



**Keny & 7 others v Principal Secretary Ministry of Lands, Housing and Urban Development
& 4 others (Environment and Land Constitutional Petition 6 of 2017 & Constitutional
Petition 5 of 2017 (Consolidated)) [2025] KEELC 5370 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5370 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

**ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 6 OF 2017
& CONSTITUTIONAL PETITION 5 OF 2017 (CONSOLIDATED)**

LA OMOLLO, J

JULY 17, 2025

BETWEEN

JOHN K KENY 1ST PETITIONER
RICHARD CHEPKWONY 2ND PETITIONER
RICHARD KIBET TOO 3RD PETITIONER
WILSON MARITIM ARAP MAGEREO 4TH PETITIONER
DANIEL KIPKEMBOI SAWE 5TH PETITIONER
SAMWEL KIPNGETICH TUM 6TH PETITIONER
SAMWEL KIPLANGAT SANG 7TH PETITIONER

AND

**THE PRINCIPAL SECRETARY MINISTRY OF LANDS, HOUSING AND
URBAN DEVELOPMENT 1ST RESPONDENT**
THE NATIONAL LAND COMMISSION 2ND RESPONDENT
KENYA FOREST SERVICE 3RD RESPONDENT
THE DIRECTOR KENYA SURVEY 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT

**AS CONSOLIDATED WITH
CONSTITUTIONAL PETITION 5 OF 2017**

BETWEEN



OGIEK INDEPENDENT COUNCIL OF SOUTH WEST MAU FOREST
(KONAIN-BOMET) APPELLANT

AND

THE PRINCIPAL SECRETARY MINISTRY OF LANDS, HOUSING AND
URBAN DEVELOPMENT 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

KENYA FOREST SERVICE 3RD RESPONDENT

THE DIRECTOR KENYA SURVEY 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

Introduction.

1. The Petitioners commenced the present proceedings vide the Petition dated 30th May, 2017 where they sought the following orders;
 - a. A declaration that the 1st, 2nd, 3rd and 4th Respondents have violated the Petitioners' rights to human dignity under Articles 28 of *the Constitution* and the right not to be subjected to any form of violence or be treated in a cruel, inhuman or degrading manner under Article 29(c) and (f) of *the Constitution*.
 - b. A declaration that the 1st, 2nd, 3rd and 4th Respondents have violated the Petitioners' right to own property under Article 40(3) of *the Constitution*.
 - c. A declaration that the 1st, 2nd, 3rd and 4th Respondents have violated the Petitioners' right to equal benefit of law under Article 27 of *the Constitution*, right to a fair administrative action under Article 47 of *the Constitution*, right to a fair hearing under Article 50 of *the Constitution* and the right to access justice under Article 48 of *the Constitution*.
 - d. An order compelling the Petitioners and all other people and communities that were formerly in South Western Mau Forest to be allowed to re-occupy their respective parcels of land.
 - e. That an order of mandamus be issued compelling the Respondents to provide security against reckless individuals within the Government and to restore the Petitioners and other affected communities within South Western Mau Forest to their respective parcels of land forthwith.
 - f. A declaration that the actions of the Government of Kenya, of evicting, razing down houses and de-gazetting private property without due process are brazen, illegal, egregious, discriminatory and hence null and void for violating the right to property and freedom and security of person and the right to dignity of the Petitioners.
 - g. A declaration that the Government has abdicated its role and has become an escapist by acting on individual President's whims, sweet and caprice. (sic)
 - h. In the alternative, adequate and prompt compensation at market value of the parcels of land in question be paid to the Petitioners and all the people who were initially living in South Western Mau forest at the time of eviction in 2009.



- i. A declaration that the right to life provided for under Article 26 of *the Constitution* of Kenya of every member of the Kipsigis Community and other communities and or individuals that were living in South Western Mau Forest including the Petitioners was contravened, and is being contravened by forcible eviction from their parcels of land in the South West Mau Forest and settlement and or Compensation of others who were affected by the same De-gazettement to the exclusion of the Petitioners, in that such members are being deprived of their means of livelihood and are being discriminated against.
 - j. A declaration that the eviction of the Petitioners and other members of the Kipsigis Community from their land in South Western Mau Forest and settlement of other people on their land by the Respondents is in contravention of their right to protection of law, and their right not to be discriminated against under Article 27 of *the Constitution* of Kenya 2010, and their right to reside in any part of Kenya.
 - k. An order restraining the first, second, third and fourth Respondents from allocating the Petitioner's land to other persons to the exclusion of the Petitioners and all allocations made with respect to South Western Mau forest de-gazettement be set aside as the same is null and void.
 - l. As order quashing the de-gazettement of South Western Mau forest and allowing the Petitioners and other Communities who were previously occupying the said lands to re-occupy them.
 - m. An order restraining the Respondents from interfering with the Petitioners and other communities who were previously living in South Western Mau Forest from the use of their parcels of land.
 - n. Any other appropriate relief that the Court deems fit.
 - o. An award of damages for pain and suffering, humiliation and distress visited upon the Petitioners.
 - p. Costs of this Petition.
2. The National Land Commission (2nd Respondent) did not file any response to the Petition while the 1st, 3rd, 4th and 5th Respondents filed grounds of opposition.
 3. The Court in its judgement delivered on 27th July, 2018 and amended on 25th October, 2018 issued the following orders;
 - a. The 2nd Respondent is directed to within 10 months from the date of this judgment, in consultation with the chiefs, and Ogiek Council of elders identify and open a register of members of the Ogiek community to whom these proceedings relate and who were evicted from South West Mau Forest specifically Konoin-Bomet. The 2nd Respondent shall identify land for the resettlement of the Petitioners in Petition No. 6 of 2017 and members of the said Ogiek community evicted from South West Mau Forest who have been resettled in line with the report of the Government Task Force on the conservation of the Mau Forest Complex 2009.
 - b. A copy of this judgment be served upon the Chairman of the National Land Commission for necessary action.
 - c. Each Party shall bear its own costs.
 4. There have been various developments since the delivery of this judgement.



5. The Petitioners vide the Notice of Motion application dated 10th October, 2019 sought for orders that the Chairman National Land Commission be committed to civil jail for a period not exceeding six months for being in contempt of the orders of the Court issued on 27th July, 2018 and 20th October, 2018 (sic).
6. Vide the ruling delivered on 8th April, 2021 the application was allowed and the Court directed that the matter be mentioned on 29th April 2021 for sentencing.
7. On 29th April, 2021 the contemnor was granted ninety days to comply with the orders of the Court as he had initiated the process of purging the contempt.
8. On 29th July, 2021 the contemnor was granted a further ninety-day period and the matter was subsequently mentioned severally to confirm whether the contemnor had complied with the orders of the Court.
9. In the year 2022 the Petitioners sought to change legal representation. The firm of Koech Gideon & Company Advocates filed the application dated 14th April, 2022 seeking to come on record for the Petitioners post judgement. The Court in its ruling delivered on 27th October, 2022 dismissed the said application.
10. The Petitioners then filed the application dated 5th December, 2022 where they sought leave to act in person. The said application was dismissed on 27th April, 2023 on the ground that the issue of representation had been dealt with by the Court in its ruling delivered on 27th October, 2022.
11. The matter was thereafter mentioned severally to confirm whether the National Land Commission had complied with the orders of the Court.
12. The Chairman National Land Commission was summoned to Court on 22nd January, 2024. The Chairman attended Court on the said date and upon listening to him, the Court was satisfied that the Commission had been active in actualizing the terms of the judgement delivered by this court.
13. The Court discharged the Chairman National Land Commission and granted the National Land Commission sixty days to come up with a master list of all the Ogiek Members to enable the Commission to execute the orders of the Court.
14. On 2nd May, 2024 the matter was mentioned to confirm whether the National Land Commission had filed the register of members of the Ogiek Community in compliance with the orders of the Court.
15. The Court confirmed that the said register had been sent to Court on email and the matter was given a further mention date for 3rd June, 2024.
16. The matter was mentioned on 3rd June, 2024 when Counsel for the Petitioners informed the Court that some names of the Petitioners who were part of the verification exercise were left out of the register.
17. The matter was further mentioned on 19th June, 2024 when the Court upon hearing Counsel for the parties observed that the judgement of the Court was specific to the South Western Mau.
18. The Court therefore granted the National Land Commission sixty days within which to file a report specific to the South Western Mau. The National Land Commission was directed to involve the Petitioners and the 3rd Respondent in coming up with the list.
19. On 24th September, 2024 the matter was mentioned and the National Land Commission was granted thirty more days to file the list that was specific to the South Western Mau in accordance with the judgment of this court.



20. As the matter was awaiting the filing of the list, the Petitioners filed the application dated 23rd September, 2024. In the said application they are seeking leave to act in person. The application is pending hearing and determination. I note that there have been previous applications of similar nature filed by the Petitioners. The dates of the applications and ruling made are as follows:
 - a. An application dated 5th December, 2022 wherein the petitioners sought leave to act in person.
 - b. The said application was dismissed on 27th April, 2023 on the ground that the issue of representation had been dealt with by the Court in its ruling delivered on 27th October, 2022.
21. Taking the foregoing into consideration, its unlikely that a different finding will be reached on the pending application i.e the application dated 23rd September, 2024 seeking, again, leave to Act in person.
22. On 9th December, 2024, Counsel for the National Land Commission informed the Court that they had since filed the list that was specific to South Western Mau. The matter was given a further mention date for 10th February, 2025 to confirm whether all the parties had received the said list.
23. As at 10th February, 2025 the list had not been availed to Court and therefore the suit was given a further mention date for 4th March, 2025. On the said date, Counsel for the National Land Commission informed the Court that they had filed a Further Affidavit sworn by Brian Ikol on 1st November, 2024 through which they attached the said list. Counsel then sought that the matter be marked as closed.
24. Counsel for the 1st, 3rd, 4th and 5th Respondents informed the Court that they had received the said list and if there were any pending issues, those issues would be between the Petitioner and the National Land Commission (2nd Respondent).
25. Counsel for the Petitioners informed the Court that the list that was submitted by the National Land Commission did not include and/or have names of the petitioners in the present proceedings. Counsel submitted that they had filed an Affidavit in Objection to the list attached to the Further Affidavit that was sworn on 4th February, 2025.
26. Counsel sought that the affidavit of Brian Iko sworn on 1st November, 2024 be expunged from the Court record and the National Land Commission be compelled to avail the list that was furnished during a meeting held by the parties.
27. In response, Counsel for the National Land Commission submitted that there was no direction to file a response to the list and that the right procedure would have been for the Petitioners to file an application.
28. It is against this background that this Court delivers this ruling.

The 2nd Respondent's Further Affidavit.

29. The National Land Commission (2nd Respondent) filed a Further Affidavit sworn by Brian Ikol on 1st November, 2024.
30. He deposes that he is the Director Legal Affairs and Dispute Resolution of the National Land Commission (2nd Respondent).
31. He also deposes that the National Land Commission (2nd Respondent) is an Independent Commission established under Article 67(1) of *the Constitution* of Kenya and operationalized by the *National Land*



Commission Act No. 5 of 2012 adding that its fundamental function is the management of public land on behalf of the National and County governments.

32. He further deposes that the Court in its judgement directed the National Land Commission to identify and open a register of the members of the Ogiek Community who were evicted from the South West of Mau Forest more specifically Konoin-Bomet within ten months and that they be resettled.
33. It is his deposition that on 20th June, 2024 the Court issued orders directing the National Land Commission to file a list of members specific to the Ogiek Community of South west Mau -Konoin Bomet.
34. It is also his deposition that on 25th July, 2024 Counsel for the Petitioners wrote to the National Land Commission requesting for a strategy meeting to discuss the way forward.
35. It is further his deposition that pursuant to this request, the Commission invited the Petitioners Advocates together with some representatives of the Petitioners for a meeting on 10th September, 2024.
36. He deposes that during the meeting convened by the National Land Commission on 10th September, 2024, the Petitioners advocates were present together with some representatives of the Ogiek of South – West Mau Community and the representatives of the Ogiek Council of Elders. They were all given an opportunity to give their input.
37. He also deposes that during the meeting, the Petitioners submitted that some of their members were included in the Master List of the Ogiek that was filed in Court while others were excluded.
38. He further deposes that the Petitioners expressed reservations in their alleged association with the Ogiek Council of Elders and they insisted that their group was independent of the Ogiek Community group that had filed a case at the African Court of Justice.
39. It is his deposition that based on the submissions made in the said meeting and the previous list of members received from the petitioners, the National Land Commission retreated to identify members of the Ogiek of South – west Mau Community who appeared in the master list previously filed in Court.
40. It is also his deposition that upon conclusion of the exercise, the National Land Commission (2nd Respondent) came up with common names that appeared in the master list as well as in the list submitted by the Petitioners.
41. He ends his deposition by stating that the National Land Commission (2nd Respondent) has complied with the orders of the Court.
42. There are two ‘Affidavits in objection’ to the list filed by the National Land Commission (2nd Respondent) on the Court record.
43. The first ‘Affidavit in objection’ is sworn by one Richard Kipkurui Sigei on 4th February, 2025.
44. He contends that he is a member of the Ogiek Community who previously occupied South Western Mau. He goes on to state that he is therefore covered under petition No. 5 and the judgement of the Court delivered on 27th July, 2018.
45. He also contends that the National Land Commission (2nd Respondent) has to date not complied with the judgement of the Court delivered on 27th July 2018 which was later amended on 25th October, 2018, the orders of 2nd November, 2023 and the subsequent orders that required the National Land Commission to file a list of beneficiaries (sic) of the South Western Mau. He adds that the list attached to the affidavit sworn by Brian Ikol should be expunged from the Court record.



46. He further contends that they have been in communication with the National Land Commission (2nd Respondent) since the orders of the Court were issued but they are yet to enjoy the fruits of the said orders. He goes on to state that the list that has been presented to Court consists of people who did not form part of South Western Mau and did not participate in the present proceedings.
47. It is his contention that the National Land Commission (2nd Respondent) communicated that it had lost its copy of the relevant list with respect to Petition No. 5 and they duly served them with a list they had previously served upon them, on 14th February, 2024.
48. It is also his contention that upon de-gazettement and subsequent eviction from South Western Mau, the persons evicted were dispersed and they formed different groups to pursue justice. As such, no one can singularly claim to be the chair of all the previous occupants and Ogiek in particular as each group ought to be dealt with separately.
49. It is further his contention that the South Western Mau was not only occupied by the Ogiek but was occupied by several other persons from other tribes.
50. He contends that the National Land Commission (2nd Respondent) should therefore desist from making assumptions and handle all claims without discrimination.
51. He also contends that the no reasons have been given as to why their names have been rejected and/or left out from the list.
52. He further contends that the Ogiek who were living in South Western Mau were never at any moment under a Kingdom as they belonged to different communities with different representatives. He goes on to state that the National Land Commission (2nd Respondent) documented twenty-five groups, their respective leaders, documentation and claim registration numbers.
53. He ends his deposition by stating that the National Land Commission (2nd Respondent) should produce a list specific to South Western Mau where they belong.
54. The second 'Affidavit in Objection' is sworn by Gideon Chirchir on 4th February, 2025.
55. He contends that he is the Chairman of the Kapsean Koisabei Tinderet Community that previously occupied parts of South Western Mau. He adds that they are covered under the present petition and the judgement delivered on 27th July, 2018.
56. He also contends that the community he is in charge of registered a complaint with the National Land Commission (2nd Respondent), vide complaint number NLC/HLI/011/2017 but to date they have not received feedback with respect to compensation of its members despite attending several meetings with the 2nd Respondent.
57. He further contends that the National Land Commission (2nd Respondent) has not complied with the orders of the Court dated 27th July, 2018 and later amended on 24th October, 2018 (sic). The said orders required the National Land Commission (2nd Respondent) to file a list of beneficiaries(sic) of South Western Mau and the Court should therefore expunge from the Court record the affidavit filed by Brian Ikol.
58. It is his contention that the Kapsean Koisabei Tinderet community has a list of one thousand and five members which list of members is within the knowledge of the National Land Commission (2nd Respondent).



59. It is also his contention that they have attended several interviews with the National Land Commission (2nd Respondent) and no reasons have been given why members of his community are missing from the list.
60. It is further his contention that upon de-gazettement and subsequent eviction from South Western Mau, all the persons were dispersed and they formed different groups to pursue justice.
61. He contends that therefore, no one can singularly claim to be the Chair of all the previous occupants and the Ogiek in particular as each group ought to be dealt with separately.
62. He also contends that the South Western Mau was not only occupied by the Ogiek but by several other persons from other tribes.
63. He further contends that the National Land Commission (2nd Respondent) should desist from making assumptions and handle all claims without discrimination.
64. It is his contention that no reasons have been given as to why their names have been rejected and/or left out.
65. It is also his contention that the Ogiek living in the South Western Mau were not a kingdom as they were different communities with different heads as documented by the National Land Commission (2nd Respondent). He adds that they were a total of twenty-five groups with their respective leaders, documentation and claim registration numbers.
66. He ends his deposition by stating that the National Land Commission (2nd Respondent) should produce a list with specific reference to South Western Mau where they belong. He adds that he is swearing the affidavit on his behalf and on behalf of the people of Kapsean Koisabei Tinderet Community who were occupying sections of South Western Mau.

Analysis and determination.

67. The judgment delivered by this court on 27th July, 2018 and amended on 25th October, 2018 is in the realm of structural interdicts.
68. Structural interdicts are important in the enforcement of socio-economic rights.
69. In paragraph 75 of this court's judgement, it was held as follows

“I have anxiously and carefully considered the pleadings, rival submissions and the law and the authorities cited to me and it is my finding that the Petitioners have proved that their rights have been violated. However, the Court has already pronounced itself on the manner in which the persons evicted from the Mau Forest in similar circumstances ought to be redressed in the 3 cases cited above. That being the case, this Court can do no better than restate the position in the said authorities and direct that the Petitioners pursue their remedies for compensation with the National Land Commission (2nd Respondent) whose mandate is to manage, alienate, and allocate public land and to monitor the registration of all rights and interests in land in accordance with the principles laid down in the Land Act 2012.”
70. This court then, in the disposal paragraph of its judgement directed the National Land Commission (2nd Respondent) to, within 10 months, in consultation with Chiefs and Ogiek Council of Elders to:



- a. Identify and open a register of members of the Ogiek community to whom these proceedings relate and who were evicted from South West Mau Forest specifically Konoin-Bomet.
 - b. Identify land for the resettlement of the Petitioners in Petition No. 6 of 2017 and members of the said Ogiek community evicted from South West Mau Forest who have been resettled in line with the report of the Government Task Force on the conservation of the Mau Forest Complex 2009.
71. The National Land Commission (2nd Respondent) is adamant that they have already filed a list in compliance with the judgment of this court.
72. From the “Affidavits in Objection” that have been filed, it is evident that the Petitioners have reservations as to the list as filed by the National Land Commission (2nd Respondent).
73. In *Moi University v Council of Legal Education & another* [2016] eKLR, the High Court outlined 5 elements of a structural interdicts as follows:
- a. A declaration by the Court on how a constitutional right has been infringed or denied by the government or its agencies.
 - b. A Court order directing the government or its agencies to comply with its constitutional mandate.
 - c. A Court order directing the government to prepare and submit a comprehensive report under oath to the Court on a specific date. The report should outline the government’s plan of action to remedy the said violations and the means of compliance the government wishes to adopt.
 - d. Evaluation of the government’s plan by the Court to assess constitutional soundness and whether the violations are addressed. This involves dialogue between the court and the government or its agency to identify any threats to implementation of the plan. The Court may provide amendments or insights to the proposed plan.
 - e. Finally, once the Court approves the plan, it issues a final order which takes into consideration the government plan and court insights. Failure by the government to implement the final order then amounts to contempt of Court.
74. In my assessment, all the steps as set out in the *Moi University v Council of Legal Education & another* (Supra) were followed and have culminated into a report filed in this court by the National Land Commission (2nd Respondent) on 9th December, 2025.
75. Essentially, what needed to be done by the National Land Commission (2nd Respondent) in compliance with the judgment of this court has been done albeit to the dissatisfaction of the Petitioners.
76. This Court is of the view that grievances relating to the process leading to the compiling of the report and/or list filed in this court on 9th December, 2025 and the legitimacy of that report are for determination in another forum.
77. The judgement of this court also advised the Petitioners to pursue remedies for compensation with the National Land Commission (The National Land Commission 2nd Respondent) whose mandate is to manage, alienate and allocate public land and to monitor the registration of all rights and interests in land in accordance with the principles laid down in the *Land Act* 2012.
78. In the result, I find that the present proceedings are at an end and I hereby mark this file as closed.



79. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 17TH DAY OF JULY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Mugunya for the Petitioners.

Miss Njuguna for the 2nd Respondent.

Miss Chepkemoi for the 1st, 3rd, 4th and 5th Respondent.

