



**Orodi & 11 others v Oyugi & 3 others; National Environmental  
Authority (Interested Party) (Environment & Land Petition 7 of 2021)  
[2023] KEELC 15746 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15746 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ENVIRONMENT & LAND PETITION 7 OF 2021**

**AY KOROSS, J**

**FEBRUARY 23, 2023**

**[ORIGINALLY KISUMU ELC PETITION NO. E002 OF 2021]**

**IN THE MATTER OF ARTICLES 1 (1), (3) (C) & (4), 2 (1) (5) AND (6), 3 (1) & (2); 10 (2)  
(A)-(D); 19, 20, 21, 22, 23 (1)-(3E), 24, 28, 35, 40, 42, 43, 48, 50 (1), 60, 66, 69(1) (A) (D)  
(F) (G) & (H) & (2), 70, 162 (2) (B), 258 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF VIOLATION, DENIAL, THREAT AND  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLES 26, 40, 42 AND 43 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT  
AND COORDINATION ACT & THE ENVIRONMENTAL  
(IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2003**

**AND**

**IN THE MATTER OF THE MINING ACT & THE  
MINING (LICENCE AND PERMIT) REGULATIONS 2017**

**AND**

**IN THE MATTER OF THE PHYSICAL AND LAND USE PLANNING ACT**

**AND**

**IN THE MATTER OF THE LAND CONTROL ACT**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013**

**AND**



IN THE MATTER OF THE ENVIRONMENT AND LAND COURT ACT

AND

IN THE MATTER OF THE VIOLATION OF THE RIO  
DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992)

AND

IN THE MATTER OF THE VIOLATION OF THE  
UNIVERSAL DECLARATION OF HUMAN RIGHTS

AND

IN THE MATTER OF THE AFRICAN (BANJUL)  
CHARTER ON HUMAN AND PEOPLES' RIGHTS

BETWEEN

GEORGE OGAYO ORODI ..... 1<sup>ST</sup> PETITIONER  
MAURICE OCHOLA BABU ..... 2<sup>ND</sup> PETITIONER  
TITO ODINDO BABU ..... 3<sup>RD</sup> PETITIONER  
BENARD BABU ..... 4<sup>TH</sup> PETITIONER  
DAVID BABU ..... 5<sup>TH</sup> PETITIONER  
VITALIS OCHIENG ADIDA ..... 6<sup>TH</sup> PETITIONER  
CHARLES OMONDI OYAYA ..... 7<sup>TH</sup> PETITIONER  
MOSES OYAYA ..... 8<sup>TH</sup> PETITIONER  
ALFRED OGINGA OMITI ..... 9<sup>TH</sup> PETITIONER  
GEORGE ONDIKO ..... 10<sup>TH</sup> PETITIONER  
GEORGE AWINO ..... 11<sup>TH</sup> PETITIONER  
WILLIS OLOO ..... 12<sup>TH</sup> PETITIONER

AND

EMMANUEL OYIER OYUGI ..... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY, MINING AND PETROLEUM ..... 2<sup>ND</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
THE DIRECTOR OF MINES AND GEOLOGY ..... 4<sup>TH</sup> RESPONDENT

AND

NATIONAL ENVIRONMENTAL AUTHORITY ..... INTERESTED PARTY



## JUDGMENT

### Petitioners' Case

1. This petition concerns the mining project being carried out on Siaya/Abom/646 (hereinafter referred to as 'the suit property') and its effects to the residents of Abom within Bondo constituency in Siaya county (hereinafter referred to as 'Abom').
2. By a petition dated January 28, 2021, the petitioners sought the following orders:
  - a. A declaration the petitioners' and abom residents' right to life and protection under article 26, their right to property under article 40, their right to a clean and healthy environment under article 42 and their right to economic and social welfare under article 43 all of the Constitution of Kenya had been contravened by the 1<sup>st</sup> respondent;
  - b. A declaration that the mining activities being undertaken by the 1<sup>st</sup> respondent in Abom without licences, consents and approvals violated the Constitution and law, was *ultra vires* the Mining Act, the Environmental Management and Coordination Act, Physical and Land Use Planning Act and the Land Control Act and were thus illegal and void;
  - c. An order restraining the 1<sup>st</sup> respondent, his servants, agents or employees or persons acting through him from continuing with illegal mining activities in Abom;
  - d. An order that the 1<sup>st</sup> respondent do pay compensation and royalties to the people of Kenya for the illegal mining activities and such compensation be determined by the court and if ordered and paid, be applied to public projects and facilities in Bondo constituency;
  - e. An order compelling the county commander of police, Siaya county and officer in charge of the police station- Abom to ensure that the court order is complied with;
  - f. A supervisory order do issue to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to report back to this honourable court on the progress of compliance with the orders issued herein;
  - g. Under the supervision of the interested party, an order that the 1<sup>st</sup> respondent do restore land parcel No Siaya/Abom/646 to the position it was in before the mining activities took place;
  - h. Damages and costs; and
  - i. Such other orders as this honourable court shall deem fit.
3. In support of the petition, the 1<sup>st</sup> petitioner with the authority of the other 11 co-petitioners filed a supporting affidavit dated January 28, 2021.
4. The petitioners' case was set out in the petition, supporting affidavit and supplementary affidavit. To buttress their case, they tendered photographs, a map sheet, a demand letter by their counsel M/s Naikuni Ngaah & Miencha Company Advocates, a stop order from the National Environment Management Authority ('NEMA') to the 1<sup>st</sup> respondent and an impact assessment report prepared by Wycliff Owino Okinda who was an environmental impact assessment auditor and accredited by NEMA.
5. It was their case that they and the 1<sup>st</sup> respondent were residents of abom and they were all small-scale gold miners and diggers. They had filed the petition as a public interest litigation on behalf of the residents of Bondo.



6. They made several allegations against the 1<sup>st</sup> respondent *inter alia*; he had illegally and unlawfully mined gold and mercury on the suit property which was an agricultural parcel of land without obtaining approvals, consents, change of use and licenses from statutory bodies; he had failed to conduct an environmental impact assessment, social assessment and public participation, his actions had negatively impacted the environment and affected the petitioners and residents of Abom. They particularized the injuries occasioned to them by the 1<sup>st</sup> respondent's mining project as follows;
  - a. Mining explosives had caused structural cracks on walls of buildings;
  - b. Noise pollution which was emitted at midnight had deprived the residents of Abom peace, quietness and tranquillity;
  - c. Mining dust had caused respiratory illness and other health related complications;
  - d. Poor waste disposal and management had exposed the residents to health hazards;
  - e. Water pollution from harmful chemicals such as mercury and sulphuric acid had posed a risk to humans and livestock;
  - f. Environmental degradation and nuisance had presented itself; and
  - g. There was breach of the Constitution and laws on mining and environment.
7. They contended their pleas to the 1<sup>st</sup> respondent to desist from his illegal activities had fallen on deaf ears hence a stop order was issued against him by NEMA. The said order also compelled the 1<sup>st</sup> respondent to obtain an Environmental Impact Assessment ('EIA') which he had declined to heed. The 1<sup>st</sup> respondent had also declined to halt his illegal and unlawful mining project.

#### **Respondents' And Interested Party's Case**

8. By the firm of M/s Oguso & Okungu Advocates, the 1<sup>st</sup> respondent filed a reply to petition dated January 28, 2021. It was composed of denials and non-admission of the averments made by the petitioners.
9. The 1<sup>st</sup> respondent averred *inter alia*; he was a stranger to the allegations made by the petitioners; the petitioners were the ones who had breached the law; the allegations made against him were a figment of the petitioners' imagination; the petitioners had not produced a single shred of evidence to prove his culpability; he was not in breach of any constitutional or legal provision and he was neither involved in any mining project nor did he collude with any person to excavate, dig or carry out mining activities.
10. By a replying affidavit dated March 5, 2021, the 1<sup>st</sup> respondent admitted he was the registered owner of the suit property.
11. Despite evidence of service, the 2<sup>nd</sup> to 4<sup>th</sup> respondents and interested party did not participate in these proceedings.

#### **Parties' Written Submissions**

12. It was agreed parties would dispose of the petition by way of written submissions.
13. The petitioners filed their written submissions dated May 24, 2022. counsel, Mr Ochieng, identified two issues for this court's determination; whether the 1<sup>st</sup> respondent had infringed on the petitioners' rights to clean and healthy environment and, whether the petitioners had established a case to warrant



issuance of a restraining order to stop the 1<sup>st</sup> respondent from continuing with his illegal and unlawful mining activities.

14. On the 1<sup>st</sup> issue, counsel submitted that by virtue of articles 19(3), 20(2) and 43 of the Constitution and international laws, the petitioners were entitled to ventilate on their rights to clean and healthy environment, socio economic rights, life and property. Counsel relied on the persuasive decision of the African Court in Communication No 155/96: The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria where in referring to articles 16 and 24 of the African Charter, the court stated as follows;

‘These rights recognize the importance of a clean and safe environment and is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of an individual. As rightly observed by Alexander Kiss, “an environment degraded by pollution ...is harmful to physical and moral health.’

15. On the 2<sup>nd</sup> issue, counsel submitted that the photographs which were adduced by the petitioners demonstrated that mining activities took place on the suit property and its environs.
16. Counsel submitted that the expert report dated October 22, 2021 evidenced there was wanton mining activities on the suit property which affected the environment. Further, a laboratory results certificate which had been issued by the Water Resource Authority had established heavy metals had been discharged from the suit property. Counsel placed reliance on the case of Mohamed Ali Baadi & others v Attorney General & 11 others [2018] eKLR where in their finding, the bench stated as follows;

‘The “passive” aspect which includes the right of the public to seek information from public authorities, and the obligation of public authorities to provide information in response to a request.’

17. The respondents and interested party did not file their respective submissions.

### **Analysis And Determination**

18. In consideration of the petitioners’ case and their submissions together with the 1<sup>st</sup> respondent’s case, it is my considered view that the issues falling for determination are as follows;
- a. Whether the petitioners’ rights to life, property, economic and social welfare and, clean and healthy environment had been violated.
  - b. Whether the 1<sup>st</sup> respondent carried out mining activities on the suit property unlawfully.
  - c. What orders should be made with regard to the petition?
19. However, before I proceed, I have noticed the petition referred to the interested party as National Environment Authority. It appears this was a typographical error because by section 7 of the Environmental Management and Co-ordination Act (‘EMCA’), NEMA is established. I will proceed to address the issues for determination in a sequential manner.

#### **a. Whether the petitioners’ rights to life, property, economic and social welfare and, clean and healthy environment have been violated**

20. The petitioners based their constitutional attack on the 1<sup>st</sup> respondent’s mining project and its impact on the residents of Abom and their structures. The petitioners’ main argument was that their rights to life, property, economic and social rights and clean and healthy environment had been violated.



21. The petitioners filed the petition within the auspices of several provisions of law notably articles 26, 40, 42 and 43 of the Constitution. Being a court of equal of status, section 13 of the Environment and Land Court Act donates this court with jurisdiction to hear and determine petitions on redress of denial, violation or infringement of, or threat to, rights or fundamental freedoms relating to the environment and the use and occupation of, and title to, land.
22. Article 26 provides that every person has the right to life and no person's life should be intentionally deprived unless sanctioned by law.
23. Article 40 provides that every person has the right to own property of any description in Kenya either individually or in association with others and such person should not be arbitrarily deprived of his property or should his enjoyment of the property be restricted.
24. Article 42 provides that everyone has the right to a clean and healthy environment for the benefit of present and future generations.
25. Article 43 provides for the right to persons to socio-economic welfare including the right to the highest attainable standard of health.
26. Article 70 provides for the mode of enforcement of article 42 through the court process which include such as orders on preventing, stopping and discontinuing acts that violate the right to clean and healthy environment. The provisions of article 70 of the Constitution have been replicated in section 3 of EMCA.
27. Article 19 provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of human beings.
28. The petitioners' claim was filed to preserve the dignity of the residents of Abom and to ensure their realisation of human rights.
29. By article 22 and section 3(3) of EMCA, the petitioners had the *locus standi* to institute these proceedings. In the case of Joseph Leboo & 2 others v Director Kenya Forest Services & another (2013) eKLR the court stated:-
 

'A reading of articles 42 and 70 of the Constitution above, makes it clear, that one does not have to demonstrate personal loss or injury, in order to institute a cause aimed at the protection of the environment.'
30. As proffered by the expert report, this court did no doubt mining activities involve extraction, processing, concentration, amalgamation, burning and refining which have an impact on water sources, air, noise and vibrations, soil quality, human displacement and could affect health among others.
31. If not mitigated, these activities can negatively interfere with the exercise of fundamental rights to life, property, economic and social welfare and clean and healthy environment. To ensure that activities do not interfere with people's rights, EMCA established limitative standards on various pollutive outputs.
32. These regulations include *inter alia*, the Environmental Management and Co-ordination (Water Quality) Regulations, 2006 which in its 1<sup>st</sup> and 3<sup>rd</sup> schedule, sets out the quality standards of sources of domestic water and standards for effluent discharge into the environment and the Environmental Management and Co-ordination (Noise and Excessive Vibration Pollution) (control) Regulations, 2009 which limits noise and vibrations' intensity, duration, frequency or character as to annoy, disturb, or



- cause or tend to cause adverse psychological or physiological effects on persons, or cause damage to persons or property and in its 3<sup>rd</sup> schedule, it provides that if the polluting entity is a mine or quarry, then the measurement has to be taken at the facility.
33. Additionally, it has the *Environmental Management and Co-ordination (Air Quality) Regulations, 2014* and the *Environmental Management and Co-ordination (Waste Management) Regulations, 2006*. Regulation 14 of the latter stipulates each trade or industry has to install an anti-pollution equipment for the treatment of waste emanating from such trade or industrial undertaking. Its 3<sup>rd</sup> schedule sets the standards for treatment and disposal of waste.
34. As earlier stated, the petition particularized the injuries suffered as a consequence of the alleged pollution. The question that suffices is whether the petitioners tendered scientific and factual evidence to support their allegations. It is trite law that he who alleges must prove. Section 107 of the *Evidence Act* stipulates as follows;
- ‘(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.’
35. In the case of *Leonard Otieno v Airtel Kenya Ltd* (2018) eKLR, Mativo J as he then was expressed himself thus;
- ‘Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *constitution* and inevitably result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.’
36. In the Court of Appeal decision of *Kibos Distillers Limited & 4 others v Benson Ambuti Adegwa & 3 others* [2020] eKLR the court expressed itself thus on the nature of evidence to be adduced in cases involving pollution.
- ‘Pollution is primarily proved by empirical, technical and scientific evidence and not by lay man opinion testimony or depositions.’
37. To prove the causal nexus between the alleged violation of rights to the alleged injuries and pollution, the petitioners tendered an impact assessment report which in part stated it had scientifically carried out an assessment of water sources in Abom. The water sources were classified into three; ground water (hand dug wells and hand pump wells), spring and perennial rivers, and surface water. The first two were conducted outside the precincts of the mining project while the latter was conducted within the mining project.
38. From the report that was prepared by Water Resources Authority in accordance with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> schedule of the *Environmental Management and Co-ordination (Water Quality) Regulations, 2006*, the elements of lead, mercury, copper, arsenic, chromium, zinc and cadmium were either non-detectable or within the acceptable range. In other words, the mining project had not caused any water pollution outside the mining project.
39. Within the mining project, a similar criterion of assessment was conducted. Elements of copper, arsenic, chromium, zinc and cadmium were either non-detectable or within the acceptable range. However, lead and mercury levels were elevated. Lead was found to be at 0.193 mg/l against the



acceptable standard of 0.1 mg/l while mercury was found to be at 0.0264 mg/l against the required standard of 0.02 mg/l.

40. The expert report capped the acceptable standard of mercury at 0.006 mg/l which is the WHO standard while Water Resource Authority capped the maximum acceptable amount at 0.02 mg/l. Statutorily, the 3<sup>rd</sup> schedule of the *Environmental Management and Co-ordination (Water Quality) Regulations, 2006* caps the maximum standard for effluent discharge of mercury to the environment at 0.005 mg/l. The report attributed the high levels of mercury at the mining project to its use during the process amalgamation of gold. It would appear lead is either used during the process of mining gold or is a byproduct. This is so because its high levels were only found within the mining project. The question that arises is whether lead and mercury were being disposed off by the 1<sup>st</sup> respondent in accordance with legal provisions.
41. The *Environmental Management and Co-ordination (Waste Management) Regulations, 2006* has defined waste management as follows;

‘waste management’ means the activities either administrative or operational that are used in handling, packaging, treatment, condition, storage and disposal of waste.’
42. The expert report was silent on whether waste management was being conducted within the mining project in order to manage waste disposal including managing mercury and lead levels. An expert report in accordance with the regulations would have sufficed. In addition there was no evidence lead and mercury had escaped from the mining project. Therefore, the petitioners allegation that the residents of Abom and their livestock had borne the wrath of harmful chemicals from the mining project fails.
43. The expert report admitted an assessment of noise and vibration level was never conducted in accordance with the *Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (control) Regulations, 2009*. Such an assessment would have established the blast frequency and vibrations peak particle velocity. Regulation 14 thereof provides as follows on vibrations and noise from mines: -
  - ‘(1) Where defined work of construction, demolition, mining or quarrying is to be carried out in an area, the authority may impose requirements on how the work is to be carried out including but not limited to requirements regarding—
    - (a) machinery that may be used; and
    - (b) the permitted levels of noise as stipulated in the second and third schedules to these regulations.
  - (2) The relevant lead agency shall ensure that mines and quarries where explosives and machinery used are located in designated areas and not less than two kilometers away from human settlements.
  - (3) Any person carrying out construction, demolition, mining or quarrying work shall ensure that the vibration levels do not exceed 0.5 centimetres per second beyond any source property boundary or 30 metres from any moving source.’
44. In sum, the petitioners did not table any report to affirm the noise and vibrations emanating from the project exceeded the legally stipulated maximum decibels or demonstrated an empirical scientific causal link between the noise and vibration from the mining project to the cracks and nuisance the residents of Abom were experiencing.



45. Even if the expert report attributed the cracks on buildings to the mining project, the report stated ‘It is likely that some of the reported damages could be conditions that were present long way before the mining operations in the area.’ An expert report from NEMA or an accredited expert which would have depicted the levels of noise and vibration would have settled the petitioners assertions. The petitioners’ contention that vibrations from the mining project had cracked their buildings or that noise pollution had deprived the residents’ of Abom peace, quietness and tranquillity fails.
46. The expert report did not conduct an assessment on the petitioners allegations of a correlation between mining dust and alleged respiratory illness and other health related complications. The report read in part ‘...the short period of study could not allow for assessment of the individuals medical records and health implications in order to evaluate the incidences of toxicity of these metals...’
47. An expert report to show the capped standards of mining dust as envisaged under regulation 54 of the *Environmental Management and Co-ordination (Air Quality) Regulations* would have sufficed. A medical report was not tendered too. This court has not satisfied itself the petitioners had discharged the burden of proof that mining dust from the mining project had caused respiratory illness and other health related complications to the petitioners and residents of Abom. The petitioners claims on this ground fails.
48. The report was silent on the petitioners allegations of waste disposal and environmental degradation. The burden lay with the petitioners to tender evidence to illustrate the 1<sup>st</sup> respondent had exceeded the permissible statutory requirements, conducted poor waste management or the environment had been degraded. In my honest opinion, these allegations were not substantiated by a credible expert report, a lead agency or a person duly authorized by NEMA. It therefore ensues the petitioners’ assertions on these grounds fail.
49. It is my finding that the petitioners’ did not prove to the required standard that their rights to life, property, economic and social welfare and, clean and healthy environment were violated by the respondents.

**b. Whether the 1<sup>st</sup> respondent unlawfully and illegally carried out mining activities on the suit property.**

50. Having appreciated the petitioners’ and 1<sup>st</sup> respondent’s pleadings. It is my considered deduction that the petitioners contention was that the mining project had flouted several provisions of law.
51. In violation with section 58 of EMCA and schedule 2 thereof, the 1<sup>st</sup> respondent had not submitted an EIA study report and project report to the interested party which were pre-project requirements.
52. In contravention with sections 101(1) and 176(1) and (2) of the *Mining Act*, the 1<sup>st</sup> respondent had carried out mining activities without concern for the environment and the respondents had not conducted an EIA, social heritage assessment report and environmental management plan which preceded issuance of a mining license. In essence, there was laxity and several provisions of law had been flouted.
53. In contravention with schedule 3 of the *Physical and Land Use Planning Act*, the 1<sup>st</sup> respondent had not conducted a change of use of the suit property from agricultural land to that of a mining project and consent had not been issued to the 1<sup>st</sup> respondent pursuant to section 6(1) of the *Land Control Act*.
54. According to the petitioners, these contraventions were wrongful, illegal and unlawful and caused harm to the environment, to them and to the residents of Abom.



55. By the provisions of section 214 of the *Mining Act*, the burden of proof shifted to the 1<sup>st</sup> respondent to show the genesis of his mining project. He was required to show that he had met all the statutory requirements before its commencement and continuous operation. This provision of law states as follows;

‘Whenever it is necessary to ascertain whether a person is the holder of a mineral right, or the holder of a licence or permit granted under this Act, or is otherwise authorized to engage in mineral dealings, the burden of proof shall lie on the person who alleges that he or she is the holder of the licence or permit.’

56. In spite of the stop order by NEMA being of no probative value because it did not describe the property that was the subject of the order. The expert report which affirmed the 1<sup>st</sup> respondent carried out mining activities on the suit property was not dispelled by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent admitted he owned the suit property. It was evident the 1<sup>st</sup> respondent was and still is conducting a mining project on the suit property.

57. The 1<sup>st</sup> respondent did not produce any shred of evidence before this court to allay the petitioners allegations. He merely denied the accusations levelled against him and asserted he was a stranger to them. It is my finding on this issue that the 1<sup>st</sup> respondent illegally and unlawfully carried out mining activities on the suit property.

### c. What orders should be made with regard to the petition?

58. By the provisions of articles 22 and 258 of the *Constitution*, this court has the inherent power to make any orders which will serve the wider interests of justice. This residual power has been the subject of court decisions including the Court of Appeal decision of *Nguruman Limited v Shompole Group Ranch & another* [2014] eKLR where the court stated: -

‘It is now trite that the inherent power of the court exists in the court’s jurisdiction as a safety valve to enable the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the power of the court.’

59. In a most recent Court of Appeal decision of *Migori County Government & another v Migori County Transport Sacco* (Civil Appeal 110 of 2017) [2021] KECA 7 (KLR) (23 September 2021) (Judgment) the court was of a similar position as the decision of *Nguruman Limited v Shompole Group Ranch* (ibid) when it stated as follows: -

‘The court was always possessed of residual inherent powers which allowed it to make any orders in the wider interest of justice. It was for the court to fashion out an appropriate remedy even in instances where the *Constitution* and the law were silent.’

60. The 1<sup>st</sup> respondents’ impugned mining project on the suit property was commenced and carried out without adhering to applicable laws and regulations. This court is called upon to issue appropriate reliefs to ensure the ends of justice are achieved.

61. The petitioners sought for compensation, royalties and damages which was to be assessed by the court. This was in consonance with article 23 of the *Constitution*. The petitioners did not tender any material to demonstrate the number of people affected by the mining project, royalties due from it or the damages they suffered as a result of failure by the 1<sup>st</sup> respondent to comply with statutory regulations. This court is constrained from making such an assessment. See *Isaiab Luyara Odando & another v*



62. Ultimately, it is trite law that costs follow the event. The petitioners were partially successful in ventilating their interests. I hereby exercise my discretion and grant them one half of the costs of this petition. For the reasons and findings herein earlier stated, I hereby issue the following disposal orders;
- a. That it is hereby declared the commencement of the impugned mining project on land parcel No Siaya/Abom/646 without complying with the provisions of the Environmental Management and Coordination Act, Mining Act, Physical and Land Use Planning Act and Land Control Act were contrary to the provisions of the applicable laws and regulations.
  - b. That the mining project on land parcel No Siaya/Abom/646 shall be closed within 60 days from the date of service of the orders of this court on all parties.
  - c. The 1<sup>st</sup> respondent shall thereafter apply for approvals and certification of the mining project on land parcel No Siaya/Abom/646 from all relevant regulatory authorities within the applicable laws and regulations.
  - d. That the 4<sup>th</sup> respondent and the National Environment Management Authority are hereby directed to monitor and ensure the mining project on land parcel No Siaya/Abom/646 is undertaken in compliance with all the applicable laws and regulations.
  - e. The 4<sup>th</sup> respondent and National Environment Management Authority shall ensure the orders of this court are complied with.
  - f. I award one half of the costs of this petition to the petitioners.

**DELIVERED AND DATED AT SIAYA THIS 23 DAY OF FEBRUARY 2023.**

**HON. A. Y. KOROSS**

**JUDGE**

**23/02/2023**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

Mr. Ochieng for the Petitioner

N/A for respondent

Court assistant: Ishmael Orwa

