki sewage treatment plant.**

- (b) Regular inoculation of the Effluent Treatment Plant (ETP) with enzymes assisted in degradation of liquid waste which mitigated the odour released therefrom.**
- (c) Though the noise levels were within the permissible levels, it was recommended that the facility undertakes to eliminate noise impacts to the immediate neighbourhood.**
- (d) The waste composting sites lacked licences.**

Upon conclusion of the inspection of 7-11-2024, an improvement notice was issued against the 6th Respondent demanding that the facility acquires licences for its waste composting sites, emissions and that it undertakes an ambient noise survey.

A report by the 4th Respondent dated 10-2-2025 notes that the effluent was treated at the Effluent Treatment plant while the slurry and solid waste were used for the production of manure, growing of Black soldier Flies and collected by the neighbouring coffee farms, e.g. Makindi Farm.

- (11) The 4th Respondent denies failing to ensure that the 6th Respondent complies with the law of minimal emissions from the factory, timely collection of waste and eradicating noise pollution following the action outlined above. It adds that all the necessary licences were issued subject to conditions which, if effectively complied with to the letter will alleviate the Petitioners' concerns.

Finally, the 4th Respondent is willing and prepared to implement any legitimate orders that may emanate from a decision of this Court.

- (12) In support of its response the 4th Respondent filed the following material.

- (a) Replying affidavit dated 12-3-2025.**
- (b) Copy of license to the 6th Respondent dated 5-12-2022 for proposed avocado packing and oil processing go down.**
- (c) Copy of report dated 30-8-2024.**
- (d) Copy of letter to WRA dated 23-9-2024.**
- (e) Copy of improvement notice dated 7-11-2024.**

(f) Copy of Ambient – Noise Survey Report dated 19-2-2025.

(g) Copy of inspection report dated 10-2-2025.

- (13) The 6th Respondent filed a replying affidavit dated 26-3-2025 through its Managing Director, Oscar Moya Lerin. The response is in agreement with that by the 4th Respondent. I will only mention the new material raised by the 6th Respondent without repeating what has already been said by the 4th Respondent. The following therefore is the new material raised by the 6th Respondent. Firstly, all the preliminary requirements were met by the 6th Respondent before the issuance of the licences. Secondly, the complaint by the Petitioners was that the contamination was caused during the rainy season as per the annexed exhibits SW2, by the rains that carried the alleged “waste” from the factory to their premises. Thirdly, during the stakeholders meeting of 21-8-2024, it was revealed that a report from the 4th Respondent found that the wastewater from the factory did not leave the facility but was otherwise directed to the effluent treatment plant. Further, the Sub County Agricultural Officer informed the parties that a crop damage analysis report was conducted in June to assess the damage caused by the April floods of the year 2024. He added that no soil sample analysis had been conducted to ascertain what had caused the crop damage, meaning that nothing had been placed before the said committee to point to the allegation that crop damage was caused by the contamination of the soil by the alleged effluent discharge from the factory. Even though the minutes do not indicate it, the same officer said that crop damage was a perennial issue that recurred over the seasons. Fourthly, the report by the 4th Respondent dated 30-8-2024 exonerated the 6th Respondent from the claims initiated by the Petitioners. Fifthly, the 6th Respondent conducted and prepared the relevant ambient noise and air appraisal and reports and all measures were put in place. These appraisals as the report will show concluded that there was no pollution and recommendations were made to manage and improve the measures to avoid possible pollution in the future.
- (14) Fifthly, the 6th Respondent has always had in place measures to manage effluent discharge from its operations. In particular, it has treatment plants within its premises where the treated discharge is dumped away from the site in a different location, with the waste being transported away from the plant. Fifthly, the 6th Respondent objects to the report from Jomo Kenyatta University of Agriculture and Technology for many reasons.

The report was conducted without the involvement of the relevant stakeholders in the dispute and it cannot therefore be considered as objective. There is no guarantee that the samples were taken from the premises of the 6th Respondent. While the report is dated 5-11-2024, the alleged damage occurred in the period of April to June 2024. In addition to the above, the sample collection points are generally described and are not specific; the report infers the presence of avocado oil contamination upstream and fails to link the alleged contamination with the damage as alleged. The report, at Chapter 8, states that the workers did not have adequate PPE's and this negates its authenticity as the factory is closed to outsiders and it has never hosted any personnel from JKUAT to conduct any audit within the premises. Again, the report recommends that the 6th Respondent engages the services of a NEMA accredited laboratory to sample and analyse the wastewater before it is released to the farmers. This has always been the case and the Petitioners would have known about it had they conducted an actual audit. Sixthly, it is not certain if the photographs filed by Petitioners are of their land parcels because all land adjacent to the factory has lush green vegetation. If there was contamination from the factory, the greatest damage would be on the adjacent land yet this is not the case. The reports by the 4th Respondent corroborate the deposition that the properties next to the factory are lush green.

For the above and other reasons, the 6th Respondent prays that the petition be dismissed with costs for being baseless, frivolous and an abuse of the court process.

- (15) In support of its case, the 6th Respondent filed the following evidence.
- (a) Replying affidavit dated 26-3-2025.**
 - (b) Licence for the implementation of the projected regarding the “proposed avocado packing and oil processing godown”.**
 - (c) Environmental Audit Report for the year 2025.**
 - (d) Licence to establish on organic manure composting site to compost avocado solid waste from avocado processing plant at Makuyu/Kimorori/Block IV/173 Thangira area.**
 - (e) Effluent discharge licence dated 8-1-2024.**
 - (f) Single business permit for the year 2025.**

(g) Ambient noise survey report dated 16-12-2024.

(h) Workplace air quality monitoring report dated 16-12-2024.

(i) Eleven photographs showing denaturing unit, secondary treatment, Nema sampling point, tanks, drains on the boundaries and a vehicle for transporting wastewater.

(16) At the trial on 11-11-2025 and 9-3-2026, a total of four(4) witnesses testified. They included professor A.N. Gachanja, the 2nd Petitioner, Sarah Waruo and Oscar Moya Lerin.

According to the evidence of the Petitioners' expert witness, Prof. A.N. Gachanja, avocado contamination was detected in all soil and water from the factory effluent drains. Residual contamination with avocado components was detected in water samples from the factory effluent drain (point 3) and water collected on the farm adjacent to the factory(point 5) . According to the professor, avocado oil in the soil affects the absorption of nutrients and water from the soil by the plants. The date of the collection of the samples was 23-9-2024. In collecting the samples, the expert witness did not involve any other party. He did not include photographs showing the collection of the samples.

The second Petitioner's testimony was as per his affidavit dated 19-1-2025 while the 4th and 6th Respondents testimony was as per their affidavits dated 12-3-2025 and 26-3-2025 respectively. This evidence is already summarized in paragraphs 2,3,4,8,9,10,11,13 and 14 of this judgment. All the three witnesses reiterated what is in their affidavits and documents and remained unshaken in cross-examination.

(17) Counsel for the 6th Respondent filed written submissions dated 3-3-2026. Those by the 4th Respondent were filed last year and are dated 7-5-2025. The Attorney General's submissions are dated 13-4-2026 while the Petitioners are dated 20-4-2026. The issues identified and framed by learned counsel for the parties are as follows.

(i) Whether the petition meets the constitutional threshold.

(ii) Whether the Petitioners' right to a clean and health environment has been violated or threatened.

(iii) Whether the state Respondents failed in their constitutional and statutory duties.

(iv) Whether the 6th Respondent caused environmental harm.

(v) Whether the petition discloses any cause of action against the 1st, 2nd and 3rd Respondents.

(vi) Whether the Petitioners' complaints were addressed by the relevant state agencies.

(vii) Whether the Petitioners are entitled to special and general damages.

(viii) Whether the 6th Respondent is duly licenced to conduct their business.

(ix) Whether the 6th Respondent caused pollution by their own actions including air and noise pollution.

(x) Whether the Petitioners suffered any loss from the alleged pollution.

(xi) Whether the Petitioners are entitled to the reliefs sought.

(18) I have carefully considered the petition in its entirety including the grounds, the supporting affidavit, the replying affidavit, the testimonies at the trial, the written submissions, the issues identified and the law cited therein. I find that the issues as identified will resolve the dispute.

(19) Regarding the 1st issue, I find that the petition meets the constitutional threshold because it has specified the violated Article as 42 which guarantees a clean and healthy environment to all. The particulars of the violations have been provided. There is a clear link between the 6th Respondent and the violation and the reliefs sought are clearly and simply stated. I therefore find that the petition meets the threshold set in the cases of **Anarita Karimi Njeru vs. The Republic 1976-1980 KLR 1272 and Mumo Matemu vs. Truted Society of Human Rights Alliance [2013] eKRL.**

I will deal with the second issue towards the end of the judgment.

(20) As for the third issue, I do not find sufficient evidence to prove that the state Respondents sued, that is to say, the 1st, 2nd, 3rd, 4th and 5th failed in their constitutional and statutory duties. The 4th Respondent which is the lead state agency in supervision and coordination of all the matters relating to the environment has demonstrated that as soon as it received the complaint

from the Petitioners, it swung into action. A multiple agency stakeholders meeting was convened and it was given work to do. This work included conducting an inspection of the 6th Respondent's

factory in the months of August and November 2024 and subsequent dates. The measures taken were meant to avert the possibility of storm water mixing with wastewater from the factory. The 4th Respondent was convincing in explaining the measures taken to avert the problem complained of. The other state agencies joined in this suit had no direct role to play in the management and coordination of matters relating to the environment. The Water Resources Authority which deals with Water Resources was informed of the complaint but it was not joined in this suit as a party.

- (21) The Petitioners called only one expert witness who is a professor in the Department of Chemistry at JKUAT. This witness's evidence related to only one out of the three aspects of the Petitioners' claim. The claim by the Petitioners concerns improper discharge of wastewater and solid waste into their farms. There is also a claim of excessive vibration pollution and air pollution.

This is at prayer 1 of the petition dated 9-1-2025. The Petitioners did not call any evidence on noise and air pollution. The burden of proof was on the Petitioners to prove their case on the three heads. It is trite law that the burden of proof in a suit or proceeding lies on the person who would fail if no evidence were adduced either side. See **Section 108 of the Evidence Act.**

The only evidence called was on the contamination of soil and water. This evidence was challenged by the 4th and 6th Respondents on various grounds. For example, it talks of the workers of the 6th Respondent not being provided with PPEs, the management carrying out a fire safety audit and ensuring that its employees undergo medical examinations regularly. This is at recommendation 8.2. Those aspects of the report take away its credibility. The other things that take away its credibility include lack of involvement of other parties when collecting the samples, lack of photographs showing the collection of the samples, lack of laboratory results, lack of a letter of reference among others. However, the movement of oil upstream through capillarity was well explained by the witness. Overall, the report by the 4th

Respondent dated 30-8-2024 seriously undermines the report filed by the Petitioners. It is to be noted that the Respondents did not shoulder any burden of proof in this case. The fact that the whole area is said to be a wetland with a high water table with storm water stagnating there because of low gradient explains that this flooding may be a natural phenomenon unrelated to the activities of the 6th Respondent in the area. Having made this finding, I find that many of the other issues are covered in this finding. Specifically, there is no sufficient proof as per the 4th issue that the 6th Respondent caused environmental harm. I also find that the petition does not disclose any cause of action against the 1st, 2nd and 3rd Respondents. This finding covers the 5th issue.

- (22) It is my finding that the Petitioners' complaints were addressed by the 4th Respondent and as a result the 6th Respondent acquired a waste transportation licence for vehicles transporting waste from the facility to the external disposal sites, the drains on both sides of their boundaries ensure that storm water draws to the river or the wetland, raw solid waste not accumulated at the premises, wastewater is being disposed through licensed exhausters to Kang'oki sewerage treatment plant and a host of other precautionary measures.
- (23) It is my finding that both special and general damages have not been proved. Firstly, it has not been proved that the 6th Respondent caused any harm to the environment for the reasons given in paragraph 21 above. Secondly, the Sub County Agricultural Officer Kandara was not called a witness in this Court to explain the basis of his findings. He should have been called to explain how he arrived at the various amounts for each of the Petitioners. His report lacks many details of the size of the land, the quantities of the arrow roots etcetera. In the case of the cracks in the house of Mary Nyaguthii Mungai, no report by a Quantity Surveyor or a Valuer as to the extent of the damage and the relationship between the noise from the factory and the cracks was ever filed.
- (24) As for the licences of the 6th Respondent to conduct its business, I find that it has the requisite licences and there was no averment in the petition to the effect that it had no such licences.

(25) In conclusion and though I **dismiss** the petition, I find that it was not in vain because it has resulted in the 4th Respondent enforcing and the 6th Respondent implementing the precautionary principle of sustainable development.

I **dismiss** the petition. No order as to costs.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 6th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistants – Jackline and Antony
Petitioner’s Counsel – Miss Mwenda
1st, 2nd and 3rd Respondent’s Counsel – Miss Nyawira
4th Respondent’s Counsel – Miss Nyawira holding brief
6th Respondent’s Counsel – Mr Kigerah