

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA IN NAIROBI**  
**HCCHRPET/E..../2026**

KATIBA INSTITUTE ..... PETITIONER  
VERSUS  
ATTORNEY-GENERAL..... 1ST RESPONDENT  
NATIONAL ASSEMBLY.....2ND RESPONDENT  
CABINET SECRETARY FOR THE ENVIRONMENT,  
CLIMATE CHANGE AND FORESTRY ..... 3RD RESPONDENT  
AND  
WINNIE TSUMA..... INTERESTED PARTY

**Certificate of Urgency**

I, Joshua Malidzo Nyawa, Advocate of the High Court of Kenya, certify this matter extremely urgent because:

1. Article 4(2) of the Constitution proclaims Kenya as a multi-party democratic state founded on national values and principles of governance referred to in Article 10, including the rule of law, good governance and accountability.
2. Today, the Respondents have subverted these constitutional commands and demonstrated a headstrong contumaciousness born of bold impunity, open defiance, and a cynical disregard for the authority of the Constitution and the integrity of the judicial system, in several material respects. A pure demonstration of *utado!*
3. On 11 March 2021, Justice Mrima in **Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)** declared that local tribunals are **subordinate courts** whose administration, like that of all other subordinate courts, must fall under the Judiciary through the Judicial Service Commission (JSC). The Court further held that the appointment of tribunal members by the Executive violates the principles of separation of powers, judicial independence, and the right to a fair hearing, and

directed that tribunals be transitioned to the Judiciary with appointments made by the JSC.

4. Recently, on 21 February 2025, the Court of Appeal upheld Hon. Justice Mrima's judgment in **Attorney-General v Okoiti & 3 others (Civil Appeal E416 of 2021) [2025] KECA 309 (KLR) (21 February 2025)**.
5. Similarly, with respect to the National Environment Tribunal, Hon. Justice Chacha Mwita while allowing Katiba Institute's (the Petitioner herein) petition in **Katiba Institute & 2 others v Attorney-General & another; Judicial Service Commission & 10 others (Interested Parties) (Constitutional Petition 268 of 2018 & Petition 251 of 2017 (Consolidated)) [2025]** declared Section 125 of Environment and Management Act, that allowed the cabinet secretary to appoint members of National Environment Tribunal, as unconstitutional. Justice Chacha Mwita found that only the JSC can make such appointments.
6. Despite these explicit, binding, and consistent judicial pronouncements, the 3rd Respondent has proceeded to appoint the Interested Party to the National Environment Tribunal. The appointment of the Interested Party is set to take effect on **8 February 2026**.
7. Further compounding this constitutional defiance, the 2nd Respondent enacted the **Gambling Control Act, No. 14 of 2025**, whose **Section 88** establishes the Gaming Appeals Tribunal and vests the power to appoint its members in the President and the Cabinet Secretary, an arrangement that flies directly in the face of settled constitutional jurisprudence.

8. This level of **executive and legislative impunity is unprecedented.**  
The Respondents appear to treat the constitutional text as a mere suggestion and binding court decisions as disposable paper. The resulting harm to Kenya's constitutional democracy, as envisaged under **Article 4**, is both profound and self-evident.
  
9. Unless urgently restrained, this unconstitutional appointment will take effect, entrench illegality, undermine the authority of the courts, and occasion irreparable harm to the independence of the Judiciary, the separation of powers, and the right to a fair hearing.
  
10. In the circumstances, the **urgency of arresting this grave and escalating constitutional regression** cannot be overstated.

Dated 22 January 2026, Nairobi



**Joshua Malidzo Nyawa**  
**Advocate for Petitioner**

**Drawn and filed by**

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AND  
WINNIE TSUMA..... INTERESTED PARTY

**Notice of Motion**

(Under Rule 3(2),(3), (4) and (5), 19, 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and Article 23 of the Constitution of Kenya, 2010)

**TAKE NOTICE** that this Honourable court shall be moved on the ..... day of .....2026 at 9.00 in the morning or soon thereafter as Counsel for the Petitioner/Applicant may be heard on an application for orders that:

- a) This Application and Petition be certified as urgent and heard on a priority basis in the first instance.
  
- b) A conservatory order issue staying/suspending the appointment of the Interested party to National Environment Tribunal published in Gazette Notice No. 396 of 2026, contained in the Kenya Gazette Vol. CXXVIII—No. 10 on 16 January 2026 pending the inter-parties hearing and determination of this Application.
  
- c) A conservatory order staying/suspending the implementation of Section 88(2) of the Gambling Control Act, No. 14 of 2025, pending the inter-parties hearing and determination of this Application.

d) A conservatory order issue, staying/suspending the appointment of the Interested parties to National Environment Tribunal, published in Gazette notice no 396 of 2026, contained in the Kenya Gazette Vol. CXXVIII—No. 10 on 16 January 2026 pending the inter-parties hearing and determination of this Petition.

e) A conservatory order staying/suspending the implementation of Section 88(2) of the Gambling Control Act, No. 14 of 2025, pending the inter-parties hearing and determination of this Petition.

Which Application is based on the following grounds and supported by the affidavit of **Emily Kinama**:

1. The genesis of this matter emanates from two events: first, the appointment of the Interested Party to the National Environment Tribunal in Gazette Notice No. 396 of 2026, contained in the Kenya Gazette Vol. CXXVIII—No. 10 on 16 January 2026. Secondly, the enactment of the Gambling Control Act, No. 14 of 2025, which came into effect on 12 August 2025.
2. These events are profoundly unconstitutional and threaten our constitutional democracy as follows:
3. Article 4(2) of the Constitution proclaims Kenya as a multi-party democratic state founded on national values and principles of governance referred to in Article 10, including the rule of law, good governance and accountability.
4. Today, the Respondents have subverted these constitutional commands and demonstrated a headstrong contumaciousness born of bold impunity, open defiance, and a cynical disregard for the authority of the Constitution and the integrity of the judicial system, in several material respects.
5. On 11 March 2021, Hon. Justice Mrima in **Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)** declared that local tribunals are

**subordinate courts** whose administration, like that of all other subordinate courts, must fall under the Judiciary through the Judicial Service Commission (JSC). The Court further held that the appointment of tribunal members by the Executive violates the principles of separation of powers, judicial independence, and the right to a fair hearing, and directed that tribunals be transitioned to the Judiciary with appointments made by the JSC.

6. Recently, on 21 February 2025, the Court of Appeal upheld Hon. Justice Mrima's judgment in **Attorney-General v Okoiti & 3 others (Civil Appeal E416 of 2021) [2025] KECA 309 (KLR) (21 February 2025)**.
7. Similarly, with respect to the National Environment Tribunal, Justice Chacha Mwita while allowing Katiba Institute's (the Petitioner herein) petition in **Katiba Institute & 2 others v Attorney-General & another; Judicial Service Commission & 10 others (Interested Parties) (Constitutional Petition 268 of 2018 & Petition 251 of 2017 (Consolidated)) [2025]** declared Section 125 of Environment and Management Act that allowed the cabinet secretary to appoint members of National Environment Tribunal unconstitutional. Justice Chacha Mwita found that only the JSC can make such appointments.
8. Despite these explicit, binding, and consistent judicial pronouncements, the 3rd Respondent has proceeded to appoint the Interested Party to the National Environment Tribunal. The appointment of the Interested Party is set to take effect on **8 February 2026**.
9. Further compounding this constitutional defiance, the 2nd Respondent enacted the **Gambling Control Act, No. 14 of 2025**, whose **Section 88** establishes the Gaming Appeals Tribunal and vests the power to appoint its members in the President and the Cabinet Secretary, an arrangement that flies directly in the face of settled constitutional jurisprudence. The provision provides as follows:

**88. The Gambling Appeals Tribunal**

- (1) There is established a body to be known as the Gambling Appeals

Tribunal.

(2)The Tribunal shall consist of —

(a)a Chairperson appointed by the President from among persons qualified to be judges of the High Court;

(b)two persons appointed by the Judicial Service Commission who shall be advocates of the High Court; and

(c)four persons appointed by the Cabinet Secretary from among persons who possess knowledge and experience in matters relating to gambling, business administration, risk management or law enforcement studies.

10. This level of **executive and legislative impunity is unprecedented**. The Respondents appear to treat the constitutional text as a mere suggestion and binding court decisions as disposable paper. The resulting harm to Kenya’s constitutional democracy, as envisaged under **Article 4**, is both profound and self-evident.
11. Unless urgently restrained, this unconstitutional appointment will take effect, entrench illegality, undermine the authority of the courts, and occasion irreparable harm to the independence of the Judiciary, the separation of powers, and the right to a fair hearing.
12. It is in the public interest that this Court uphold constitutional supremacy, the respect for the judiciary and observance of court decisions. It is in the public interest that this Court reiterates its position, as well as that of the Court of Appeal, that tribunals are part of the judiciary and that their members can only be appointed by the Judicial Service Commission.
13. For good reason, the continued appointment of members of Tribunals by the Executive is a violation of the principle of separation of powers, independence of the Judiciary and the right to fair hearing.
14. The foregoing arguable issues disclose a prima facie case with a high likelihood of success, which needs to be preserved until the same is properly ventilated before the court, as the foregoing events are a threat to the Bill of Rights, good governance, accountability, constitutionalism,

and the rule of law. It is thus contrary to the public interest.

15. Unless the Petition and the Application are certified as urgent, and the prayers sought in the application granted, the Petition shall be rendered nugatory because:

- a) The Respondents will continue to violate the Constitution, and the promise of an independent Judiciary will be defeated.
- b) The Respondents will continue to ignore Court decisions and hence undermine the Authority of the Judiciary.
- c) The Right to a fair hearing will be rendered meaningless as disputes will be heard and presided over by partial adjudicators appointed by the Executive.
- d) Remedies issued at the Judgement stage are insufficient to address the harm done to the Constitution, as this Court cannot undo the decisions that would have been rendered by the Tribunals occupied by members appointed by the Executive.
- e) The public interest calls for ensuring that the constitutional provisions and values are scrupulously adhered to.
- f) It is the duty of this Honourable Court to arrest a threat to the Bill of Rights and the Constitution of Kenya.

11. We ask that this Application be allowed as prayed.

Dated 22 January 2026, Nairobi.



Joshua Malidzo Nyawa  
Advocate for Applicant

**Drawn and filed by**  
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**To: THE HIGH COURT OF KENYA**  
**PETITION**

**A. Introduction**

1. *Utado?* is the unspoken refrain underlying the Respondents’ actions, an attitude of calculated impunity directed at Kenyans, the Judiciary, and the Constitution, evidenced by the repeated appointment of tribunal members and enactment of legislation in direct defiance of apparent judicial authority. This conduct reflects not mere error but a deliberate normalisation of disobedience, eroding public confidence in constitutional governance and weakening the courts’ institutional authority.
2. This Petition challenges a deliberate, escalating, and institutionalised defiance of the Constitution and binding court decisions by the Executive and the Legislature, manifested through the continued appointment of members to statutory tribunals in a manner repeatedly declared unconstitutional by the High Court and conclusively affirmed by the Court of Appeal.
3. In open disregard of Article 4(2) of the Constitution, the national values and principles in Article 10, and settled constitutional jurisprudence on judicial independence and separation of powers, the Respondents have elected impunity over compliance, re-appointing tribunal members, re-

enacting struck-down legislative schemes, and treating judicial authority as a procedural inconvenience rather than a constitutional command.

4. What is before this Honourable Court is therefore not an isolated statutory infraction, but a structural assault on constitutional supremacy, judicial independence, and the finality of court decisions, which, if left unchecked, will normalise disobedience of binding judgments and hollow out constitutional governance itself.
5. It is for this reason that the Petitioner approaches the Court.

## **B. Description of Parties**

### **1. Petitioner**

6. The Petitioner is the Katiba Institute. It is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya's 2010 Constitution, helping to resist efforts to undermine that Constitution, and generally assisting in developing a culture of constitutionalism in Kenya.

### **2. Respondent**

7. The 1st Respondent is the Attorney-General. The Attorney-General is an office established under Article 156 of the Constitution as the principal legal adviser to the government. The Attorney-General represents the national government in court or other legal proceedings.
8. The 2nd Respondent is the National Assembly. The National Assembly exercises legislative authority as a house of Parliament established under Article 93 of the Constitution. Its duties include representing the people of the constituencies, deliberating and resolving issues of concern to the people, enacting legislation, determining the allocation of revenue among the different levels of government, and overseeing national revenue expenditures.
9. The 3rd Respondent is the Cabinet Secretary for Environment, Climate change and forestry. The office is established under Article 152 of the Constitution of Kenya, 2010.

### **Interested Party**

10. The Interested Party is an advocate of the High Court of Kenya, whom the 3rd Respondent appointed as a member of the National Environment Tribunal.

### **C. Statement of Standing and Jurisdiction**

11. The Petitioner institutes this petition on the strength of Article 3(1), which states that every person has an obligation to respect, uphold, and defend the Constitution of Kenya 2010.
12. The Petitioner is a person envisaged under Articles 22(2)(c) and 258(2)(c) of the Constitution, which provides every person with the right to approach this Honourable Court in the public interest and institute court proceedings, claiming that a right in the Bill of Rights or another constitutional provision, respectively, has been contravened or is threatened with contravention.
13. Under Article 165(3)(d)(i) and (ii) of the Constitution of Kenya, the High Court has jurisdiction to hear any question respecting the interpretation of this Constitution, including the determination of the question whether any law is inconsistent with or in contravention of this Constitution and whether anything said to be done under the authority of this Constitution or any law is inconsistent with, or in contravention of, the Constitution.

### **D. Background to the petition**

14. The genesis of this matter lies in two events: first, the appointment of the Interested Party to the National Environment Tribunal in Gazette notice no. 396 of 2026, contained in the Kenya Gazette Vol. CXXVIII—No. 10 on 16 January 2026. The appointment of the Interested Party is set to take effect on **8 February 2026**.
15. Secondly, the **Gambling Control Act, No. 14 of 2025**, came into effect on 12 August 2025. Section 88 of the Act establishes the Gaming Appeals Tribunal. It vests the power to appoint its members in the President and

the Cabinet Secretary, an arrangement that flies directly in the face of settled constitutional jurisprudence. The provision provides as follows:

**88. The Gambling Appeals Tribunal**

(1) There is established a body to be known as the Gambling Appeals Tribunal.

(2) The Tribunal shall consist of —

(a) a Chairperson appointed by the President from among persons qualified to be judges of the High Court;

(b) two persons appointed by the Judicial Service Commission who shall be advocates of the High Court; and

(c) four persons appointed by the Cabinet Secretary from among persons who possess knowledge and experience in matters relating to gambling, business administration, risk management or law enforcement studies.

16. These actions contravene three judicial decisions namely; **Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR); Attorney-General v Okoti & 3 others (Civil Appeal E416 of 2021) [2025] KECA 309 (KLR) (21 February 2025); and Katiba Institute & 2 others v Attorney-General & another; Judicial Service Commission & 10 others (Interested Parties) (Constitutional Petition 268 of 2018 & Petition 251 of 2017 (Consolidated)) [2025].**

**E. Legal basis for the petition**

17. The Petition contests the constitutionality of the newly created offices of advisors to the President and the appointment of people to fill those offices. It discloses explicit constitutional violations carried out with the highest level of contempt.

**a) Constitution of Kenya**

18. The Preamble to the Constitution recognises the aspirations of all Kenyans for a government based on the essential values of human rights, equality,

freedom, democracy, social justice, and the rule of law.

19. Article 1(1) of the Constitution of Kenya 2010 embodies the concept of the people's sovereignty and states that 'All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution'.
20. Articles 2(1) and (4) of the Constitution provide that the Constitution is the supreme law of the Republic and binds all persons. Any law inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
21. Article 3(1) states, 'Every person has an obligation to respect, uphold and defend this Constitution.'
22. Article 6(2) states that 'the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations based on consultation and cooperation'.
23. Article 10 establishes the national values and principles of governance. Article 10(1):

The national values and principles bind all State organs, State officers, public officers, and all persons whenever any of them—

  - (a) applies or interprets this Constitution;
  - (b) enacts, applies or interprets any law; or
  - (c) makes or implements public policy decisions.
24. Article 10(2) asserts that the national values and principles of governance include:
  - (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;

(c) good governance, integrity, transparency and accountability; and

(d) sustainable development.

25. Chapter Four of the Constitution establishes the Bill of Rights. Article 19(1) states that '[t]he Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies'. According to Article 19(2), human rights and fundamental freedoms are protected to 'preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings'. Article 19(3). Provides that the rights and fundamental freedoms guaranteed in the Bill of Rights:

(a) belong to each individual and are not granted by the State;

(b) do not exclude other rights and fundamental freedoms not in the Bill of Rights but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations contemplated in this Constitution.

26. Article 20 addresses the application of the Bill of Rights. Articles 20(1)-(4) state that:

(1) The Bill of Rights applies to all law and binds all State organs and all persons.

(2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

(3) In applying a provision of the Bill of Rights, a court shall—

(a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and

(b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) In interpreting the Bill of Rights, a court, tribunal, or other authority shall promote—

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of the Bill of Rights.

27. Article 21 addresses the implementation of rights and fundamental freedoms. Articles 21(1), (3) & (4) state that:

(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(4) The State shall enact and implement legislation to fulfil its international obligations regarding human rights and fundamental freedoms.

28. Article 22 provides for the enforcement of the Bill of Rights and provides that ‘every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened’.

29. Article 23(1) gives this Court ‘jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights’.

30. In proceedings alleging that a fundamental right or freedom has been denied, violated, infringed, or threatened, this Court may grant appropriate relief, including:

(a) a declaration of rights;

(b) an injunction;

- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

31. Article 24(1) states that ‘A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- a) the nature of the right or fundamental freedom;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

32. Article 28 entitles every person to dignity and the right to have their dignity respected.

33. Article 47(1) states that every person has the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair; and (2) if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

34. Article 48 states that the state shall ensure access to justice for all persons and if any fee is reasonable and shall not impede access to justice.

35. Article 50 guarantees the right to fair hearing by providing that every person has the right to have any dispute that can be resolved by the

application of law decided in a fair and public hearing before a court or another independent and impartial tribunal or body.

36. Article 159 of the Constitution establishes the Judiciary and vests all judicial authority on the judiciary and Article 160 of the Constitution guarantees the independence of the Judiciary.

37. Article 165(3)(a) and (b) establishes the High Court and vests it with unlimited jurisdiction in criminal and civil matters to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened'. It also has jurisdiction under Article 165(3)(d):

to hear any question respecting the interpretation of this Constitution including the determination of—

(i) the question whether any law is inconsistent with or in contravention of this Constitution;

(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution....

38. Article 169 of the Constitution provides for subordinate Courts. It describes subordinate courts to include: Magistrate Courts, Kadhis' courts, the courts martial and any other court or local tribunal as may be established by an Act of Parliament, other the courts established as required by Article 162(2).

39. Article 172 of the Constitution establishes the Judicial Service Commission as an institution meant to promote and facilitate the independence of the Judiciary and tasks the institution of appointing of judges and judicial officers.

40. Article 258(2) of the Constitution provides that 1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention. In addition to a person acting in their interest, court proceedings under clause (1) may be instituted by a person acting in public interest.

41. Article 259(1) requires that the Constitution be interpreted in a manner that:

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance.

## **F. Particulars of Constitutional Violations**

### **i. Violation of the principle of the rule of law and judicial authority**

42. In a good constitutional hygienic state, laws whose effect is to defeat a court pronouncement are not considered, let alone being enacted. It is considered a grave undermining of judicial authority to pass laws to evade the consequences of court decisions or to disregard the Court's positions. It is equally terrible for a state organ to act in a manner that ignores Court decisions.

43. The objective normative value-based system established in the Constitution was not accidental. Instead, Kenyans reacted to the unchecked powers vested in the executive branch, the lack of transparency and the failure to entrench accountability. To constrain these powers, Kenyans decided to preclude the exercise of arbitrary power. They envisioned a society founded on values and principles, as set out in Article 10 of the Constitution, such as the rule of law, transparency, accountability, the devolution of powers, and good governance.

44. Kenyans intended that the said provisions should have substantive bite and that they would be enforced and implemented. They desired these values and principles to be put into practice. It follows, therefore, that all State organs, State officers, public officers and all persons, whether they

apply or interpret the Constitution, enact, apply or interpret any law or make or implement public policy decisions, must defer to Article 10.

45. The value of the rule of law demands strict compliance with the Constitution and laws, including Court decisions. Contrary to this constitutional logic, the 2nd Respondent enacted Section 88(2) of the Gambling Control Act, which contradicts not only the Constitution but also Court Positions. Section 88(2) of the Act allows the Executive (President and Cabinet Secretary) to appoint members of the Gaming Appeals Tribunal. This is contrary to the explicit findings of this Court in **Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)**.
46. In this decision, Justice Mrima declared that local tribunals are **subordinate courts** whose administration, like that of all other subordinate courts, must fall under the Judiciary through the Judicial Service Commission (JSC). The Court further held that the appointment of tribunal members by the Executive violates the principles of separation of powers, judicial independence, and the right to a fair hearing, and directed that tribunals be transitioned to the Judiciary with appointments made by the JSC. Justice Mrima was recently upheld by the Court of Appeal in **Attorney-General v Okoti & 3 others (Civil Appeal E416 of 2021) [2025] KECA 309 (KLR) (21 February 2025)**
47. The 3rd Respondent, on the other hand, has reappointed the Interested party as a member of the National Environment Tribunal. This is contrary to the findings of Justice Chacha Mwita who while allowing Katiba Institute's (the Petitioner herein) petition in **Katiba Institute & 2 others v Attorney-General & another; Judicial Service Commission & 10 others (Interested Parties) (Constitutional Petition 268 of 2018 & Petition 251 of 2017 (Consolidated)) [2025]** declared Section 125 of Environment and Management Act that allowed the cabinet secretary to appoint members of National Environment Tribunal unconstitutional.

Justice Chacha Mwita found that only the JSC can make such appointments.

48. As such, the 3rd Respondent could not appoint the interested party as the function can only be exercised by the Judicial Service Commission. The 3rd Respondent acted *ultra vires* and in violation of the normative, objective-value-based system under Article 10 of the Constitution.

49. The 2010 Constitution cannot countenance such actions. The Rule of Law frowns on any attempt to undermine judicial authority.

**ii. Violation of the Principle of Separation of Powers**

50. Separation of powers is a national value and principle of governance derived from Article 1(3), Article 94(1), Article 129, and Article 159 of the Constitution. The committal of judicial authority to the judicial arm, executive role to the Executive arm and legislative role to the Legislature accords with the Montesquieuian constitutional design.

51. Article 169 of the Constitution establishes Tribunals as subordinate courts, and they are part of the Judiciary. These tribunals perform adjudicatory functions, and it is on this basis that the Judiciary, not the executive should handle their affairs.

52. Separation of powers entails the constitutional controls through which the Constitution regulates the exercise of public power. It entails that both the Legislature and the Executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. By appointing members of tribunals, the executive walks into the *judiciary's domain, thereby violating the doctrine of the separation of powers.*

53. Additionally, most of the disputes handled by the local tribunals involve the executive. As such, the executive has an obvious advantage, given that it is responsible for the appointment and removal of the Members. In such circumstances, the executive ought not to be the appointing

authority. Instead, that duty ought to be undertaken by an independent entity.

**iii. Violation of the Right to Fair Administrative Action and the Right of Fair Hearing**

54. Appointments to tribunals by the Executive in cases where the Executive is a party to disputes before the tribunal violate the right to fair administrative action under Article 47 as well as the right to fair hearing under Article 50.
55. Article 50(1) guarantees every person the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before an independent and impartial court, tribunal or body. Therefore, the appointment of Article 169(1)(d) Tribunals by the Executive violates the right to have legal disputes resolved in a fair hearing before an independent and impartial tribunal or body.
56. Similarly, the Universal Declaration of Human Rights (Article 10) further proclaims that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
57. The right to a fair hearing before an independent and impartial tribunal is further secured by Article 7 of the African Charter on Human and Peoples' Rights, which, among others, links the right to be tried within a reasonable time by an impartial court or tribunal – fair trial.
58. Appointment of members of the adjudicatory tribunals by the Executive violates the right to a fair hearing by a competent, independent and impartial tribunal established by law in the following four ways. First, adjudicatory tribunals whose members are appointed by the Executive do not fully match the definition of “tribunal” under Article 14 of the ICCPR. This Article defines a tribunal as independent of the executive and legislative branches of government and, in specific cases, as enjoying judicial independence in deciding legal matters in judicial proceedings.

59. Second, whereas the competence, independence and impartiality of a tribunal is an absolute right that is not subject to any exception, the appointment of some tribunals by the Executive fails the requirement of independence in the procedure of appointments and does not guarantee actual independence of the tribunal from political interference by the executive branch and the legislature.
60. Third, appointment of adjudicatory tribunals by the Executive creates a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable and where the executive can control or direct the exercise of judicial authority by these tribunals and is therefore incompatible with the notion of an independent tribunal.
61. Fourth, in the light of the well-established principle that “Justice must not only be done but must manifestly and undoubtedly be seen to be done”, the very fact that an adjudicatory tribunal is seen to be appointed by the executive will create a reasonable perception on the part of parties and the public that it is not impartial, however upright and carefully neutral the individual members may be.
62. Section 88(2) of the Gambling Control Act and the appointment of the Interested party by the Cabinet Secretary are unconstitutional as they violate the right to fair administrative action and the right to a fair hearing.

**iv. Usurpation of the mandate of the Judicial Service Commission and Violation of the Independence of the Judiciary**

63. Article 159(1), which falls under Chapter 10 of the Constitution headed “The Judiciary”, provides that Judicial authority is derived from the people and vested in, and is to be exercised by, the courts and “tribunals” established by or under the Constitution.
64. In that respect, Article 160(1) provides for the independence of the Judiciary so that in the exercise of judicial authority, the Judiciary is only

subject to the Constitution and the law and is not subject to the control or direction of any person or authority. Tribunals thus fall under the subordinate court in accordance with Article 162(4) as read with Article 169(1)(d), being “any other court or local tribunal as may be established by an Act of Parliament.” This placed all tribunals under the Judiciary after the effective date (27 August 2010).

65. The core mandate of the Judicial Service Commission under Article 172(1) is to promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice and “shall-(c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates and other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament.”
66. Members of Tribunals are “other Judicial officers” within the Judiciary who are to be appointed, disciplined and removed by the JSC in accordance with the Judicial Service Act, an Act of Parliament which provides for the administration of the Judiciary.
67. Section 88(2) of the Gambling Control Act is unconstitutional for taking away the function of the JSC and vesting it in the Executive (President and Cabinet Secretary). Equally, the appointment of the Interested Party by the Cabinet is unconstitutional as the appointment of members of Tribunals can only be done by the Judicial Service Commission.

### **G. Conclusion**

68. In conclusion, this Honourable Court is vested with broad remedial authority under Article 23(3) of the Constitution to fashion appropriate reliefs that not only cure past violations but also prevent their recurrence, particularly where a violation is systemic, deliberate, and repetitive.
69. The facts disclosed in this Petition demonstrate a persistent and institutionalised pattern of constitutional defiance by the Executive and the Legislature, notwithstanding clear, consistent, and binding judicial

pronouncements on the appointment and administration of statutory tribunals.

70. Declaratory relief alone is therefore insufficient. In the absence of a remedy of non-repetition, the Respondents have shown a clear propensity to: re-enact unconstitutional provisions, make fresh appointments in defiance of court decisions, and entrench illegality through legislative and administrative inertia.
71. As such, a remedy of non-repetition is warranted to protect the supremacy of the Constitution, safeguard judicial independence, preserve the separation of powers, and prevent the normalisation of executive and legislative disobedience of court orders.

#### **H. Reliefs Requested**

72. As a result, invoking Article 23 of the Constitution, the petitioner seeks the following or other appropriate reliefs:
- a) A declaration that the appointment of the chairperson, members and staff of the Gambling Appeals Tribunal is the exclusive constitutional mandate of the Judicial Service Commission in accordance with Article 172 (1) (c) of the Constitution as read with the Judicial Service Act. To that extent, Section 88(2) of the **Gambling Control Act, No. 14 of 2025**, which places the mandate to appoint members of the Tribunal on the President and the Cabinet Secretary, is unconstitutional, null and void.
  - b) A declaration that the appointment of the chairperson, members and staff of the National Environment Tribunal is the exclusive constitutional mandate of the Judicial Service Commission in accordance with Article 172 (1) (c) of the Constitution as read with the Judicial Service Act.

- c) A declaration that the appointment of the Interested Party, by the 3rd Respondent, as a member of the National Environment Tribunal, is unconstitutional.
- d) A judicial review order in the nature of certiorari quashing the appointment of the Interested party as a member of the National Environment Tribunal, published in Gazette notice no 396 of 2026, contained in the Kenya Gazette Vol. CXXVIII—No. 10 on 16 January 2026.
- e) Pursuant to Article 23(3) of the Constitution, a **remedy of non-repetition** do issue prohibiting the President, Cabinet Secretaries, Parliament, and all State organs from appointing members to any statutory tribunal exercising judicial or quasi-judicial functions, or enacting or re-enacting legislation purporting to vest such appointment powers in the Executive, otherwise than in strict compliance with the Constitution and binding judicial precedent, and declaring that any such future appointments or legislative provisions made in contravention thereof shall be **null and void ab initio**.
- f) Any other prayers this Court deems fit.

Dated 22 January 2026, Nairobi



**Joshua Malidzo Nyawa**  
**Advocate for Petitioner**

**Drawn and filed by**

Joshua Malidzo Nyawa,

C/o Katiba Institute

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To be served on	
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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA IN NAIROBI**  
**HCCHRPET/E/2026**

KATIBA INSTITUTE ..... PETITIONER  
VERSUS  
ATTORNEY-GENERAL ..... 1ST RESPONDENT  
NATIONAL ASSEMBLY ..... 2ND RESPONDENT  
CABINET SECRETARY FOR ENVIRONMENT,  
CLIMATE CHANGE AND FORESTRY ..... 3RD RESPONDENT  
AND  
WINNIE TSUMA ..... INTERESTED PARTY

**Affidavit of Emily Kinama in Support of the Petition and Application**

I, Emily Kinama, make oath and state:

1. I am an adult resident of Nairobi and the Litigation Manager at Katiba Institute, the Petitioner. My address of service is Post Office Box Number 26586-00100, Nairobi, in the Republic of Kenya.
2. I am familiar with the issues relating to this Petition and am competent to swear this affidavit.
3. The genesis of this matter emanates from two events: first, the appointment of the Interested Party to the National Environment Tribunal in Gazette notice no 396 of 2026, contained in the Kenya Gazette Vol. CXXVIII—No. 10 on 16 January 2026. Secondly, the enactment of the **Gambling Control Act, No. 14 of 2025**, which came into effect on 12 August 2025.  
*(Copies of the Gazette notice and the Act are marked as **Annexure EK1 and EK2**)*
4. These events are profoundly unconstitutional and threaten our constitutional democracy as follows:
5. Article 4(2) of the Constitution proclaims Kenya as a multi-party democratic state founded on national values and principles of governance referred to in Article 10, including the rule of law, good governance and accountability.
6. Today, the Respondents have subverted these constitutional commands and demonstrated a headstrong contumaciousness born of bold impunity, open defiance, and a cynical disregard for the authority of the Constitution and the integrity of the judicial system, in several material

respects.

7. On 11 March 2021, Justice Mrima in **Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)** declared that local tribunals are **subordinate courts** whose administration, like that of all other subordinate courts, must fall under the Judiciary through the Judicial Service Commission (JSC). The Court further held that the appointment of tribunal members by the Executive violates the principles of separation of powers, judicial independence, and the right to a fair hearing, and directed that tribunals be transitioned to the Judiciary with appointments made by the JSC. Justice Mrima was recently upheld by the Court of Appeal in **Attorney-General v Okoti & 3 others (Civil Appeal E416 of 2021) [2025] KECA 309 (KLR) (21 February 2025)** (*Copies of the judgments are marked as Annexure EK3 and EK4 respectively*)
8. Similarly, with respect to the National Environment Tribunal, Justice Chacha Mwita while allowing Katiba Institute's (the Petitioner herein) petition in **Katiba Institute & 2 others v Attorney-General & another; Judicial Service Commission & 10 others (Interested Parties) (Constitutional Petition 268 of 2018 & Petition 251 of 2017 (Consolidated)) [2025]** declared Section 125 of Environment and Management Act that allowed the cabinet secretary to appoint members of National Environment Tribunal unconstitutional. Justice Chacha Mwita found that only the JSC can make such appointments. (*A copy of this judgement is marked as Annexure EK5*)
9. Despite these explicit, binding, and consistent judicial pronouncements, the 3rd Respondent has proceeded to appoint the Interested Party to the National Environment Tribunal. The appointment of the Interested Party is set to take effect on **8 February 2026**.
10. Further compounding this constitutional defiance, the 2nd Respondent enacted the **Gambling Control Act, No. 14 of 2025**, whose **Section 88** establishes the Gaming Appeals Tribunal and vests the power to appoint its members in the President and the Cabinet Secretary, an arrangement that flies directly in the face of settled constitutional jurisprudence. The provision provides as follows:
  - 88. The Gambling Appeals Tribunal**
  - (1) There is established a body to be known as the Gambling Appeals Tribunal.
  - (2) The Tribunal shall consist of —
    - (a) a Chairperson appointed by the President from among persons qualified to be judges

of the High Court;

(b) two persons appointed by the Judicial Service Commission who shall be advocates of the High Court; and

(c) four persons appointed by the Cabinet Secretary from among persons who possess knowledge and experience in matters relating to gambling, business administration, risk management or law enforcement studies.

11. This level of **executive and legislative impunity is unprecedented**. The Respondents appear to treat the constitutional text as a mere suggestion and binding court decisions as disposable paper. The resulting harm to Kenya's constitutional democracy, as envisaged under **Article 4**, is both profound and self-evident.
12. Unless urgently restrained, this unconstitutional appointment will take effect, entrench illegality, undermine the authority of the courts, and occasion irreparable harm to the independence of the Judiciary, the separation of powers, and the right to a fair hearing.
13. It is in the public interest that this Court uphold constitutional supremacy, the respect for the Judiciary and the observance of court decisions. It is in the public interest that this Court reiterates its position, as well as that of the Court of Appeal, that tribunals are part of the Judiciary and that their members can only be appointed by the Judicial Service Commission.
14. For good reason, the continued appointment of members of Tribunals by the Executive is a violation of the principle of separation of powers, independence of the judiciary and the right to fair hearing.
15. The foregoing arguable issues disclose a prima facie case with a high likelihood of success, which needs to be preserved until the same is properly ventilated before the court, as the foregoing events are a threat to the Bill of Rights, good governance, accountability, constitutionalism, and the rule of law. It is thus contrary to the public interest.
16. Unless the Petition and the Application are certified as urgent, and the prayers sought in the application granted, the Petition shall be rendered nugatory because:
  - a) The Respondents will continue to violate the Constitution, and the promise of an independent Judiciary will be defeated.

- b) The Respondents will continue to ignore Court decisions and hence undermine the Authority of the Judiciary.
- c) The Right to a fair hearing will be rendered meaningless as disputes will be heard and presided over by partial adjudicators appointed by the Executive.
- d) Remedies issued at the Judgement stage are insufficient to address the harm done to the Constitution, as this Court cannot undo the decisions that would have been rendered by the Tribunals occupied by members appointed by the Executive.
- e) The public interest calls for ensuring that the constitutional provisions and values are scrupulously adhered to.

17. It is the duty of this Honourable Court to arrest a threat to the Bill of Rights and the Constitution of Kenya

18. What I have stated in this affidavit is true and accurate to the best of my knowledge, information, and belief. When I have relied on information outside my direct experience, I have explained why that information is reliable and included supporting exhibits.

Sworn by Emily Kinama on 22 January 2026 in Nairobi

DANIEL OMORO ACHACH  
ADVOCATE  
& COMMISSIONER FOR OATHS  
P. O. Box 51340 - 00100  
NAIROBI

BEFORE ME




COMMISSIONER OF OATHS

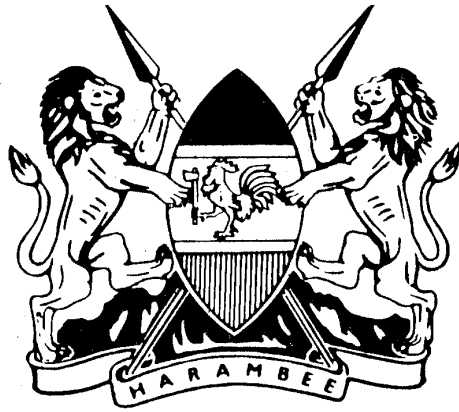


Emily Kinama  
Deponent

**Drawn and filed by**

Joshua Malidzo Nyawa,  
C/o Katiba Institute  
House No. 5, The Crescent, Off Parklands Road  
PO Box 26586-00100, Nairobi  
litigation@katibainstitute.org  
jmnyawa@katibainstitute.org

This is the Exhibit Marked "EK-1"  
 Referred to in the Annexed Affidavit Declaration  
 of Emily Kinama  
 Sworn / declared before me  
 this 22 day of Jan 2026  
 at Nairobi  
  
 Commissioner For Oaths



# THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXVIII—No. 10

NAIROBI, 16th January, 2026

Price Sh. 60

## CONTENTS

### GAZETTE NOTICES

### PAGE

The Kenya Deposit Insurance Act—Re-Appointments .....	136, 137
The State Corporations Act—Re-Appointments .....	136
The Universities Act—Appointment .....	136
The Judicial Service Act—Designation .....	136
The Science, Technology and Innovation Act— Appointments .....	136–137
The Kenya Revenue Authority Act—Appointment .....	137–138
The Anti-Counterfeit Act—Appointment .....	138
The Public Finance Management Act—Re-Appointment ....	138
The Coast Development Authority Act—Re-Appointment..	138
The Environmental Management and Co-ordination Act— Re-Appointment, etc. ....	138, 161–167
County Governments Notices .....	138–140 156–159, 170–171
The Land Registration Act—Issue of Provisional Certificates, etc. ....	140–149, 171
The Land Act—Reservation of Public Lands to the Ministry of Defence .....	149–151
Statement of Actual Revenues and Net Exchequer Issues as at 31st December, 2025 .....	151–154
The Energy and Petroleum Regulatory Authority—Fuel Energy Cost Charge, etc. ....	154–156
The East African Community Customs Management Act—Appointment and Limits of Customs Areas .....	159
The Kenya Information and Communications Act— Application by Postal Corporation of Kenya (PCK) for Review of Postage Rates .....	159–160
The Insolvency Act—Final Meeting .....	160

### GAZETTE NOTICES—(Contd.)

The Political Parties Act—Change of Political Party Officials, etc. ....	160–161
Disposal of Uncollected Goods .....	167
Change of Names .....	167–170
The Mining Act—Application for Prospecting Licence.....	170

### SUPPLEMENT Nos. 188 and 189

#### Senate Bills, 2025

	PAGE
The Social Risk Management Bill, 2025 .....	281
The Mining (Amendment) Bill, 2025 .....	341

### SUPPLEMENT No. 190

#### National Assembly Bills, 2025

	PAGE
The Sexual Offences (Amendment) Bill, 2025 .....	1213

### SUPPLEMENT No. 191

#### Legislative Supplements, 2025

LEGAL NOTICE NO.	PAGE
179—The Microfinance Act—Exemption .....	2027
180—The Public Procurement and Asset Disposal Act— Debarment .....	2027

## CORRIGENDA

IN Gazette Notice No. 18140 of 2025, *amend* the name printed as “Loice Jepkemboi Kipkorir (Dr.)” to *read* “Loice Jepkemboi Kipkorir (Dr.)”.

-----

IN Gazette Notice No. 13086 of 2024, *amend* the date of death printed as “1st November, 2002” to *read* “4th August, 2015”.

-----

IN Gazette Notice No. 10880 of 2022, Cause No. E122 of 2022, *amend* the date of death printed as “4th February, 2022” to *read* “4th January, 2012”.

-----

IN Gazette Notice No. 13099 of 2025, Cause No. E77 of 2024, *amend* the petitioner’s name printed as “Beatrice Mbaya Ringera” to *read* “Beatrice Kathira Mutonga”.

GAZETTE NOTICE NO. 383

## THE KENYA DEPOSIT INSURANCE ACT

(No. 10 of 2012)

## KENYA DEPOSIT INSURANCE CORPORATION

## RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 7 (1) (a) of the Kenya Deposit Insurance Act, 2012, I, William Samoei Ruto, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces, re-appoint—

HANNAH WAITHERERO MURIITHI

to be the Non-Executive Chairperson of the Board of Directors of the Kenya Deposit Insurance Corporation, for a period of three (3) years, with effect from the 20th January, 2026.

Dated the 16th January, 2026.

WILLIAM SAMOEI RUTO,  
*President.*

GAZETTE NOTICE NO. 384

## THE STATE CORPORATIONS ACT

(Cap. 446)

## STATE CORPORATIONS ADVISORY COMMITTEE

## RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 26 (1) (a) of the State Corporations Act, I, William Samoei Ruto, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces, re-appoint—

PHILLIP MONG’ONY

to be the Non-Executive Chairperson of the State Corporations Advisory Committee, for a period of three (3) years, with effect from 20th January, 2026.

Dated the 16th January, 2026.

WILLIAM SAMOEI RUTO,  
*President.*

GAZETTE NOTICE NO. 385

## THE STATE CORPORATIONS ACT

(Cap. 446)

## STATE CORPORATIONS ADVISORY COMMITTEE

## RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 26 (3) of the State Corporations Act, I, William Samoei Ruto, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces, re-appoint—

MUYUMBA SIMON INDIMULI

to be the Secretary of the Board of the State Corporations Advisory Committee, for a period of three (3) years, with effect from the 30th January, 2026.

Dated the 16th January, 2026.

WILLIAM SAMOEI RUTO,  
*President.*

GAZETTE NOTICE NO. 386

## THE UNIVERSITIES ACT

(Cap. 210)

## RONGO UNIVERSITY

## APPOINTMENT

IN EXERCISE of the powers conferred by section 38 (1) (a) of the Universities Act, 2012, I, William Samoei Ruto, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces, appoint—

JOHN KIPNGETICH MOSONIK (DR.) (ENG.)

to be the Chancellor of the Rongo University, for a period of five (5) years, with effect from the 16th January, 2026.

Dated the 16th January, 2026.

WILLIAM SAMOEI RUTO,  
*President.*

GAZETTE NOTICE NO. 387

## THE CONSTITUTION OF KENYA

## THE JUDICIAL SERVICE ACT

(Cap. 8A)

## DESIGNATION

PURSUANT to the provisions of the Constitution of Kenya and section 5 (2) (c) of the Judicial Service Act, the Chief Justice of the Republic Kenya designates the Magistrates’ Courts named below as Special Magistrates Courts to hear and determine cases of possession and trafficking in narcotic drugs and psychotropic substances with municipal and international dimensions:

1. Jomo Kenyatta International Airport (JKIA) Magistrates’ Court;
2. Kahawa Magistrates’ Court;
3. Mombasa Magistrates’ Court; and
4. Busia Magistrates’ Court.

This designation will take effect on the date of this Gazette Notice.

Dated the 15th January, 2026.

MARTHA K. KOOME,  
*Chief Justice and President of the Supreme Court.*

GAZETTE NOTICE NO. 388

## THE SCIENCE, TECHNOLOGY AND INNOVATION ACT

(Cap. 511)

## NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION (NACOSTI)

## APPOINTMENT

IN EXERCISE of the powers conferred by section 5 (9) of the Science, Technology and Innovation Act, as read together with section 51 (1) of the Interpretation and General Provisions Act, the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs appoints—

Florence M’Mogi Olubayo (Prof.)— *Chairperson*

*Under paragraph (a)–*

Daniel Oliech,

*Under paragraph (b)–*

George Nyakundi,

*Under paragraph (c)–*

Stephen Ikiiki (Dr.),

*Under paragraph (d)–*

Wairimu Njage,

*Under paragraph (e)–*

Evans A. Mukoye (Dr.),

*Under paragraph (f)–*

Benedict M. Mutua (Prof.),

as the Chairperson and Members of the Selection Panel for the Recruitment of the Board of the National Commission for Science, Technology and Innovation (NACOSTI), with effect from the 16th January, 2026. The selection panel shall stand dissolved after the appointment of the Members of the Board. Gazette Notice No. 3868 of 2025 is revoked.

Dated the 16th January, 2026.

MUSALIA MUDAVADI,  
*Prime Cabinet Secretary,  
Office of the Prime Cabinet Secretary and  
Ministry of Foreign and Diaspora Affairs.*

GAZETTE NOTICE NO. 389

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT

(Cap. 511)

NATIONAL RESEARCH FUND (NRF)

APPOINTMENT

IN EXERCISE of the powers conferred by section 5 (9) of the Science, Technology and Innovation Act, the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs appoints—

Amina Abubakar (Prof.) — *Chairperson,*

*Under paragraph (a)–*

Caroline C. Kiget,

*Under paragraph (b)–*

Seth Nyamweya Masese,

*Under paragraph (c)–*

Jona Wala (FCPA),

*Under paragraph (d)–*

Jane Mwangi,

*Under paragraph (e)–*

Mary Gikungu (Prof.),

*Under paragraph (f)–*

James Kahindi (Prof.),

as the Chairperson and Members of the Selection Panel for the Recruitment of the Board of Trustee of the National Research Fund (NRF), with effect from the 16th January, 2026. The selection panel shall stand dissolved after the appointment of the Members of the Board.

Dated the 16th January, 2026.

MUSALIA MUDAVADI,  
*Prime Cabinet Secretary,  
Office of the Prime Cabinet Secretary and  
Ministry of Foreign and Diaspora Affairs.*

GAZETTE NOTICE NO. 390

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT

(Cap. 511)

KENYA NATIONAL INNOVATION AGENCY (KeNIA)

APPOINTMENT

IN EXERCISE of the powers conferred by section 5 (9) of the Science, Technology and Innovation Act, the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs, appoints—

Shukri Baramadi— *Chairperson*

*Under paragraph (a)–*

Sally J. Tanui,

*Under paragraph (b)–*

Janet Kung'u,

*Under paragraph (c)–*

Michael A. Kagika,

*Under paragraph (d)–*

Ehud Gachugu (Dr.),

*Under paragraph (e)–*

James Mwaluma (Dr.),

*Under paragraph (f)–*

Peninah Aloo-Oluoch (Prof.),

as the Chairperson and members of the Selection Panel for the Recruitment of the Board of Trustee of the Kenya National Innovation Agency (KeNIA), with effect from the 16th January, 2026. The selection panel shall stand dissolved after the appointment of the members of the Board.

Dated the 16th January, 2026.

MUSALIA MUDAVADI,  
*Prime Cabinet Secretary,  
Office of the Prime Cabinet Secretary and  
Ministry of Foreign and Diaspora Affairs.*

GAZETTE NOTICE NO. 391

THE KENYA DEPOSIT INSURANCE ACT

(No. 10 of 2012)

KENYA DEPOSIT INSURANCE CORPORATION

RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 7 (1) (d) of the Kenya Deposit Insurance Act, 2012, the Cabinet Secretary for the National Treasury and Economic Planning re-appoints—

HANNAH WAITHERERO MURIITHI

as a Member of the Board of Directors of the Kenya Deposit Insurance Corporation, for a period of three (3) years with effect from the 20th January, 2026.

Dated the 16th January, 2026.

JOHN MBADI,  
*Cabinet Secretary for the  
National Treasury and Economic Planning.*

GAZETTE NOTICE NO. 392

THE KENYA REVENUE AUTHORITY ACT

(Cap. 469)

KENYA REVENUE AUTHORITY

APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (2) (e) of the Kenya Revenue Authority Act, the Cabinet Secretary for the National Treasury and Economic Planning appoints—

RISPER OLICK

to be a Member of the Board of Directors of the Kenya Revenue Authority, for a period of three (3) years, with effect from the 16th January, 2026.

Dated the 16th January, 2026.

JOHN MBADI,  
Cabinet Secretary for the  
National Treasury and Economic Planning.

GAZETTE NOTICE NO. 393

## THE ANTI-COUNTERFEIT ACT

(Cap. 510)

## ANTI-COUNTERFEIT AUTHORITY

## APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (1) (a) and (h) of the Anti-Counterfeit Act, the Cabinet Secretary for Investments, Trade and Industry appoints—

NELSON RIBUTHI GAICHUHIE

to be a Member and Chairperson of Board of Directors of the Anti-Counterfeit Authority, for a period of three (3) years, with effect from the 16th January, 2026.

Dated the 16th January, 2026.

LEE KINYANJUI,  
Cabinet Secretary for Investments, Trade and Industry.

GAZETTE NOTICE NO. 394

## THE PUBLIC FINANCE MANAGEMENT ACT

(Cap. 412A)

## THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS

## THE FINANCIAL INCLUSION FUND

## RE-APPOINTMENT

IN EXERCISE of powers conferred by section 10 (1) (e) of the Public Finance Management (Financial Inclusion Fund) Regulations on Advisory Board, the Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSME) Development re-appoints—

MELISSA NGANIA

to be a Member of the Board of the Financial Inclusion Fund, for a period of three (3) years, with effect from the 20th January, 2026.

Dated the 16th January, 2026.

WYCLIFFE AMBETSA OPARANYA,  
Cabinet Secretary for Co-operatives and  
Micro, Small and Medium Enterprises (MSMEs) Development.

GAZETTE NOTICE NO. 395

## THE COAST DEVELOPMENT AUTHORITY ACT

(Cap. 449)

## COAST DEVELOPMENT AUTHORITY

## RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 4 (1) (i) of the Coast Development Authority Act, the Cabinet Secretary for East African Community, the ASALs and Regional Development re-appoints—

BENSON MUEMA KILONZO

as a Member of the Board of Directors of the Coast Development Authority, for a period of three (3) years, with effect from 3rd February, 2026.

Dated the 16th January, 2026.

BEATRICE ASKUL MOE,  
Cabinet Secretary for East African Community,  
the ASALs and Regional Development.

GAZETTE NOTICE NO. 396

## THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT

(Cap. 387)

## NATIONAL ENVIRONMENTAL TRIBUNAL

## RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 125 (1) (d) of the Environmental Management and Co-ordination Act, the Cabinet Secretary for Environment, Climate Change and Forestry re-appoints—

WINNIE TSUMA

to be a member of the National Environmental Tribunal, for a period of three (3) years, with effect from the 8th February, 2026.

Dated the 16th January, 2026.

DEBORAH MLONGO BARASA,  
Cabinet Secretary for Environment,  
Climate Change and Forestry.

GAZETTE NOTICE NO. 397

## THE CONSTITUTION OF KENYA

## THE COUNTY GOVERNMENTS ACT

(Cap. 265)

## THE PUBLIC FINANCE MANAGEMENT ACT

(Cap. 412A)

## THE SELECTION PANEL FOR THE RECRUITMENT OF THE SECRETARY/CEO AND COMMISSIONERS OF COUNTY PUBLIC SERVICE BOARD

## APPOINTMENT

NOTICE is given pursuant to section 58 (1) (a), (2) and (3) of the County Governments Act, 2012, (as amended by the County Governments (Amendment) Act, 2020 that I, Jeremiah Ekamais Lomorukai Napotikan, the Governor, Turkana County, do appoint the following persons to be Members of the Selection Panel for the Recruitment of the Secretary/CEO and Commissioners of County Public Service Board respectively:

No.	Name	Role
1	Mathew Etabo Edung (Dr.)	Chairperson
2	Samson Ochuka Omamo	Member, Advocate
3	Fatuma Ekal (Ms.)	Member, KUPPET
4	Rev. Dr. Joshua Lemuya Lojock	Member, Private Sector
5	FCPA Michael Ekai Aremon	Member, Accountant

The terms of reference of the selection Panel will be—

- To ensure the competitive sourcing of the persons to fill the positions of the Secretary/CEO and Commissioners of County Public Service Board respectively;
- To formulate and undertake the advertisements for the positions of the Secretary/CEO and Commissioners of County Public Service Board and to receive applications in respect of the said vacancies;
- To undertake the long listing and short listing of the applications received under paragraph (a) above;
- To prepare and publish the interview schedule of the candidates shortlisted for the stated vacancies; and

- (e) To conduct the interviews of the shortlisted applicants and thereafter forward the names of the successful applicants to the County Governor for onward transmission of his nominees to the County Assembly for vetting and approval.

In the performance of its task, the selection panel –

- (a) Shall regulate its own procedure;
- (b) Shall be facilitated by the Director of Human Resource Management who shall provide secretariat services; and
- (c) Shall submit a final report of its activities to the Governor at the end of its term.

The section panel shall finalize its task within a period of sixty (60) days from the date of this notice.

Dated the 11th November, 2025.

JEREMIAH EKAMAIS LOMORUKAI NAPOTIKAN (DR.),  
MR/8081526 *Governor, Turkana County.*

GAZETTE NOTICE NO. 398

THE CONSTITUTION OF KENYA  
THE COUNTY GOVERNMENTS ACT  
(Cap. 265)  
COUNTY GOVERNMENT OF TURKANA  
TURKANA COUNTY PUBLIC SERVICE BOARD  
APPOINTMENT

IN EXERCISE of the powers conferred to section 58 (1) (a), (2) and (3) of the County Governments Act, 2012, (as amended by the County Governments (Amendment) Act, 2020, upon approval by the County Assembly of Turkana in its sitting on 21st May, 2025, I, Jeremiah Ekamais Lomorukai Napotikan, Governor of Turkana County appoint—

PETER EKUNYUK INGOLAN

as Chairperson of Turkana County Public Service Board.

Dated the 11th November, 2025.

JEREMIAH EKAMAIS LOMORUKAI NAPOTIKAN (DR.),  
MR/8081527 *Governor, Turkana County.*

GAZETTE NOTICE NO. 399

THE CONSTITUTION OF KENYA  
THE COUNTY GOVERNMENTS ACT  
(Cap. 265)  
COUNTY GOVERNMENT OF KERICHO  
APPOINTMENT

IN EXERCISE of the powers conferred by Article 179 (1) of the Constitution as read with section 30 (i), (l) and 32 (3) of the County Governments Act, I, Erick Kipkoech Mutai (Dr.), Governor, Kericho County re-assign –

JOHN KIPNGENO CHERUIYOT

to be County Executive Committee Member responsible for Agriculture, Livestock and Co-operative Management. The appointment\* of Magerer J. K. Langat as County Executive Committee Member is revoked.

Dated the 3rd October, 2025.

ERICK KIPKOECH MUTAI (DR.),  
MR/8081512 *Governor, Kericho County.*

\*G.N. 7068/2025

GAZETTE NOTICE NO. 400

THE COUNTY GOVERNMENTS (AMENDMENT) ACT  
(No. 11 of 2020)

COUNTY GOVERNMENT OF NANDI  
APPOINTMENT

IN EXERCISE of the powers conferred by section 58A of the County Governments Act, I, Stephen Kipyego Sang, Governor, Nandi County, appoint—

Sally Jemutai Chumo (Dr.),  
Elly Kiptanui Kurgat,  
Sammy Kipchumba Sang,

to be Members of the Nandi County Public Service Board, for a period of six (6) years, with effect from the 17th November, 2025.

Dated the 17th November, 2025.

STEPHEN KIPYEGO SANG,  
MR/8081693 *Governor, Nandi County.*

GAZETTE NOTICE NO. 401

THE COUNTY GOVERNMENTS ACT  
(Cap. 265)  
THE COMPANIES ACT  
(Cap. 486)  
THE WATER ACT  
(Cap. 372)

NYAMIRA WATER AND SANITATION COMPANY LIMITED  
(NYAWASCO)

APPOINTMENT

IT IS NOTIFIED for the information of the general public that pursuant to section 30 (2) (l) of the County Governments Act, 2012 (as amended), the Companies Act and the Water Act, the under listed persons have been appointed as members of the board of Nyamira Water and Sanitation Company Limited (NYAWASCO) for a period of three (3) years.

Name	Position
Ogaro Lugard Kaunda (Dr.)	Chairman
Naom Nyaechero Ondieki	Member
Caroline Mongina Matar (Dr.)	Member
James Bundi Morwabe	Member
Stephen Ouko Bundi	Member
Joseph Mbere Arama	Member
Victorinah Kemunto Makori	Member
County Chief Officer, Water Sanitation and Irrigation	Member
County Chief Officer, Accounting Services	Member

Dated 19th December, 2025.

AMOS KIMWOMI NYARIBO,  
MR/8081640 *Governor, Nyamira County.*

GAZETTE NOTICE NO. 402

THE CONSTITUTION OF KENYA  
THE COUNTY GOVERNMENTS ACT  
(Cap. 265)

COUNTY GOVERNMENT OF ISIOLO

SELECTION PANEL FOR THE RECRUITMENT OF THE  
CHAIRPERSON OF THE COUNTY PUBLIC SERVICE BOARD

APPOINTMENT

PURSUANT to Section 58(A)(1) of the County Governments Act, (as amended by the County Governments (Amendment) Act 2020) and with the approval of the County Assembly that I, Abdi Ibrahim Hassan, the Governor of Isiolo County, hereby appoint the following persons to be members of the Selection Panel for the Recruitment of the Chairperson of the County Public Service Board;

1. Isack Kara Boru (Chairperson);
2. Nuria Mubarak (Member);
3. Linus Thurairira Gichunge (Member);
4. Peter Muhuha Ngechu; and
5. Rebecca Mwonjiru Munya (Member).

The terms of reference of the Selection Panel will be:

- (a) to formulate and undertake the advertisement of a vacancy in the office of the Chairperson of the County Public Service Board and to receive applications in respect of the said vacancies;
- (b) to undertake the long listing and short listing of the applications received under paragraph (a) above;
- (c) to prepare and publish the interview schedule of the candidates shortlisted for the stated vacancy;
- (d) to conduct the interviews of the shortlisted applicants and thereafter forward two (2) names of the successful applicants to the County Governor for onward transmission of his nominee to the County Assembly for vetting and approval.

In the performance of its task, the Selection Panel:

- (a) shall regulate its own procedure;
- (b) shall be facilitated by the Office of the County Secretary and the County Department of Finance as may be appropriate to the effective discharge of its mandate; and
- (c) shall submit a final report of its activities to the Governor at the end of its term.

The mandate of the Selection Panel shall be effective for a period of ninety (90) days from the date of this publication.

Dated the 8th January, 2026.

MR/7882425

ABDI I. HASSAN,  
*Governor, Isiolo County.*

GAZETTE NOTICE NO. 403

THE CONSTITUTION OF KENYA  
THE COUNTY GOVERNMENTS ACT  
(Cap. 265)

THE KILIFI COUNTY INVESTMENT AND DEVELOPMENT  
CORPORATION ACT, 2019

COUNTY GOVERNMENT OF KILIFI

KILIFI COUNTY INVESTMENT AND DEVELOPMENT  
CORPORATION BOARD

APPOINTMENT

IN EXERCISE of the powers conferred by section 30 (2) (a) of the County Governments Act, 2012 and section 6 (1) of the Kilifi County Investment and Development Corporation Act, 2019 and upon approval by the Kilifi County Assembly in its session held on 2nd December, 2025, I, Gideon Maitha Mung'aro, the Governor, Kilifi County, appoint the persons named in the first column of the Schedule, to be Members of the Kilifi County Investment and Development Corporation Board as designated in the second column of the Schedule:

SCHEDULE

Name of Member	Designation
Charles Nyiro Wanje (Dr.)	Chairperson
Kashero Emmanuel Lewa (Dr.)	Representative appointed by the Executive
Henry Lewa Mwakoyo	Representative appointed by the Executive
Cynthia Mbeyu (Ms.)	Representative appointed by the Executive
Hezekiah Mwarua Nguma	Chief Officer responsible for Finance and Economic Planning
Lynne Farrah (Ms.)	Chief Officer responsible for Trade
Alex Daya Nguzo	Acting Chief Executive Officer

Dated the 17th December, 2025.

MR/8081727

GIDEON MAITHA MUNG'ARO,  
*Governor, Kilifi County.*

GAZETTE NOTICE NO. 404

THE LAND REGISTRATION ACT  
(Cap. 300)

ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Jackson Kithuka, of P.O. Box 8350-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 14870/208, situate in Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 59145/1, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081705

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 405

THE LAND REGISTRATION ACT  
(Cap. 300)

ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Jackson Kithuka, of P.O. Box 8350-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 14870/555, situate in Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 53738/1, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081705

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 406

THE LAND REGISTRATION ACT  
(Cap. 300)

ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Wallace Mwaura Mbugua, of P.O. Box 7039-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 14870/229, situate in Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 59462/1, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081706

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 407

THE LAND REGISTRATION ACT  
(Cap. 300)

ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Wallace Mwaura Mbugua, of P.O. Box 7039-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 14870/240, situate in Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 52748/1, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081706

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 408

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Wallace Mwaura Mbugua, of P.O. Box 7039-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 14870/556, situate in Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 51298/1, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081706

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 409

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Harriet Naitore, of P.O. Box 7039-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 20727/121, situate in Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 97924/1, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081706

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 410

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS Keemti Singh Bamrah, as administrator of the estate of Swinder Singh Bamrah (deceased), is registered as proprietor of all that piece of land known as L.R. No. 209/1510, situate in the city of Nairobi in the Nairobi Area, by virtue of an indenture registered in Vol. N29, Folio 372, File 9393 and whereas sufficient evidence has been adduced to show that the said indenture issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a certified copy of the indenture provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882310

S. C. NJOROGI,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 411

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Peter Mungai Njoroge, of P.O. Box 31427-00600, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land known as L.R. 14870/543, situate in the south of Ruiru Town in Kiambu District, by virtue of a certificate of title, registered as I.R. 64562, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882353

J. O. KOECH,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 412

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS (1) Simon Ikua and (2) Elizabeth Nyakabete Nyanjuki, as administrators of the estate of Cecilia Nyanjuki Ikua, both of P.O. Box 2194, Nyeri in the Republic of Kenya, are registered as proprietors of all piece of land, known as L.R. No. 5118/70, situate in the Nyeri District, by virtue of a grant, registered as I.R. 65311/1, and whereas sufficient evidence has been adduced to show that the said grant has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882348

F. O. MAURA,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 413

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Platinum Ventures Limited, of P.O. Box 43170-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land, known as L.R. No. 20892/193, situate in the East of Mavoko Municipality in the Mavoko District, by virtue of a certificate of title, registered as I.R. 98301/1, and whereas sufficient evidence has been adduced to show that the said lease has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081620

C. K. MUCHIRI,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 414

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Betty Kadzo Baya, of P.O. Box 41274-80800, Mombasa in the Republic of Kenya, is registered as proprietor in freehold ownership interest of all that piece of land known as Subdivision No. 4871/II/MN, situate in the Mombasa Municipality in Mombasa District, and whereas sufficient evidence has been adduced to show that the said has been lost, and notice is given that after the expiration of thirty (30) days from the date hereof, I shall issue a provisional certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081509

M. S. MANYARKIY,  
*Registrar of Titles, Mombasa.*

GAZETTE NOTICE NO. 415

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A PROVISIONAL CERTIFICATE

WHEREAS Omar Said Baquteyan (deceased), of P.O. Box 90276-80100, Mombasa in the Republic of Kenya, is registered as proprietor in freehold ownership interest of all that piece of land containing 0.0797 hectare or thereabouts, known as L.R. No. 1961/III/MN, situate in the north of Mombasa Municipality in the Kilifi District, registered as C.R. 26288, and whereas the Kadhi Court No. E47 of 2022 has

issued a court order in favour of Abdalla Ahmed, and whereas all efforts made to trace the certificate of title and be surrendered to the registrar of titles for cancellation have failed, notice is given that after the expiration of sixty (60) days from the date hereof provided that no objection has been received within that period, I intend to dispense with the production of the said certificate of title and proceed with the registration of the said order in favour of Abdalla Ahmed as proprietor by transmission and upon such registration the certificate of title issued earlier to the said Omar Said Baquteyan (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/7882359 M. C. CHEPKEMOI,  
*Registrar of Titles, Mombasa.*

GAZETTE NOTICE NO. 416

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A REPLACEMENT TITLE

WHEREAS Sapphire Real Estate Limited, of P.O. Box 25713–00603, Nairobi in the Republic of Kenya, is registered as proprietor of all that property, situate in the city of Nairobi in the Nairobi Area, registered under L.R. No. 2/191, by virtue of an indenture, registered as Volume N107, Folio 171, File 12128, and whereas sufficient evidence has been adduced to show that the said indenture issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882355 S. NANDAKO,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 417

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A REPLACEMENT TITLE

WHEREAS Rachel Naserian Kinuthia, of P.O. Box 4576–00506, Nairobi in the Republic of Kenya, is registered as proprietor of all that House No. K.5/A erected on piece of land, known as L.R. No. 209/6989/130, situate in the city of Nairobi in the Nairobi Area, by virtue of a lease, registered as I.R. 41019/1, and whereas sufficient evidence has been adduced to show that the said lease issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882382 S. C. NJOROGE,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 418

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A REPLACEMENT TITLE

WHEREAS Vincent Peter Oyenga Otieno, is registered as proprietor of all that piece of land, known as Kisumu/Wathorego/1915, situate in Kisumu County, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882444 N. ODHIAMBO,  
*Land Registrar, Kisumu.*

GAZETTE NOTICE NO. 419

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A REPLACEMENT TITLE

WHEREAS Mary Gorety Amondi, is registered as proprietor of all that piece of land, known as Kisumu/Chiga/6044, situate in Kisumu County, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882448 N. ODHIAMBO,  
*Land Registrar, Kisumu.*

GAZETTE NOTICE NO. 420

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A NEW LAND TITLE DEED

WHEREAS Thairu Mubea, is registered as proprietor in absolute ownership interest of all that piece of land containing 0.9850 hectare or thereabouts, situate in the district of Nakuru, registered under title No. Dundori/Lanet Block 5/250 (Kiamunyeki "A"), and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882358 J. M. GITARI,  
*Land Registrar, Nakuru.*

GAZETTE NOTICE NO. 421

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A NEW LAND TITLE DEED

WHEREAS Jennifer Ruth Njoki Kahare, of P.O. Box 2859, Nakuru in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 1.02 hectares or thereabout, situate in the district of Nakuru, registered under title No. Kiambogo/Kiambogo Block 2/404 (Mwariki), and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081517 J. M. GITARI,  
*Land Registrar, Nakuru.*

GAZETTE NOTICE NO. 422

THE LAND REGISTRATION ACT

(Cap. 300)

ISSUE OF A REPLACEMENT TITLE

WHEREAS Ngelechei Keli (ID/5302165), is registered as proprietor of all that piece of land, situate in the county of Uasin Gishu, registered under title No. Sergoit/Karuna Block 3 (Tugen)/166, by virtue of a title deed, and whereas sufficient evidence has been adduced to show that the said title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882386 N. C. ROP,  
*Land Registrar, Uasin Gishu.*

GAZETTE NOTICE NO. 423

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS John Esolyo Kadenge (ID/1815576), is registered as proprietor of all that piece of land situate in Uasin Gishu County, known as Pioneer/Ngeria Blcok 1 (EATEC)/1394, by virtue of a certificate of lease, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081636

D. T. AGUNDA,  
*Land Registrar, Uasin Gishu.*

GAZETTE NOTICE NO. 424

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS John Esolyo Kadenge (ID/1815576), is registered as proprietor of all that piece of land situate in Uasin Gishu County, known as Pioneer/Ngeria Blcok 1 (EATEC)/1395, by virtue of a certificate of lease, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081637

D. T. AGUNDA,  
*Land Registrar, Uasin Gishu.*

GAZETTE NOTICE NO. 425

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS Henry Shibia Chimoti, of P.O. Box 169, Mumias in the Republic of Kenya, is registered as proprietor of all that property, known as parcel No. Marama/Buchenya/1802, situate in the Kakamega County, by virtue of a certificate of title, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882420

W. N. NYABERI,  
*Land Registrar, Kakamega.*

GAZETTE NOTICE NO. 426

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS (1) Annah Wamuhu (ID/0977201) and (2) Alice Njeri Gitagia (ID/7817761), are registered as proprietors of all that property, known as Muguga/Kanyariri/499, situate in the Kiambu County, by virtue of a certificate of title, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081661

G. M. MUYANGA,  
*Land Registrar, Kiambu.*

GAZETTE NOTICE NO. 427

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW CERTIFICATE OF TITLE

WHEREAS (1) Anthony Kinyua Mugo (ID/24637532) and (2) Beth Njeru Muriiti (ID/23844221), are registered as proprietors in absolute ownership interest of all that piece of land containing 0.05 hectare or thereabouts, situate in the county of Kirinyaga, known as Mwerua/Kagio/10253, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR8081718

G. M. NJOROGI,  
*Land Registrar, Kirinyaga County.*

GAZETTE NOTICE NO. 428

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW CERTIFICATE OF TITLE

WHEREAS Harun Maina Mwaniki (ID/12484354), is registered as proprietor in absolute ownership interest of all that piece of land containing 1.21 hectare or thereabout, situate in Nyandarua County, known as Nyandarua/Ol Joro Orok West/5952, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882280

M. A. OMULLO,  
*Land Registrar, Nyandarua/Samburu Counties.*

GAZETTE NOTICE NO. 429

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW CERTIFICATE OF TITLES

WHEREAS Wilson Muthumbi Wahome (ID/22359615), is registered as proprietor in absolute ownership interest of all those pieces of land containing 0.405, each, hectare or thereabout, situate in Nyandarua County, known as Nyandarua/Ol Joro Orok Salient/21271 and 21982, each, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue new land title deeds provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081698

M. A. OMULLO,  
*Land Registrar, Nyandarua/Samburu Counties.*

GAZETTE NOTICE NO. 430

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF NEW LAND TITLE DEEDS

WHEREAS Janet Wabera Kangata (ID/3372782), is registered as proprietor in absolute ownership interest of all those piece of land containing 0.043 hectare or thereabouts, situate in the county of Nyandarua, registered under title No. Nyandarua/Kiriita Mairo Inya Block 2/6012, 6013, 6014, 6015 and 6016, and whereas sufficient evidence has been adduced to show that the said land title deeds issued thereof have been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue new certificates of title provided that no objection has been received within that period.

Dated the 16th January, 2025.

MR/8081671

S. W. GITHINJI,  
*Land Registrar, Nyandarua/Samburu Counties.*

GAZETTE NOTICE NO. 431

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF NEW LAND TITLE DEEDS

WHEREAS Janet Wabera Kangata (ID/3372782), is registered as proprietor in absolute ownership interest of all those piece of land containing 0.043 hectare or thereabouts, situate in the county of Nyandarua, registered under title No. Nyandarua/Kiriita Mairo Inya Block 2/6017, 6018, 6019, 6020 and 6023, and whereas sufficient evidence has been adduced to show that the said land title deeds issued thereof have been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue new land title deeds provided that no objection has been received within that period.

Dated the 16th January, 2025.

S. W. GITHINJI,  
MR/8081671 *Land Registrar, Nyandarua/Samburu Counties.*

GAZETTE NOTICE NO. 432

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF NEW LAND TITLE DEEDS

WHEREAS Janet Wabera Kangata (ID/3372782), is registered as proprietor in absolute ownership interest of all those piece of land containing 0.043 hectare or thereabouts, situate in the county of Nyandarua, registered under title No. Nyandarua/Kiriita Mairo Inya Block 2/6010 and 6011, and whereas sufficient evidence has been adduced to show that the said land title deeds issued thereof have been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue new land title deeds provided that no objection has been received within that period.

Dated the 16th January, 2025.

S. W. GITHINJI,  
MR/8081671 *Land Registrar, Nyandarua/Samburu Counties.*

GAZETTE NOTICE NO. 433

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Sicilia Bosibori Onyiego (ID/7285924), is registered as proprietor in absolute ownership interest of all that piece of land containing 1.30 hectares or thereabouts, situate in Kisii County, registered under title No. Bassi/Bondonya/2071, and whereas sufficient evidence has been adduced to show that the land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2025.

C. H. OSWERA,  
MR/8081614 *Land Registrar, Kisii County.*

GAZETTE NOTICE NO. 434

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A REPLACEMENT TITLE

WHEREAS Alice Mmboga Gisera (ID/20425341), of P.O. Box 1950, Kakamega in the Republic of Kenya, is registered as proprietor of all that property containing 0.040 hectare or thereabouts, known as Kiminini/Kiminini Block 2/Wekhonye/477, situate in Trans Nzoia County, by virtue of a certificate of title, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

P. MAKINI,  
MR/7882387 *Land Registrar, Trans Nzoia.*

GAZETTE NOTICE NO. 435

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A REPLACEMENT TITLE

WHEREAS Samwel Cheruiyot Bett, of P.O. Box 779, Kapsabet in the Republic of Kenya, is registered as proprietor of all that property, situate in Nandi County, by virtue of a certificate of title, registered under title No. Nandi/Chepterit/691, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

J. C. CHERUTICH,  
MR/7897633 *Land Registrar, Nandi.*

GAZETTE NOTICE NO. 436

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Wakiawa Coinvest Limited, of P.O. Box 62720, Nairobi in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 0.0520 hectare or thereabouts, situate in the district of Nyeri, registered under title No. Nyeri/Municipality Block 1/870, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

B. W. MWAI,  
MR/7882414 *Land Registrar, Nyeri.*

GAZETTE NOTICE NO. 437

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Gladys Wamaitha Kigundu, of P.O. Box 46, Kiganjo in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 0.0450 hectare or thereabouts, situate in the district of Nyeri, registered under title No. Nyeri/Kalureri/Kakuret/353, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

N. G. GATHAIYA,  
MR/7897637 *Land Registrar, Nyeri.*

GAZETTE NOTICE NO. 438

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Robert Mungai (ID/9056690), is registered as proprietor in ownership interest of all that piece of land, situate in Kiambu County, known as Gatuanyaga/Ngoliba Block 2/702, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof have been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue new land title deeds provided that no objection has been received within that period.

Dated the 16th January, 2026.

R. K. NGILA,  
MR/7882294 *Land Registrar, Thika.*

GAZETTE NOTICE NO. 439

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS Benard Wainaina Njoroge (ID/21269961), of P.O. Box 242, Kenol in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 0.1800 hectare or thereabouts, situate in the district of Murang'a, registered under title No. Mitubiri/Thuthua Block 1/345, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081734

G. M. SAYA,  
*Land Registrar, Murang'a.*

GAZETTE NOTICE NO. 440

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS Charles P. Mwangi, of P.O. Box 56, Kariaini in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 1.41 hectares or thereabout, situate in the district of Murang'a, registered under title No. Loc.13/Karung'e/1336, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081651

G. M. SAYA,  
*Land Registrar, Murang'a.*

GAZETTE NOTICE NO. 441

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW LAND TITLE DEED

WHEREAS Muoki Nzioki (ID/1240695), of P.O. Box 1-90200, Kitui in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 2.20 hectares or thereabout, situate in the district of Kitui, registered under title No. Mutonguni/Kaimu/2118, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882334

G. M. MALUNDU,  
*Land Registrar, Kitui.*

GAZETTE NOTICE NO. 442

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW LAND TITLE DEED

WHEREAS David Mbuvi Kinyungu (ID/1241577), of P.O. Box 1-90200, Kitui in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 1.8 hectares or thereabout, situate in the district of Kitui, registered under title No. Mulango/Kyangunga/1009, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7897646

G. M. MALUNDU,  
*Land Registrar, Kitui.*

GAZETTE NOTICE NO. 443

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW LAND TITLE DEED

WHEREAS Philip Bernard Ilako (ID/6817498), of P.O. Box 841-00502, Nairobi in the Republic of Kenya, is registered as proprietor in absolute ownership interest of all that piece of land containing 7.2 hectares or thereabout, situate in Kitui District, registered under title No. Yatta/ B2/Kangonde/35, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081697

G. M. MALUNDU,  
*Land Registrar, Kitui.*

GAZETTE NOTICE NO. 444

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS Stephen Mutua Matheka (ID/23696735), is registered as proprietor in absolute ownership interest of all that piece of land containing 0.95 hectare or thereabouts, situate in the county of Machakos, known as parcel No. Ndalani/Ndalani Block 1/2472, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081601

D. C. LETTING,  
*Land Registrar, Machakos.*

GAZETTE NOTICE NO. 445

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS Jackline Susan Atieno Odoyo (ID/23026216), is registered as proprietor in absolute ownership interest of all that piece of land containing 0.04 hectare or thereabouts, situate in Machakos County, registered under title No. Donyosabuk/Komarock Block 1/64967, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081618

M. M. MWIGIRE,  
*Land Registrar, Machakos.*

GAZETTE NOTICE NO. 446

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A NEW LAND TITLE DEED

WHEREAS Gideon Ndeda Sijenye (ID/11048176), is registered as proprietor of all that piece of land containing 0.84 hectare or thereabouts, situate in the district of Ugenya, known as South Ugenya/Yiro/2094, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882415

J. O. OSILOLO,  
*Land Registrar, Ugenya.*

GAZETTE NOTICE No. 447

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS John Otieno Oyugi, of P.O. Box 141, Oyugis in the Republic of Kenya, is registered as proprietor in ownership interest of all that piece of land, situate in the sub-county of Rachuonyo South, known as C. Kasipul/Kamuma/4829, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

M. M. MURIMI,  
MR/7882295 *Land Registrar, Rachuonyo Sub-Counties.*

GAZETTE NOTICE No. 448

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Gradius Otieno Odhiambo (ID/29393714), is registered as proprietor in absolute ownership interest of all that piece of land containing 0.04 hectare or thereabouts, situate in the district of Ugenya, registered under title No. South Ugenya/U mala/1937, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

J. O. OSIOLO,  
MR/8081709 *Land Registrar, Ugenya.*

GAZETTE NOTICE No. 449

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Evans Onyango Otieno (ID/10546473), is registered as proprietor in absolute ownership interest of all that piece of land containing 0.05 hectare or thereabouts, situate in the district of Ugenya, registered under title No. South Ugenya/Ambira/1975, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

J. O. OSIOLO,  
MR/8081709 *Land Registrar, Ugenya.*

GAZETTE NOTICE No. 450

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW CERTIFICATE OF TITLE

WHEREAS John Mireri, Succession Cause No. E393 of 2023, is registered as proprietor of all that piece of land containing 0.6 hectare or thereabouts, known as Nyaribari Chache/B/B/Boburia/2025, situate in the Kisii County, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

C. H. OSWERA,  
MR/7882405 *Land Registrar, Kisii.*

GAZETTE NOTICE No. 451

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW CERTIFICATE OF TITLE

WHEREAS Alice Bironga Okwena (ID/95486603), is registered as proprietor in absolute ownership interest of all that piece of land containing 0.085 hectare or thereabouts, known as Majoge/Boochi/6008, situate in the Kisii County, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new certificate of title provided that no objection has been received within that period.

Dated the 16th January, 2026.

E. M. NYAKUNDI,  
MR/7897900 *Land Registrar, Kisii.*

\*Gazette Notice No. 19085 of 2025 is revoked.

GAZETTE NOTICE No. 452

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A REPLACEMENT TITLE

WHEREAS Kassim Ramadhan Amarch, of P.O. Box 48, Eldama Ravine in the Republic of Kenya, is registered as proprietor of all that piece of land, known as Baringo/Kamelilo/117, situate in Baringo County, and whereas sufficient evidence has been adduced to show that the said certificate of title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a replacement title provided that no objection has been received within that period.

Dated the 16th January, 2026.

E. N. LEPOSO,  
MR/7882445 *Land Registrar, Koibatek/Mogotio.*

GAZETTE NOTICE No. 453

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Siani Limited (Reg. No. C4007), is registered as proprietor in absolute ownership of all that piece of land containing 0.0582 hectare or thereabouts, situate in Lamu County, registered under title No. Lamu-(Town) Island/Block 4/916, and whereas sufficient evidence has been adduced to show that the said title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title provided that no objection has been received within that period.

Dated the 16th January, 2026.

J. B. OKETCH,  
MR/7882407 *Land Registrar, Lamu.*

GAZETTE NOTICE No. 454

THE LAND REGISTRATION ACT  
(Cap. 300)  
ISSUE OF A NEW LAND TITLE DEED

WHEREAS Rukia Binti Fadhil, is registered as proprietor in absolute ownership of all that piece of land containing 4.6 hectares or thereabout, situate in Lamu County, registered under title No. Lamu Island/Block IV/36, and whereas sufficient evidence has been adduced to show that the said title issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

J. B. OKETCH,  
MR/7882371 *Land Registrar, Lamu.*

GAZETTE NOTICE No. 455

## THE LAND REGISTRATION ACT

(Cap. 300)

## ISSUE OF A CERTIFICATE OF LEASE

WHEREAS Alexander Njoroge Kahende (deceased), is registered as proprietor of leasehold ownership interest of all that piece of land containing 0.62 hectare or thereabouts, known as Dagoretti/Kangemi/251, situate in the district of Nairobi, and whereas in the High Court of Kenya at Milimani in Succession Cause No. 100 of 2005, has issued a grant of letters of administration and certificate of confirmation of grant in favour of (1) Marx Gad Njuguna Kahende, (2) Ruth Wangari Kahende and (3) David Muratha Kahende, all of P.O. Box 40211-00100, Nairobi in the Republic of Kenya, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new certificate of lease provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882310

S. N. KAILEMIA,  
*Land Registrar, Nairobi.*

GAZETTE NOTICE No. 456

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Silverdale Limited, of P.O. Box 45839-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that parcel of land, known as L.R. No. 2951/340, situate in the city of Nairobi in the Nairobi Area, by virtue of a certificate of title, registered as I.R. 57403/1, and whereas sufficient evidence has been adduced to show that the said certificate of title has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I intend to proceed with the reconstruction of the land register under provisions of section 33 (5) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882353

S. C. NJOROGE,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE No. 457

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Farosh Enterprises Limited, of P.O. Box 14353, Nairobi in the Republic of Kenya, is registered as proprietor of all that parcel of land, known as L.R. No. 209/12670, situate in the city of Nairobi in the Nairobi Area, by virtue of a grant, registered as I.R. 67049/1, and whereas sufficient evidence has been adduced to show that the said grant has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I intend to proceed with the reconstruction of the land register under provisions of section 33 (5) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882428

S. C. NJOROGE,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE No. 458

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Dickson Mubera Andala, of P.O. Box 15653-00503, Nairobi in the Republic of Kenya, is registered as proprietor of all that parcel of land known as L.R. No. 30393/1279, situate in the city of Nairobi in the Nairobi Area, by virtue of a certificate of title, registered as I.R. 197266/1, and whereas sufficient evidence has been adduced to show that the said certificate of title has been lost, notice is given that

after the expiration of sixty (60) days from the date hereof, I intend to proceed with the reconstruction of the land register under provisions of section 33 (5) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7897632

S. C. NJOROGE,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE No. 459

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Magdalene Talaa Ruto (administrator), of P.O. Box 5032-80200, Nairobi in the Republic of Kenya, is registered as proprietor of all that piece of land, known as L.R. No. 498/535, situate in the Eldama Ravine Township in Eldoret District, by virtue of a grant, registered as I.R. No. 6174, and whereas the said land register in respect thereof is lost or destroyed and efforts made to locate the said land register have failed, notice is given that after the expiration of sixty (60) days from the date hereof, the property register shall be reconstructed as provided under section 33 (5) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882427

E. M. MAGHANGA,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE No. 460

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Jil Industries Limited, of P.O. Box 87801-80100, Mombasa in the Republic of Kenya, is registered as proprietor in leasehold ownership interest of all that parcel of land, known as Subdivision No. 11632/I/MN, situate in the Mombasa Municipality in the Mombasa District, registered as C.R. 35785, and whereas the land register in respect thereof is lost or destroyed and efforts made to locate the said land register have failed, and whereas the owner has executed a deed of indemnity in favour of the Government of the Republic of Kenya, notice is given that at the expiration of sixty (60) days from the date hereof provided no valid objection has been received within the period, I intend to proceed with the registration of the said instrument of indemnity and reconstruct the deed file as provided under section 33(3) of the Act.

Dated the 16th January, 2026.

MR/7882292

M. S. MANYARKIY,  
*Registrar of Titles, Mombasa.*

GAZETTE NOTICE No. 461

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Selesa Joy Odera, of Chemin de Rekion, IF, 1245, Collonge Bellerive, is registered as proprietor of all that piece of land known as Group V 448, Kilifi, situate in the south east of Kilif Town in Kilifi District, registered as LT. 35, Folio 429, File 4428, and whereas sufficient evidence has been adduced to show that the Folio in respect of the said title has been mutilated/destroyed, and whereas the registered owner has executed a deed of indemnity in favour of the Government of the Republic of Kenya, notice is given that after the expiration of sixty (60) days from the date hereof, I intend to proceed with the registration of the said deed of indemnity and reconstruct the land register as provided for under the Act, provided that no objection has been received within that period.

Dated the 19th December, 2025.

MR/8081659

M. S. MANYARKIY,  
*Registrar of Titles, Mombasa.*

GAZETTE NOTICE NO. 462

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Vincent Mbwabi Liguyani (ID/1886231), of P.O. 4364-00100, Nairobi in the Republic of Kenya, is registered as proprietor of all that property, known as Kiambu/Municipality Block III/195, situate in Kiambu County, and whereas the land register in respect thereof is lost or destroyed and efforts made to locate the said land register have failed, notice is given that after the expiration of sixty (60) days from the date hereof, I intend to proceed with the reconstruction of the land register under provisions of section 33 (5) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7897643

B. L. LONG'OLENYANG  
*Land Registrar, Kiambu.*

GAZETTE NOTICE NO. 463

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Mary Wamuyu Muthechi (ID/0802941), is registered as proprietor in absolute ownership interest of all that piece of land containing 0.6500 hectare or thereabouts, situate in the district of Nanyuki, known as Ngobit Supuko 5/516, and whereas sufficient evidence has been adduced to show that the land register (green card) issued thereof has been lost, notice is given that after the expiration of thirty (30) days from the date hereof, I shall proceed and reconstruct the lost green card as provided under section 33 (1) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7882351

E. M. NYAMU,  
*Land Registrar, Nanyuki.*

GAZETTE NOTICE NO. 464

## THE LAND REGISTRATION ACT

(Cap. 300)

## RECONSTRUCTION OF LOST OR DESTROYED LAND REGISTER

WHEREAS Antony Okello Omondi, is registered as proprietor in absolute ownership interest of all that piece of land, situate in the Sub-County of Rachuonyo, known as W. Kasipul/Konyango Kokal/1507, and whereas the land register in respect thereof is lost or destroyed and efforts made to locate the said land register have failed, notice is given that after the expiration of thirty (30) days from the date hereof, I intend to proceed with the reconstruction of the land register under provisions of section 33 (5) of the Act, provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/7787561

G. O. OBONDO,  
*Land Registrar, Rachuonyo.*

GAZETTE NOTICE NO. 465

## THE LAND REGISTRATION ACT

(Cap. 300)

## REGISTRATION OF INSTRUMENT

WHEREAS John Kimunya Kamau (deceased), is registered as proprietor of all that piece of land, known as Kampi ya Moto/Menengai Block 1/869, situate in the district of Nakuru, and whereas in the Chief Magistrate's Court of Kenya at Nakuru in Succession Cause No. 279 of 2017, has issued grant of letters of administration and certificate of confirmation of grant in favour of Hannah Njambi Kimunya, whereas the said court has executed an application to be registered as proprietor by transmission of L.R.A. 50, and whereas the land title deed in respect of John Kimunya Kamau (deceased) has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no

valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said application to be registered as proprietor by transmission of L.R.A. 50 in the name of Hannah Njambi Kimunya, and upon such registration the land title deed issued earlier to the said John Kimunya Kamau (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/8081516

J. M. GITARI,  
*Land Registrar, Nakuru.*

GAZETTE NOTICE NO. 466

## THE LAND REGISTRATION ACT

(Cap. 300)

## REGISTRATION OF INSTRUMENT

WHEREAS Mathew Mugua Kagwe (deceased), is registered as proprietor of all that piece of land containing 2.26 hectares or thereabout, situate in the Nyandarua County, known as Nyandarua/Kirima/3838, and whereas the Senior Principal Magistrate's Court at Engineer in Succession Cause No. E169 of 2024, has issued grant of letters of administration and certificate of confirmation of grant in favour of Theresia Murigi Mugua (ID/2946023), and whereas the said land title deed issued earlier to the said Mathew Mugua Kagwe (deceased), has been reported missing or lost, notice is given that after the expiration of sixty (60) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said instruments of L.R.A. 39 and L.R.A. 42, and upon such registration the land title deed issued earlier to the said Mathew Mugua Kagwe (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/8081725

M. A. OMULLO,  
*Land Registrar, Nyandarua/Samburu.*

GAZETTE NOTICE NO. 467

## THE LAND REGISTRATION ACT

(Cap. 300)

## REGISTRATION OF INSTRUMENT

WHEREAS Kiketi Muasya (deceased), is registered as proprietor of all that piece of land, situate in the county of Machakos, containing 2.023 hectares or thereabout, known as Athriver/Athriver Block 5/394, and whereas in the Senior Principal Magistrate's Court at Kangundo in Succession Cause No. 101 of 2016, has issued grant of letters of administration and certificate of confirmation of grant in favour of Stella Nduku Muasya, and whereas the said title deed issued earlier to the said Kiketi Muasya (deceased), has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said instruments of L.R.A. 39 and issue a land title deed to Stella Nduku Muasya, and upon such registration the land title deed issued earlier to the said Kiketi Muasya (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/7897628

D. M. MWANGANGI,  
*Land Registrar, Machakos.*

GAZETTE NOTICE NO. 468

## THE LAND REGISTRATION ACT

(Cap. 300)

## REGISTRATION OF INSTRUMENTS

WHEREAS Alice N. Mulandi (deceased), is registered as proprietor of all those piece of land, situate in the district of Makeni, known as Konza South/Konza South Block 7 (Kima)/142 and 201, and whereas in the Principal Magistrate's Court at Kilungu in Succession Cause No. E29 of 2024, has issued grant of letters of administration

and certificate of confirmation of grant in favour of Grace Mbele Kathukya, and whereas the said land title deeds issued earlier to the said Alice N. Mulandi (deceased), have been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deeds and proceed with registration of the said instruments of L.R.A. 19 and issue a land title deed to Grace Mbele Kathukya and upon such registration the said land title deeds issued earlier to the said Alice N. Mulandi (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/7897649 R. M. SOO,  
*Land Registrar, Makueni.*

GAZETTE NOTICE No. 469

THE LAND REGISTRATION ACT

(Cap. 300)

REGISTRATION OF INSTRUMENT

WHEREAS Justus Ngiki Kivuva (deceased), is registered as proprietor of all that piece of land, situate in the district of Makueni, known as Konza South/Konza South Block 5 (Konza)/857, and whereas in the Principal Magistrate's Court at Kilungu in Succession Cause No. E17 of 2025, has issued grant of letters of administration and certificate of confirmation of grant in favour of Frere Ngiki, and whereas the said land title deed issued earlier to the said Justus Ngiki Kivuva (deceased), has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said instruments of L.R.A. 19 and issue a land title deed to Frere Ngiki and upon such registration the said land title deed issued earlier to the said Justus Ngiki Kivuva (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/7897648 R. M. SOO,  
*Land Registrar, Makueni.*

GAZETTE NOTICE No. 470

THE LAND REGISTRATION ACT

(Cap. 300)

REGISTRATION OF INSTRUMENT

WHEREAS Mutua Muthoka (deceased), is registered as proprietor of all that piece of land containing 0.78 hectare or thereabouts, situate in district of Kitui, known as Zombe/Ngunji/156, and whereas in the Chief Magistrate's Court at Kitui in Succession Cause No. E171 of 2024, has issued letters of administration in favour of Muthini Mutisya, and whereas the said has executed land application to be registered as proprietor by transmission L.R.A. 39, and whereas the land title deed issued earlier to Mutua Muthoka (deceased) has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said L.R.A. 39, and upon such registration the land title deed issued earlier to the said Mutua Muthoka (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/8081685 G. M. MALUNDU,  
*Land Registrar, Kitui.*

GAZETTE NOTICE No. 471

THE LAND REGISTRATION ACT

(Cap. 300)

CANCELLATION AND REVERTING A NEW LAND TITLE DEED

WHEREAS Michael Omondi Wakaba (ID/35174340), is registered as proprietor in absolute ownership interest of all that piece of land containing 1.1 hectares or thereabout, situate in the district of Nyando, known as Kisumu/Sidho East/3083, and whereas in the Principal Magistrate's Court at Nyando case No. MCELC/E5/2020,

has issued a decree directing the land registrar to rectify the registry and to revert the said land title deed in the name of Nahori Ligeyo Wahombo (deceased), and whereas all efforts made to compel the registered proprietor to surrender the said land title deed issued in respect to the said piece of land have failed, notice is given that after the expiry of thirty (30) days from the day hereof, provided that no valid objection has been received within that period, I intend to dispense with the production of the said land title deed to Nahori Ligeyo Wahombo (deceased), and upon such registration the land title deed issued to Michael Omondi Wakaba (ID/35174340), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/7882303 R. K. KALAMA,  
*Land Registrar, Nyando/Muhoroni/Nyakach.*

GAZETTE NOTICE No. 472

THE LAND REGISTRATION ACT

(Cap. 300)

REGISTRATION OF INSTRUMENT

WHEREAS Cherus arap Tirigei (deceased), is registered as proprietor of all that piece of land, known as parcel No. Kericho/Kapkatet/495, situate in Kericho County, and whereas in the Senior Principal Magistrate's Court at Sotik in Succession Cause No. E19 of 2025, has issued grant of letters of administration and certificate of confirmation of grant in favour of Esther Chepkoech Soi, and whereas the said land title deed issued earlier to the said Cherus arap Tirigei (deceased), has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of L.R.A. 39 and L.R.A. 42 and issue a land title deed in the name of Esther Chepkoech Soi, and upon such registration the land title deed issued earlier to the said Cherus arap Tirigei (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/8081544 J. W. MAURA,  
*Land Registrar, Kericho.*

GAZETTE NOTICE No. 473

THE LAND ACT

(Cap. 280)

RESERVATION OF PUBLIC LAND TO THE MINISTRY OF DEFENCE

IN EXERCISE of the powers conferred by sections 15, 16, 17 and 18 of the Land Act, the National Land Commission issues this reservation order to reserve and vest the care, control, and management of the land parcel L.R. No.33516, measuring approximately 123.21hectares and situated in Tana River County, as described in FR No. 690/82 to Ministry of Defence, hereinafter referred to as "The Management Bod".

The management body shall hold and use the reserved land parcel subject to the following special conditions;

1. The land shall only be used as a Military Camp.
2. The management body shall not part with the possession of the reserved land parcels or any part thereof without the written consent of the National Land Commission.
3. The management body shall within 180 days of publishing of this reservation order cause to be prepared and submit to the National Land Commission a land use and management plan of the reserved land parcel.
4. The preparation of the plan referred in (3) shall—
  - (a) take into consideration the physical planning regulations and other relevant laws in force,
  - (b) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve,
  - (c) comply with the values and principles of the Constitution

- (d) allow for controlled/regulated access to critical areas for community livelihoods and resilience including grazing, salt licks and livestock watering points.
- (e) provide access to critical areas and pathways for wildlife movement(corridors)and dispersal areas in order to mitigate against potential human-wildlife conflicts.
5. The management body shall prepare and submit an environmental and social impact assessment report before any major land development projects, to identify potential environmental and social risks and propose mitigation strategies in line with the Environmental Management and Coordination Act,1999 (EMCA).
  6. The management body ensure that at least 10% of the land is covered by trees and vegetation as part of the Constitutional requirement towards achievement of at least 10% tree cover and green growth agenda.
  7. The management body shall facilitate the National Land Commission comply with identification and mapping of ecological sensitive areas (ESAs), develop an inventory of the assets IN THE RESERVED PARCELS and demarcate these for environmental protection and climate change resilience building.
  8. The management body shall ensure periodic monitoring of the status of the critical and sensitive natural assets within THE RESERVED PARCELS and submit a report annually to the Commission support and adopt systems and mechanisms for nature regeneration and sustainable landscape management.
  9. The management body shall ensure the protection and sustainability of vital and fragile natural assets including water (springs, rivers,), forests, and wildlife concentration and breeding areas for posterity.
  10. The management body shall promote local content and engage local communities during land development phases in order to create jobs and income for the local community and their economies.
  11. The management body shall ensure enforcement and compliance to guidelines on rehabilitation of quarries, waste disposal sites and wastelands refusal, recycling, re-use, remanufacture and composting.
  12. The management body shall support and adopt systems and mechanisms for nature regeneration and sustainable landscape management.
  13. The management body shall adopt climate smart technologies for operations and processes that reduce carbon footprints and emissions.
  14. The management body shall adhere to the Global Industry Practices (GIPs) that promote good environmental and public health standards.
  15. The management body shall ensure proper documentation, stock-take, monitoring and reporting of the land-scape level critical biodiversity resources including measures taken towards their protection and conservation.
  16. The management body shall pay any assessment payable to County Government as authorized in law.
  17. The management body shall facilitate the harmonious coordination of services provided by other public agencies on the reserved land, ensuring optimal and efficient utilization.
  18. The management body shall be responsible for safeguarding the land making sure the demarcated boundaries of the land parcels are well maintained.
  19. The management body shall develop an inclusive governance for conflict transformation and peace building on identified disputes, including involving community leaders, women and youth to resolve the disputes.

Dated the 7th August, 2025

MR/7893375

GERSHOM OTACHI,  
Chairman, National Land Commission.

GAZETTE NOTICE NO. 474

THE LAND ACT

(Cap. 280)

RESERVATION OF PUBLIC LAND TO THE MINISTRY OF DEFENCE

IN EXERCISE of the powers conferred by Sections 15, 16, 17 and 18 of the Land Act, the National Land Commission issues this reservation order to reserve and vest the care, control, and management of the land parcel L.R. No.33024,measuring approximately 4006.493hectares and situated in Garissa County, as described in FR No. 672/168 to Ministry of Defence, hereinafter referred to as "The Management Body".

The management body shall hold and use the reserved land parcel subject to the following special conditions;

1. The land shall only be used as a Military Camp & Training Area.
2. The management body shall not part with the possession of the reserved land parcels or any part thereof without the written consent of the National Land Commission.
3. The management body shall within 180 days of publishing of this reservation order cause to be prepared and submit to the National Land Commission a land use and management plan of the reserved land parcel.
4. The preparation of the plan referred in (3) shall—
  - (a) take into consideration the physical planning regulations and other relevant laws in force,
  - (b) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve,
  - (c) comply with the values and principles of the Constitution
  - (d) allow for controlled/regulated access to critical areas for community livelihoods and resilience including grazing, salt licks and livestock watering points.
  - (e) provide access to critical areas and pathways for wildlife movement(corridors)and dispersal areas in order to mitigate against potential human-wildlife conflicts.
5. The management body shall prepare and submit an environmental and social impact assessment report before any major land development projects, to identify potential environmental and social risks and propose mitigation strategies in line with the Environmental Management and Coordination Act,1999 (EMCA).
6. The management body ensure that at least 10% of the land is covered by trees and vegetation as part of the Constitutional requirement towards achievement of at least 10% tree cover and green growth agenda.
7. The management body shall facilitate the National Land Commission comply with identification and mapping of ecological sensitive areas (ESAs), develop an inventory of the assets IN THE RESERVED PARCELS and demarcate these for environmental protection and climate change resilience building.
8. The management body shall ensure periodic monitoring of the status of the critical and sensitive natural assets within THE RESERVED PARCELS and submit a report annually to the Commission support and adopt systems and mechanisms for nature regeneration and sustainable landscape management.
9. The management body shall ensure the protection and sustainability of vital and fragile natural assets including water (springs, rivers,), forests, and wildlife concentration and breeding areas for posterity.
10. The management body shall promote local content and engage local communities during land development phases in order to create jobs and income for the local community and their economies.

11. The management body shall ensure enforcement and compliance to guidelines on rehabilitation of quarries, waste disposal sites and wastelands refusal, recycling, re-use, remanufacture and composting.
12. The management body shall support and adopt systems and mechanisms for nature regeneration and sustainable landscape management.
13. The management body shall adopt climate smart technologies for operations and processes that reduce carbon footprints and emissions.
14. The management body shall adhere to the Global Industry Practices (GIPs) that promote good environmental and public health standards.
15. The management body shall ensure proper documentation, stock-take, monitoring and reporting of the land-scape level critical biodiversity resources including measures taken towards their protection and conservation.

16. The management body shall pay any assessment payable to County Government as authorized in law.
17. The management body shall facilitate the harmonious coordination of services provided by other public agencies on the reserved land, ensuring optimal and efficient utilization.
18. The management body shall be responsible for safeguarding the land making sure the demarcated boundaries of the land parcels are well maintained.
19. The management body shall develop an inclusive governance for conflict transformation and peace building on identified disputes, including involving community leaders, women and youth to resolve the disputes.

Dated the 7th August, 2025.

MR/7893375

GERSHOM OTACHI,  
Chairman, National Land Commission.

GAZETTE NOTICE NO. 475

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

STATEMENT OF ACTUAL REVENUES AND NET EXCHEQUER ISSUES AS AT 31ST DECEMBER, 2025

<i>Receipts</i>	<i>Original Estimates (KSh.)</i>	<i>Actual Receipts (KSh.)</i>
Opening Balance 01.07.2025		6,427,596,936.91
Tax Revenue	2,627,062,211,976.26	1,161,294,487,141.55
Non-Tax Revenue	127,646,334,082.98	82,110,056,646.15
Domestic Borrowing (Note 1)	1,098,261,888,821.11	670,430,958,495.40
External Loans and Grants (Note 2)	569,809,081,748.00	226,971,343,613.36
Other Domestic Financing	10,795,343,839.00	21,572,340,822.05
<b>Total Revenue</b>	<b>4,433,574,860,467.35</b>	<b>2,168,806,783,655.42</b>

RECURRENT EXCHEQUER ISSUES			
<i>Vote</i>	<i>Ministries/Departments/Agencies</i>	<i>Original Estimates (KSh.)</i>	<i>Exchequer Issues (KSh.)</i>
R1011	Executive Office of the President	4,520,303,961.00	2,454,208,994.85
R1012	Office of the Deputy President	2,968,834,559.00	3,188,091,785.65
R1013	Office of the Prime Cabinet Secretary	356,636,938.00	205,506,814.65
R1014	State Department for Parliamentary Affairs	363,508,889.00	163,920,707.80
R1015	State Department for Performance and Delivery Management	-	-
R1016	State Department for Cabinet Affairs	228,723,204.00	87,429,659.40
R1017	State House	7,681,901,432.00	9,082,350,448.70
R1018	State Department for National Government Co-ordination	1,022,343,631.00	330,269,441.75
R1023	State Department for Correctional Services	37,832,701,992.00	17,428,637,811.75
R1024	State Department for Immigration and Citizen Services	9,180,034,808.00	4,759,927,758.35
R1025	National Police Service	125,312,631,555.00	62,830,456,619.95
R1026	State Department for Internal Security and National Administration	31,734,465,087.00	22,168,573,487.20
R1032	State Department for Devolution	1,331,230,248.00	746,827,441.05
R1033	State Department for Special Programmes	488,084,242.00	2,866,839,738.15
R1036	State Department for the ASALs and Regional Development	6,595,076,046.00	3,561,098,620.50
R1041	Ministry of Defence	189,561,647,260.00	90,047,243,252.85
R1053	State Department for Foreign Affairs	22,734,805,062.00	10,210,871,928.55
R1054	State Department for Diaspora Affairs	717,827,342.00	234,194,683.65
R1064	State Department for Vocational and Technical Training	20,430,111,022.00	9,410,477,337.55
R1065	State Department for Higher Education and Research	86,164,033,390.00	57,977,911,885.75
R1066	State Department for Basic Education	108,054,099,951.00	79,571,229,854.95
R1067	State Department for Science, Innovation and Research	832,865,404.00	348,285,814.55
R1071	The National Treasury	48,499,588,911.00	27,117,655,555.30
R1072	State Department for Economic Planning	3,393,417,533.00	1,604,728,178.85
R1073	State Department for Public Investments and Assets Management	2,832,399,815.00	900,041,532.05
R1082	State Department for Medical Services	57,204,613,491.00	25,204,865,319.20
R1083	State Department for Public Health and Professional Standards	17,573,677,650.00	15,697,896,964.85
R1091	State Department for Roads	1,325,035,000.00	616,460,195.00
R1092	State Department for Transport	2,468,787,056.00	993,761,583.25
R1093	State Department for Shipping and Maritime Affairs	470,782,223.00	218,648,513.70
R1094	State Department for Housing and Urban Development	1,813,440,317.00	774,721,627.95
R1095	State Department for Public Works	2,153,323,471.00	1,004,953,764.60
R1097	State Department for Aviation and Aerospace Development	230,359,225.00	59,332,808.15
R1104	State Department for Irrigation	647,216,610.00	324,686,366.15
R1109	State Department for Water and Sanitation	3,119,942,945.00	1,509,191,967.95
R1112	State Department for Lands and Physical Planning	3,252,168,880.00	1,557,776,070.75

<i>Vote</i>	<i>Ministries/Departments/Agencies</i>	<i>Original Estimates (KSh.)</i>	<i>Exchequer Issues (KSh.)</i>
R1122	State Department for Information Communications, Technology and Digital Economy	3,130,589,165.00	1,474,146,429.75
R1123	State Department for Broadcasting and Telecommunications	3,482,161,772.00	1,542,927,195.45
R1132	State Department for Sports	1,058,460,837.00	516,826,688.80
R1134	State Department for Culture and Heritage	2,137,866,128.00	1,112,809,903.20
R1135	State Department for Youth Affairs and the Arts	2,048,043,305.00	1,291,247,660.15
R1152	State Department for Energy	879,884,528.00	434,097,331.50
R1162	State Department for Livestock Development.	2,728,709,832.00	1,372,416,069.00
R1166	State Department for Blue Economy and Fisheries	2,877,201,290.00	1,418,115,771.50
R1169	State Department for Crop Development	6,006,312,489.00	2,954,476,081.50
R1173	State Department for Co-operatives	4,664,381,907.00	787,924,169.35
R1174	State Department for Trade	2,342,468,752.00	1,196,690,644.25
R1175	State Department for Industry	2,711,771,091.00	1,379,376,545.20
R1176	State Department for Micro, Small and Medium Enterprises Development	1,437,210,575.00	1,038,574,951.05
R1177	State Department for Investment Promotion	709,437,200.00	343,562,732.15
R1184	State Department for Labour and Skills Development	1,615,105,739.00	871,080,810.40
R1185	State Department for Social Protection and Senior Citizens Affairs	29,029,748,798.00	22,282,967,631.10
R1186	State Department for Children Services	12,073,116,294.00	6,374,118,344.15
R1192	State Department for Mining	613,413,476.00	346,341,908.40
R1193	State Department for Petroleum	295,000,000.00	161,286,403.15
R1202	State Department for Tourism	760,958,141.00	375,579,917.00
R1203	State Department for Wildlife	3,799,504,637.00	1,284,214,762.70
R1212	State Department for Gender and Affirmative Action	1,880,151,049.00	434,173,247.65
R1213	State Department for Public Service	16,802,841,153.00	9,514,277,807.85
R1221	State Department for East African Community	1,034,727,960.00	343,032,893.80
R1252	The State Law Office	4,522,216,345.00	2,014,620,040.95
R1253	State Department for Justice Human Rights and Constitutional Affairs	1,020,342,234.00	334,603,081.00
R1261	The Judiciary	24,871,354,027.00	12,059,793,191.75
R1271	Ethics and Anti-Corruption Commission	4,306,262,694.00	1,805,082,539.30
R1281	National Intelligence Service	51,447,229,480.00	36,423,614,740.00
R1291	Office of the Director of Public Prosecutions	4,388,131,922.00	2,763,522,296.35
R1311	Office of the Registrar of Political Parties	2,486,991,519.00	1,445,682,056.90
R1321	Witness Protection Agency	841,206,825.00	459,304,095.75
R1331	State Department for Environment and Climate Change	2,551,994,324.00	1,224,964,000.55
R1332	State Department for Forestry	3,982,168,653.00	2,000,307,568.20
R2011	Kenya National Commission on Human Rights	530,334,902.00	256,396,009.65
R2021	National Land Commission	2,803,230,215.00	1,532,641,592.75
R2031	Independent Electoral and Boundaries Commission	9,302,347,536.00	3,024,924,099.45
R2041	Parliamentary Service Commission	2,839,865,359.00	767,526,648.15
R2042	National Assembly	28,568,556,038.00	12,875,124,621.55
R2043	Parliamentary Joint Services	6,794,110,806.00	3,245,163,494.45
R2044	Senate	8,199,167,797.00	3,853,829,063.00
R2051	Judicial Service Commission	842,410,000.00	431,437,904.00
R2061	The Commission on Revenue Allocation	370,005,079.00	152,243,625.95
R2071	Public Service Commission	3,546,677,980.00	1,286,809,029.00
R2081	Salaries and Remuneration Commission	751,716,658.00	278,063,461.70
R2091	Teachers Service Commission	385,552,363,906.00	201,261,332,347.20
R2101	National Police Service Commission	1,390,844,291.00	592,240,811.10
R2111	Auditor-General	7,952,032,880.00	3,489,110,101.85
R2121	Office of the Controller of Budget	826,093,754.00	295,150,352.80
R2131	The Commission on Administrative Justice	674,212,573.00	295,263,317.65
R2141	National Gender and Equality Commission	556,488,224.00	306,831,100.00
R2151	Independent Policing Oversight Authority	1,315,881,096.00	604,512,871.10
	<b>Total Recurrent Exchequer Issues</b>	<b>1,470,449,922,385.00</b>	<b>809,189,434,496.50</b>

<i>Vote</i>	<i>CFS Exchequer Issues</i>	<i>Original Estimates (KSh.)</i>	<i>Exchequer Issues (KSh.)</i>
CFS 050	Public Debt	1,901,389,947,018.35	941,608,557,468.55
CFS 051	Pensions and Gratuities	234,898,447,748.00	73,801,842,040.10
CFS 052	Salaries, Allowances and Miscellaneous	4,736,706,399.00	1,786,967,234.30
	<b>Total CFS Exchequer issues</b>	<b>2,141,025,101,165.35</b>	<b>1,017,197,366,742.95</b>

## DEVELOPMENT EXCHEQUER ISSUES

<i>Vote</i>	<i>Ministries/Departments/Agencies</i>	<i>Original Estimates (KSh.)</i>	<i>Exchequer Issues (KSh.)</i>
D1011	Executive Office of President	1,034,004,100.00	537,191,256.80
D1012	Office of the Deputy President	100,000,000.00	6,596,364.00
D1013	Office of the Prime Cabinet Secretary	-	-
D1017	State House	894,906,667.00	416,365,141.05
D1018	State Department for National Government Co-ordination	22,000,000.00	-
D1023	State Department for Correctional Services	309,004,510.00	61,565,884.95
D1024	State Department for Immigration and Citizen Services	1,670,274,845.00	139,845,926.40
D1025	National Police Service	1,212,814,922.00	213,668,761.95
D1026	State Department for Internal Security and National Administration	3,965,777,277.00	3,582,638,638.50

<i>Vote</i>	<i>Ministries/Departments/Agencies</i>	<i>Original Estimates (KSh.)</i>	<i>Exchequer Issues (KSh.)</i>
D1032	State Department for Devolution	15,915,122,542.00	434,478,637.00
D1033	State Department for Special Programmes	165,602,460.00	-
D1036	State Department for ASALs and Regional Development	3,508,689,612.00	1,484,118,043.80
D1041	Ministry of Defence	1,000,000,000.00	100,000,000.00
D1053	State Department for Foreign Affairs	2,346,400,000.00	1,154,150,000.00
D1064	State Department for Vocational and Technical Training	2,109,623,214.00	976,933,647.65
D1065	State Department for Higher Education and Research	2,741,974,265.00	1,352,088,931.00
D1066	State Department for Basic Education	18,180,447,879.00	5,626,912,939.75
D1071	The National Treasury	33,060,488,274.00	8,783,742,646.00
D1072	State Department of Economic Planning	59,300,111,950.00	29,798,865,665.00
D1073	State Department for Public Investments and Assets Management	736,000,000.00	169,476,567.45
D1082	State Department for Medical Services	13,615,068,600.00	3,254,361,105.20
D1083	State Department for Public Health and Professional Standards	5,161,191,767.00	1,526,199,095.45
D1091	State Department of Roads	76,244,238,213.00	24,277,203,170.10
D1092	State Department of Transport	4,322,236,808.00	1,793,111,842.45
D1093	State Department for shipping and Maritime Affairs	165,602,460.00	82,500,000.00
D1094	State Department for Housing and Urban Development	20,890,355,362.00	1,688,468,370.00
D1095	State Department for Public Works	703,000,000.00	27,619,900.00
D1097	State Department for Aviation and Aerospace Development	358,805,330.00	165,602,459.00
D1104	State Department for Irrigation	4,963,175,736.00	2,558,619,879.10
D1109	State Department for Water and Sanitation	31,016,976,232.00	10,920,977,784.85
D1112	State Department for Lands and Physical Planning	3,505,390,000.00	1,750,195,000.00
D1122	State Department for Information Communications, Technology and Digital Economy	6,485,200,631.00	1,829,998,843.30
D1123	State Department for Broadcasting and Telecommunications	356,045,289.00	93,993,181.50
D1132	State Department for Sports	100,000,000.00	40,000,000.00
D1134	State Department for Culture and Heritage	56,980,000.00	5,000,000.00
D1135	State Department for Youth Affairs and the Arts	2,172,428,825.00	69,872,100.00
D1152	State Department for Energy	21,120,892,644.00	9,015,714,531.50
D1162	State Department for Livestock Development	4,076,058,633.00	1,707,018,877.95
D1166	State Department for Blue Economy and Fisheries	4,206,727,099.00	3,966,711,492.85
D1169	State Department for Crop Development	29,114,811,411.00	14,197,383,842.20
D1173	State Department for Co-operatives	1,471,377,900.00	731,758,150.00
D1174	State Department for Trade	369,845,500.00	150,675,183.40
D1175	State Department for Industry	5,822,254,000.00	561,504,580.00
D1176	State Department for Micro, Small and Medium Enterprises Development	2,761,779,500.00	1,567,353,010.55
D1177	State Department for Investment Promotion	2,061,026,000.00	1,006,427,510.80
D1184	State Department for Labour and Skills Development	768,601,830.00	241,371,758.25
D1185	State Department for Social Protection and Senior Citizen Affairs	187,130,780.00	34,583,135.00
D1186	State Department for Children Services	244,000,000.00	43,061,529.35
D1192	State Department for Mining	267,171,968.00	2,560,000.00
D1193	State Department for Petroleum	150,000,000.00	-
D1202	State Department for Tourism	-	-
D1203	State Department for Wildlife	1,376,080,668.00	472,262,700.00
D1212	State Department for Gender and Affirmative Action	4,128,949,404.00	2,035,937,600.00
D1213	State Department for Public Service	1,511,405,740.00	637,858,450.75
D1252	The State Law Office	300,000,000.00	86,869,795.65
D1261	The Judiciary Fund	1,152,938,473.00	179,829,039.00
D1271	Ethics and Anti-Corruption Commission	180,000,000.00	51,098,163.00
D1291	Office of the Director of Public Prosecutions	86,000,000.00	-
D1331	State Department for Environment and Climate Change	1,864,702,439.00	453,618,658.65
D1332	State Department for Forestry	2,336,041,057.00	1,020,450,353.50
D2021	National Land Commission	556,104,101.00	300,000,000.00
D2031	Independent Electoral and Boundaries Commission	30,000,000.00	-
D2043	Parliamentary Joint Services	1,565,000,000.00	1,439,354,688.15
D2091	Teachers Service Commission	671,000,000.00	217,470,052.80
D2111	Auditor-General	330,000,000.00	-
	<b>Total Development Exchequer Issues</b>	<b>407,099,836,917.00</b>	<b>145,043,234,885.60</b>
	<b>Total Issues to National Government</b>	<b>4,018,574,860,467.35</b>	<b>1,971,430,036,125.05</b>

The printed estimates and actuals for National Government exclude Appropriation in Aid (AIA).

<i>Code</i>	<i>County Governments-Equitable Share</i>	<i>Original Estimates (KSh.)</i>	<i>Total Cash Released (KSh.)</i>
4460	Baringo	7,083,683,384.00	2,939,728,604.00
4760	Bomet	7,447,200,499.00	3,090,588,207.00
4910	Bungoma	11,838,054,666.00	4,912,792,687.00
4960	Busia	7,956,564,058.00	3,301,974,083.00
4360	Elgeyo/Marakwet	5,515,146,712.00	2,288,785,885.00
3660	Embu	6,077,441,672.00	2,522,138,293.00
3310	Garissa	8,877,784,676.00	3,684,280,642.00
5110	Homa Bay	8,646,376,063.00	3,588,246,067.00
3510	Isiolo	5,631,357,298.00	2,337,013,279.00
4660	Kajiado	8,894,254,886.00	3,691,115,778.00
4810	Kakamega	13,674,848,566.00	5,675,062,156.00

<i>Vote</i>	<i>Ministries/Departments/Agencies</i>	<i>Original Estimates (KSh.)</i>	<i>Exchequer Issues (KSh.)</i>
4710	Kericho	7,178,668,356.00	2,979,147,370.00
4060	Kiambu	13,071,817,986.00	5,424,804,463.00
3110	Kilifi	12,813,396,770.00	5,317,559,660.00
3960	Kirinyaga	6,151,661,892.00	2,552,939,686.00
5210	Kisii	9,819,721,768.00	4,075,184,535.00
5060	Kisumu	8,902,026,938.00	3,694,341,179.00
3710	Kitui	11,503,907,837.00	4,774,121,753.00
3060	Kwale	9,078,699,643.00	3,767,660,353.00
4510	Laikipia	6,104,082,008.00	2,533,194,032.00
3210	Lamu	3,857,621,205.00	1,600,912,800.00
3760	Machakos	10,179,132,681.00	4,224,340,064.00
3810	Makueni	8,976,335,654.00	3,725,179,296.00
3410	Mandera	12,265,064,993.00	5,090,001,974.00
3460	Marsabit	8,105,669,078.00	3,363,852,667.00
3560	Meru	10,553,946,059.00	4,379,887,614.00
5160	Migori	8,883,939,719.00	3,686,834,982.00
3010	Mombasa	8,383,385,281.00	3,479,104,892.00
4010	Murang'a	7,969,464,876.00	3,307,327,923.00
5310	Nairobi City	21,417,128,397.00	8,888,108,284.00
4560	Nakuru	14,455,147,658.00	5,998,886,278.00
4410	Nandi	7,771,778,066.00	3,225,287,897.00
4610	Narok	9,770,317,146.00	4,054,681,615.00
5260	Nyamira	6,073,434,356.00	2,520,475,258.00
3860	Nyandarua	6,662,675,631.00	2,765,010,387.00
3910	Nyeri	6,896,132,673.00	2,861,895,059.00
4210	Samburu	6,336,970,364.00	2,629,842,701.00
5010	Siaya	7,754,478,885.00	3,218,108,737.00
3260	Taita/Taveta	5,760,449,685.00	2,390,586,619.00
3160	Tana River	7,222,474,730.00	2,997,327,013.00
3610	Tharaka - Nithi	5,058,286,293.00	2,099,188,812.00
4260	Trans Nzoia	7,991,120,837.00	3,316,315,147.00
4110	Turkana	13,892,577,371.00	5,765,419,605.00
4310	Uasin Gishu	8,977,014,770.00	3,725,461,129.00
4860	Vihiga	6,008,751,224.00	2,493,631,758.00
3360	Wajir	10,507,580,683.00	4,360,645,984.00
4160	West Pokot	7,002,426,007.00	2,906,006,793.00
<b>Total Issues -Equitable Share (Note 3)</b>		<b>415,000,000,000.00</b>	<b>172,225,000,000.00</b>
<b>GRAND TOTAL</b>		<b>4,433,574,860,467.35</b>	<b>2,143,655,036,125.05</b>
<b>Exchequer Balance as at 31.12.2025 (Note 2)</b>		<b>-</b>	<b>25,151,747,530.37</b>

*Note 1:* Domestic Borrowing of KSh. 1,098,261,888,821.11 comprises of net domestic borrowing KSh. 634,751,408,224.11 and Internal Debt Redemptions (Roll-overs) KSh. 463,510,480,597.00.

*Note 2:* Closing balance of KSh. 25,151,747,530.37 includes KSh. 25,059,101,738.86 in Sovereign Bonds proceeds bank account.

*Note 3:* The Equitable Share Allocation to County Governments is KSh. 415,000,000,000.00 as per County Allocation of Revenue Act, 2025. The County Governments Additional Allocations Act, 2025 provides for additional allocations to County Governments in FY2025/2026 amounting to KSh. 70,666,327,886.00 to be disbursed through the respective Ministries, Departments and Agencies.

Dated the 15th January, 2026.

JOHN MBADI NG'ONGO,  
Cabinet Secretary, the National Treasury and Economic Planning.

GAZETTE NOTICE NO. 476

THE ENERGY AND PETROLEUM REGULATORY AUTHORITY  
SCHEDULE OF TARIFFS 2023 FOR ELECTRICITY TARIFFS, CHARGES, PRICES AND RATES  
FUEL ENERGY COST CHARGE

PURSUANT to Clause 1 of Part III of the Schedule of Tariffs 2023, notice is given that all prices for electrical energy specified in Part II of the said Schedule will be liable to a fuel energy cost charge of plus 326 Kenya cents per kWh for all meter readings to be taken in January, 2026.

Information used to calculate the fuel energy cost charge.

<i>Power Station</i>	<i>Fuel Price in December 2025 KSh/Kg. (Ci)</i>	<i>Fuel Displacement Charge/ Fuel Charge in December 2025 KSh. /kWh</i>	<i>Variation from November 2025 Prices Increase /(Decrease)</i>	<i>Units in December 2025 in kWh (Gi)</i>
Kipevu III Diesel Plant	75.71		(3.45)	38,760,970
Muhoroni GT	170.91		-	4,060,170
Rabai Diesel with steam turbine	81.57		(5.04)	47,420
Rabai Diesel without steam turbine	81.57		(5.04)	38,468,580
Iberafrica Diesel -Additional Plant	86.28		0.13	4,840,650

Power Station	Fuel Price in December 2025 KSh/Kg. (Ci)	Fuel Displacement Charge/ Fuel Charge in December 2025 KSh./kWh	Variation from November 2025 Prices Increase /(Decrease)	Units in December 2025 in kWh (Gi)
Thika Power Diesel Plant	83.18		0.64	2,975,700
Thika Power Diesel Plant (with steam unit)	83.18		0.64	17,653,300
Gulf Power	93.91		(2.18)	3,368,800
Triumph Power	95.49		3.02	364,650
Triumph Power	95.49		3.02	1,971,550
Olkaria IV Steam Charge		2.58	(0.01)	89,209,460
Olkaria I Unit IV and V Steam Charge		2.58	(0.01)	89,782,650
Sosian Menengai		2.58	(0.01)	27,919,360
Import From Uetcl		13.29	(0.03)	23,091,450
Export To Uetcl		13.29	(0.03)	(2,031,595)
Lodwar Diesel (Thermal)	209.21		1.97	1,511,973
Mandera Diesel (Thermal)	208.75		(9.70)	1,794,012
Marsabit Diesel (Thermal)	205.61		3.56	723,533
Wajir Diesel	207.80		1.20	1,455,256
Moyale Diesel (Thermal)	295.77		-	2,013
Merti (Thermal)	215.85		(0.63)	58,050
Habaswein (Thermal)	206.62		0.97	278,043
Elwak (Thermal)	211.30		21.05	222,050
Baragoi	221.57		29.83	42,822
Mfangano (Thermal)	232.33		12.99	95,136
Lokichogio	209.49		(5.82)	115,259
Takaba (Thermal)	183.73		(27.83)	101,657
Eldas	206.78		27.80	68,745
Rhamu	217.58		2.66	114,045
Laisamis	203.98		4.46	52,893
North Horr	245.97		3.64	45,366
Lokori	230.12		8.83	35,352
Daadab	203.30		4.47	182,406
Faza Island	270.96		2.12	152,728
Lokitaung	240.19		(3.08)	16,490
Kiunga	257.28		(22.46)	25,581
Kakuma	212.00		2.15	454,984
Banisa	200.15		(11.05)	75,421
Lokiriama	308.16		-	3,950
Kotulo	204.20		24.02	30,956
Karmoliban	222.15		10.09	60,694
Kholondile	182.27		(22.81)	13,439
Sololo	210.00		-	88,962
Maikona	227.96		-	17,049
Hulugo	219.15		-	4,922
EEU Imports Moyale	-	17.61	(0.72)	633,600
TanESCO - 400kv Import	-	10.52	(0.75)	366,272
TanESCO - 400kv Export	-	12.77	(1.09)	(50,076,826)

Total units generated and purchased (G), excluding exports in December, 2025

1,276,415,272 kWh

MR/8081506

DANIEL K. BARGORIA,  
Director-General.

GAZETTE NOTICE NO. 477

## ENERGY AND PETROLEUM REGULATORY AUTHORITY

## SCHEDULE OF TARIFFS 2023 FOR ELECTRICITY TARIFFS, CHARGES, PRICES AND RATES

## FOREIGN EXCHANGE FLUCTUATION ADJUSTMENT

PURSUANT to Clause 2 of Part III of the Schedule of Tariffs 2023, Notice is given that all prices for electrical energy specified in Part II of the said Schedule will be liable to a foreign exchange fluctuation adjustment of plus 178.53 cents per kWh for all meter readings taken in January, 2026.

Information used to calculate the forex adjustment

Parameter	KenGen (FZ)	KPLC (HZ)	IPPs (IPPZ)	TOTAL (FZ+HZ+IPPZ)
Exchange Gain/(Loss)	68,781,374.03	502,405,840.37	1,331,644,023.61	1,902,831,238.01

Total units generated and purchased (G) excluding exports in December, 2025

1,276,415,272 kWh

MR/8081506

DANIEL K. BARGORIA,  
Director-General.

GAZETTE NOTICE NO. 478

ENERGY AND PETROLEUM REGULATORY AUTHORITY  
SCHEDULE OF TARIFFS 2023 FOR ELECTRICITY TARIFFS, PRICES, CHARGES AND RATES  
WATER RESOURCE MANAGEMENT AUTHORITY LEVY

PURSUANT to Clause 5 of Part III of the Schedule of Tariffs 2023, Notice is hereby given that all prices for Electrical Energy specified in Part II (A) of the said Schedule will be liable to a Water Resource Management Authority (WRMA) Levy of Plus 1.38 Cents per kWh for all meter readings taken in January 2026.

Information used to calculate the WRMA Levy:

Approved WRMA levy for energy purchased from hydropower plants of capacity equal to or above 1MW = 5.00 Kenya cents per kWh

Hydropower Plant	Units Purchased in December 2025 (kWh)
Gitaru	60,674,040
Kamburu	32,140,950
Kiambere	69,957,080
Kindaruma	14,433,370
Masinga	17,882,260
Tana	7,995,950
Wanji	5,012,550
Sagana	919,530
Turkwel	58,077,000
Gogo	368,829
Sondu Miriu	19,556,355
Sangoro	6,557,913

Total units purchased from hydropower plants with capacity equal to or above 1MW = 293,575,826 kWh

Total units generated and purchased (G) excluding exports in December, 2025 = 1,276,415,272 kWh

MR/8081506

DANIEL K. BARGORIA,  
*Director-General.*

GAZETTE NOTICE NO. 479

ENERGY AND PETROLEUM REGULATORY AUTHORITY  
SCHEDULE OF TARIFFS 2023 FOR ELECTRICITY TARIFFS, PRICES, CHARGES AND RATES  
INFLATION ADJUSTMENT

PURSUANT to Clause 3 of Part III of the Schedule of Tariffs 2023, notice is given that all prices for electricale specified in Part II of the said Schedule will be liable to an inflation adjustment of plus 46 cents per kWh for all meter readings taken in January–June, 2026.

	INFA KenGen	INFA IPP	INFA KPLC	Last Half-year Period Inflation Costs Under /(Over) Recovery	TOTAL
Escalated cost	639,463,219.63	933,929,536.01	1,439,517,657.18	(140,188,099.90)	2,872,722,312.92

Total projected units generated or purchased by the company (Gp) = 7,559,439,040kWh

MR/8081506

DANIEL K. BARGORIA,  
*Director-General.*

GAZETTE NOTICE NO. 480

THE COUNTY GOVERNMENTS ACT  
(Cap. 265)  
COUNTY ASSEMBLY OF MAKUENI  
COUNTY ASSEMBLY OF MAKUENI STANDING ORDERS  
SPECIAL SITTINGS OF THE COUNTY ASSEMBLY

NOTICE is given to all Members of the County Assembly that pursuant to Standing Order No. 32 of the Makueni County Assembly Standing Orders, on the request of the Leader of the Majority party, Leader of the Minority Party and in consultation with the Committee on Budget and Appropriations, it is notified for the information of Members of the County Assembly and the general public that there will be special sittings of the County Assembly which shall be held in the County Assembly Chambers, in Wote on Tuesday, 20th January, 2026 at 9.30a.m. and 2.30 p.m.

The business to be transacted at the special sitting shall be the consideration and approval of:

1. The Annual Development Plan, 2026.
2. Tabling of the Auditor General reports for various entities of the County Government of Makueni.
3. Message from the Governor forwarding nominees for vetting and approval for appointment to the positions of Members, County Public Service Board and Chairperson, Makueni County Empowerment Fund Committee.

In accordance with Standing Order No. 32 of the County Assembly of Makueni Standing Orders, the business specified in this notice shall be the only business before the County Assembly during the special sittings, following which the County Assembly shall stand adjourned until Monday, 9th February, 2026, at 2.30 p.m., in accordance with the Resolution of the County Assembly made on Wednesday, 3rd December, 2025.

Dated the 14th January, 2026.

MR/8081703

DOUGLAS MBILU,  
*Speaker, County Assembly of Makueni.*

GAZETTE NOTICE NO. 481

## THE COUNTY GOVERNMENTS ACT

(Cap. 265)

## COUNTY ASSEMBLY OF KAKAMEGA

## COUNTY ASSEMBLY OF KAKAMEGA STANDING ORDERS

## SPECIAL SITTING OF THE COUNTY ASSEMBLY

NOTICE is given to all Members of the County Assembly of Kakamega and the general public that pursuant to Standing Order No. 26 of the County Assembly of Kakamega Standing Orders, a special sitting of the County Assembly shall be held at the County Assembly Buildings, Kakamega, on Wednesday, the 21st January, 2026 at 10.00 a.m., to conclusion of business for purposes of deliberating on the Auditor-General's Reports on the Financial Statements of—

- (a) Kakamega County Water and Sanitation Company;
- (b) Kakamega County Rural Water and Sanitation Company;
- (c) Kakamega Municipality;
- (d) Mumias Municipality;
- (e) Kakamega County Dairy Development Corporation and Kakamega County Microfinance Corporation of FY 2024/25.

The County Assembly shall also consider the reports of:

- (a) Mumias Municipality Solid Waste Management Plan 2025 – 2029;
- (b) Urban Climate Risk Profile;
- (c) Strategic Plan 2026 – 2030;
- (d) Integrated Development Plan (IDeP) 2026 – 2030;
- (e) Kakamega Municipality Solid Waste Management Plan and;
- (f) Climate Risk Profile and Integrated Development Plan 2025 – 2029.

Dated the 14th January, 2026.

JAMES W. NAMATSI,

MR/8081726

*Speaker, County Assembly of Kakamega.*

GAZETTE NOTICE NO. 482

## THE COUNTY GOVERNMENTS ACT

(Cap. 265)

## THE COUNTY ASSEMBLY OF MERU STANDING ORDERS

## SPECIAL SITTINGS OF THE COUNTY ASSEMBLY OF MERU

NOTICE is given to all Honourable Members of the County Assembly of Meru and the public pursuant to the provisions of Standing Order No. 30 (3) and (4) of the County Assembly of Meru Standing Orders, that a Special Sitting(s) of the County Assembly shall be held in the Assembly Chamber, County Assembly of Meru premises situate along Kenyatta Highway, adjacent to the Meru Museum, on Monday, the 19th January, 2026 from 10.00 a.m.

At the Sitting(s):

1. The Sectoral Committee on Education, Technology and Vocational Training will Table its Report on its consideration of The School Meals and Nutrition Program Policy Framework for EDCE Learners in Public Pre-Schools;
2. The Sectoral Committee on Transport and Energy will Table its Report on its consideration of the Meru County Energy Plan 2023–2033;
3. The Chairperson Sectoral Committee on Land, Economic and Physical Planning will issue and Table a Notice of Motion urging the County Assembly to adopt the Proposed Nkubu Municipality Plan Validation Exercise Report;
4. The Honourable Assembly will consider the Tabled Report of the Sectoral Committee on Education, Technology and Vocational Training on its consideration of The School Meals and Nutrition Program Policy Framework for EDCE Learners in Public Pre-Schools by leave of the House;

5. The Honourable Assembly will consider the Tabled Report of the Sectoral Committee on Transport and Energy on its consideration of the Meru County Energy Plan 2023-2033 by leave of the House; and

6. The Honourable Assembly will consider the proposed Motion, by leave of the House, by the Chairperson Sectoral Committee on Land, economic and Physical Planning urging the County Assembly to adopt the Proposed Nkubu Municipality Plan Validation Exercise Report.

Dated the 14th January, 2026.

AYUB B. SOLOMON,

MR/8081690

*Speaker, County Assembly of Meru.*

GAZETTE NOTICE NO. 483

## THE CONSTITUTION OF KENYA

## THE COUNTY GOVERNMENTS ACT

(Cap. 265)

## COUNTY ASSEMBLY OF NYANDARUA STANDING ORDERS

## SPECIAL SITTING OF THE COUNTY ASSEMBLY

NOTICE is given to all Members of the Nyandarua County Assembly and the general public that pursuant to Standing Order No. 31 of the County Assembly Standing Orders, the Nyandarua County Assembly shall have a special sitting on Wednesday, the 21st January, 2026, commencing at 10.00 a.m. in the County Assembly Chambers at Ol Kalou.

The businesses to be transacted shall be:

- (a) Consideration of the Report on the Nyandarua County Annual Development Plan for FY 2026/2027;
- (b) Consideration of the Report on the approval of various nominees to the positions of chairperson and members the Nyandarua County Public Service Board; and
- (c) Tabling of reports of the Office of the Auditor-General on the Nyandarua County Executive and other entities of the County Government.

Dated the 14th January, 2026.

STEPHEN W. WAIGANJO,

MR/8081682

*Speaker, County Assembly of Nyandarua.*

GAZETTE NOTICE NO. 484

## THE CONSTITUTION OF KENYA

## THE PUBLIC FINANCE MANAGEMENT ACT, 2012

## THE PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENTS) REGULATIONS, 2015

## THE NANDI COUNTY TEXTILE CORPORATION ACT

## THE NANDI COUNTY INVESTMENT AND DEVELOPMENT PROMOTION ACT, 2024

## COUNTY GOVERNMENT OF NANDI

## ESTABLISHMENT OF A COUNTY CORPORATION

IN EXERCISE of the powers conferred by Article 183 (1) of the Constitution, as read with section 36(1) of the County Governments Act, 2012, section 5 of the Public Finance Management Act, 2012 and Regulation 201 of the Public Finance Management (County Governments) Regulations, 2015, it is notified for the general information of the public that the County Government of Nandi has established The Nandi County Investment and Development Promotion Corporation Limited, (Company No. PVT-7815R9KZ), pursuant to the provisions of the Nandi County Investment and Development Promotion Act, 2024.

The Company shall be a County Corporation, a body corporate with perpetual succession and a common seal and shall perform the functions set out under the said Act.

Dated the 14th January, 2025.

ISAIAH K. KETER,

MR/8081699

*CECM, Trade and Industrialization.*

GAZETTE NOTICE NO. 485

## THE COUNTY GOVERNMENTS ACT

(Cap. 265)

## COUNTY GOVERNMENT OF BUNGOMA

## APPOINTMENT

IN EXERCISE of the powers conferred by the County Governments Act, 2012 to the office of the County Executive Committee Member responsible for matters related to land within the jurisdiction of Bungoma County Government, the following persons are appointed as members of the Taskforce Committee to establish and take inventory of county public land, with effect from the 18th February, 2019 in line with the Terms of Reference.

Lawrence Sifuna	-	Chairperson,
Linnet Chemos Chemtai	-	Vice-Chairperson,
Henry Bramwel Wakwabubi	-	Secretary,
George Nyeli Khasabuli	-	Member,
Krysantus Dabani Wosianju	-	Member,
Jonathan Lusaka	-	Member,
Alferd Simiyu Wangila	-	Member,
Josephine Lusweti	-	Member,
Ednah Olekete	-	Member,
Ruth Nekesa	-	Member,
Wycliffe Wamalwa	-	Member,

Dated the 18th February, 2019.

MONICA SALANO FEDHA (DR.),  
CECM for Lands, Urban/Physical Planning,  
Housing & Municipalities.

MR/8081641

GAZETTE NOTICE NO. 486

## THE PHYSICAL AND LAND USE PLANNING ACT

(Cap. 303)

## COUNTY GOVERNMENT OF LAMU

## COMPLETION OF PART DEVELOPMENT PLANS

S/No.	PDP Ref. No	Area	Purpose
1.	LMU/229/11/4/25	Ashuwei	Community land
2.	LMU229/11/5/25	Mvundeni	Community land
3.	LMU/225/11/6/25	Simambae	Community land
4.	LMU/229/11/7/25	Rubu	Community land
5.	LMU/229/11/8/25	Mwambore	Community land

PURSUANT to the provisions of Sections 13(g) and 69(1) of the Physical and Land Use Planning Act, read together with Section 15 (g) of Legal Notice No. 27 of 2020, the preparation of the above plans were completed on the 24th Day of October, 2025.

The Part Development Plans relate to sites situated in Kiunga Ward, Lamu County.

Copies of the Part Development Plans of Ashuwei, Mvundeni, Rubu, Mwambore, and Simambae, as prepared, have been deposited for public inspection free of charge at the offices of the CECM in charge of Physical Planning, Urban Development, Energy, Water and Natural Resources, Infrastructure and Public Works- Lamu County and the Director Physical Planning- Ardhi House, Mokowe Lamu County; between the hours of 8.00 am to 5.00 pm, Monday to Friday.

Any interested person who wishes to make any representation in connection with or objection to the above Part Development Plan may send such representation in writing to be received by the CECM in charge of Lands and Physical Planning and the Director of Physical Planning, Lamu County, in the address of Lamu County Executive P.O. Box 74-80500 Lamu, or electronically via email:

dir.physicalplanning@lamu.go.ke not later than sixty (60) days from the date of publication of this notice, and such representation or objection shall state the grounds on which it is made.

Dated the 5th December, 2025.

TASHRIFA BAKARI MOHAMED,  
County Executive Committee Member,  
Lands, Physical Planning, Urban Development,  
Natural Resources, Infrastructure, Energy,  
Water and Public Works.

MR/7882364

GAZETTE NOTICE NO. 487

## THE PHYSICAL AND LAND USE PLANNING ACT

(Cap. 303)

## COMPLETION OF PART DEVELOPMENT PLAN

Title of Development Plan: Part Development Plan for Mitunguu Urban Centre, Meru County. PDP Ref. No. NRB/1912/2025/1 for:

- Existing Site for Mitunguu Airport (Approx. 112.05 Ha).
- Formalisation of Mitunguu National Polytechnic (Approx. 15.59 Ha)

NOTICE is given that, pursuant to the provisions of Sections 13(g), and 69(1 and 4) of the Physical and Land Use Planning Act, read together with Legal Notice No. 27 of 2020, the preparation of the above plans was on the 22nd December, 2025 completed.

The Part Development Plan relates to sites situated in Mitunguu urban centre, Meru County.

Copies of the Part Development Plan as prepared have been deposited for public inspection free of charge at the offices of the County Commissioner, Meru County, CECM in charge of Physical and Land Use Planning, Meru County, and the National Director of Physical Planning-5th Floor, Ardhi House Building, Nairobi; between the hours of 8.00am to 5.00pm, Monday to Friday.

Any interested person who wishes to make any representation in connection with or objection to the above Part Development Plan may send such representation in writing to be received by the National Director of Physical Planning, 1st Ngong' Avenue, Ardhi House Building, P.O. Box 45025-00100, Nairobi or electronically via email: ndpp@ardhi.go.ke not later than 60 days from the date of publication of this notice, and such representation or objection shall state the grounds on which it is made.

Dated the 7th January, 2026.

JOHN S. NTABO,  
Ag. National Director of Physical Planning,  
MR/7882397 State Department for Lands and Physical Planning.

GAZETTE NOTICE NO. 488

## THE PHYSICAL AND LAND USE PLANNING ACT

(Cap. 303)

## COMPLETION OF PART DEVELOPMENT PLANS

## TITLE OF DEVELOPMENT PLANS

- Madaraka and Old Town Local Physical and Land Use Development Plan
- Qualaliwe and Hadesa Local Physical and Land Use Development Plan
- Heilu Local Physical and Land Use Development Plan
- Sololo Makutano Local Physical and Land Use Development Plan
- Sololo Ramata Local Physical and Land Use Development Plan
- Uran Local Physical and Land Use Development Plan
- Laisamis Local Physical and Land Use Development Plan
- Turbi Local Physical and Land Use Development Plan
- Lami Local Physical and Land Use Development Plan

10. Sessi Local Physical and Land Use Development Plan
11. Butiye Local Physical and Land Use Development Plan
12. Gurumesa Local Physical and Land Use Development Plan
13. Manyatta Local Physical and Land Use Development Plan
14. Korr Local Physical and Land Use Development Plan
15. Loiyangalani Local Physical and Land Use Development Plan
16. Dukana Local Physical and Land Use Development Plan
17. Maikona Local Physical and Land Use Development Plan

PURSUANT to the provisions of section 49(1) of the Physical and Land Use Planning Act, Notice is given that the preparation of the above Plans were on the 16th December, 2025 completed.

A copy of the Plans as prepared has been deposited for public inspection free of charge at the CECM Lands, Energy, Housing and Urban Development office in Marsabit.

Any interested person who wishes to make any representation in connection with or objection to the above Plans may within sixty days send the same to CECM Lands, Energy, Housing and Urban Development, P.O. Box 384-60500, Marsabit and such representations or comments shall state the grounds upon which they are made.

Dated the 16th December, 2025.

ADAN HIRBO,  
*County Executive Committee Member,*  
MR/7897642 *Lands, Energy, Housing and Urban Development.*

GAZETTE NOTICE NO. 489

### THE PHYSICAL AND LAND USE PLANNING ACT

(Cap. 303)

#### COUNTY GOVERNMENT OF WAJIR

#### COMPLETION OF PART DEVELOPMENT PLANS

PDP. Ref. Nos.	Date Completed	Title of the Plans
PDP No.332/2025/03	27/06/2025	Formalisation of the Existing Residential Plots- Wajir Municipality
PDP No.332/2025/04	27/06/2025	Formalisation of the Existing Agricultural Land(Farm)- Wajir Municipality

PURSUANT to the provisions of section 49 (1) of the Physical and Land Use Planning Act, 2019, notice is given that the preparation of the above Part Development Plans was on the 27th August, 2025 completed.

Copies of the plans as prepared has been deposited for public inspection free of charge at office of the County Executive Committee Member, Lands, Public Works, Housing and Urban Development in Wajir Municipality.

Any interested person who wishes to make any representation in connection with or objection to the above plan may within sixty days send the same to the office of the County Executive Committee Member, Lands, Public Works, Housing and Urban Development in Wajir Municipality and such representations or comments shall state the grounds upon which they are made.

Dated the 28th August, 2025.

SAADIA AHMED ABDI,  
*CECM for Lands, Public Works,*  
MR/7803684 *Housing and Urban Development.*

GAZETTE NOTICE NO. 490

### THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004

#### APPOINTMENT AND LIMITS OF, CUSTOMS AREAS.

PURSUANT to Section 12 of the East African Community Customs Management Act, 2004, the Commissioner of Customs and Border Control appoints the following, Customs Area, Entrances and Exits.

(a) The place specified in the first column of the First Schedule, as a Customs Area for the purposes of the Act and the limits shall be those set out in the second column of that schedule;

(b) The places specified in the first column of the Second Schedule of the Customs Area for the purposes set out in the third column of the Schedule, limits shall be those set out in the second column of the schedule

#### FIRST SCHEDULE

Appointment and limits of a Customs Area.

Place	Limits
M/s Two Rivers International Finance & Innovation Centre (SEZ) Limited located in Nairobi	The area on LR No. 22/365, Plot 14, Nairobi within the area bounded by coordinates- -1.21264823 36.79707634 -1.21225878 36.79743203 -1.21207425 36.79712698 -1.21239806 36.79682824

#### SECOND SCHEDULE

Appointment of entry and exit to and from the Customs Area.

Place	Limits	Purpose
M/s Two Rivers International Finance and Innovation Centre (SEZ) Limited located in Nairobi	The area marked AC8 and AC9 on the survey of Two Rivers International Finance & Innovation Centre (SEZ) Limited Plot 14 on the Two Rivers Land Company Layout Plan deposited in the office of the Commissioner of Customs and Border Control)	Entry and Exit

Dated the 12th January, 2026.

CHEGE MACHARIA,  
*for Commissioner of Customs and Border Control.*  
"This Gazette Notice is an addendum to Gazette Notice No. 16914 of 8th December, 2023".  
SO 6217

GAZETTE NOTICE NO. 491

### THE KENYA INFORMATION AND COMMUNICATIONS ACT

(Cap. 411A)

#### APPLICATION BY POSTAL CORPORATION OF KENYA (PCK) FOR REVIEW OF POSTAGE RATES

NOTICE is given to the general public that pursuant to the Kenya Information and Communications Act, 1998 (As amended), and the Kenya Information and Communications Regulations 2001 (as amended), PCK, a body corporate established by the Postal Corporation Act (No. 3 of 1998), has applied to the Communications Authority of Kenya for approval to review their private letter box/ bag rental fees owing to the increased costs associated with service delivery. The proposed changes are as indicated in Table 1 below:

TABLE 1: Revised Private Letter Boxes/Bag Rental Fee

Letter Box Rental			
Category	Current Rate (Kshs.)	Proposed Rate (Kshs.)	Rates
Individual	2,000.00	2,200.00	
Corporate	9,450.00	10,000.00	
Special Corporate	6,225.00	7,000.00	
Sub Post Offices	1,320.00	To be harmonized	
Learning and Religious Organization	7,725.00	8,000.00	
Key Deposit	560.00	1,000.00	
Lock Replacement	650.00	1,000.00	

The review of the proposed fees is likely to affect the public, local authorities, companies, persons or bodies of persons within the Republic of Kenya. Any person or local authority, company or body of persons desirous of making any representation on or objection to the proposed revision must do so vide a letter addressed to: *The Director General, Communications Authority of Kenya, CA Centre, Waiyaki Way, P.O. Box 14448 - 00800, Nairobi* indicating "Postal Tariff

Review” on the outside of the cover enclosing it on or before expiry of thirty (30) days from the date of publication of this notice and must forward to PCK a copy of the representation or objection.

Dated the 3rd December, 2025.

MR/7882349

DAVID MUGONYI,  
*Director-General/Ceo.*

GAZETTE NOTICE NO. 492

THE INSOLVENCY ACT

(Cap. 53)

LAFARGEHOLCIM EAST AFRICA LIMITED (*the Company*)

(*In Members' Voluntary Liquidation*)

Company No: C.89509

INSOLVENCY UNDER SECTION 402 (2)  
AND REGULATION 77G (2)

FINAL MEETING

NOTICE is given of the final meeting of the members in the above matter which will be held virtually on Monday, 26th January 2026, at 10.00 a.m., E.A.T, for the purposes of having the statement of accounts of the liquidation laid before the meeting, showing the way the liquidation has been conducted and giving any explanations thereof.

The Liquidator acts as an agent of the Company and contracts without any personal liability whatsoever.

Dated the 23rd December, 2025.

HARVEEN GADHOKE,  
*Liquidator.*  
*Adili Associates LLP*  
*ALN House, Eldama Ravine Close*  
*Off Eldama Ravine Road, Westlands*  
*P.O. Box 764-00606, Nairobi*  
*Tel. +254 709 676 000*  
*Email: info@adili.africa.*

MR/8081663

\*Gazette notice No. 353 of 2026 is revoked.

GAZETTE NOTICE NO. 493

THE INSOLVENCY ACT

(Cap. 53)

IN THE MATTER OF AKZO NOBEL KENYA LIMITED

(*the Company*)

(*In Members' Voluntary Liquidation*)

Company Number: PVT/2016/026624

INSOLVENCY NOTICE UNDER SECTION 402 (2) AND  
REGULATION 77G (2)

FINAL MEETING

NOTICE is given of the final meeting of the members in the above matter which will be held virtually on Monday, 26th January 2026, at 11.00 a.m., E.A.T, for the purposes of having the statement of accounts of the liquidation laid before the meeting, showing the way the liquidation has been conducted and giving any explanations thereof.

The Liquidator acts as an agent of the Company and contracts without any personal liability whatsoever.

Dated the 23rd December, 2025.

HARVEEN GADHOKE,  
*Liquidator.*  
*Adili Associates LLP*  
*ALN House, Eldama Ravine Close*  
*Off Eldama Ravine Road, Westlands*  
*P.O Box 764-00606, Nairobi*  
*Tel. +254 709 676 000*  
*Email: info@adili.africa*

MR/8081663

\*Gazette notice No. 354 of 2026 is revoked.

GAZETTE NOTICE NO. 494

THE POLITICAL PARTIES ACT

(Cap. 7D)

CHANGE OF POLITICAL PARTY OFFICIALS

IN EXERCISE of the power conferred by Section 20 (1) (c) of the Political Parties Act, the Registrar of Political Parties gives notice that United Green Movement (UGM) intends to change its party officials as follows:

Designation	Former Official	Current Official
Deputy Party Leader	Daniel Lepeyion	Mohamed Osman Omar
Secretary General	Felix M. Ndoi	Benard Nyokangih Miruka

Any person with written submissions concerning the intended changes by the political party shall within seven (7) days from the date of this publication make their written submissions to the Registrar of Political Parties.

Further enquiries can be made through the Registrar's Offices, P.O. Box 1131-00606, Lion Place, Waiyaki Way, 4th Floor from 8: 00 a.m. to 5: 00 p.m.

Dated the 19th November 2025.

J. C. LORIONOKOU,  
*Registrar of Political Parties/Ceo.*

GAZETTE NOTICE NO. 495

THE POLITICAL PARTIES ACT

(Cap. 7D)

CHANGE OF POLITICAL PARTY PARTICULARS

IN EXERCISE of the powers conferred by section 20 (1) (a), (c) and (e) of the Political Parties Act, the Registrar of Political Parties gives notice that Mazingira Greens Party of Kenya (MGP) intends to change its party particulars as follows:

- (i) Change of party constitution:
- (ii) Change of physical location of the head office:

Former location	Current location
Mirema Drive 7958/13	Ruprani House, Room 302, Moktah Dadah Street, Nairobi

- (iii) Change of party officials:

Designation	Former Official	Current Official
Party Leader	Cryus Muriuki	Martin Mburugu Bikuri
Deputy Party Leader	-	Madina Dokote Tise
Chairperson	Madina Dokota Tise	John Kiplagat Bunei
Deputy Chairperson	-	Joseph Ngarama Karanu
Secretary General	Ngorongo Makanga	Ngorongo Makanga
Deputy Secretary General	-	Erastus Kimathi Mugambi
Organizing Secretary	-	Harrison Gitagia Kamau
Deputy Organizing Secretary	-	James M'itonga Mirianga
Treasurer	Charles K. Maringo	Gladys Kabia Micheni
Deputy Treasurer	-	Patricia Chepchumba Rotich
National Chairperson for Women League	-	Violet Nanjala Maurice

Designation	Former Official	Current Official
National Chairperson for Youth League	Ann Nkirote Nteere	Fiona Kawira Mugambi
National Chairperson for Special Interest Groups	-	Alexandar Ndolo Kilele
Director of Elections	-	Eunice Muthoni Imanyara

Any person with written submissions concerning the intended changes by the political party shall within seven (7) days from the date of this publication make their written submissions to the Registrar of Political Parties.

Further enquiries can be made through the Registrar's Offices, P.O. Box 1131-00606, Lion Place, Waiyaki Way, 4th Floor from 8.00 a.m. to 5:00 p.m.

Dated the 25th November, 2025.



MR/7882413 J. C. LORIONOKOU,  
Registrar of Political Parties/CEO.

GAZETTE NOTICE No. 496

**THE POLITICAL PARTIES ACT,  
(Cap. 7D)**

**PROVISIONAL REGISTRATION OF POLITICAL PARTIES**

IN EXERCISE of the powers conferred by section 5 (2) (a) of the Political Parties Act, the Registrar of Political Parties gives notice that the following political parties have applied for provisional registration under section 6 of the Act:

S/No.	Names	Party Colours	Party Symbols	Slogans	Founding members
1.	People Centred Party (PEC)	Orange, Green and White		<i>Fursa kwa wote</i>	1. Martin Ambrose Mutua 2. Nancy Kwamboka Omweri 3. Joseph Gichuki Karuri 4. Mbogai Sarah Mkarie 5. James Nyang'au Gichana 6. Brian Ingonga Inzai
2.	United Super Alliance Party (USAP)	French Violet, Metallic Gold, Silver		<i>Tuko Macho</i>	1. Yunia Kemuma Machuka 2. Paul Mecha Nyabuto 3. James Kimani Karanja 4. Samson Ochieng Opap 5. Franciseah Banareri Nyamamba

Any person with written submissions concerning the registration of the above political parties shall within seven (7) days from the date of this publication deposit them with the Registrar of Political Parties.

Further enquiries can be made through the Registrar's Offices, Lion Place, Waiyaki Way, P.O. Box 1131-00606, Nairobi, from 8:00 a.m. to 5:00 p.m.

Dated the 20th November, 2025.

MR/7882412 J. C. LORIONOKOU,  
Registrar of Political Parties/Ceo.

GAZETTE NOTICE No. 497

**THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION ACT**

(No. 8 of 1999)

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT  
FOR THE PROPOSED COPPER ORE DEPOSIT WITHIN LAND  
REFERENCE Nos. 116, 217, 218, 226, 229, 230, 231, 232, 233, 235,  
236, 237 AND 240-NGILUNI SETTLEMENT SCHEME AT  
KAMUNYU VILLAGE, MTITO ANDEI LOCATION, KAMBU  
SUB-COUNTY, MAKUENI COUNTY**

**INVITATION OF PUBLIC COMMENTS**

PURSUANT to section 59 of the Environmental Management and Co-ordination Act, 2019, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The proponent, Shaanxi Africa Mining Company, proposes to extract and transport copper ore from the designated mining area to an off-site processing plant. The copper ore will be mined using suitable open-pit and will involve activities such as geological mapping, sampling and confirmation drilling where required on plot L.R. Nos. 116, 217, 218, 226, 229, 230, 231, 232, 233, 235, 236, 237 and 240-Ngiluni settlement scheme at Kamunyu village, Kambu Sub-County, Makueni County.

The following are the anticipated impacts and proposed mitigation measures:

Impact	Mitigation Measure
Uncontrolled development	<ul style="list-style-type: none"> <li>Obtain approvals from NEMA, County Government, and other sectoral regulators before project commencement; ensure compliance with land use plans and zoning regulations to avoid conflicts.</li> </ul>
Lack of environmental awareness among workers and community	<ul style="list-style-type: none"> <li>Conduct environmental awareness sessions; install site signage; distribute project information through meetings, posters, and leaflets.</li> </ul>
Mismanagement of site operations	<ul style="list-style-type: none"> <li>Appoint competent site managers; implement operational codes; ensure statutory compliance.</li> </ul>
Accidents and hazards	<ul style="list-style-type: none"> <li>Provide insurance cover for workers and equipment; establish emergency response plans; provide first aid and PPE; ensure no contamination reaches Athi River.</li> </ul>
Air pollution and dust emissions	<ul style="list-style-type: none"> <li>Spray water on dusty surfaces; require dust masks; cover transport trucks; limit vehicle speeds; maintain equipment.</li> </ul>
Solid waste generation	<ul style="list-style-type: none"> <li>Provide segregated waste bins; engage licensed waste handlers; encourage recycling and reuse.</li> </ul>
Loss of biodiversity	<ul style="list-style-type: none"> <li>Demarcate construction boundaries; avoid unnecessary clearing; replant indigenous species; maintain buffer zones.</li> </ul>
Soil erosion and sedimentation	<ul style="list-style-type: none"> <li>Stabilize disturbed soils; construct silt traps and drainage; avoid excavation during heavy rains; rehabilitate disturbed areas; prevent sediment runoff into Athi River.</li> </ul>
Water demand and wastewater generation	<ul style="list-style-type: none"> <li>Obtain WRA permits; implement water recycling; use water-efficient fixtures; install mobile toilets/septic systems; monitor water quality, ensuring Athi River is not affected.</li> </ul>
Occupational health and safety risks	<ul style="list-style-type: none"> <li>Register with DOSHS; provide PPE; install fire-fighting equipment; conduct safety drills; restrict public access.</li> </ul>
Community conflicts	<ul style="list-style-type: none"> <li>Establish grievance redress mechanism; conduct consultations; prioritize local hiring; implement CSR initiatives.</li> </ul>
Air pollution	<ul style="list-style-type: none"> <li>Use dust suppression methods; cover transport</li> </ul>

<i>Impact</i>	<i>Mitigation Measure</i>
	trucks; plant windbreaks; monitor air quality;
Noise pollution	• Enclose noisy equipment; provide ear protection; schedule high-noise tasks during daytime; monitor noise levels; minimize disturbance to wildlife in conservancy.
Greenhouse gas emissions	• Use fuel-efficient equipment; prioritize grid electricity; adopt renewable energy; implement tree planting programs.
Biodiversity loss	• Minimize clearing; replant cleared areas with indigenous species; maintain buffer zones; monitor ecosystems.
Job losses	• Provide retraining; pay terminal benefits; link workers to alternative employment.
Insecurity	• Contract security firm; secure or remove equipment; prevent illegal occupation; safeguard areas near conservancy.
Safety and health risks	• Supervise demolition; ensure PPE use; restrict to daytime; provide first aid; install warning signage.
Waste generation	• Recycle or reuse demolition materials; engage licensed waste contractors; prevent open dumping or burning; protect nearby natural areas.
Soil erosion and ecological degradation	• Rehabilitate site; decontaminate soil if necessary; plant indigenous vegetation; implement long-term erosion management.

The full report of the proposed project is available for inspection during working hours at:

(a) Director-General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839-00200, Nairobi.

(b) County Director of Environment, Makueni County.

A copy of the EIA report can be downloaded at [www.nema.go.ke](http://www.nema.go.ke),

The National Environment Management Authority invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director-General, NEMA, to assist the Authority in the decision making process regarding this project.

Comments can also be e-mailed to [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke)

MAMO B. MAMO,  
*Director-General,*

MR/8081645 *National Environment Management Authority.*

GAZETTE NOTICE NO. 498

THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION ACT

(Cap. 387)

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT  
FOR THE PROPOSED LANDUSE CHANGE AND  
DEVELOPMENT OF ESSENTIAL INFRASTRUCTURE AND  
UTILITIES KARUNGURU GATED COMMUNITY ESTATE  
ON PLOT L.R. NO. 294/60 ALONG KENYATTA ROAD IN  
RUIRU, KIAMBU COUNTY.

INVITATION FOR PUBLIC COMMENTS

PURSUANT to Section 59 of the Environmental Management and Coordination Act, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The proponent, Karunguru Estates Limited, proposes to change the land use from agricultural to residential, aligning with a master plan. The project entails the subdivision into 305 residential plots covering 115 acres with the remaining 122 hectares reserved for

common infrastructure buildings and amenities including water pans, boreholes, clubhouse, coffee museum, perimeter security mansions, parking areas, lighting, access roads, fresh water abstraction, storage and distribution, waste water disposal trunk main and distribution, firefighting water distribution, power supply and distribution and fibre optic ring mains distribution and associated works on plot L.R. No. 294/60 along Kenyatta Road in Ruiru, Kiambu County.

The following are the anticipated impacts and proposed mitigation measures:

<i>Impacts</i>	<i>Mitigation Measures</i>
Land use change	• Ensure compliance with approved land use plans, conduct stakeholder consultations, and compensate for land use change through green space planning.
Habitat and vegetation loss	• Limit vegetation clearance to project-specific areas. • Replant native vegetation in cleared areas. • Identify and protect sensitive habitats.
Baseline surveys	• Conduct environmental, social, and biodiversity surveys before project commencement.
Dust generation during site prep	• Undertake water sprinkling to suppress dust. • Cover loose soil and stockpile to control the amount of dust generated.
Noise pollution from machinery	• Notify nearby residents on ongoing works and limit work hours to daytime.
Vegetation clearance	• Limit clearing to project area and implement erosion control (e.g., silt traps).
Disturbance to fauna	• Minimize construction activities near the waterlogged area enriched with bird's species. • Implement dust suppression measures.
Pollution of the waterlogged area	• Install sediment traps and erosion control barriers to protect the water from pollution; • Avoid storing materials near the waterlogged area.
Invasive species introduction	• Regularly monitor for invasive species and implement removal programs. • Rehabilitate disturbed soils quickly.
Habitat fragmentation	• Establish green corridors to maintain habitat connectivity especially for the birds.
Dust pollution	• Use dust suppression techniques like sprinkling water and provide PPE to workers.
Air emissions	• Maintain equipment regularly and reduce idling time.
Noise pollution	• Use low-noise equipment and work within prescribed daytime hours.
Occupational health and safety risks	• Provide PPE, safety training, and emergency response measures.
Domestic and construction waste	• Develop waste management plan, segregate waste, and use licensed waste handlers. • Provide sanitary facilities for workers on site.
Water demand	• Use rainwater harvesting systems and promote water conservation practices.
Traffic congestion and road damage	• Develop traffic management plan. • Promptly repair damaged sections of the roads used during construction. • Deliver construction materials during off-

<i>Impacts</i>	<i>Mitigation Measures</i>
	peak movements.
Risk of accidents	• Use safety signage, enforce PPE use, and limit access to unauthorized persons.
Water pollution	• Install sedimentation traps and properly storm water. • Provided containment systems and spill managements systems for accidental spillages that occur on site.
Domestic generation waste	• Develop waste collection systems, Use licensed waste handlers for waste disposal. Promote recycling of waste where possible.
Increased demand water	• Implement rainwater harvesting and water-efficient systems. Undertake water recycling where feasible
Sewage and wastewater	• Install and maintain wastewater treatment systems. Connect to the county water and sewerage infrastructure where possible.
Traffic congestion	• Improve road infrastructure and provide sufficient parking spaces. Provide road use signage to guide the road users.
Air Pollution	• Plant trees within the area. • Promote the use of clean energy alternatives.
Noise pollution	• Noisy activities to be done during the day Restrict repairs and renovations work hours.
Storm water management	• Develop drainage systems and permeable surfaces to manage runoff.
Occupational health and safety	• Conduct regular OHS training and provide PPE to staffs and security teams
Community safety and security	• Install perimeter fencing, surveillance systems, and employ security personnel.
Habitat disturbance	• Establish buffer zones between developed areas and the waterlogged area. Conduct regular biodiversity awareness campaigns for residents.
Pollution from residential areas	• Install and maintain effective storm water management systems. Educate residents on proper waste disposal practices.
Loss of green cover	• Maintain green spaces with native plant species. Monitor landscape for invasive plants.
Waste generation	• Reuse or recycle construction materials and dispose of waste safely.
Soil erosion and land degradation	• Implement erosion control measures like replanting vegetation.
Air and dust pollution	• Suppress dust using water and enforce PPE use.
Noise pollution	• Use low-noise equipment and schedule works during daytime hours.
Occupational health and safety	• Provide PPE, enforce safety protocols, and ensure first aid availability.
Site rehabilitation	• Restore site to acceptable condition through landscaping and revegetation.

The full report of the proposed project is available for inspection during working hours at:

(a) Director General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839-00200, Nairobi.

(b) County-Director of Environment, Kiambu City County.

A copy of the EIA report can be downloaded at [www.nema.go.ke](http://www.nema.go.ke)

The National Environmental Management Authority, invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director General, NEMA to assist the Authority in the decision making process for this project.

Comments can also be e-mailed to [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke)

MAMO B. MAMO,

*Director-General,*

MR/7882329

*National Environment Management Authority.*

GAZETTE NOTICE NO. 499

THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION ACT

(Cap. 387)

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT  
FOR THE PROPOSED RESIDENTIAL APARTMENTS ON  
PLOT L.R NO.NAIROBI/BLOCK 160/1694 LOCATED ALONG  
LIKONI ROAD, SOUTH B AREA, NAIROBI CITY COUNTY.

INVITATION FOR PUBLIC COMMENTS

PURSUANT to Section 59 of the Environmental Management and Coordination Act, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The proponent, Terui Company Limited, proposes to develop 11-block residential apartments with each block comprising of 2-level basements with 448 No. parking spaces, typical first to 12th floor comprising of (192No. one-bedroom units, 396No. two bedroom units and 72No. three bedroom units), sewer system, boundary wall, gymnasium, restaurant, playground, management office, transformer room, generator room, energy storage room, distribution room, pool equipment room, pump room, ground water tank, an entrance gate, other associated facilities and amenities on plot L.r no.Nairobi/block 160/1694 located along Likoni Road, South B area, Nairobi City County.

The following are the anticipated impacts and proposed mitigation measures:

<i>Impacts</i>	<i>Mitigation Measures</i>
Air Pollution	<ul style="list-style-type: none"> <li>• Use of dust screens/nets around the construction site to contain and arrest dust.</li> <li>• Regular sprinkling of water on work areas to prevent fugitive dust violations.</li> <li>• Ensure no burning of waste such as paper and bottles on non-designated areas.</li> <li>• Regular covering and watering of all exposed stockpiles on site.</li> <li>• Regular and prompt maintenance of construction machinery and equipment to minimize.</li> <li>• Generation of hazardous gases.</li> </ul>
Noise Pollution	<ul style="list-style-type: none"> <li>• Construction works shall be carried out during the day.</li> <li>• The contractor shall use noise shields on noisy equipment such as corrugated iron sheet structures.</li> <li>• All noisy activities shall be scheduled concurrently during the construction to reduce the exposure period.</li> </ul>

<i>Impacts</i>	<i>Mitigation Measures</i>	<i>Impacts</i>	<i>Mitigation Measures</i>
	<ul style="list-style-type: none"> <li>• Operation of the noisy machinery shall be carried out when necessary and switched off when not in use.</li> <li>• Provide and enforce the use of Personal Protective Equipment (PPE) by the workers at all times during the construction phase.</li> <li>• Monitor noise levels as per NEMA &amp; NCC guidelines.</li> </ul>		<ul style="list-style-type: none"> <li>• Provide billboards at the site/entrance to notify motorists and the general public about the proposed project.</li> <li>• Enforce speed limits for construction vehicles especially along the adjacent roads.</li> <li>• Develop a traffic management plan to ensure that the site vehicles do not interfere with the regular traffic along the access roads.</li> </ul>
Oil pollution	<ul style="list-style-type: none"> <li>• Proper storage, handling, and disposal of new/used oil and related oil wastes.</li> <li>• Routine maintenance of the construction equipment to avoid oil leaks.</li> <li>• Maintenance of the construction equipment to be carried out in the contractor's yard (off the site).</li> </ul>	Insecurity	<ul style="list-style-type: none"> <li>• Engage services of security guards</li> <li>• Install and regular maintenance of the CCTV cameras.</li> <li>• Place hotline numbers on strategic places.</li> <li>• Sensitize residents on security precautions.</li> <li>• Sensitize the residents on "Nyumba Kumi Initiative".</li> </ul>
Solid waste	<ul style="list-style-type: none"> <li>• Engage the services of the NEMA waste contractor to handle the waste.</li> <li>• Covering of the trucks when transporting building materials and waste.</li> <li>• Segregation of the water at source before disposal to designated areas.</li> <li>• Use of an integrated solid waste management system through a hierarchy of options:</li> <li>• Source reduction, recycling, composting and reuse.</li> <li>• Efficient use of the materials to reduce waste and recycling/reuse where feasible.</li> <li>• Monitor waste as per the waste management regulations.</li> </ul>	Storm water Drainage	<ul style="list-style-type: none"> <li>• Proper design and maintenance of the drainage structures.</li> <li>• Construct internal drains within the property for storm water management.</li> <li>• Proper installation of cascades to break the impact of water flowing in the drains.</li> <li>• Rainwater harvesting to reduce surface runoff.</li> <li>• The proponent will ensure drainage facilities are fitted with adequate functional oil.</li> <li>• Water separators and silt traps.</li> </ul>
Liquid waste	<ul style="list-style-type: none"> <li>• Channel all liquid waste to the NCWSC were line serving the area</li> <li>• Conduct routine inspection and monitoring of the internal drainage system to identify and repair any leakages and blockages.</li> <li>• Provision of adequate sanitary facilities to the workers during the construction.</li> <li>• Regular inspection and maintenance of the internal sewer system.</li> </ul>	Health and safety of workers	<ul style="list-style-type: none"> <li>• Register the construction site as a workplace with DOSHS.</li> <li>• Provide PPE to the workers and ensure that they wear them at all times.</li> <li>• Provide first aid kit for the workers on the site.</li> <li>• All workers to be adequately insured against accidents.</li> <li>• All workers shall be sensitized before construction begins on how to control accidents related to construction.</li> <li>• Keep a record of the public emergency service telephone numbers including Police, Fire brigade, and Ambulance at strategic points.</li> <li>• Ensure that the workers are registered with NHIF / NSSF and remit appropriate fees.</li> <li>• Prepare a comprehensive contingency plan before construction begins on accident response.</li> </ul>
Water demand	<ul style="list-style-type: none"> <li>• Connect to the existing water supply after the acquisition of the relevant permits.</li> <li>• Drill a borehole to supplement the existing water supply.</li> <li>• Use of water efficient fittings/fixtures for plumbing products and white goods.</li> <li>• Provision of adequate water tanks for water storage.</li> <li>• Prompt detect and repair of the water fixtures and fittings.</li> </ul>		
Energy Demand	<ul style="list-style-type: none"> <li>• Use of solar energy as an alternative source of energy.</li> <li>• Install and routine maintenance of energy efficient fixtures and fittings.</li> <li>• Turn off the machinery and equipment when not in use.</li> <li>• Put off all the lights immediately when not in use.</li> </ul>		
Increased Traffic	<ul style="list-style-type: none"> <li>• Ferry building materials during off-peak hours.</li> <li>• Employ traffic marshals to control traffic in and out of site.</li> </ul>		

The full report of the proposed project is available for inspection during working hours at:

(a) Director General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839-00200, Nairobi.

(b) County-Director of Environment, Nairobi City County.

A copy of the EIA report can be downloaded at [www.nema.go.ke](http://www.nema.go.ke)

The National Environmental Management Authority, invites members of the public to submit oral or written comments within

thirty (30) days from the date of publication of this notice to the Director General, NEMA to assist the Authority in the decision making process for this project.

Comments can also be e-mailed to [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke)

MAMO B. MAMO,  
*Director-General,*

MR/7882328 *National Environment Management Authority.*

GAZETTE NOTICE No. 500

THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION ACT

(Cap. 387)

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT  
FOR THE PROPOSED WASTE LUBRICANT OIL STORAGE &  
RECYCLING PLANT ON PLOT NO. KILIFI/KALIANG'OMBE  
/JIMBA/63, KILIFI COUNTY.

INVITATION FOR PUBLIC COMMENTS

PURSUANT to Section 59 of the Environmental Management and Coordination Act, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The proponent Abhimanyu Trading Limited intends to construct a used oil storage and treatment plant comprising of an office, used oil storage tanks, oil water interceptor, used lubricant oil recycling turnkey machine, boundary wall and an open yard with storm water drainage other associated amenities and facilities on plot No. Kilifi/Kaliang'ombe/Jimba/63, Kilifi County.

The following are the anticipated impacts and proposed mitigation measures.

<i>Impacts</i>	<i>Mitigation Measures</i>
Noise generation	<ul style="list-style-type: none"> <li>Schedule project activities between 8:00 a.m. and 5:00 p.m.</li> <li>Train operators on efficient operation practices, including minimizing idling time and hooting.</li> <li>Maintenance of equipment to ensure optimal performance and reduced noise emissions.</li> <li>Enclose or shield noisy equipment to reduce ambient noise levels.</li> <li>Carry out periodic noise level measurements at the site.</li> <li><b>Provide PPE</b> to all personnel operating or working above 85db.</li> <li><b>Install noise barriers, silencers, or dampeners</b> on machinery.</li> </ul>
Gaseous emissions	<ul style="list-style-type: none"> <li>Use covered containers for handling and transporting waste oil.</li> <li>Regularly service machinery and generators to reduce exhaust emissions.</li> <li>Monitor ambient air quality periodically to detect pollutant levels.</li> <li>Avoid open burning of oily waste, rags, or sludge.</li> <li>Minimize idling of vehicles and heavy equipment within the facility.</li> </ul>
Waste generation and disposal	<ul style="list-style-type: none"> <li>Segregate waste at source into hazardous and non-hazardous categories.</li> <li>Label and store hazardous waste in sealed, leak-proof containers.</li> </ul>

<i>Impacts</i>	<i>Mitigation Measures</i>
Oil spillages	<ul style="list-style-type: none"> <li>Provide designated waste bins for different waste streams</li> <li>Contract licensed waste handlers for collection and disposal of hazardous and general waste.</li> <li>Encourage reuse and recycling where feasible</li> <li>Conduct periodic audits to monitor waste management practices.</li> <li>Conduct routine inspection and monitoring of all oil and fuel storage tanks.</li> <li>Maintenance of fully stocked spill kits at the Yard</li> <li>Develop and implement a Spill Prevention and Emergency Response Plan (SPERP).</li> <li>Pave all oil handling and storage areas.</li> <li>Construct an oil-water interceptor in the drainage system.</li> <li>Construct bund walls around the fuel tank farm to contain potential spills or leaks.</li> <li>In case of accidental spillage</li> <li>Immediately stop the source of the spill.</li> <li>Activate emergency response plan and alert responsible personnel.</li> <li>Contain the spill using sand, absorbent booms, or soil bunds.</li> <li>Block nearby drains to prevent oil from entering water systems.</li> <li>Use spill kits to absorb and clean up spilled oil.</li> </ul>
Fire Risk	<ul style="list-style-type: none"> <li>Install fire extinguishers at key points around the plant.</li> <li>Equip site with fire hose reels and sand buckets at strategic locations.</li> <li>Train all workers on fire safety, use of extinguishers, and evacuation procedures.</li> <li>Conduct regular fire drills and emergency preparedness exercises.</li> <li>Install smoke detectors and heat sensors in critical areas.</li> <li>Prohibit open flames and smoking within site.</li> <li>Clearly label flammable materials.</li> <li>Keep fire assembly points and access routes well-marked and unobstructed</li> </ul>
Occupational Health and Safety Risks	<ul style="list-style-type: none"> <li>Construction of a site office for coordinating activities.</li> <li>Appointment of a responsible team/persons to oversee Health, Safety, and Environment (HSE) matters.</li> <li>Development of appropriate emergency procedures and Standard Operating Procedures (SOPs) for critical site activities.</li> <li>Provision of Workers Injury Benefits Act (WIBA) coverage for all site personnel.</li> <li>Engagement of security services from a reputable security firm at the site.</li> </ul>

<i>Impacts</i>	<i>Mitigation Measures</i>
Climate Change Risks	<ul style="list-style-type: none"> <li>• Provision of clean drinking water, adequate sanitation facilities, a first aid kit, and other basic welfare amenities at the site.</li> <li>• Designation of a fire assembly point at the site.</li> <li>• Maintenance of a register of workers.</li> <li>• Implementation of a permit-to-work system for electrical works, hot works, and confined spaces</li> <li>• Prepare annual carbon footprint reports and implement the recommendations</li> <li>• Comply with the Climate Change Act 2023 and National Climate Change Action Plan 2023 – 2027.</li> <li>• Prepare annual carbon footprint reports and implement the recommendation.</li> <li>• Comply with the Climate Change Act 2023 and National Climate Change Action Plan 2023 – 2027.</li> </ul>

The full report of the proposed project is available for inspection during working hours at:

- (a) Director General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839–00200, Nairobi.
- (b) County-Director of Environment, Kilifi County.

A copy of the EIA report can be downloaded at [www.nema.go.ke](http://www.nema.go.ke)

The National Environmental Management Authority, invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director General, NEMA to assist the Authority in the decision making process for this project.

Comments can also be e-mailed to [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke)

MAMO B. MAMO,  
*Director-General,*  
National Environment Management Authority.

MR/7882372

GAZETTE NOTICE No. 501

THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION ACT

(Cap. 387)

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT  
FOR THE PROPOSED MIXED DEVELOPMENT  
(COMMERCIAL, RESIDENTIAL AND RECREATION) AND  
ASSOCIATED FACILITIES ON PLOT L.R.NO  
NAIROBI/BLOCK 25/17 ON PROF DAVID WASAWO DRIVE,  
OFF RIVERSIDE DRIVE IN CHIROMO AREA, NAIROBI  
COUNTY.

INVITATION FOR PUBLIC COMMENTS

PURSUANT to Section 59 of the Environmental Management and Coordination Act, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The proponent, Sparkling Mansion Limited Liability Partnership, proposes to construct a single mixed use block of 21No. storeys (ground, 6No. podium floors, 1st – 21st floors plus roof floor) comprising a total of 260No. units (80No. two bedroom, 140No. one bedroom and 40No. studio apartment units) with a restaurant, residents lounge, swimming pool, terrace, bar, a gym and drying area on the roof floors, parking slots, associated facilities and amenities on plot L.r. No. Nairobi/Block 25/17 on Prof David Wasawo Drive, off Riverside Drive in Chiromo Area, Nairobi County.

The following are the anticipated impacts and proposed mitigation measures:

<i>Possible Impacts</i>	<i>Proposed Mitigation Measures</i>
Waste management	<ul style="list-style-type: none"> <li>• Waste minimization by ordering right/accurate quantities and sizes rather than cutting to sizes leaving wastes or ordering excess quantities leaving residuals.</li> <li>• Reduction and segregation of waste at source and suitable bins properly labeled to facilitate recycle and/or sound disposal.</li> <li>• Engage the services of NEMA registered waste collector for disposal of solid waste.</li> <li>• Sound waste management system by incorporating suitable facilities for collection, segregation and safe disposal of solid wastes to support recycling and reuse.</li> <li>• Proper storage, handling and disposal of new &amp; used oil.</li> <li>• Installation of sanitary systems that use less water.</li> <li>• Connection to sewer for wastewater disposal.</li> <li>• Ensure compliance with Waste Management Regulations, 2006 and the Sustainable Waste Management Act.</li> <li>• Connection to sewer.</li> <li>• Liaise with respective service providers for installation/expansion.</li> <li>• Adequate provision for infrastructure and services.</li> <li>• Installation of internal infrastructure (drainage, water, roads, sewer, parking, rain water harvesting and storage etc) to best standards.</li> <li>• Installation of transformer(s) and supplementary sources such as solar systems.</li> <li>• Adoption of green building technologies.</li> </ul>
Constraints to infrastructure and services	<ul style="list-style-type: none"> <li>• Control earthworks and compact loose soils.</li> <li>• Install drainage structures properly.</li> <li>• Landscaping on project completion.</li> <li>• Control and manage excavation activities.</li> <li>• Provide soil erosion control and conservation structures/means where necessary.</li> <li>• Ensure standard appropriate practices.</li> <li>• Efficient drainage structures by proper design, construction and maintenance.</li> </ul>
Soil disturbance and erosion	<ul style="list-style-type: none"> <li>• Enclose the site with suitable double dust screens.</li> <li>• Sprinkle water to dry soils in excavated areas and earth roads to suppress dust.</li> <li>• Covering friable material loads during transportation.</li> <li>• Sound condition of machinery and equipment.</li> </ul>
Air pollution	<ul style="list-style-type: none"> <li>• Enclose the site with suitable double dust screens.</li> <li>• Sprinkle water to dry soils in excavated areas and earth roads to suppress dust.</li> <li>• Covering friable material loads during transportation.</li> <li>• Sound condition of machinery and equipment.</li> </ul>

<i>Possible Impacts</i>	<i>Proposed Mitigation Measures</i>
Noise pollution	<ul style="list-style-type: none"> <li>• Strict adherence to Air Quality Regulations, 2014.</li> <li>• Erect suitable barriers to control noise.</li> <li>• Maintain machinery, plant equipment.</li> <li>• Construction activities to be restricted between 8am – 5pm.</li> <li>• Workers exposed to high-level noise to wear safety and protective gear.</li> <li>• Adherence to Noise and Excessive Vibration Pollution (Control) Regulations, 2009.</li> </ul>
Increased pressure on resources	<ul style="list-style-type: none"> <li>• Adoption of green building technologies.</li> <li>• Conservation of resources; use of renewable resources; rain water harvesting and storage; installation of solar energy systems.</li> <li>• Sourcing materials from environmentally compliant suppliers/sources.</li> <li>• Use of recyclable materials; Installation of water conserving taps and facilities; waste water recycling and reuse.</li> <li>• Installation of transformer(s) and supplementary sources such as solar systems and standby generators.</li> <li>• Ensure electrical equipment, appliances and lights are switched off when not being used.</li> <li>• Design to provide for adequate natural lighting and ventilation.</li> </ul>
Public health, occupational health and safety	<ul style="list-style-type: none"> <li>• Train staff/workers on occupational health and safety; Provide full PPEs and workmen's compensation cover in addition to the right tools and operational instructions and manuals.</li> <li>• Design and disseminate appropriate emergency response plans.</li> <li>• Installation and maintenance of fire prevention, control and management measures.</li> <li>• Ensure machinery and equipment servicing and maintenance as per schedules and legal requirements</li> <li>• Ensure adherence OSHA, 2007.</li> <li>• Ensure use of standard construction materials and to the specifications. Avoid undesirable, substandard, hazardous or unauthorized materials during construction and maintenance.</li> <li>• Provide fully equipped First Aid kits and train staff on its use.</li> <li>• Provide bill boards at the site/entrance to notify motorists and public about the development.</li> <li>• Waste water management installations (e.g. Sewers) be isolated from water pipes to avoid contamination of domestic water.</li> <li>• Design to include adequate circulation.</li> </ul>
Traffic Management	<ul style="list-style-type: none"> <li>• Conduct a traffic Impact Assessment and generate a traffic management plan.</li> </ul>

<i>Possible Impacts</i>	<i>Proposed Mitigation Measures</i>
	<ul style="list-style-type: none"> <li>• The Traffic management plan should be followed throughout the project cycle</li> </ul> <p>The full report of the proposed project is available for inspection during working hours at:</p> <p>(a) Director General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839-00200, Nairobi.</p> <p>(b) County-Director of Environment, Nairobi County.</p> <p>A copy of the EIA report can be downloaded at <a href="http://www.nema.go.ke">www.nema.go.ke</a></p> <p>The National Environmental Management Authority, invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director General, NEMA to assist the Authority in the decision making process for this project.</p> <p>Comments can also be e-mailed to <a href="mailto:dgnema@nema.go.ke">dgnema@nema.go.ke</a></p> <p style="text-align: right;">MAMO B. MAMO, <i>Director-General,</i></p> <p>MR/7882430 <span style="float: right;"><i>National Environment Management Authority.</i></span></p>

## GAZETTE NOTICE NO. 502

## BRIXX GROUP

## DISPOSAL OF UNCOLLECTED GOODS

NOTICE is given pursuant to the provision of the disposal of uncollected goods Act (cap.38) laws of Kenya Notice is given to the owner of motor vehicle registration No. KCX O48T, Toyota Passo, to take delivery of the said motor vehicle from Mijek Court located at Syokimau within thirty (30) days from date of publication of this notice, upon payment of accumulated parking/ storage charges together with the costs of the publication in any other incidental cost, failure to which the same shall be disposed by the way of Public Auction and proceed of the sale be defrayed against all accrued charges without further notice

Dated the 12th January, 2026.

HYVET WAIRIMU,  
*for Brixx Group.*

MR/8081520

## GAZETTE NOTICE NO. 503

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 9th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 88, in Volume D1, Folio 3/19, File No. MMXXVI, by our client, Bryan Musau, formerly known as Bryan Musau Nzioka, formally and absolutely renounced and abandoned the use of his former name Bryan Musau Nzioka and in lieu thereof assumed and adopted the name Bryan Musau, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Bryan Musau only.

SHABAAN ASSOCIATES,  
*Advocate for Bryan Musau,*  
*formerly known as Bryan Musau Nzioka.*

MR/8081511

## GAZETTE NOTICE NO. 504

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 17th December, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 691, in Volume D1, Folio 416/5087, File No. MMXXV, by our client, Hassan Nur Abdi, of P.O. Box 17355-00100, Nairobi in the Republic of Kenya, formerly known as Hassan Daudi Salah, formally and absolutely renounced and abandoned the use of his former name Hassan Daudi Salah and in lieu thereof assumed and adopted the name Hassan Nur Abdi, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Hassan Nur Abdi only.

MCDONALD & COMPANY,  
*Advocate for Hassan Nur Abdi,*  
*formerly known as Hassan Daudi Salah.*

MR/8081651

GAZETTE NOTICE NO. 505

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 17th December, 2025, duly executed and registered in the Registry of Documents at Mombasa as Presentation No. 170, in Volume B-13, Folio 2470/22609, File No. 1637, by our client, Nahla Ahmad Mohamed, formerly known as Nakhala Ahmad Mohamed, formally and absolutely renounced and abandoned the use of her former name Nakhala Ahmad Mohamed, and in lieu thereof assumed and adopted the name Nahla Ahmad Mohamed, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Nahla Ahmad Mohamed only.

MKAN &amp; COMPANY,

*Advocates for Nahla Ahmad Mohamed,*

MR/7882360

*formerly known as Nakhala Ahmad Mohamed.*

GAZETTE NOTICE NO. 506

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 15th December, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 520, in Volume DI, Folio 413/5062, File No. MMXXV, by our client, Marion Cinaidah Bliss, of P.O. Box 5709-00100, Nairobi in the Republic of Kenya, formerly known as Marion Cinaidah Moraah alias Marion Cinaidah Oduor, formally and absolutely renounced and abandoned the use of her former name Marion Cinaidah Moraah alias Marion Cinaidah Oduor, and in lieu thereof assumed and adopted the name Marion Cinaidah Bliss, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Marion Cinaidah Bliss only.

P. N. MAINA &amp; COMPANY,

*Advocates for Marion Cinaidah Bliss,**formerly known as Marion Cinaidah Moraah*

MR/7882354

*alias Marion Cinaidah Oduor.*

GAZETTE NOTICE NO. 507

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 8th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 66, in Volume DI, Folio 2/12, File No. MMXXIV, by our client, Sarah Strojny, of P.O. Box 22201-00500, Nairobi in the Republic of Kenya, formerly known as Sarah Muthoni Muthee, formally and absolutely renounced and abandoned the use of her former name Sarah Muthoni Muthee, and in lieu thereof assumed and adopted the name Sarah Strojny, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Sarah Strojny only.

AMA LLP,

*Advocates for Sarah Strojny,*

MR/7882404

*formerly known as Sarah Muthoni Muthee.*

GAZETTE NOTICE NO. 508

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 7th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 26, in Volume DI, Folio 1/6, File No. MMXXVI, by our client, Lydia Akinyi Preciouss, of P.O. Box 1464-00515, Buruburu in the Republic of Kenya, formerly known as Lydia Akinyi Owino, formally and absolutely renounced and abandoned the use of her former name Lydia Akinyi Owino, and in lieu thereof assumed and adopted the name Lydia Akinyi Preciouss, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Lydia Akinyi Preciouss only.

OCHIENG MAKOKHA &amp; COMPANY,

*Advocates for Lydia Akinyi Preciouss,**formerly known as Lydia Akinyi Owino.*

MR/7897631

GAZETTE NOTICE NO. 509

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 8th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 321, in Volume DI, Folio 241/3902, File No. MMXXV, by me, Leontyne A. Mbinya James, of P.O. Box 139-00300, Nairobi in the Republic of Kenya, formerly known as Teresia Mbinya Munyao, formally and absolutely renounced and abandoned the use of my former name Teresia Mbinya Munyao, and in lieu thereof assumed and adopted the name Leontyne A. Mbinya James, for all purposes and authorizes and requests all persons at all times to designate, describe and address me by my assumed name Leontyne A. Mbinya James.

LEONTYNE A. MBINYA JAMES,

MR/7882422

*formerly known as Teresia Mbinya Munyao.*

GAZETTE NOTICE NO. 510

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 27th November, 2025, duly executed and registered in the Registry of Documents at Mombasa as Presentation No. 157, in Volume B-13, Folio 2463/22541, File No. 1637, by our client, Shehnain Abdulmajid Mohamed Aboo, of P.O. Box 83313-80100, Mombasa in the Republic of Kenya, formerly known as Shehnain Zaahir Mamdani, formally and absolutely renounced and abandoned the use of her former name Shehnain Zaahir Mamdani, and in lieu thereof assumed and adopted the name Shehnain Abdulmajid Mohamed Aboo, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Shehnain Abdulmajid Mohamed Aboo only.

OBOO &amp; COMPANY,

*Advocates for Shehnain Abdulmajid Mohamed Aboo,*

MR/7882431

*formerly known as Shehnain Zaahir Mamdani.*

GAZETTE NOTICE NO. 511

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 27th November, 2025, duly executed and registered in the Registry of Documents at Mombasa as Presentation No. 159, in Volume B-13, Folio 2464/22547, File No. 1637, by our client, Farida Nizar Merali, of P.O. Box 89244-80100, Mombasa in the Republic of Kenya, formerly known as Farida Nizarali Merali alias Farida Roshanali Merali Dewji, formally and absolutely renounced and abandoned the use of her former name Farida Nizarali Merali alias Farida Roshanali Merali Dewji, and in lieu thereof assumed and adopted the name Farida Nizar Merali, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Farida Nizar Merali only.

OBOO LLP,

*Advocates for Farida Nizar Merali,*

MR/7882433

*formerly known as Farida Nizarali Merali,*  
*alias Farida Roshanali Merali Dewji.*

GAZETTE NOTICE NO. 512

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 27th November, 2025, duly executed and registered in the Registry of Documents at Mombasa as Presentation No. 158, in Volume B-13, Folio 2464/22546, File No. 1637, by our client, Nizar Roshanali Abdulrasul Merali, of P.O. Box 89244-80100, Mombasa in the Republic of Kenya, formerly known as Nizarali Roshanali Merali alias Nizarali Roshanali Merali Dewji, formally and absolutely renounced and abandoned the use of her former name Nizarali Roshanali Merali alias Nizarali Roshanali Merali Dewji, and in lieu thereof assumed and adopted the name Nizar Roshanali Abdulrasul Merali, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Nizar Roshanali Abdulrasul Merali only.

OBOO LLP,

*Advocates for Nizar Roshanali Abdulrasul Merali,*

MR/7882432

*formerly known as Nizarali Roshanali Merali,*  
*alias Nizarali Roshanali Merali Dewji.*

GAZETTE NOTICE No. 513

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 24th October, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 917, in Volume DI, Folio 402/4054, File No. MMXXV, by our client, Diana Nyambura Lapaz, formerly known as Diana Nyambura Mutiso, formally and absolutely renounced and abandoned the use of her former name Diana Nyambura Mutiso, and in lieu thereof assumed and adopted the name Diana Nyambura Lapaz, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Diana Nyambura Lapaz only.

KM LLP,

*Advocates for Diana Nyambura Lapaz,  
formerly known as Diana Nyambura Mutiso.*

MR/7882340

GAZETTE NOTICE No. 514

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 11th December, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 443, in Volume DI, Folio 411/5047, File No. MMXXV, by our client, Judy Wacui Makori (guardian), of P.O. Box 50532-00200, Nairobi in the Republic of Kenya, on behalf of Will Makori (minor), formerly known as Will Nyamweya Makori, formally and absolutely renounced and abandoned the use of his former name Will Nyamweya Makori, and in lieu thereof assumed and adopted the name Will Makori for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Will Makori only.

NJENGA MAINA & COMPANY,  
*Advocates for Judy Wacui Makori (guardian),  
on behalf of Will Makori (minor),  
formerly known as Will Nyamweya Makori.*

MR/7882333

GAZETTE NOTICE No. 515

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 21st October, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 688, in Volume DI, Folio 346/3505, File No. MMXXV, by our client, Crispus Ileri Mwene Mavati, of P.O. Box 04000-00100, Nairobi in the Republic of Kenya, formerly known as Crispus Ileri Kinuva, formally and absolutely renounced and abandoned the use of his former name Crispus Ileri Kinuva, and in lieu thereof assumed and adopted the name Crispus Ileri Mwene Mavati, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Crispus Ileri Mwene Mavati only.

E. K. MUTUA & COMPANY,  
*Advocates for Crispus Ileri Mwene Mavati,  
formerly known as Crispus Ileri Kinuva.*

MR/7862016

\*Gazette Notice No. 17011 of 2025 is Revoked,

GAZETTE NOTICE No. 516

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 5th September, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 198, in Volume DI, Folio 291/3036, File No. MMXXV, by our client, Krishan Premji Raghwani (guardian), of P.O. Box 3540-40100, Mombasa in the Republic of Kenya, on behalf of Mitul Krishan Raghwani (minor), formerly known as Mitul Sanjay Shivji Kerai, formally and absolutely renounced and abandoned the use of his former name Mitul Sanjay Shivji Kerai, and in lieu thereof assumed and adopted the name Mitul Krishan Raghwani for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Mitul Krishan Raghwani only.

KIIRU & NGUONO,  
*Advocates for Krishan Premji Raghwani (guardian),  
on behalf of Mitul Krishan Raghwani (minor),  
formerly known as Mitul Sanjay Shivji Kerai.*

MR/7893466

GAZETTE NOTICE No. 517

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 13th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 123, in Volume DI, Folio 4/34, File No. MMXXVI, by our client, Winnie Felistus Muthoni Munene, of P.O. Box 47699-00100, Nairobi in the Republic of Kenya, formerly known as Felistus Njoki Munene, formally and absolutely renounced and abandoned the use of her former name Felistus Njoki Munene, and in lieu thereof assumed and adopted the name Winnie Felistus Muthoni Munene, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Winnie Felistus Muthoni Munene only.

ALBERT MUMMA & COMPANY,  
*Advocates for Winnie Felistus Muthoni Munene,  
formerly known as Felistus Njoki Munene.*

MR/8081632

GAZETTE NOTICE No. 518

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 13th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 122, in Volume DI, Folio 4/33, File No. MMXXVI, by our client, Purity Wanja Muiruri, of P.O. Box 205-00159, Athi River in the Republic of Kenya, formerly known as Tabitha Wanja Gachui, formally and absolutely renounced and abandoned the use of her former name Tabitha Wanja Gachui, and in lieu thereof assumed and adopted the name Purity Wanja Muiruri, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Purity Wanja Muiruri only.

ALBERT MUMMA & COMPANY,  
*Advocates for Purity Wanja Muiruri,  
formerly known as Tabitha Wanja Gachui.*

MR/8081633

GAZETTE NOTICE No. 519

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 9th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 89, in Volume DI, Folio 2/46, File No. MMXXIV, by our client, David Karega, of P.O. Box 2346-00100, Westlands Nairobi in the Republic of Kenya, formerly known as David Karega Wanjiku, formally and absolutely renounced and abandoned the use of his former name David Karega Wanjiku, and in lieu thereof assumed and adopted the name David Karega, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name David Karega only.

G. K. MUTURI & COMPANY,  
*Advocates for David Karega,  
formerly known as David Karega Wanjiku.*

MR/8081639

GAZETTE NOTICE No. 520

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 14th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 185, in Volume DI, Folio 7/52, File No. MMXXVI, by our client, Portious Makori Mochama, of P.O. Box 4046-40200, Kisii in the Republic of Kenya, formerly known as Evans Mosioma Obutu, formally and absolutely renounced and abandoned the use of his former name Evans Mosioma Obutu, and in lieu thereof assumed and adopted the name Portious Makori Mochama, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Portious Makori Mochama only.

C. M. MIGIRO & COMPANY,  
*Advocates for Portious Makori Mochama,  
formerly known as Evans Mosioma Obutu.*

MR/8081714

GAZETTE NOTICE NO. 521

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 15th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 218, in Volume D1, Folio 07/53, File No. MMXXVI, by our client, Isaack Waititu, of P.O. Box 14611-00800, Nairobi in the Republic of Kenya, formerly known Isaack Waititu Mbugua, formally and absolutely renounced and abandoned the use of his former name Isaack Waititu Mbugua and in lieu thereof assumed and adopted the name Isaack Waititu, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Isaack Waititu only.

GIDRAPH WAWERU &amp; COMPANY,

*Advocates for Isaack Waititu,*

MR/8081724

*formerly known as Isaack Waititu Mbugua.*

GAZETTE NOTICE NO. 522

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 8th January, 2026, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 304, in Volume D1, Folio 193/3905, File No. MMXX, by our client, Faith Wanja, of P.O. Box 23312-00100, Nairobi in the Republic of Kenya, formerly known Medinah Isabel Munawal, formally and absolutely renounced and abandoned the use of her former name Medinah Isabel Munawal and in lieu thereof assumed and adopted the name Faith Wanja, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Faith Wanja only.

AFRILAW SOLUTIONS LLP,

*Advocates for Faith Wanja,*

MR/8081628

*formerly known as Medinah Isabel Munawal.*

GAZETTE NOTICE NO. 523

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 14th January, 2026, duly executed and registered in the Registry of Documents at Mombasa as Presentation No. 52, in Volume B-13, Folio 2473/22646, File No. 1637, by our client, Amina Fundi Odenthal, of P.O. Box 81302-80100, Mombasa in the Republic of Kenya, formerly known as Amina Fundi Chidzuga, formally and absolutely renounced and abandoned the use of her former name Amina Fundi Chidzuga, and in lieu thereof assumed and adopted the name Amina Fundi Odenthal, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Amina Fundi Odenthal only.

MUTISYA MWANZIA &amp; ONDENG,

*Advocates for Amina Fundi Odenthal,*

MR/8081733

*formerly known as Amina Fundi Chidzuga.*

GAZETTE NOTICE NO. 524

## CHANGE OF NAME

NOTICE is given that by a deed poll dated 5th December, 2025, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 252, in Volume D1, Folio 405/4079, File No. MMXXV, by our client, Muhammad Abdullahi Mulika, of P.O. Box 173-90132, Sultan Amud in the Republic of Kenya, formerly known as Muhammad Muendo Mulika, formally and absolutely renounced and abandoned the use of his former name Muhammad Muendo Mulika, and in lieu thereof assumed and adopted the name Muhammad Abdullahi Mulika, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Muhammad Abdullahi Mulika only.

M'NJAU &amp; MAGETO,

*Advocates for Muhammad Abdullahi Mulika,*

MR/8081732

*formerly known as Muhammad Muendo Mulika.*

GAZETTE NOTICE NO. 525

## THE MINING ACT

*(Cap. 306)*

## APPLICATION FOR PROSPECTING LICENCE

PURSUANT to section 34 of the Mining Act, the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs notifies receipt of an application for Prospecting licence from Minex Mining Limited which details are set out in the Schedule hereto.

The application may be accessed from the Ministry's portal *vide* the website address <https://portal.miningcadastre.go.ke/> and is published in the *Gazette* and opened to the public for comments for twenty-one (21) days from the date of this notice.

Any objection by any person or Community against the grant of the prospecting licence may be submitted to the Cabinet Secretary within twenty-one (21) days from the date of this notice at the following address:

*The Cabinet Secretary,  
Ministry of Mining, Blue Economy and Maritime Affairs,  
Works Building-Ngong Road,  
P.O. Box 30009-00100,  
Nairobi.  
Email: cs@mining.go.ke*

## SCHEDULE

<i>Applicant</i>	Minex Mining Limited
<i>Applicant Address</i>	P.O. Box 66091-00800, Nairobi
<i>Application Number</i>	PL/2025/0618
<i>Application Area</i>	206.127 km <sup>2</sup> (959 Cadastral Blocks)
<i>Locality</i>	Embu County
<i>Mineral(s) Sought</i>	Group E: Base and Rare Metals Group

## PROPOSED APPLICATION BOUNDARIES

<i>Order</i>	<i>Lat. Deg.</i>	<i>Lat. Min.</i>	<i>Lat. Sec.</i>	<i>N/S</i>	<i>Long. Deg.</i>	<i>Long. Min.</i>	<i>Long. Sec.</i>	<i>E/W</i>
1	00	42	41.03	S	37	46	24.82	E
2	00	41	47.99	S	37	40	21.81	E
3	00	32	3.42	S	37	43	59.83	E
4	00	32	48.42	S	37	45	06.28	E
5	00	33	32.24	S	37	46	10.99	E
6	00	36	02.97	S	37	49	53.56	E
7	00	41	33.19	S	37	47	49.75	E

Dated the 5th January, 2026.

**HASSAN ALI JOHO,**  
*Cabinet Secretary for Mining  
Blue Economy and Maritime Affairs.*

GAZETTE NOTICE NO. 526

THE CONSTITUTION OF KENYA  
THE COUNTY GOVERNMENTS ACT*(Cap. 265)*

## COUNTY GOVERNMENT OF TURKANA

## COUNTY SECRETARY

## APPOINTMENT

IN EXERCISE of the powers conferred to section 44 (1) and (2) of the County Governments Act, 2012, (as amended by the County Governments (Amendment) Act, 2020, upon approval by the County Assembly of Turkana in its sitting on 21st May, 2025, I, Jeremiah Ekamais Lomorukai Napotikan, Governor of Turkana County appoint—

RICHARD TITUS EKAI AMBASADA (DR.)

as County Secretary for Turkana County Government.

Dated the 11th November, 2025.

**JEREMIAH EKAMAI LOMORUKAI NAPOTIKAN (DR.),**  
MR/8081528 *Governor, Turkana County.*

GAZETTE NOTICE NO. 527

THE CONSTITUTION OF KENYA  
THE COUNTY GOVERNMENTS ACT  
(Cap. 265)

COUNTY ASSEMBLY OF NYAMIRA STANDING ORDERS  
SPECIAL SITTING OF THE COUNTY ASSEMBLY

PURSUANT to Standing Order No. 28 (1), (2), (3) and (4) of County Assembly of Nyamira Standing Orders, it is notified for the general information of the members of the County Assembly of Nyamira and the general public that there shall be a special sitting for the County Assembly on Monday, the 19th January, 2026, 10.00 a.m.

The business to be transacted on the special sitting shall be consideration of the Report of Appointment Committee on Selection Panel for Recruitment of the County Public Service Board Chairperson and Board Members.

Dated the 14th January, 2026.

MR/8081713 THADDEUS N. NDUBI,  
*Speaker, County Assembly of Nyamira.*

GAZETTE NOTICE NO. 528

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A CERTIFICATE OF LEASE

WHEREAS Mohamed Abdi Ibrahim, is registered as proprietor of a leasehold interest in all that piece of land containing 0.0205 hectare or thereabouts, situate in the district of Nairobi, registered as title No. Nairobi/Block 104/222, and whereas sufficient evidence has been adduced to show that the said certificate of lease issued thereof is lost or misplaced, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new certificate of lease provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081654 M. KAHOCHIO,  
*Registrar of Titles, Nairobi.*

GAZETTE NOTICE NO. 529

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A NEW LAND TITLE DEED

WHEREAS Simon Waweru Gathara (ID/2031543), is registered as proprietor of all that property, situate in the district of Murang'a, registered under title No. Kakuzi/Ithanga/Gituamba/Block 2/325, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081728 G. M. SAYA,  
*Land Registrar, Murang'a.*

GAZETTE NOTICE NO. 530

THE LAND REGISTRATION ACT  
(No. 3 of 2012)

## ISSUE OF A REPLACEMENT TITLE

WHEREAS John opiyo Otieno, is registered as proprietors in absolute ownership interest of all that piece of land containing 0.0162 hectare or thereabouts, situate in the county of Machakos, registered under title No. Mavoko Town Block 78 (Wanjohi)/231, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a

replacement title provided that no objection has been received within that period.

Dated the 16th January, 2025.

MR/8081612 D. C. LETTING,  
*Land Registrar, Machakos.*

GAZETTE NOTICE NO. 531

THE LAND REGISTRATION ACT  
(Cap. 300)

## ISSUE OF A NEW LAND TITLE DEED

WHEREAS Karoli Ooko, is registered as proprietor of all that property, situate in the district of Nyando, registered under title No. Kisumu/Muhoroni/1041, and whereas sufficient evidence has been adduced to show that the said land title deed issued thereof has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall issue a new land title deed provided that no objection has been received within that period.

Dated the 16th January, 2026.

MR/8081708 R. K. KALAMA,  
*Land Registrar, Nyando.*

GAZETTE NOTICE NO. 532

THE LAND REGISTRATION ACT  
(Cap. 300)

## REGISTRATION OF INSTRUMENT

WHEREAS Ndungu Nganga (deceased), is registered as proprietor of that piece of land containing 5.4 acres or thereabout, known as Loc. 1/Mukarara/73, situate in the district of Murang'a, and whereas the Principal Magistrates Court at Kandara in Succession Cause No. E374 of 2022, has issued grant of letters of administration and certificate of confirmation to Mburu Ndungu, and whereas all efforts to recover the land title deed and be surrendered to the Land Registrar for cancellation have failed, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of the said administration letters to Mburu Ndungu, and upon such registration the land title deed issued earlier to the said Ndungu Nganga (deceased), shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2026.

MR/8081668 G. M. SAYA,  
*Land Registrar, Murang'a.*

GAZETTE NOTICE NO. 533

THE LAND REGISTRATION ACT  
(No. 3 of 2012)

## CANCELANON OF TITLES

WHEREAS Leap Frog Limited, is registered as proprietor of all those pieces of land, known as Ngong/Ngong/93820, 93821, 93822, 93823, 93824, 93825, 93826, 93828, 93830, 93831, 93832, 93833, 93834, 93835, 93836, 93837, 93838, 93839, 93840, situate in Kajiado North District, and whereas sufficient evidence adduced proves that the provisional land title deeds were procured through fraud, misrepresentation and concealment of material fact, and whereas all efforts made to compel the director to surrender the land title deeds for cancellation have failed, notice is given that after the expiration of ninety (90) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the cancelation of the said provisional title deeds issued earlier to the said Leap Frog Limited, shall be deemed to be cancelled and of no effect.

Dated the 16th January, 2025.

MR/8081514 F. M. KITHINJI,  
*Land Registrar, Kajiado North.*

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Transfer of Employees of the Kenya  
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THE REPUBLIC OF KENYA

LAWS OF KENYA

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**THE GAMBLING CONTROL ACT**

NO. 14 OF 2025

Revised and published by the National Council for Law Reporting  
with the authority of the Attorney-General as gazetted by the Government Printer

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Kenya

# Gambling Control Act

Act No. 14 of 2025

Legislation as at 12 August 2025

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Gambling Control Act (Act No. 14 of 2025)  
Contents

- Part I – PRELIMINARY ..... 1
  - 1. Short title ..... 1
  - 2. Interpretation ..... 1
  - 3. Objects and purpose of the Act ..... 5
- Part II – FUNCTIONS OF THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS ..... 5
  - 4. Functions of the National Government ..... 5
  - 5. Functions of county governments ..... 6
- Part III – ESTABLISHMENT OF THE GAMBLING REGULATORY AUTHORITY OF KENYA ..... 6
  - 6. Establishment of the Authority ..... 6
  - 7. Board of the Authority ..... 6
  - 8. Qualification for appointment to the Board ..... 7
  - 9. Vacancy in the Board ..... 8
  - 10. Functions of the Authority ..... 8
  - 11. Gambling operation Guidelines ..... 9
  - 12. Powers of the Board ..... 10
  - 13. Conduct of business and affairs of the Board ..... 10
  - 14. Committees of the Board ..... 10
  - 15. Remuneration of the Board ..... 10
  - 16. Director-General ..... 10
  - 17. Removal of the Director-General ..... 11
  - 18. Corporation Secretary ..... 11
  - 19. Staff of the Authority ..... 12
  - 20. Delegation of powers of the Board ..... 12
  - 21. Seal of the Authority ..... 12
  - 22. Funds of the Authority ..... 12
  - 23. Financial year ..... 12
  - 24. Annual estimates ..... 12
  - 25. Accounts and audit ..... 13
  - 26. Reports of the Authority ..... 13
  - 27. Protection from personal liability ..... 13
- Part IV – LICENCES AND PERMITS ..... 13
  - 28. Licensed gambling activities ..... 13
  - 29. Requirements for licensing ..... 14
  - 30. Application for a licence ..... 14

31. Renewal of a licence .....	16
32. Refusal to grant or renew a licence .....	16
33. Revocation of a licence .....	16
34. Suspension of licence .....	17
35. Duration of a licence .....	17
36. Display of a licence .....	17
37. Investigation by the Authority .....	18
38. Duplicate licence .....	18
39. Register of licences .....	18
40. Security for gambling activity .....	18
41. Gambling capital .....	18
42. Books to be kept by a licensee .....	18
43. Submission of accounts by a licensee .....	19
44. Control of gambling machines .....	19
45. Application for a permit .....	19
46. Endorsement of permit .....	19
47. Revocation of a permit .....	19
48. Duration of a permit .....	20
49. Display of a permit .....	20
Part V – CONTROL AND LICENSING OF LOTTERIES .....	20
50. Authorization of a public lottery for charitable purposes .....	20
51. Conduct of a public lottery .....	21
52. Authorization of a lottery relating to horse racing .....	21
53. Lottery conducted for charitable, sporting or other purposes .....	22
54. Lottery incidental to entertainment .....	22
55. Licensing lotteries incidental to sports or games .....	23
56. Private Lottery .....	23
57. Submission of audited accounts and returns in respect to a lottery .....	24
Part VI – CONTROL AND LICENSING OF BETTING .....	24
58. Bookmaker's licence .....	24
59. Totalisator licence .....	24
60. Laying of totalisator, betting pools and odds .....	25
61. Promoter's licence in respect of a pool betting scheme .....	25
62. Authorization of a bookmaking at a race meeting .....	25
63. Control of betting machines .....	26

Part VII – CASINO, SLOT MACHINE AND OTHER FORMS OF GAMBLING .....	26
64. Casinos and other forms of gambling .....	26
65. Powers of the Authority to inspect .....	27
66. Officers of the Authority to be present .....	27
Part VIII – ONLINE GAMBLING .....	27
67. Licensing of online gambling .....	27
68. Control of online gambling .....	27
69. Online gambling transaction .....	28
70. Payment of prizes and remittance of winning .....	28
71. Minimum amount a person can bet online .....	29
72. Registration of a player .....	29
73. Player's account to be kept .....	29
74. Restriction on credit and inducements .....	30
75. Restriction on dealing with a player's money .....	30
76. Player's account .....	30
77. Inactive account .....	31
78. Financial reporting by a licensee .....	31
79. Restriction on foreign operators .....	31
80. Dispute resolution .....	32
Part IX – AMUSEMENTS WITH PRIZES, PRIZE COMPETITIONS, CHAIN LETTERS AND GAMBLING MACHINES .....	32
81. Provision of amusements with prize at non-commercial entertainments .....	32
82. Provision of amusements with prize at a commercial entertainment .....	32
83. Amusement machines .....	33
84. Authorization of prize competitions .....	33
85. Authorization of media promotions with prizes .....	34
86. Chain letters .....	34
Part X – ADVERTISEMENT OF GAMBLING ACTIVITIES .....	34
87. Advertisement of gambling .....	34
Part XI – THE GAMBLING APPEALS TRIBUNAL .....	35
88. The Gambling Appeals Tribunal .....	35
89. Remuneration of members of the Tribunal .....	37
90. Appeals from decisions of the Tribunal .....	37
91. Conduct of business and affairs of the Tribunal .....	37
Part XII – OFFENCES AND PENALTIES .....	37
92. Offences relating to gambling premise .....	37

93. False declaration .....	38
94. Transfer of a licence without the approval of the Authority .....	38
95. Failure to keep proper books of accounts .....	38
96. Failure to submit accounts .....	38
97. Failure to pay levy or a prescribed fee .....	38
98. Operating without a licence or permit prohibited .....	38
99. Advertisements of unauthorized lotteries .....	38
100. Sale or distribution of unauthorized tickets .....	38
101. Prohibition against unlicensed bookmaking .....	39
102. Prohibition of late bets .....	39
103. Promotion of unauthorized pool betting .....	39
104. Offences relating to pool betting schemes .....	40
105. Unauthorized bookmaking .....	40
106. Unauthorized racing .....	40
107. Prohibition against touting .....	40
108. Prohibition against playing games of chance in unlicensed betting premises .....	41
109. Prohibition against betting with a child .....	41
110. Obtaining money by cheating in lawful gambling or by wagering on any event .....	41
111. Consideration by a court .....	41
Part XIII – MISCELLANEOUS PROVISIONS .....	41
112. Appointment of inspectors .....	41
113. Power to enter and inspect land and premises .....	42
114. Offences by body corporate .....	42
115. Self-exclusion .....	42
116. Forfeiture of licence or security .....	43
117. Power to seize machines .....	43
118. Prosecution of offences .....	43
119. Power to make Regulation .....	43
120. Repeal of Cap. 131. ....	44
121. Transitional provisions .....	44
122. Transition of licences and permits .....	45
123. Consequential amendment .....	45
FIRST SCHEDULE (s.13) .....	45
SECOND SCHEDULE (s.30(1)(e)) .....	46
THIRD SCHEDULE (s. 40(1)) .....	47

# GAMBLING CONTROL ACT

## NO. 14 OF 2025

Published in Kenya Gazette on 12 August 2025

Assented to on 7 August 2025

Commenced on 26 August 2025

**AN ACT of Parliament to provide for the regulation of betting, casinos and other forms of gambling; authorization of prize competitions and public lotteries; for the establishment of the Gambling Regulatory Authority of Kenya; and for connected purposes**

### Part I – PRELIMINARY

#### 1. Short title

This Act may be cited as the Gambling Control Act, 2025.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“Authority” means the Gambling Regulatory Authority of Kenya established by section 6;

“authorized race meeting” means a race meeting in respect of which a permit authorizing bookmaking has been issued under this Act;

“amusement game” means a game that is played by means of an amusement machine with a restricted prize;

“amusement machine” means a machine or a device whether operated electronically, manually or otherwise on which an amusement game is played exclusively for amusement purposes and is operated by insertion of money or amusement machine token, and includes pool tables;

“beneficial owner” has the meaning assigned to it in [the Companies Act \(Cap. 486\)](#);

“bet” means a wager or stake of money or money’s worth, or any other valuable thing by or on behalf of any person; agreement to wager or stake by or on behalf of any person money or a valuable thing on a horse race, fight, game, sport, lottery or exercise or any other event, race or contingency;

“betting premises” means premises used for the purposes of betting to which the public has access and which are kept or used, on one or more occasions, for the purpose of—

- (a) bets being made therein between persons resorting to the premises and the owner, occupier or keeper thereof, or any person using the premises, or any person procured or employed by or acting for or on behalf of the owner, occupier, keeper or person using the premises, or of any person having the care or management or in any manner conducting the business thereof; or
- (b) any money or valuable thing being received by or on behalf of the owner, occupier, keeper or person aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give, or for securing the paying or giving by some other person of, any money or valuable thing on any horse race, or other race, fight, game, sport, lottery or exercise, or any other event or contingency;

“betting transaction” includes the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker;

“bingo” means a game where a player marks off numbers on cards or screens as the numbers are drawn randomly, the winner being the first to mark off all the numbers required and includes playing by electronic means or by online communication;

“Board” means the Board of the Gambling Regulatory Authority of Kenya constituted in accordance with section 7 of this Act;

“bookmaker” means a person who, whether on his own account or as a servant or agent to another person, carries on, whether occasionally or regularly, the business of receiving and negotiating bets excluding—

- (a) a person who carries on, or is employed to operate a totalisator in respect of which a licence has been issued under this Act; or
- (b) a person employed in a business that is wholly concerned with a pool betting scheme in respect of which a licence has been issued under this Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to gambling;

“casino” means any designated premise or part of a premise, approved virtual or online platform or a site where a person may participate in a game approved by the Authority;

“chain letter” means a scheme or an investment promising a high rate of return made up of money from a gambling operator or licensee luring a player into a bigger risk;

“Collector” means the Commissioner-General appointed under section 11 of [the Kenya Revenue Authority \(Cap.469\)](#);

“coupon” in relation to a pool betting scheme or proposed pool betting scheme, includes a document connected designed to assist in the making of a bet by way of pool betting;

“Director-General” means the Director-General of the Authority appointed under section 16;

“electronic device” means an electrical, digital, magnetic, wireless, optical, or electro-magnetic device used in gambling;

“Fund” means the National Lottery Fund established by section 44 of [the National Lottery Act \(Cap.131A\)](#);

“gambling” means the playing of a game of chance for prize winning and includes lottery betting, prize competitions, and media promotions with prizes;

“gambling equipment” means any software, device, instrument, including a chip, a token, a voucher or any other instrument with a fixed monetary wagering value used instead of money for the purpose of gambling, tokens dice, counter, ticket, gambling table, board, box, bird or an animal used for purposes of or capable of being used for or in connection with gambling and includes—

- (a) a linked jackpot equipment;
- (b) an electronic monitoring system including any electronic, computer, communications system or device used or adapted to send or receive data from a gambling equipment in relation to security, accounting, monitoring, evaluation or operation of gambling and gambling equipment;
- (c) any online gambling machine; or
- (d) part of a replacement or part of any gambling machine equipment or system;

“gambling machine” means any device which is operated electronically or mechanically or both electronically and mechanically that is designed for—

- (a) placing bets for playing a game of chance which does not require action by a player other than the manipulation of the machine;
- (b) playing a game of chance which requires no action by a player other than the manipulation of the machine; or

(c) the purpose of playing a game of chance or a game of fixed chance and skill which may result in payable winnings;

“gambling premises” means premises which are kept or used, whether on one or more than one occasion, for gaming, and to which the public has or may have access for the playing therein of a game of chance, whether the game of chance be an unlawful game or not;

“gambling platform” means a system that offers a full range of services for effecting a gambling activity;

“gambling service” means any service that is required to facilitate any component of an activity for gambling and may be provided by an intermediary;

“game of chance” includes a game of chance and skill combined but does not include an athletic game or sport;

“good cause” means a charitable cause or an event for charity;

“gross gambling revenue” means total revenue received from a gambling activity before any deductions are made;

“horse race” includes a pony race;

“jackpot” means the highest prize resulting from a combination of letters, numbers, symbols or representations displayed or advertised in a game of chance and payable either from a fixed prize schedule or accumulates as contributions are made to a special prize pool;

“licence” means a legal authorization issued by the Authority and which—

- (a) is subject to compliance with specific conditions and standards prescribed by the Authority;
- (b) may be cancelled at any time if the conditions or standards are violated; and
- (c) is assigned to a specific person and may not be re-assigned to another person;

“licensee” means a person issued with a licence under this Act;

“licensed betting premises” means premises duly licensed where bets may be made and settled;

“lottery” includes a sweepstake, a raffle and any scheme, arrangement, system plan or device for the sale, gift, disposal or distribution of any property depending upon or as determined by a slot or a chance, whether by throwing or casting a dice, or by withdrawing a ticket, card, slot, numbers or figures, or by means of a wheel;

“lottery ticket” means any document or electronic evidence entitling a person to participate in a lottery chance;

- (a) to supplier;
- (b) to performs maintenance of gambling equipment; or
- (c) provider of gambling services;

“manufacture” means to produce, import, sell, lease, make available, distribute, maintain or repair a gambling device and may include—

- (a) to supply;
- (b) to perform maintenance of gambling equipment; or
- (c) to provide gambling services;

“National Lottery” means the National Lottery established under section 22 of [the National Lottery Act \(Cap.131A\)](#);

“odd” means a gambling chance;

“online bookmaker” means a person who carries on any form of betting by means of remote communications, including virtual games, virtual sports as well as other forms of gambling;

“online gambling” means any form of gambling in which persons participate by the use of remote communication and on the internet;

“person” includes a partnership, association, trust, or a juristic person established by operation of any other law;

“pool betting” means the making of bets, other than bets made by means of totalisator, whether the bets are made on the system known as a fixed odds betting or otherwise, by a number of persons on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons;

“pool betting scheme” means a scheme involving the receiving or negotiating of bets made by way of pool betting;

“prize” means the prize awarded to a winner of a lottery or a prize promotion;

“punter” means a person who is in possession of a valid ticket or other kind of valid receipt issued by a licensee relating to gambling;

“race meeting” means a gathering of the public or of members of an association of persons to watch an authorized horse race or any other related race;

“record” includes any book, account, document, paper or other source of information compiled, recorded, stored in written form or on micro film, or by electronic process, or in any other matter or by any other means;

“remote platform authorization” means a formal approval granted by the Cabinet Secretary, in consultation with the Authority, to a person to operate a technological system, software or infrastructure that enables or facilitates online gambling activities including—

- (a) digital platforms that host multiple gambling operators;
- (b) software systems that process gambling transactions across multiple operators;
- (c) technological infrastructure that enables the integration of payment systems with gambling operations;
- (d) shared systems for player verification, anti-money laundering compliance, or fraud detection; or
- (e) any other technological solution that serves as an intermediary or enabling system for online gambling activities.

“reporting institution” has the meaning assigned to it in [the Proceeds of Crime and Anti-Money Laundering Act \(Cap.59A\)](#);

“security” means any deposit provided as security under this Act;

“slot machine” means any mechanical, electrical or other device, contrivance or machine that is metered and which is able to record history of play, which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner;

“stake” means money or money’s worth that a player may risk to make a bet or buy into a gambling game;

“testing agent” means a person licensed under this Act to test and calibrate gambling machines, equipment or devices;

“ticket” in relation to any lottery or game of chance, includes any written or electronic document evidencing the claim of a person to participate in a lottery or a game of chance;

“totalisator” means an instrument, a machine, a contrivance, or a scheme for enabling any number of persons to make bets on any event or contingency and includes a device showing the number and amount of bets staked in a race; and

“trade permit” means a legal authorization issued by a county government and which authorizes a person to engage in a business within the specific county government;

“Tribunal” means the Gambling Appeals Tribunal established in section 88.

### 3. Objects and purpose of the Act

The objects and purpose of this Act is to—

- (a) provide a framework for regulation and control of gambling activities;
- (b) authorise some gambling activities and prohibit the rest as unlawful gambling;
- (c) promote the development of a responsible gambling industry;
- (d) minimize social harm associated with gambling;
- (e) ensure integrity and fairness in licensed gambling activities; and
- (f) provide for the establishment of mechanisms for resolution of disputes relating to gambling.

## Part II – FUNCTIONS OF THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS

### 4. Functions of the National Government

- (1) The National Government shall—
  - (a) establish policies, norms and standards for the conduct of betting, lotteries, casinos and other forms of gambling;
  - (b) regulate the gambling industry in accordance with this Act;
  - (c) licence gambling activities including online gambling in accordance with this Act;
  - (d) licence national lotteries;
  - (e) conduct security checks, vetting and due diligence in respect of gambling activities;
  - (f) enforce compliance with this Act;
  - (g) conduct anti-money laundering risk-based inspections and inspections to combat financing of terrorism through casinos and any other forms of gambling;
  - (h) pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and the Anti-money Laundering Act, regulate and supervise the reporting institutions licensed under this Act (Cap.59A);
  - (i) provide capacity building and technical assistance to county governments; and
  - (j) perform any other function as may be prescribed under this Act or any other written law.
- (2) In the discharge of its mandate under subsection (1), the Authority shall collaborate with county governments and county gambling regulatory authorities in the discharge of functions relating to betting, lotteries, casinos and other forms of gambling.

## 5. Functions of county governments

A county government shall—

- (a) implement and ensure compliance to this Act;
- (b) issue trade permits for gambling premises;
- (c) implement policy standards and norms of gambling within its jurisdiction;
- (d) ensure periodic monitoring and evaluation of betting, lotteries and gaming trade permits issued by county governments;
- (e) handle complaints and facilitate arbitration; and
- (f) perform such other functions as are incidental to the exercise of any or all of the county government functions provided for under this Act.

## Part III – ESTABLISHMENT OF THE GAMBLING REGULATORY AUTHORITY OF KENYA

### 6. Establishment of the Authority

- (1) There is established an Authority to be known as the Gambling Regulatory Authority of Kenya.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—
  - (a) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
  - (b) borrowing money;
  - (c) entering into contracts;
  - (d) suing and being sued; and
  - (e) doing or performing all such other acts necessary for the performance of its functions under this Act which may be lawfully done or performed by a body corporate.
- (3) The Authority shall be the successor of the Betting Control and Licensing Board established under section 3 of [the Betting, Lotteries and Gaming Act \(Cap. 131\)](#).
- (4) The headquarters of the Authority shall be in Nairobi, but the Authority may establish offices at such other places in Kenya as may be necessary for the execution of its mandate.

### 7. Board of the Authority

- (1) The management of the Authority shall vest in a Board which shall consist of—
  - (a) a Chairperson who shall be appointed by the President;
  - (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to gambling or a representative designated in writing;
  - (c) the Principal Secretary in the Ministry for the time being responsible for the National Treasury or a representative designated in writing;
  - (d) the Attorney-General or a representative designated in writing

- (e) two persons, not being public officers, appointed by the Cabinet Secretary, being persons with background in finance, law, betting and lotteries or business management, provided that—
    - (i) one shall represent persons with disabilities; and
    - (ii) one shall represent faith-based organizations;
  - (f) two persons nominated by the Council of Governors and appointed by Cabinet Secretary; and
  - (g) the Director-General who shall be an *ex officio* member.
- (2) The appointment of the Chairperson and members appointed under subsection (1) (a),(e) and (f) shall be by name and notice in the *Gazette*.
- (3) The Chairperson and members of the Board appointed under subsection (1) (a), (e) and (f) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years based on satisfactory performance.
- (4) In appointing the members of the Board under subsection (1)(e), the Cabinet Secretary shall—
- (a) ensure that not more than two-thirds of the members are of the same gender;
  - (b) observe the principle of regional and ethnic balance; and
  - (c) have due regard to the principle of fair competition and merit as the basis for the appointments.
- (5) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office fall at different times.

## 8. Qualification for appointment to the Board

- (1) A person shall be qualified for appointment as the Chairperson or a member of the Board, if the person—
- (a) is a Kenyan citizen;
  - (b) holds a university degree from a university recognized in Kenya;
  - (c) has a minimum of ten years working experience in a relevant field;
  - (d) was not a director, employee, or shareholder of a gambling operator in the preceding five years;
  - (e) meets the requirements of Chapter Six of the Constitution; and
  - (f) has submitted to the Cabinet Secretary a written declaration stating that the person does not have any interests in the gambling sector or an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the Board.
- (2) A person shall not be appointed as a Chairperson or member of the Board if the person—
- (a) is an undischarged bankrupt;
  - (b) has been convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
  - (c) at the time of appointment holds a political office;
  - (d) has previously been removed from a public office on account of misconduct or any other lawful reasons; or
  - (e) in the last twelve months immediately preceding the appointment, had personal direct or indirect commercial interest in the sector regulated under this Act.

## 9. Vacancy in the Board

- (1) The office of the Chairperson or a member of the Board appointed under section (1) (a), (e) and (f) shall become vacant if the holder—
  - (a) dies;
  - (b) resigns from office by notice in writing, in case of the Chairperson, to the President and, in case of a member, to the Cabinet Secretary;
  - (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months;
  - (d) has been absent from three consecutive meetings of the Board without a notice to the Chairperson; or
  - (e) is removed in accordance with subsection (2).
- (2) A member of the Board may be removed from office for—
  - (a) violation of the Constitution or any other law;
  - (b) gross misconduct, whether in the performance of the functions of the office of a member or otherwise;
  - (c) physical or mental incapacity to perform the functions of the office of a member;
  - (d) incompetence; or
  - (e) bankruptcy.
- (3) The Cabinet Secretary shall ensure that any vacancy in the Board is filled as soon as practicable in accordance with the provisions of the Act.

## 10. Functions of the Authority

The Authority shall—

- (a) develop standards and norms for betting, lotteries, casinos and other forms of gambling;
- (b) regulate and control gambling activities;
- (c) issue licences for gambling activities prescribed under this Act;
- (d) develop policies for placing of bet for betting, lotteries and gambling that include a savings component for social health insurance or social retirement benefit;
- (e) monitor the implementation of gambling policies at the national and county level;
- (f) establish and maintain, in consultation with county governments, a register of all gambling machines and devices, and other relevant data on licensed gambling activities;
- (g) conduct security checks, vetting and due diligence in respect of gambling activities, licensees, their shareholders, directors, beneficial owners and staff;
- (h) establish an electronic central real time gambling monitoring system to monitor compliance with regulatory requirements;
- (i) monitor socio-economic patterns of gambling activities at the national and county level including to undertake research and identify factors relating to, and patterns, causes and consequences of—
  - (i) the socio-economic impact of gambling;
  - (ii) addictive or compulsive gambling; and
  - (iii) any other matter that is relevant to the gambling sector;

- (j) coordinate research and surveys relating to the gambling industry;
- (k) monitor and alleviate illegal cross border gambling activities in collaboration with county governments;
- (l) advise county governments on matters relating to the regulation of gambling activities;
- (m) receive and make determination on complaints from companies and the public on matters pertaining to games of chance;
- (n) establish programmes to improve the capacity of county governments on matters relating to the regulation of gambling activities;
- (o) collaborate with the Kenya Revenue Authority, established under [the Kenya Revenue Authority Act \(Cap. 469\)](#), to establish a monitoring system for tax compliance under this Act; and
- (p) perform any other functions conferred by this Act or any other written law.

## 11. Gambling operation Guidelines

- (1) The Cabinet Secretary shall, in consultation with the Authority, prescribe guidelines of practice on the manner in which facilities for gambling are operated by the holder of a licence under this Act.
- (2) A guideline issued under subsection (1) shall describe arrangements that should be made by a person providing facilities for gambling for the purposes of—
  - (a) ensuring that gambling is conducted in a fair and open way;
  - (b) protecting children and other vulnerable persons from being harmed or exploited by gambling;
  - (c) making assistance available to persons who are or may be affected by problems related to gambling;
  - (d) protecting of vulnerable gamblers;
  - (e) information and data protection in accordance with the [Data Protection Act \(Cap. 411C\)](#);
  - (f) online payment protection;
  - (g) creation of secure online gambling environment;
  - (h) ethical and responsible marketing;
  - (i) safety measures against criminal activities, anti-money laundering and terrorism; and
  - (j) public awareness and education campaigns.
- (3) The Cabinet Secretary may, in consultation with the Authority, review the guidelines issued under this section.
- (4) Before issuing or revising the guidelines under this section, the Cabinet Secretary and the Authority shall consult—
  - (a) any person who represents licensing authorities;
  - (b) the body responsible for the protection of the best interests of the child, as established in the [Children Act \(Cap. 141\)](#);
  - (c) any person who represents the Inspector General of Police;
  - (d) any person who represents the interests of punters; and
  - (e) the members of public in such manner as the Authority considers appropriate.
- (5) The Cabinet Secretary shall prescribe guidelines providing for remote platform authorization.

## 12. Powers of the Board

- (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.
- (2) Without prejudice to the generality of subsection (1), the Board shall have power to—
  - (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
  - (b) receive any grants, gifts, donations or endowments made to the Authority and make disbursements therefrom in accordance with the provisions of this Act;
  - (c) conduct such investigations as may be necessary for the enforcement of this Act;
  - (d) approve the opening, operation and closing of the bank accounts of the Authority with the approval of the National Treasury;
  - (e) conduct such investigations as may be necessary for the implementation of the Act;
  - (f) inquire into any complaint against a licensee; and
  - (g) undertake any activity necessary for the fulfilment of any of the functions of the Board.

## 13. Conduct of business and affairs of the Board

- (1) The procedure for the conduct of the business and affairs of the Board shall be as provided in the First Schedule.
- (2) Subject to the First Schedule, the Board shall regulate its own procedure.

## 14. Committees of the Board

The Board may establish such committees as it may consider necessary to assist it in the performance of its functions and the exercise of any of its powers.

## 15. Remuneration of the Board

The members of the Board shall be paid such allowances and disbursements, for expenses, as may be determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

## 16. Director-General

- (1) There shall be a Director-General of the Authority who shall be appointed by the Board through an open, transparent and competitive process on such terms and conditions as the Board may, on the advice of the Salaries and Remuneration Commission, determine.
- (2) A person shall be qualified for appointment as the Director-General if the person—
  - (a) is a citizen of Kenya;
  - (b) holds a degree from a university recognized in Kenya;
  - (c) has at least ten years' experience in senior management in a public or a private institution; and
  - (d) satisfies the requirements of Chapter Six of the Constitution.
- (3) The Director-General shall be—
  - (a) the Chief Executive Officer of the Authority;
  - (b) the custodian of all the records of the Authority;

- (c) responsible for—
  - (i) the day-to-day management of the affairs and staff of the Authority;
  - (ii) facilitating, coordinating and ensuring execution of the mandate of the Authority;
  - (iii) the management and maintenance of efficiency of the staff of the Authority;
  - (iv) the execution of decisions of the Board;
  - (v) preparing and submitting for approval, by the Board, programmes of work for the achievement of the mandate of the Authority; and
  - (vi) the performance of such other duties as may be assigned by the Board or any written law.
- (4) The Director-General shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

### 17. Removal of the Director-General

- (1) The Director-General may be removed from office by the Board in accordance with the terms and conditions of service for—
  - (a) gross misconduct or misbehavior;
  - (b) bankruptcy;
  - (c) incompetence or neglect of duty;
  - (d) violation of the Constitution or any other written law; or
  - (e) inability to perform the functions of office by reason of physical or mental incapacity.
- (2) Before the Director General is removed under subsection (1), the Director-General shall be given—
  - (a) sufficient notice of the allegations made against him or her; and
  - (b) an opportunity to present his or her defence against the allegations.

### 18. Corporation Secretary

- (1) The Authority shall competitively recruit a person qualified, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Secretary to the Board.
- (2) The Secretary to the Board shall—
  - (a) provide guidance to the Board on the Board's duties, responsibilities and powers;
  - (b) ensure that Board follows its procedures and complies with the respective laws and regulations;
  - (c) prepare the Board's work plans and assist the Chairperson to organise the activities of the Board including meetings, agendas of meetings, issuing notices to other members of the Board, circulating Board papers before meetings, keeping a record of attendance at meetings;
  - (d) take and keep the minutes of the meetings of the Board, and circulating the minutes to the members of the Board;
  - (e) keep a record of the usage of the seal of the Authority;
  - (f) keep a record of the appointment letters, notices of appointment and the written acceptance of appointment by members of the Board;
  - (g) keep a record of conflicts of interest declared by each member of the Board; and

- (h) perform such other duties as the Board may direct.

## 19. Staff of the Authority

The Authority may appoint such number of professional, technical and administrative staff for the Authority as it may consider necessary for the discharge of its functions, on such terms and conditions as the Board may determine, on the advice of the Salaries and Remuneration Commission.

## 20. Delegation of powers of the Board

The Board may by resolution, either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

## 21. Seal of the Authority

- (1) The common seal of the Authority shall be kept in the custody of the Director-General or such other person as the Board, may direct and shall not be used except upon the order of the Board.
- (2) The common seal of the Authority shall be authenticated by the signature of the Chairperson of the Board and of the Director-General:

Provided that the Board shall, in absence of either the Chairperson or the Director-General, in any particular matter nominate one member of the Board to authenticate the seal of the Authority on behalf of either the Chairperson or the Director-General.

- (3) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed and unless the contrary is proven, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

## 22. Funds of the Authority

The funds of the Authority shall comprise of—

- (a) such monies as may be appropriated by the National Assembly for purposes of the Authority;
- (b) the moneys paid by the operator of the National Lottery under section [43 \(1\) \(c\)](#) of the [National Lottery Act \(Cap. 131A\)](#);
- (c) such monies as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (d) such license fees, charges and penalties as may be prescribed and approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for National Treasury;
- (e) interest from the investment of money standing to the credit of the Authority; and
- (f) all monies from any other source provided for, donated or lent to the Authority.

## 23. Financial year

The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in every year.

## 24. Annual estimates

- (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board of that year.

- (2) The annual estimates shall make provisions for all estimated expenditure of the Board for the financial year concerned, and in particular shall provide for the—
  - (a) payment of salaries, allowances and other charges in respect of the staff of the Board;
  - (b) payment of pensions, gratuities and other charges in respect of former staff of the Board;
  - (c) proper maintenance of the buildings and grounds of the Board;
  - (d) maintenance, repair and replacement of the equipment and other property of the Board;
  - (e) payment of allowances of the members of the Board and the members of the Board; and
  - (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

## 25. Accounts and audit

- (1) The Authority shall cause to be kept all proper books and records of accounts relating to the income, expenditure, assets and liabilities of the Authority.
- (2) The accounts of the Authority shall be prepared and audited in accordance with the [Public Finance Management Act \(Cap. 412A\)](#) and the [Public Audit Act \(Cap. 412B\)](#).

## 26. Reports of the Authority

- (1) The Authority shall prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation.
- (2) The Authority shall continuously and on a regular basis monitor and report on its performance and on the performance of all of its licensees on a quarterly basis, with a summary of performance reported through Authority's annual report on the basis of a clear outcome-based performance framework developed by the National Government.

## 27. Protection from personal liability

No matter, thing or act done by a member of the Board, an officer, employee or agent of the Authority shall if the matter or thing is done in good faith in the course of executing the functions, powers of member of the Board, officer, employee or agent of the Authority shall, if the matter or thing is done in good faith in the course of executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable for any action, claim or demand whatsoever.

## Part IV – LICENCES AND PERMITS

### 28. Licensed gambling activities

- (1) A person shall not offer any gambling activity or service unless the activity or service is licensed under this Act.
- (2) The Authority shall issue gambling licences under this Act with respect to—
  - (a) a public gambling for conducting a table game and operating a slot machine;
  - (b) the national lottery;
  - (c) a bookmaking;
  - (d) licensing of on-the course and off-the course totalisators;

- (e) a prize competition;
  - (f) a bingo;
  - (g) a pool betting scheme;
  - (h) public lotteries as under section [50\(2\)](#);
  - (i) an online gambling;
  - (j) gambling equipment and device manufacture or assembling;
  - (k) gambling equipment and device sale or distribution;
  - (l) gambling equipment testing;
  - (m) provision of any gambling software or platform;
  - (n) gambling equipment repair and servicing;
  - (o) key gambling employees;
  - (p) all media promotions with prizes and prize competitions cutting across several counties; and
  - (q) any other form of gambling as may be prescribed in regulations.
- (3) The Cabinet Secretary shall in consultation with the Authority, make regulations for the classification of licenses issued under this Act.
- (4) In this section, “gambling employee” means a person who is employed or authorized, to make a decision that regulates the operations of a casino, bookmaker, lottery, racecourse or any other form of gambling.

## 29. Requirements for licensing

A person shall not be licensed to offer any gambling or betting activity under this Act unless that person—

- (a) is a body corporate in which a minimum of thirty per cent of shares are held by Kenyan citizens; and
- (b) maintains an account with an authorized financial institution registered in Kenya into which it pays all monies relating to the licensed gambling and lottery activity.

## 30. Application for a licence

- (1) An application for a licence shall be made in the prescribed form and shall be accompanied by—
- (a) the application fee prescribed by the Cabinet Secretary in regulations;
  - (b) sufficient evidence to show that the applicant is in possession of, or commands the prescribed gambling capital;
  - (c) security by way of such insurance bond or bank guarantee as security as may be prescribed under the Act or regulations;
  - (d) information from the applicant of the proximity of the intended premise to a learning institution;
  - (e) declarations as provided for in the Second Schedule;
  - (f) such other information as it may consider necessary to enable the Authority to determine the application; and
  - (g) a declaration of the good causes the applicant intends to undertake and the proposed budget devoted to the good causes.
- (2) Authority shall vet all applications for a licence under this Act.

- (3) The Authority shall, in determining whether an applicant is suitable to hold a licence or permit under this Act, consider, in relation to the body corporate and its directors, as applicable—
  - (a) the financial status or solvency of the person;
  - (b) the educational or other qualifications or experience of the applicant having regard to the nature of the functions which, if the application is granted, the person shall perform; and
  - (c) the status of any other licence or approval granted to the applicant by any financial sector regulator.
- (4) Without prejudice to the generality of subsection (1), the Authority may, in considering whether an applicant is fit and proper—
  - (a) take into account whether the applicant or the directors of the body corporate—
    - (i) has contravened any law in Kenya or elsewhere designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in transacting with marketable securities;
    - (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
    - (iii) has taken part in any business practice which, is proven to be fraudulent, prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the applicant's methods of conducting business;
    - (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that applicant; or
    - (v) has acted in such a manner as to cast doubt on the applicant's competence and soundness of judgment;
  - (b) take into account any information in the possession of the Authority, whether provided by the applicant or not, relating to—
    - (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent; and
    - (ii) where the applicant is a company in a group of companies, any other company in the same group of companies, or any substantial shareholder or key personnel of the company or any company referred to under this subparagraph;
  - (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
  - (d) have regard to the state of affairs of any other business which the applicant carries on or purports to carry on.
- (5) The Authority shall give the applicant an opportunity to be heard before determining whether the applicant is fit and proper for the purposes of this Act.
- (6) A person who knowingly makes a false statement or declaration in an application for, or a renewal or variation of, a licence or permit commits an offence and shall, upon conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.
- (7) For the purposes of this section, “group of companies” means any two or more companies, one of which is the holding company of the others.
- (8) The Authority may grant a licence upon considering all the requirements under this section.

- (9) The Authority shall within fourteen days of issuance of a license under this section, transmit a copy of the licence to the relevant county government.

### 31. Renewal of a licence

- (1) The Authority may, on application by a licensee, renew a licence for a further period provided for in subsection (3).
- (2) An application under this section shall—
- (a) be made in the prescribed form and forwarded to the Authority together with the prescribed fee;
  - (b) be lodged with the Authority at least three months prior to the expiry of the licence; and
  - (c) be considered in accordance with the provisions of section 30.
- (3) A gambling licence issued under this section shall be valid for a period of thirty-six months from the date of issue or for such other period as may be prescribed in regulations.

### 32. Refusal to grant or renew a licence

- (1) The Authority may refuse to grant or renew a licence if it is satisfied that—
- (a) the information contained in the application is false or untrue in any material particulars;
  - (b) the application does not meet any of the requirements for the issuance or renewal of a licence; or
  - (c) the application is not in conformity with the obtaining policy regarding use of any software system as prescribed by the Cabinet Secretary in consultation with the Authority and the Communications Authority of Kenya.
- (2) Where the Authority refuses to grant or renew a licence, it shall forthwith notify the applicant in the prescribed form stating the reason for such refusal.
- (3) A person aggrieved by the decision of the Authority under this section may, within twenty-one days from the day of notification under subsection (2) lodge an appeal before the Committee.

### 33. Revocation of a licence

- (1) The Authority may revoke a licence issued under this Act—
- (a) where the holder is in breach of any of the provisions of this Act;
  - (b) where it discovers that a licensee made a statement in connection with the application which he knew to be false or untrue;
  - (c) where the gambling business is wound up or dissolved; or
  - (d) if the licensee is in breach of any condition prescribed in the Act and which is required for the issuance of a licence.
- (2) Where the Authority intends to revoke a licence under subsection , the Authority shall serve the licensee with the notice of the intended revocation specifying the grounds for such revocation and require the licensee to, within fourteen days of service of the notice, give reasons why the licence should not be revoked.
- (3) A notice under subsection (2) shall be served not less than twenty-one days before the date of the intended revocation and shall specify the grounds for such revocation.
- (4) Where a licensee fails to give reasons within the period stated, the licence shall cease to be valid.

- (5) If reasons are furnished by the licensee, the Authority, as the case may be, shall after considering such reasons—
  - (a) decide whether or not to revoke the licence; or
  - (b) call upon the licensee to appear before it on a specified date to make oral representations in support of any written representations made by the licensee or to answer any questions which the Authority, as the case may be, regarding such written representations, thereafter the Authority shall determine whether or not to revoke the licence.
- (6) The revocation of a licence shall not prejudice any liability or obligation incurred under or in relation to the licence prior to its revocation.
- (7) The revocation of a licence shall take effect upon the expiry of the notice under subsection (3).
- (8) A licensee whose licence has been revoked shall surrender the licence to the Authority and shall not be eligible to hold a licence under this Act for a period not exceeding five years with effect from the effective date of the revocation.
- (9) A person aggrieved by the decision of the Authority under this section may appeal to the Committee within twenty-one days with effect from the date upon which such decision was conveyed to a licensee.

#### **34. Suspension of licence**

- (1) The Authority may suspend a licence issued under this Act if the holder of the licence contravenes the provisions of the Act upon giving notice and giving the licensee an opportunity to be heard.
- (2) The procedure under section 33 shall apply with the necessary modifications when the Authority is considering the suspension of a licence.
- (3) Where the Authority suspends a licence under subsection (1), it shall forthwith inform the public through a notice in the *Gazette*, and two newspapers of nationwide circulation or any media of national coverage.
- (4) Where a licence ceases to be valid under subsection (1), the Authority shall inform the licensee in writing the date upon which the licence was suspended.
- (5) The suspension of a licence shall not prejudice any liability or obligation incurred under or in relation to the licence prior to its suspension.

#### **35. Duration of a licence**

The duration of every licence issued under this Act shall vary for each gambling and betting activity subject to the provisions of section 31(3).

#### **36. Display of a licence**

- (1) A licensee shall display the licence issued under this Act at a place that is visible to the public during the period of validity of the licence.
- (2) Where the licence allows for the establishment of a branch, a copy of the licence shall be displayed at the branch at a place that is prominently visible to the public during the period of validity of the licence.
- (3) A holder of an online gambling license shall display the license issued under this Act in their online platform.

### 37. Investigation by the Authority

- (1) The Authority may from time to time and on its own motion or upon receipt of information from any person, investigate the conduct of a licensee under this Act.
- (2) The Authority may direct any person who is investigated pursuant to subsection (1) to take such action as may be necessary to rectify any shortcomings discovered, and may take such other action as may be appropriate where the licensee fails or refuses to comply with directions issued by the Authority.

### 38. Duplicate licence

The Authority may issue a duplicate licence to a licensee whose licence is lost, destroyed or mutilated upon application for a duplicate in the prescribed form and payment of the prescribed fees to the Authority.

### 39. Register of licences

- (1) The Authority shall keep and maintain a register of licences in such form as it may determine and shall record in the register in respect of every licence—
  - (a) the name, identity and registration number of a licensee;
  - (b) particulars of the gambling activity to which a licence relates;
  - (c) the county or counties to which a licence relates;
  - (d) the date of expiry of the licence;
  - (e) particulars of any revocation or suspension of the licence;
  - (f) particulars of any amendment to a licence; and
  - (g) any other particulars that the Authority may consider necessary.
- (2) The register maintained by the Authority shall be open to the public at reasonable times and upon payment of the prescribed fee.

### 40. Security for gambling activity

- (1) The Authority shall require a licensee to deposit an insurance security bond or bank guarantee equivalent to cover the amounts provided in the Third Schedule.
- (2) The insurance security bond or bank guarantee deposited under this section may be used by the Authority to defray a licensee's liability, which may arise from the licensed activity.
- (3) The Authority shall prescribe applicable insurance security bond or bank guarantee for a gambling activity prescribed under section 28 (2) (q).
- (4) The Cabinet Secretary may by notice in the *Gazette* revise the Third Schedule

### 41. Gambling capital

- (1) Each licensee shall provide proof of adequate gambling capital to set up the licensed operations.
- (2) The Authority shall, in consultation with the Cabinet Secretary, determine and publish by notice in the *Gazette* the amount of capital for each gambling activity regulated under this Act.

### 42. Books to be kept by a licensee

- (1) The Authority shall prescribe books of accounts to be kept by a licensee.

- (2) A licensee shall regularly enter or cause to be entered particulars of entries on the books of accounts as prescribed by the Authority.

#### **43. Submission of accounts by a licensee**

- (1) A licensee shall submit to the Authority audited statement of accounts within three months after the end of a financial year.
- (2) The accounts of a licensee submitted under this section shall be audited by an auditor approved by the Authority.

#### **44. Control of gambling machines**

A licensee shall ensure that their gambling machines—

- (a) are located in premises in which the respective county government has issued a permit;
- (b) are sourced from a certified source with international certification standards;
- (c) have an import certificate issued by the Authority indicating the model and the functions of the machine; and
- (d) undergo standards verification after every three months.

#### **45. Application for a permit**

- (1) A holder of a gambling licence issued by the Authority under section 28 shall apply for a trade permit from the respective county government for a premise within which the person intends to carry out the licensed gambling activity.
- (2) An application for a gambling permit shall be in such manner as may be prescribed by the respective county government and shall be accompanied by—
  - (a) the fee prescribed by the respective county government;
  - (b) a licence issued by the Authority; and
  - (c) such other information as the county government may consider necessary for the determination of the application.
- (3) A county government shall grant a permit upon determining the suitability of the intended premises for which the application is made and considering the requirements set out in subsection (2).
- (4) A permit issued under this Act shall not be transferable.

#### **46. Endorsement of permit**

A permit issued under this Act shall state the location of the premise to which it relates, and shall be endorsed with all conditions imposed by the Authority and respective county government.

#### **47. Revocation of a permit**

- (1) A county government may revoke a permit issued under this Act where—
  - (a) the holder is in breach of any condition attached to the permit; or
  - (b) the Authority has revoked a licence of a permit holder.
- (2) Where a county government intends to revoke a permit under subsection (1), the county government shall serve the permit holder with the notice of the intended revocation specifying the

grounds for such revocation and require the person to, within fourteen days of service of the notice furnish reasons why the permit should not be revoked.

- (3) Where the person fails to give reasons within the period specified, the permit shall cease to be valid.
- (4) If the person furnishes reasons, the county government, shall after considering such reasons—
  - (a) decide whether or not to revoke the permit; or
  - (b) call upon the permit holder to appear before it on a specified date to make oral representations in support of any written representations made by the permit holder or to answer any questions which the county government may have, regarding the written representations, and thereafter the county government shall determine whether or not to revoke the permit.
- (5) The revocation of a permit shall not prejudice any liability or obligation incurred under or in relation to the permit prior to its revocation.
- (6) Where a permit is revoked, under subsection (1), the county government shall serve the permit holder with a notice of revocation of a permit in the prescribed form.
- (7) A notice under subsection (2) shall be served not less than twenty-one days before the date of the intended revocation and shall specify the grounds for such revocation.
- (8) The revocation of a permit shall take effect after twenty-one days upon expiry of a notice issued under subsection (7).
- (9) The holder of a permit that is revoked shall surrender the permit to the county government and shall not be eligible to hold a permit under this Act for a period not exceeding five years with effect from the effective date of the revocation.
- (10) A person aggrieved by the decision of the county government under this section may appeal to the Committee within twenty-one days from the date of receipt of the decision.

#### **48. Duration of a permit**

Every permit issued by the county government shall be valid for a period of twelve months from the date of issue unless a different duration has been prescribed under this Act.

#### **49. Display of a permit**

A holder of a permit issued under this Act shall, during the period of its validity display the permit within the business or premise at a place that is prominently visible to the public.

### **Part V – CONTROL AND LICENSING OF LOTTERIES**

#### **50. Authorization of a public lottery for charitable purposes**

- (1) The Authority shall issue a licence authorizing the promotion and conduct of a public lottery intended to raise funds for charitable purposes which may include charitable activities for—
  - (a) social service;
  - (b) public welfare;
  - (c) relief of distress;
  - (d) recreational purposes;
  - (e) sporting purposes;
  - (f) any other purpose that may be assigned to it by the Authority.

- (2) The authorization by the Authority under subsection (1) shall be for public lotteries where the promotion and lottery activities are undertaken countrywide, across more than one county or through media.
- (3) The county governments may licence the promotion and conduct of a public lottery intended to raise funds for the charitable activities set out in subsection (1), where the promotion and the lottery activities are confined within the respective counties.
- (4) The license issued under subsection (3) shall be for a period not exceeding one year.
- (5) The Cabinet Secretary shall in consultation with the Authority, set the percentage of the gross revenue of a public lottery that shall be devoted to the object for which the lottery was promoted.
- (6) Despite section 30(1) (g), the percentage set by the Cabinet Secretary under subsection (5), shall not be less than thirty per cent of the gross revenue of the public lottery, but in no case shall the Authority require a proportion greater than forty-five per cent of the gross proceeds.
- (7) The Authority shall grant a licence for the promotion of a lottery under this section only to a body corporate.
- (8) A promoter of a lottery authorized under this section who devotes proceeds of the lottery to activities not permitted or to a purpose other than expenses and prizes permitted commits an offence and shall be liable upon conviction to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding twenty years, or to both.

## 51. Conduct of a public lottery

- (1) The Authority or county government shall, in respect of any public lottery, impose the conditions prescribed in the Act or in regulations to ensure that a lottery is promoted and conducted efficiently for the purpose for which it is being promoted.
- (2) In conducting a public lottery under this Act, a promoter—
  - (a) may deduct operating expenses not exceeding twenty per cent of gross proceeds of the lottery;
  - (b) shall provide insurance bond or bank guarantee for the conduct of the lottery;
  - (c) shall ensure proper and equitable distribution of the charitable funds of the lottery;
  - (d) shall take reasonable measures to ensure that a purchaser of a ticket or a chance in a lottery is protected against fraud; and
  - (e) shall take such steps as it may deem necessary to ensure that any conditions imposed by the Authority are complied with.
- (3) In this section, the term “gross proceeds” means the total proceeds received from a lottery prior to any deductions.

## 52. Authorization of a lottery relating to horse racing

- (1) A county government may issue a licence authorizing promotion of a lottery relating to a horse race, promoted within or outside Kenya.
- (2) The Authority may, in respect of a lottery to be promoted and conducted in Kenya under this section, issue—
  - (a) an on-the-course permit authorizing the promotion and conduct of a lottery on a course specified; or
  - (b) a licence authorizing the promotion and conduct of a lottery off the course.

**53. Lottery conducted for charitable, sporting or other purposes**

- (1) A lottery may be promoted and conducted on behalf of a society established for—
  - (a) charitable purposes;
  - (b) participation in a sport, support of athletics, or cultural activities; or
  - (c) purposes for raising money to be applied for purposes of public good and are not for private gain or purposes of commercial undertaking.
- (2) The Authority may, upon the issuance of a licence under this section impose such conditions to the manner in which a person issued with a licence may conduct the promotion and conduct of a lottery under this section, including—
  - (a) requiring a promoter to be a member of a society duly authorized to act as such;
  - (b) prohibiting the payment of remuneration to a promoter or any person engaged by way of business or employed in the promoter's organization in connection with the lottery;
  - (c) capping the prize of a ticket to twenty thousand shillings;
  - (d) a ticket or chance shall be sold for a price of at least twenty shillings;
  - (e) requiring the application of the whole proceeds, upon deduction of sums lawfully appropriated on account of expenses or for the provision of prizes, to purposes of the society, as described in subsection (1);
  - (f) requiring the amount of proceeds appropriated on account of expenses not to exceed fifteen per cent of the whole proceeds;
  - (g) capping the amount of the proceeds appropriated for the provision of prizes not to exceed one half of the whole proceeds;
  - (h) requiring the price of each ticket or a chance to be the same on all the tickets;
  - (i) requiring every ticket, notice of a lottery lawfully exhibited, distributed or published to specify the name of the society sponsoring the lottery, the name and address of the promoter and the date on which the draw, determination or event to which the prize winners are ascertained is expected to take place;
  - (j) prohibiting the delivery of a ticket through post to a person who is not a member of the society;
  - (k) prohibiting the admittance of a person to participate in a lottery except upon payment to the promoter of the whole price of the ticket or chance; and
  - (l) requiring payment for expenses or prizes out of proceeds of the lottery.
- (3) A person, including a promoter of a lottery who contravenes any of the conditions set out in subsection (2) commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**54. Lottery incidental to entertainment**

- (1) Authority may issue a licence for a lottery promoted and conducted as an incident of entertainment countrywide, across more than one county or through the media.
- (2) A county government may issue a licence for a lottery promoted and conducted as an incident of entertainment confined within the respective county.

- (3) The Authority or a county government may, upon the issuance of a licence under this section, impose such conditions on the manner in which a person issued with a licence may conduct the lottery, including—
- (a) requiring that the ticket or chance is sold or issued in a premise which the lottery may take place;
  - (b) requiring that the result of the lottery is declared on the premises in which the lottery took place;
  - (c) requiring that the facility provided for participating in a lottery or the gambling entertainment is not held for private gain;
  - (d) requiring that a prize in a lottery is in the custody and disposal of a promoter of a lottery;
  - (e) requiring that a ticket or chance in a lottery is issued or allotted upon the receipt of the full price;
  - (f) directing that the price of a ticket or chance shall be displayed on each ticket;
  - (g) prohibiting money prize in a lottery; and
  - (h) capping the price of a ticket or a chance to not more than fifty shillings.
- (4) This section shall apply to entertainments including bazaars, sales of work, fetes, dinners, dances, sporting or athletic events limited to one or more days.
- (5) A person who contravenes any of the conditions set out in subsection (3) commits an offence and, shall upon conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### **55. Licensing lotteries incidental to sports or games**

- (1) The Authority may issue a licence authorizing a person to organize and manage a lottery incidental to a sport or game.
- (2) A licence shall state the lottery incidental to the game or sport which a licensee may organize and manage.
- (3) The Authority may, in respect of a licence issued under this section, impose conditions on—
- (a) the manner in which a person may conduct a sport or game lottery;
  - (b) the hours during which the premises may be open;
  - (c) the suitability, condition and conduct of the premises;
  - (d) the protection of persons taking part in the gamble against fraud;
  - (e) measures to ensure responsible gambling; and
  - (f) payment of admission fees for persons gambling in the premises.
- (4) Where an admission fee is charged under subsection (f) it shall be subject to the payment of tax under the Entertainment Tax Act ([Cap. 479](#)).

### **56. Private Lottery**

- (1) The Authority may issue a licence for a private lottery.

- (2) The Authority may, upon the issuance of a licence under this section, impose such conditions to be met by a person issued with a licence, including—
- (a) requiring the net proceeds or part thereof of lottery to be devoted to the provision of prizes for purchasers of tickets or chances, or, in the case of a lottery promoted for the members of the society shall be devoted to the purposes of the society;
  - (b) requiring a notice or advertisement of a lottery to be exhibited on a premise or the club of the members whom the lottery is promoted;
  - (c) requiring the price of each ticket or a chance to be the same on all the tickets;
  - (d) requiring each ticket to bear the name and address of a promoter of the lottery and a statement of a person to whom the sale of the tickets or chances is restricted;
  - (e) requiring a ticket or a chance to be issued or allotted by a promoter by way of sale upon receipt of a full price;
  - (f) prohibiting the return of money or anything of value received by a promoter; or
  - (g) prohibiting delivery of a ticket in a lottery through the post office.
- (3) A person or a promoter of a lottery who contravenes the conditions specified in subsection (2) commits an offence and shall, upon conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

#### **57. Submission of audited accounts and returns in respect to a lottery**

A promoter and a beneficiary of a lottery promoted or conducted under this Act shall be required to submit audited accounts and make returns in such form and within such period as the Authority or respective county government may specify.

### **Part VI – CONTROL AND LICENSING OF BETTING**

#### **58. Bookmaker's licence**

The Authority may, in respect of bookmaking, issue—

- (a) an on-the-course licence authorizing a person to carry out the business of a bookmaker at any authorized race meeting;
- (b) an off-the-course licence authorizing a person to carry on the business of a bookmaker at any authorized betting premises;
- (c) a licence authorizing a person to carry on the business as a bookmaker of both on and off the course race; or
- (d) an online bookmakers licence.

#### **59. Totalisator licence**

- (1) The Authority may issue any of the following licences for each totalisator—
- (a) an on-the-course licence authorizing a person to operate a totalisator on a specified course;
  - (b) an off-the-course licence authorizing a person to operate a totalisator at a specified betting premise; or
  - (c) a licence authorizing a person to operate a totalisator both on and off the course.
- (2) A licence under this section may be issued in respect of each race day or for a period not exceeding one year.

- (3) Every transaction effected by means of a totalisator shall be recorded in such manner as may be prescribed by the Authority to ensure that as far as is practicable, the record is in an uninterrupted view of the public.
- (4) In this section, “race day” means an approved day in which a race meeting is held.

#### **60. Laying of totalisator, betting pools and odds**

- (1) The Cabinet Secretary may, in consultation with the Authority, make rules for the operation of totalisators.
- (2) A holder of a totalisator licence shall conduct a totalisator or a betting pool in accordance with totalisator rules issued by the Authority.
- (3) The aggregate of returns by a holder of a totalisator licence or a person who has made a winning bet on any event, or combination of events, shall not be less than eighty-five per cent of the total amount pooled or such other amount, as may be approved by the Authority, in respect of an event or combination of events.
- (4) A person who participates in a totalisator’s bet shall not—
  - (a) bet upon the result of a horse race or any other race;
  - (b) sell or offer for sale, or purchase from a person a ticket or card entitling a purchaser or a holder thereof to an interest in the result of the working of a totalisator on a horse race or any other race;
  - (c) make a contract or bargain of any kind to pay or to receive money upon an event determined or to be determined by the result of the working of a totalisator on a horse race or any other race;
  - (d) receive or permit receipt of a betting transaction in respect of a totalisator in respect of a horse race or any other race after the start of the race;
  - (e) register on a totalisator after the start of a horse race or any other race any money received in respect of the race; or
  - (f) take into account in the calculation or payment of a betting transaction which has not been registered on a totalisator.
- (5) The provisions of subsections (4) (a) and (b) shall not apply to an employee engaged in the lawful operation of a totalisator in a manner approved by the Authority.
- (6) A person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

#### **61. Promoter’s licence in respect of a pool betting scheme**

- (1) The Authority shall issue a promoter’s licence in respect to a pool betting scheme authorizing a promoter to provide a pool betting scheme within Kenya.
- (2) A licence issued under this section shall apply to one pool betting scheme at a time.

#### **62. Authorization of a bookmaking at a race meeting**

- (1) A promoter of a race meeting who intends to permit a bookmaker to carry out bookmaking at a race meeting shall upon payment of the prescribed fees, apply to the Authority for the relevant licence in the prescribed form.
- (2) The Authority may upon receipt of an application under subsection (1), issue a licence authorizing bookmaking to take place at a race meeting held on a racecourse on the day specified in the licence.

- (3) A licence issued under this section shall specify the number of race meetings that may be held on a licensed racecourse within a year.
- (4) In this section, “racecourse” means an approved ground used or intended for use for the purpose of horse racing or a related race.

### **63. Control of betting machines**

- (1) A licensee shall ensure that their betting machines—
  - (a) are sourced from a certified source with international certification standards;
  - (b) have an import certificate issued by the Authority indicating the model and the functions of the machine; and
  - (c) undergo standards verification after every three months.
- (2) standards verification referred to in subsection (1)(c) and developed by the Authority shall be conducted by the Kenya Bureau of Standards.
- (3) A person shall not operate a betting machine unless the person has been issued with a valid bookmaker’s licence.
- (4) A single bet in a gambling machine shall be a minimum of twenty shillings only.

## **Part VII – CASINO, SLOT MACHINE AND OTHER FORMS OF GAMBLING**

### **64. Casinos and other forms of gambling**

- (1) A person may be granted a licence to operate a casino and other forms of gambling upon meeting the requirements set out in section 29.
- (2) The Cabinet Secretary may in consultation with the Authority and the Council of Governors, make regulations prescribing the number of casinos, amusement machines, slot machines and other forms of gambling that may be operated within the counties.
- (3) The Cabinet Secretary shall consider the following in making the regulations under subsection (2)—
  - (a) number and geographic distribution of existing licensed casinos, slot machines and other forms of gambling at the time;
  - (b) the presence of tourists in a county;
  - (c) the cultural and religious distribution of the residents of each county;
  - (d) the incidence and social consequences of compulsive and addictive gambling; and
  - (e) the promotion of—
    - (i) job creation within the gambling industry;
    - (ii) diversity of ownership within the gambling industry;
    - (iii) efficiency of operation in the gambling industry; and
    - (iv) competition within the gambling industry.
- (4) The Cabinet Secretary shall, in consultation with the Authority, make regulations prescribing the places where gambling machines shall be placed including the distance to—
  - (a) learning institutions;
  - (b) religious establishment; and

(c) residential areas.

(5) A single bet in a casino machine shall be played for a minimum of twenty shillings.

#### **65. Powers of the Authority to inspect**

A licensee shall, in respect of each premise where a casino is operated allow the Authority or any person designated by the authority in writing to—

- (a) enter any licensed premise or facility belonging to or under the control of the licensee for purposes of inspection;
- (b) examine or inspect any machine, document or data in a licensed premises or facility, and make copies or extracts from it;
- (c) seize, for the purpose of examination, any information, machine, document or data, on the conduct of a casino;
- (d) seal or otherwise secure any such premise, facility, machine, document or data in the casino where an offence has been committed;
- (e) secure a valid and enforceable written undertaking from a person controlling a licensee in any way not to change, transfer, cede the control of a licence or in any way encumber the licence to another person without the consent of the Authority; and
- (f) take such steps as may be reasonably necessary to protect all gambling players.

#### **66. Officers of the Authority to be present**

The Authority shall ensure that its officers are present in all casinos for purposes of ensuring compliance with the Act and the conditions imposed by the Authority under the relevant licence.

### **Part VIII – ONLINE GAMBLING**

#### **67. Licensing of online gambling**

- (1) A person who desires to operate, sell or promote online gambling in Kenya, shall apply, in the prescribed form, for a licence from the Authority for the following—
  - (a) an online bookmakers licence;
  - (b) an online lottery licence; or
  - (c) an online casino licence.
- (2) A person making an application for an online gambling licence under subsection (1) shall submit to the Authority a proposed gambling control system, which shall be duly considered by the Authority with or without variation.
- (3) In granting a licence under this section, the Authority shall require an applicant to deposit with the Authority such security as prescribed under the Act.

#### **68. Control of online gambling**

- (1) A person licensed to carry out an online gambling activity shall conduct the activity under a gambling control system approved by the Authority.
- (2) The Authority shall not approve a system under subsection (1) unless the licensee provides for—
  - (a) online security of information;

- (b) safety and security against criminal activities;
  - (c) online payment system;
  - (d) protection measures against under age gambling;
  - (e) protection measures against vulnerability in gambling;
  - (f) awareness and education;
  - (g) responsible advertising; and
  - (h) data protection measures under the [Data Protection Act \(Cap. 411C\)](#).
- (3) The Authority shall impose the requirement of an approved gambling control system as a condition of the licence granted under subsection (1) which the licensee shall be required to comply with.
- (4) The failure by the licensee to comply with the requirements of the approved gambling control system shall lead to revocation of the licence and offence.
- (5) The Authority shall establish a framework to facilitate real time monitoring of casinos and online gambling activities, which shall be accessible for monitoring by the Communications Authority of Kenya and any other relevant government agency.
- (6) In order to facilitate the real time monitoring of gambling, an operator shall be required to provide the Authority with—
- (a) the platforms for participation which may, where applicable, include—
    - (i) all visual and audio communication channels; or
    - (ii) an online website platform;
  - (b) particulars of the charges to be levied by an operator;
  - (c) particulars and the location of servers of the operator’s system to show how a player may be registered and deregistered on the system;
  - (d) particulars and the location of all other servers;
  - (e) a valid telecommunication licence; and
  - (f) any other information required by the Authority.
- (7) In the case of mobile online gambling, lottery or a betting licence, particulars of network connectivity with two links to mobile operators shall be provided to the Authority.
- (8) An operator shall maintain a customer care centre within Kenya to monitor and respond to issues raised by consumers.

## 69. Online gambling transaction

An online gambling transaction shall commence when a player deposits money into his or her gaming account and shall conclude when a player withdraws money from his or her gaming account.

## 70. Payment of prizes and remittance of winning

- (1) Where a player in an online gambling transaction wins a monetary prize, a licensee shall within two days credit the amount to the player’s account.
- (2) Where a player wins a non-monetary prize, the licensee shall—
  - (a) deliver the prize to the player within seven days; or
  - (b) notify the player in writing of an address within Kenya where the prize may be collected.

- (3) If a non-monetary prize is not collected within a period of six months after the winner has been notified of the place where the prize may be collected, a licensee may dispose of the prize by public auction, or in a manner approved by the Authority.
- (4) The proceeds of sale under subsection (3) may be used to pay for the cost of disposal of the prize, and any remainder be deposited in the Fund.
- (5) Any claim against a licensee for uncollected prize shall lapse after six months from the date of declaration of the winnings.
- (6) An operator shall require proof of age of majority prior to the remittance of the prize to the registered player.

#### **71. Minimum amount a person can bet online**

- (1) A player in an online gambling activity shall not bet an amount of less than twenty shillings in a competition.
- (2) The minimum amount set under subsection (1) shall be inclusive of such saving component for the player as shall be determined by the Authority in consultation with the Cabinet Secretary.
- (3) An operator who permits a person to engage in an online gambling activity for an amount less than the amount prescribed under subsection (1) an offence and shall be liable upon conviction to a fine of not less than three million shillings or to imprisonment for a term not exceeding five years, or to both.

#### **72. Registration of a player**

- (1) A licensee shall not allow any person to participate as a player in an authorized game conducted by a licensee unless the person is registered as a player and holds an account with the licensee.
- (2) An operator shall put in place mechanisms to ensure that a child is not registered for an online game, lottery or bet for which they are licensed to operate.
- (3) An operator shall require proof of age of majority prior to the registration of every player.
- (4) The Authority may make regulations for the prevention of the registration of a child from an online game, lottery or bet.
- (5) Where a licensee becomes aware that a person has provided false information during registration, the licensee shall not register such person and where such a person has already been registered, the licensee shall immediately cancel the person's registration.
- (6) A licensee shall avail the following to a player—
  - (a) all the rules relating to authorized games conducted by a licensee; and
  - (b) the particulars of any processing fee which may be incurred by the player.
- (7) A licensee shall not induce, facilitate or aid a player to place a wager or a bet by advancing credits, the use of credit cards or meeting third party costs incurred by a player:

Provided that this provision shall not apply to free bets and bonus bets conducted in the ordinary course of business.

#### **73. Player's account to be kept**

- (1) A licensee shall establish and maintain a player's account for each player who is registered by the licensee.

- (2) A licensee shall credit to an account established under subsection (1) in respect of a registered player all funds—
  - (a) received by a licensee from or on behalf of a player; or
  - (b) owed by a licensee to the player.
- (3) A licensee shall not accept a wager from a player unless—
  - (a) there are adequate funds in the player's account to cover the amount of the wager; and
  - (b) the funds necessary to cover the amount of the wager are approved by the player.
- (4) A licensee may receive funds from a player through—
  - (a) a debit card;
  - (b) an electronic funds transfer;
  - (c) mobile money transfer;
  - (d) cash deposits; or
  - (e) any other method as may be approved by the Authority from time to time.

#### **74. Restriction on credit and inducements**

- (1) A licensee shall not—
  - (a) provide credit to a player or on a player's account or act as an agent for a credit provider to facilitate the provision of credit to a player;
  - (b) make an offer designed to induce persons to participate or increase their participation in licensed activities; or
  - (c) participate in arrangements for inducing persons to gamble.
- (2) A person who breaches the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years, or to both.
- (3) Nothing in this section shall be construed as limiting an operator from offering free bets and bonus bets in the ordinary course of business.

#### **75. Restriction on dealing with a player's money**

A licensee shall not deal with any amount standing to the credit of a player's account except—

- (a) to debit to the account a wager made by a player or an amount as directed by a player for purposes of a wager;
- (b) to remit funds standing to the credit of an account of a player at the player's request; or
- (c) to pay bank charges for deposits received and funds withdrawn.

#### **76. Player's account**

- (1) A licensee shall deposit all the player's money in a bank account or mobile money or, upon a player's request, make a cash payment to the player:

Provided that a licensee shall maintain a register of all monies paid out to a punter.

- (2) Any money in a player's account, including money in transit or in the process of being cleared shall at any time be at least equal to the aggregate amount standing to the credit of players' accounts held by a licensee:

Provided that where funds standing to the credit of a player's account falls below the aggregate total of the amount standing to the credit of a players' accounts, the licensee shall make good the shortfall from the licensee's own money within a period of thirty days from the end of the month in which the shortfall occurs.

- (3) A licensee holding a player's bank account shall—
- (a) not enforce or execute, any charge, write-off, set-off or other claim against a player's account;
  - (b) not combine the account with any other account in respect of any debt owed to it by a player; or
  - (c) credit any interest payable on a player's account, only to the player's account.

### **77. Inactive account**

- (1) Where a transaction has not been recorded on a player's account for three months, a licensee shall remit the balance in the account to a player.
- (2) Where the whereabouts of a player remain unknown for a period of five years, the monies standing to the credit of the player's account shall be presumed abandoned and the licensee shall remit such monies to the Unclaimed Financial Assets Authority.
- (3) A licensee shall maintain a register of all monies remitted under subsection (2).

### **78. Financial reporting by a licensee**

A licensee shall at the end of each financial year submit audited financial reports to the Authority indicating—

- (a) its gross revenue for the financial year;
- (b) its net revenue for the financial year;
- (c) the amount remitted to the Collector for the financial year; and
- (d) the good causes they implemented as part of the license conditions.

### **79. Restriction on foreign operators**

- (1) A gambling operator based in a foreign country shall only be issued with an online gambling licence where the operator—
- (a) is registered in Kenya;
  - (b) has a physical address registered in Kenya; and
  - (c) meets the requirements prescribed by the Authority in regulations.
- (2) In addition to the requirements under subsection (1), a gambling operator based in a foreign country shall be required to provide its audited books of accounts for the immediately preceding year.
- (3) A foreign based gambling operator who provides online gambling services in Kenya without a licence commits an offence and shall, upon conviction—
- (a) in the case of a natural person, be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both; or

- (b) in the case of a corporate person, be liable to a fine not exceeding fifty million shillings.
- (4) Despite the provisions of subsection (1), a gambling operator based in a foreign country who does not intend to carry out online gambling activities in Kenya may apply for a licence to the Authority under this section.
- (5) A foreign based operator who applies for a licence under subsection (4) shall be exempt from the requirement under section 29 (a).

## 80. Dispute resolution

A party to a dispute arising out of an online gambling activity, may appeal to the Tribunal for resolution of the dispute within fourteen days from the date of the dispute.

## Part IX – AMUSEMENTS WITH PRIZES, PRIZE COMPETITIONS, CHAIN LETTERS AND GAMBLING MACHINES

### 81. Provision of amusements with prize at non-commercial entertainments

- (1) A person may provide amusement with prize at non-commercial entertainment where the whole proceeds of the entertainment after deducting the expenses of the entertainment are devoted to purposes other than private gain.
- (2) The opportunity to win a prize at an amusement to which this section applies shall not be the only inducement to a person to attend the entertainment.
- (3) A person who breaches the conditions specified in subsection (1) commits an offence and shall upon conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

### 82. Provision of amusements with prize at a commercial entertainment

- (1) A person may, subject to subsections (2) and (3), provide for amusement with a prize –
  - (a) on a premise which a permit for the provision of an amusement has been granted by a county government under the relevant law; and
  - (b) at a pleasure fair consisting wholly or mainly of an amusement provided by travelling showmen held on any day of the year on the premises not previously used in that year on more than twenty-seven days for the holding of a pleasure fair.
- (2) The following conditions shall be observed in connection with amusements under this section –
  - (a) the amount paid by a person for any one chance to win a prize shall not exceed five thousand shillings;
  - (b) the aggregate amount issued by way of sale of a chance in a determination of a winner of a prize shall not exceed five million shillings;
  - (c) the sale of a chance and a declaration of a result shall take place on the same day and on the same premise on which the amusement took place;
  - (d) money prize for distribution shall not exceed one million shillings;
  - (e) the winning or the purchase of a chance to win a prize shall not entitle a person to any further opportunity to win money by taking part in any amusement with prize or in any gamble or lottery; and

- (f) in the case of a pleasure fair under subsection (1)(b), the opportunity to win a prize at an amusement to which this subsection applies shall not be the only inducement to a person to attend the fair.
- (3) Where an amusement with a prize takes the form of a game played by use of a machine played by insertion of a coin or a token into a machine, the following conditions shall apply—
  - (a) a successful player may receive—
    - (i) a money prize not exceeding one million shillings;
    - (ii) a prize other than money of a value not exceeding five million shillings; or
    - (iii) a token of a nominal value exchangeable for a prize other than money on the basis of a prize of a value or aggregate value not exceeding five million shillings or for a number of tokens equal to a maximum number of tokens which may be won by any one playing of the game; and
  - (b) a player's success at the game shall not entitle a person to exchange any prize or token for a benefit other than those provided for under paragraph (a).
- (4) A person who breaches the conditions specified in this section commits an offence and shall upon conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### 83. Amusement machines

- (1) A county government may issue an amusement machine licence authorizing the use of an amusement machine in a licensed premise.
- (2) A person commits an offence if the person—
  - (a) uses or permits the use of an amusement machine in respect of which a licence has not been issued under subsection (1); or
  - (b) contravenes or allows the contravention of any condition provided for or imposed by the county government.
- (3) A person who commits an offence under subsection (2) shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.
- (4) In this section, “amusement machine” means a machine, other than a gambling machine—
  - (a) which is operated by the insertion of a coin or coins or other equivalent into the machine;
  - (b) whereby a successful player neither receives nor is offered any benefit other than—
    - (i) opportunity afforded by the automatic action of the machine to play the game again without insertion of a coin; or
    - (ii) the delivery by the machine of a coin or coins of a value not exceeding that required in order to play the game once.

### 84. Authorization of prize competitions

- (1) The Authority may, issue a licence authorizing the promotion and conduct of prize competitions cutting across several counties.
- (2) A county government may issue a licence authorizing the promotion and conduct of prize competitions confined to a county.
- (3) A person who promotes or advertises any prize licence issued under this section shall be subject to such conditions as shall be prescribed in regulations by the Authority and county governments,

and in every case, to the condition that no person under the age of eighteen years shall play an amusement machine unless in the presence of, and with the permission of the parent or guardian.

#### **85. Authorization of media promotions with prizes**

- (1) A person shall not, without a license issued by the Authority, conduct a media promotion with prizes.
- (2) A person who undertakes media promotion in either electronic or print media with prizes licensed under this section shall be subject to the conditions prescribed by the Authority in regulations.
- (3) The conditions referred to in subsection (2) shall include
  - (a) eligibility of participants;
  - (b) costs of participation;
  - (c) dates of the promotion;
  - (d) prizes to be won;
  - (e) verification of winnings by the Authority;
  - (f) process of claiming prizes won; and
  - (g) publication of prize awards.

#### **86. Chain letters**

A person who sends or causes to be sent, or supplies or delivers any chain letter or who sends or receives money or money's worth in connection with a chain letter, commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### **Part X – ADVERTISEMENT OF GAMBLING ACTIVITIES**

#### **87. Advertisement of gambling**

- (1) A person shall not, without the approval of the Authority, promote the advertisement of a gambling activity on electronic medium or any other form of communication by—
  - (a) holding himself out by advertisement, promotion, notice or public placard with the aim of enticing members of the public to participate in gambling;
  - (b) displaying any written or printed placard or notice relating to any form of game of chance in any shape or form so as to be visible in a public street or place;
  - (c) printing or publishing, or causing to be printed or published, any advertisement or notice;
  - (d) using a prominent personality or celebrity, public vehicle or lifestyle advertising to promote gambling; or
  - (e) advertising gambling by organizing, promoting or sponsoring a sporting event, trade fairs, exhibitions, shows, cultural, artistic, recreational, educational or entertainment programmes or any other event.
- (2) A gambling advertisement shall—
  - (a) indicate the addictive nature of gambling;
  - (b) notify players to play responsibly;
  - (c) prohibit children from playing;

- (d) not use false, misleading or deceptive message likely to create an erroneous positive impression of gambling;
  - (e) not be featured or broadcasted on television or radio between six o'clock in the morning and ten o'clock in the evening unless during a live sporting event;
  - (f) not be erected on an advertisement billboard of close proximity to a learning institution; and
  - (g) dedicate twenty per cent of aired advertisement towards promotion of responsible gambling.
- (3) The Cabinet Secretary may, in consultation with the Authority, make regulations providing for—
- (a) the circumstances under which the national lottery and licensed gambling activities may be advertised;
  - (b) information that is to appear in an advertisement;
  - (c) the places where, circumstances or manner in which signs relating to a national lottery or gambling activity may be displayed;
  - (d) conditions requiring advertisements about the gambling service authorised by the licence including—
    - (i) publication only to certain classes of persons;
    - (ii) the content which may require specified words to be included in the advertisement;
    - (iii) content not to be included in an advertisement;
    - (iv) content not to be published in certain types of publications or media; and
    - (v) requirement for the content of the advertisement to be approved by the Authority.
- (4) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding twenty years, or to both.

## Part XI – THE GAMBLING APPEALS TRIBUNAL

### 88. The Gambling Appeals Tribunal

- (1) There is established a body to be known as the Gambling Appeals Tribunal.
- (2) The Tribunal shall consist of —
- (a) a Chairperson appointed by the President from among persons qualified to be judges of the High Court;
  - (b) two persons appointed by the Judicial Service Commission who shall be advocates of the High Court; and
  - (c) four persons appointed by the Cabinet Secretary from among persons who possess knowledge and experience in matters relating to gambling, business administration, risk management or law enforcement studies.
- (3) The Chairperson and members of the Tribunal shall be appointed by the Cabinet Secretary by notice in the *Gazette*.
- (4) A person shall be eligible for appointment as a member of the Tribunal if that person—
- (a) meets the requirements of Chapter Six of the Constitution;
  - (b) has a relevant bachelors' degree from a university recognized in Kenya;

- (c) has at least ten years' experience in a relevant sector;
  - (d) is not a public officer;
  - (e) has not at any time within the preceding five years been an employee of the Authority or the National Lottery Board;
  - (f) has not been convicted of an offence under any law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
  - (g) has not been adjudged bankrupt by a court of competent jurisdiction; and
  - (h) has not in the last twelve months immediately preceding the appointment, had direct or indirect personal or commercial interest in the sector regulated under this Act.
- (5) The Chairperson or a member of the Tribunal shall hold office—
- (a) in case of the Chairperson, for a term not exceeding three years and shall not be eligible for re-appointment; and
  - (b) in case of a member, for a term not exceeding three years and shall be eligible for re-appointment for one further term of three years based on satisfactory performance.
- (6) The members of the Tribunal, other than the Chairperson, shall serve on a part-time basis.
- (7) The Chairperson or member of the Tribunal shall cease to hold office if that person—
- (a) resigns from office by notice in writing addressed to—
    - (i) the President, in the case of the Chairperson; or
    - (ii) the Cabinet Secretary, in the case of a member;
  - (b) becomes a public servant or an employee of the Authority or the National Lottery Board;
  - (c) is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson;
  - (d) is adjudged bankrupt by a court of competent jurisdiction;
  - (e) is convicted of a criminal offence under any law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
  - (f) is unable to perform the functions of the office by reason of physical or mental infirmity; or
  - (g) is otherwise unable or unfit to discharge the functions of the office.
- (8) A person appointed as the Chairperson or a member of the Tribunal shall, before assuming office, take or subscribe to the oath or affirmation before the Chief Registrar of the Judiciary.
- (9) The functions of the Tribunal shall be to hear and determine appeals, from the national or county governments,—
- (a) against any decision of the Authority or the National Lottery Board;
  - (b) regarding complaints arising out of the outcome of a gambling transaction;
  - (c) regarding complaints arising out of the functionality of gambling machines and equipment; and
  - (d) regarding any other matter as may be prescribed under this Act or referred to it by the Board.
- (10) Save as expressly provided by this Act, the Tribunal shall regulate its own procedure.
- (11) The Judicial Service Commission shall provide secretariat services to the Tribunal and shall assign or appoint such secretary and other support staff as may be necessary for the Tribunal to effectively perform its functions.

- (12) **The Cabinet Secretary shall prescribe, in regulations, the procedures for the operationalization of the Tribunal.**

### **89. Remuneration of members of the Tribunal**

The Chairperson and the members of the Tribunal shall be paid such remuneration and allowance as shall be determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

### **90. Appeals from decisions of the Tribunal**

A person aggrieved by a decision of the Tribunal may appeal to the High Court within fourteen days from the date of the decision of the Tribunal.

### **91. Conduct of business and affairs of the Tribunal**

- (1) The Chairperson shall ensure the orderly and expeditious discharge of the mandate of the Tribunal.
- (2) Without limiting the generality of subsection (1), the Chairperson shall—
  - (a) constitute a panel to hear any matter before the Tribunal;
  - (b) determine the place at which a panel may sit; and
  - (c) determine the procedure for the conduct of the business of the Tribunal.
- (3) A panel constituted for any proceedings shall have at least three members, one of whom shall be an advocate of the High Court.
- (4) At a hearing of a matter before the panel—
  - (a) if the chairperson is a member of the panel as constituted, the Chairperson shall preside; or
  - (b) in any other case, the Chairperson shall designate one of the members of the panel who being an advocate of the High Court to preside over the proceedings.
- (5) Where a member of the panel ceases to be such a member, or is not available for the proceedings, the Chairperson of the Tribunal shall assign another member to the panel and the proceedings shall continue.

## **Part XII – OFFENCES AND PENALTIES**

### **92. Offences relating to gambling premise**

A person, owner or occupier of a licensed gambling premises or electronic site who—

- (a) allows such premise to be used for unlicensed gambling activities;
- (b) aids in the carrying out of unlicensed management of electronic gambling site or unlicensed betting activities;
- (c) announces, publishes, cause to be announced, cause to be published, either orally or by means of any print, writing, design, sign, or otherwise or solicit any person to bet in an unlicensed gambling activity or site;
- (d) advances, furnishes, or receives money for the purpose of establishing or conducting unlicensed gambling activity; or
- (e) opens, keeps, uses, causes or permits the use of a premise for carrying on an unauthorized lottery,

commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**93. False declaration**

A person who makes a false statement or declaration in an application for issuance or renewal of a licence or permit, commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**94. Transfer of a licence without the approval of the Authority**

A person who transfers a licence without the approval of the Authority or a county government commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**95. Failure to keep proper books of accounts**

A licensee who fails to keep any book, record or account required to be kept under this Act, or keeps false records or information, or who makes or causes to be made any book entry which is false, commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**96. Failure to submit accounts**

A licensee who refuses or fails to submit a statement of accounts when required by the Authority, the respective county government or the Collector or submits a false or misleading statement of accounts commits an offence and shall, upon conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**97. Failure to pay levy or a prescribed fee**

A person who fails to pay a levy or any fees prescribed under this Act shall be liable to pay to the Authority and County Government all outstanding amounts of levies or fees together with interest that will accrue at the rate prescribed by the Cabinet Secretary in Regulations.

**98. Operating without a licence or permit prohibited**

A person who operates or conducts any form of gambling without a valid licence commits an offence and shall be liable upon conviction—

- (a) for a first offence, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years or to both; and
- (b) for a second or subsequent offence to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

**99. Advertisements of unauthorized lotteries**

A person who prints, publishes, or causes to be printed or published an advertisement or any notice relating to an unauthorized lottery, or relating to the sale of a ticket or chance in any such lottery commits an offence, and shall be liable upon conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding one year or to both.

**100. Sale or distribution of unauthorized tickets**

A person who promotes or proposes an unauthorized lottery be promoted either in Kenya or elsewhere or —

- (a) prints a ticket to be used in an unauthorized lottery;

- (b) sells or distributes, or offers or advertises for sale or distribution, or has in his or her possession for the purpose of sale or distribution, tickets or chances in a lottery;
- (c) distributes, or has in his or her possession for the purpose of distribution—
  - (i) an advertisement of an unauthorized lottery;
  - (ii) a list of prize winners or winning tickets in an unauthorized lottery; or
  - (iii) any matter descriptive of the drawing or intended drawing of a lottery relating to an unauthorized lottery, which is intended to act as an inducement to persons to participate in the lottery or in other lottery;
- (d) brings, or invites any person to send, into Kenya for the purpose of sale or distribution of a ticket or advertisement of unauthorized lottery; or
- (e) sends or attempts to send out of Kenya any valuable thing received in respect of the sale or distribution, or a document recording the sale or distribution, or the identity of the holder, of a ticket or chance in the lottery,

commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### **101. Prohibition against unlicensed bookmaking**

- (1) A person who acts, facilitates or carries on business contrary to the terms of a licence issued under this Act commits an offence and shall be liable upon conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both:

Provided that this section shall not apply to an employee of a licensee acting in the course of employment, at a licensed betting premise, or at an authorized race meeting.

- (2) The provisions of subsection (1) shall not apply to an employee of a person licensed to operate a totalisator who is engaged in lawful operation in a manner approved by the Authority.

### **102. Prohibition of late bets**

A person who in connection with a totalisator in respect of which a licence has been issued under this Act —

- (a) receives or permits to be received a betting transaction on a totalisator in respect of a horse race or any other race after the start of the race;
- (b) registers on that totalisator after the start of a horse race or other race any moneys received in respect of that race; or
- (c) takes into account in the calculation or payment of a betting transaction which has not been registered on that totalisator,

commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### **103. Promotion of unauthorized pool betting**

- (1) A person shall not—
  - (a) promote a pool betting scheme within Kenya in contravention of the terms of a licence issued under this Act; or
  - (b) promote, receive or negotiate bets on behalf of a promoter of an unauthorized pool betting scheme.

(2) A person who contravenes the provisions of subsection (1)

commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

#### **104. Offences relating to pool betting schemes**

A person who in connection with an unauthorized pool betting scheme—

- (a) prints a coupon to use in such a scheme;
- (b) sells, distributes, offers or advertises for sale or distribution;
- (c) has in his or her possession for the purpose of sale or distribution a coupon relating to such a scheme;
- (d) distributes or has in his or her possession for the purpose of distribution—
  - (i) an advertisement of the scheme;
  - (ii) a list of prize winners or winning coupons in the scheme; or
  - (iii) any such matter descriptive of the determination or intended determination of a prize of a winner relating to the scheme with the intention of inducing a person to participate in the scheme;
- (e) brings, or invites any person to send into Kenya for the purpose of sale or distribution a coupon relating to an advertisement of the scheme;
- (f) sends or attempts to send out of Kenya any money or valuable thing received in respect of the sale or distribution, or any document recording the sale distribution, or the identity of the holder of a coupon in the scheme;
- (g) prints, publishes, or causes to be printed or published, an advertisement or any notice or to the issue of a coupon or a dividend relating to the scheme; or
- (h) takes or sends out of Kenya money in connection with any pool betting scheme authorized under the Act,

commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

#### **105. Unauthorized bookmaking**

A person who permits a bookmaker to carry on business at a race meeting outside the scope of the conditions of permit issued commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

#### **106. Unauthorized racing**

A person who holds a race meeting or owns or operates a racecourse without a valid licence commits an offence and shall upon conviction be liable to a fine not exceeding four million shillings or to imprisonment for a term not exceeding four years, or to both.

#### **107. Prohibition against touting**

A person who touts or solicits the members of the public with a bookmaker outside a licensed betting premises or at an authorized race meeting, commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**108. Prohibition against playing games of chance in unlicensed betting premises**

A person who permits in an unlicensed betting premise the playing of a game of chance commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**109. Prohibition against betting with a child**

A person who—

- (a) bets with a child;
- (b) employs a child in a licensed betting premises or in connection with a pool betting scheme or in the effecting of any betting;
- (c) receives or negotiates a bet through a child; or
- (d) sends to a child any information, notice, advertisement, letter, or other document relating to betting,

commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

**110. Obtaining money by cheating in lawful gambling or by wagering on any event**

A person who while playing with an instrument of gambling or in taking part in the stakes or wagers or in betting on the sides, or hands of those that are playing or in wagering on the event of a gamble, sport, pastime or exercise through unlawful means wins from another person or on behalf of another person, a sum of money or valuable thing commits, an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both.

**111. Consideration by a court**

In exercising discretion on the amount of penalty to be charged or imprisonment term to be imposed on an offender, the court shall consider the following factors

- (a) the gambling activity in issue;
- (b) the investment amount incurred in the gambling activity in issue;
- (c) the duration of the offence; and
- (d) any other aggravating factors.

**Part XIII – MISCELLANEOUS PROVISIONS****112. Appointment of inspectors**

- (1) The Authority and the county government shall appoint duly qualified officers to be inspectors of the Authority and county government respectively for such areas or units as shall be specified.
- (2) An inspector appointed under subsection (1) shall—
  - (a) monitor compliance with the provisions of this Act;
  - (b) monitor the operations of all licensed gambling operations;
  - (c) examine equipment and devices used in gambling and scrutinize records maintained in respect of the gambling activities;
  - (d) monitor the handling and counting of money on casino premises;

- (e) receive and investigate complaints from gambling patrons, licensees or members of the public in relation to gambling;
- (f) assist in any manner where necessary in the detection of offences committed under this Act on all gambling premises;
- (g) report to the Board on the conduct of gambling operations; and
- (h) perform such other functions as may be required under this Act.

### 113. Power to enter and inspect land and premises

- (1) A gambling inspector on production of an authority document, may in the performance of duties under this Act, at all reasonable times enter without warrant and inspect a gambling premise or any other gambling event in which he or she has reason believe that an offence under this Act or under any regulations made thereunder, has been committed to—
  - (a) examine and take copies of books, accounts and documents relating or appearing to relate to any betting transaction, lottery or gambling;
  - (b) seize, remove or detain a book, account or document or any equipment which he or she has reasonable cause to believe shall afford evidence of an offence under this Act or any regulations made thereunder; or
  - (c) require the owner or occupier of the premises to render such explanation or give such information relating to any betting transaction, lottery or gambling as may be reasonably required by him or her in the performance of his or her duties.
- (2) A person who resists hinders or obstructs a person acting in pursuance of any of the provisions of this section or who on a requisition under subsection (1), withholds information or gives information knowing or having reason to believe that the information is false or misleading commits, an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### 114. Offences by body corporate

Where an offence under this Act is committed by a body corporate, every person charged with or concerned or acting in, the control or management of the affairs, or activities of such body corporate, commits that offence and shall be liable to be punished accordingly unless it is proved by such person that the offence was not committed through no act or omission, on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

### 115. Self-exclusion

- (1) A person who has recognized that their gambling is harmful to himself or herself, or giving rise to difficulties in limiting the money or time or both, spent on gambling, leading to adverse consequences for that person, others, or for the community, may voluntarily enter a self-exclusion agreement between himself or herself and a licensee to be excluded from all gambling establishments and all controlled games, including online gambling or any other gambling activities or privileges.
- (2) A person who enters an agreement under subsection (1) shall notify the Authority of the agreement.
- (3) The Authority shall maintain a register of all notifications made under subsection (2) and shall notify all licensees of the self-exclusion agreement.

- (4) The holder of a licence issued under this Act shall—
- (a) establish mechanisms to give effect to self-exclusion and take all reasonable steps to refuse service to a person who enters a self-exclusion agreement from participating in gambling;
  - (b) as soon as practicable, take all reasonable steps to prevent any marketing material from being availed to a self-excluded customer;
  - (c) take steps to remove the name, contact information and other details of a self-excluded person from any marketing databases used by the licensee within two days of receiving the completed self-exclusion notification;
  - (d) close any customer accounts of an individual who has entered a self-exclusion agreement and return any funds held in the customer account; and
  - (e) put into effect procedures designed to ensure that an individual who has self-excluded shall not gain access to the licensee's gambling services.
- (5) An operator who fails to implement a self-exclusion request within seven days of receipt of a written notification commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.
- (6) Despite the provisions of this section, the Cabinet Secretary shall prescribe regulations providing for the manner in which an affected person may petition the Authority for the application of the self-exclusion provisions on a vulnerable gambler.

#### **116. Forfeiture of licence or security**

- (1) Where a person issued with a licence under this Act is convicted of an offence under this Act, the court may order forfeiture or cancellation of licence or a forfeiture of the insurance security bond or bank guarantee provided by the licensee, where applicable.
- (2) A person whose licence is cancelled in pursuance of an order under subsection (1) shall, be disqualified from holding or obtaining a licence or a further licence for a period of five years beginning on the date of the conviction which gave rise to the order:
- Provided that the court may include in the order a direction that the period of disqualification shall be shorter than five years as the court may specify where it appears to the court to be just in all the circumstances.
- (3) A bookmaker, promoter of a pool betting scheme, organizer or manager of licensed gambling premises, or a servant or agent, who employs in his or her business any person known to him or her to be disqualified under subsection (2) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

#### **117. Power to seize machines**

The police shall, in coordination with the Authority and county governments have power to seize any illegal gambling, betting and lottery machines.

#### **118. Prosecution of offences**

The Director of Public Prosecutions may appoint a duly qualified officer of the Authority, to be a public prosecutor for the purposes of any case.

#### **119. Power to make Regulation**

- (1) The Cabinet Secretary shall, in consultation with the Board, make regulations generally for the better carrying into effect of any provisions under this Act.

- (2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for—
- (a) the procedure to be followed by the Authority in exercising any powers conferred upon it by this Act;
  - (b) the procedure to be followed in the making of an application for the issuance, renewal and variation of a licence or permit issued under this Act;
  - (c) the conduct of casinos, gambling machines and online gambling;
  - (d) the conduct of a national lottery;
  - (e) standardization of gambling machines;
  - (f) the location and distribution of lotteries and gambling;
  - (g) national lottery rules;
  - (h) fees and levies charged under this Act;
  - (i) the form and manner in which returns or statements of accounts shall be furnished to the Authority;
  - (j) proximity of gambling premises and advertisements to learning institutions;
  - (k) protection of winners; and
  - (l) guidelines for gambler exclusion mechanisms including self-exclusion, venue-initiated request for exclusion, court ordered exclusions and request by families or initiated parties.
- (3) For purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
  - (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
  - (c) the principles and standards applicable to the rules made under this section are those set out in the Statutory Instruments Act (Cap. 2A).

## 120. Repeal of **Cap. 131**.

The Betting, Lotteries and Gaming Act is repealed

## 121. Transitional provisions

- (1) For the purposes of this section “former Board” means the Betting Control and Licensing Board existing immediately before the commencement of this Act.
- (2) Upon the commencement of this Act, all rights duties, obligations, assets and liabilities attaching to the former Board shall be automatically and fully transferred to the Authority established under section 6, and any reference to the former Board in any contract or document shall, for all purposes, be deemed to be a reference to the Board established under section 6 of this Act.
- (3) A person who immediately before the commencement of this Act was a member of the former Board shall, upon the commencement of this Act, be deemed to be a member of the Board for the unexpired period of their term.
- (4) A person who was, immediately before the commencement of this Act, an employee of the former Board shall, upon the commencement of this Act, be deemed to be an employee of the Authority, subject to subsection (5).

- (5) Despite subsection (4), all the employees of the former Board shall upon the commencement of this Act be given an option to elect to serve in the Board or be redeployed in the public service within a period of one year.
- (6) Without prejudice to section 120—
  - (a) the provisions of sections 29A, 44A, 55A and 59B of the repealed Act relating to betting tax, gaming tax, lottery tax and prize competition tax shall continue to be in force until new provisions are enacted; and
  - (b) the provisions of section 29B and 29C of the repealed Act relating to—
    - (i) powers of the Board for anti-money laundering and countering the financing of terrorism purposes; and
    - (ii) penalties for violations relating to money laundering and terrorism financing,shall continue in force until new provisions are enacted.

## 122. Transition of licences and permits

- (1) All gambling activities including casinos and online gambling whose licences were issued under the repealed Act shall remain valid for the period of the licence.
- (2) A person licensed under the repealed Act shall, upon expiry of the licence issued under the repealed Act, apply to the Authority for a new licence.

## 123. Consequential amendment

- (1) The *Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A)* is amended in the First Schedule by deleting paragraph (c) and substituting therefor the following new paragraph—
  - (c) Gambling Regulatory Authority;
- (2) The Kenya Revenue Authority Act (*Cap. 469*) is amended in Part II of the First Schedule by deleting paragraph 7 and substituting therefor the following new paragraph .

## FIRST SCHEDULE (s.13)

### CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

#### 1. Meetings

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Unless three quarters of the members otherwise agree, at least fourteen days' notice in writing of a meeting shall be given to every member.
- (3) A meeting shall be presided over by the chairperson or in the absence of the Chairperson, the members present shall appoint one of their members to preside at the meeting.
- (4) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in any case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- (5) The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board.
- (6) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

## 2. Quorum

- (1) Subject to subparagraph (2), the quorum of the meeting shall be two thirds of the members.
- (2) A decision of the Board shall not be invalid by reason only of a vacancy among the members thereof.

## 3. Conflict of interest

- (1) If a person has a personal or fiduciary interest in any matter before the Board and is present at a meeting of the Board or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching on such matter.
- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

## 4. Rules of procedure

Subject to the provisions of this Schedule, the Board shall determine rules of procedure for the conduct of its business.

## 5. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

# SECOND SCHEDULE (s.30(1)(e))

## DECLARATIONS

- (a) A certificate of incorporation of the business;
- (b) A business plan indicating the minimum investments and sources of the funds;
- (c) A valid premium rated service provider where applicable;
- (d) A valid contract with an odds feed provider where applicable;
- (e) Income tax declarations for the preceding two years (if applicable);
- (f) Tax compliance certificate;
- (g) Financial reports for the preceding two years (if any);
- (h) Licensee's gambling account;
- (i) List of directors of the company;
- (j) A disclosure of its beneficial ownership information in accordance with the [Companies Act \(Cap. 486\)](#);
- (k) Memorandum of association or partnership deed or a business registration certificate where applicable; and
- (l) Relevant documents showing technical specifications of hardware and software to be used to conduct the gambling.

**THIRD SCHEDULE (s. 40(1))****GAMBLING SECURITY**

<b>Type of Gambling</b>	<b>Amount (Shillings)</b>
(a) Casinos including public Gambling for conducting tables and slots machines	20,000,000
(b) Online Gambling	100,000,000
(c) National Lottery	100,000,000
(d) Totalisator	5,000,000
(e) Prize competition	5,000,000
(f) Non-online Gambling including non-online bookmakers, non-online casinos, non-online lotteries	20,000,000
(g) Amusement with prizes	200,000
(h) A premise or a shop operating under a licence of online Gambling including online bookmaker, online casino and online lottery	500,000



This is the Exhibit Marked ".....EK-3....."  
 Referred to in the Annexed Affidavit Declaration  
 of.....**Emily Kinama**.....  
 Sworn / declared before me  
 this.....**22**.....day of.....**Jan**.....20.....**26**.....  
 at.....**Nairobi**.....  
 .....  
 Commissioner For Oaths

**Okoiti v Judicial Service Commission & 2 others; Katiba Institute  
 (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)  
 (Constitutional and Human Rights) (11 March 2021) (Judgment)**

*Okiya Omtatah Okoiti v Judicial Service Commission &  
 2 others; Katiba Institute (Interested Party) [2021] eKLR*

Neutral citation: [2021] KEHC 461 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 CONSTITUTIONAL AND HUMAN RIGHTS  
 PETITION 197 OF 2018  
 AC MRIMA, J  
 MARCH 11, 2021**

**BETWEEN**

**OKIYA OMTATAH OKOITI ..... PETITIONER**

**AND**

**THE JUDICIAL SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE PARLIAMENT OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KATIBA INSTITUTE ..... INTERESTED PARTY**

**Local tribunals established under article 169(1)(d) of the Constitution are to be managed under the Judiciary and not the Executive.**

Reported by Beryl Ikamari

***Constitutional Law** - constitutional petitions - institution of constitutional petitions - justiciability - claim that local tribunals established under article 169(1)(d) of the Constitution should all be within the competence of the Judicial Service Commission and that it was necessary to pass legislation for the tribunals to be handled as subordinate courts within the Judiciary - whether a constitutional petition that sought reliefs requiring Parliament to pass legislation was justiciable.*

***Constitutional Law** - interpretation of the Constitution - interpretation of the term 'local tribunal' as used in article 169(1)(d) of the Constitution - what were the qualities of local tribunals referred to under article 169(1)(d) of the Constitution - Constitution of Kenya article 169(1) and 172(1)(c).*



**Constitutional Law** - separation of powers - separation of powers between the Executive and the Judiciary - exercise of judicial authority by local tribunals established under the Constitution - whether the appointment and removal of members of such tribunals by the Executive violated the principle of separation of powers - whether local tribunals established under article 169(1)(d) of the Constitution should be transitioned from the Executive to the Judiciary - Constitution of Kenya article 169(1) and 172(1)(c).

### **Brief facts**

The petitioner sought various reliefs from the court with respect to the Constitution, composition and operations of tribunals established pursuant to article 169(1)(d) of the Constitution of Kenya, 2010 (Constitution). He explained that the tribunals should fall within the competence of the Judicial Service Commission and that the fact that some were under the Executive was a violation of the doctrine of separation of powers. The petitioner added that the members of the tribunals were appointed under varied terms of service with the tribunals having different rules of procedure. The petitioner felt aggrieved by the fact that some of the statutes establishing the tribunals did not provide for the rights to appeal to superior courts.

In response, the Judicial Service Commission (JSC) explained that it did not have a role to play in tribunals established under articles 144(3), 150(2), 158(4), 168(5)(a) or (b) and 251(4) of the Constitution. It, however, stated that it had a role to play in the case of local tribunals established under article 169(1)(d) of the Constitution and that such tribunals were part of the Judiciary. The JSC added that there was no transitional legislation on local tribunals but it had managed to transition 20 local tribunals from the Executive to the Judiciary.

The 2<sup>nd</sup> respondent, the Attorney General, agreed that it was necessary to transition tribunals established under article 169(1)(d) of the Constitution to the Judiciary from various Ministries and Government Departments. The Attorney General stated that although the Tribunals Bill, 2017, which would have provided the legislative mechanism for the transition had been formulated, it was yet to be approved by the Cabinet. The 2<sup>nd</sup> respondent posited that a declaration of unconstitutionality of the various statutes constituting the tribunals in question, as sought by the petitioner, would deny persons serving in the tribunal a right to fair administrative action and fair hearing. He added that the 6 months transition, as sought by the petitioner, was too short as the financial cycle was midway through its implementation.

The 3<sup>rd</sup> respondent stated that it was not a mandatory requirement for Parliament to enact a law to govern tribunals in Kenya and that article 261 of the Constitution on the dissolution of Parliament for failure to enact laws was inapplicable to the circumstances. The 3<sup>rd</sup> respondent also stated that if the petitioner desired the enactment of such a law, he should petition Parliament.

### **Issues**

- i. Whether a petition seeking reliefs that required Parliament to pass legislation to transition local tribunals, established under article 169(1)(d) of the Constitution, from the Executive to the Judiciary was justiciable.
- ii. What was the nature of local tribunals referred to under article 169(1)(d) of the Constitution?
- iii. Whether the appointment and removal of members of the local tribunals under article 169(1)(d) of the Constitution by the Executive violated the principle of separation of powers and violated the right to a fair hearing under article 50 of the Constitution.
- iv. Whether the local tribunals established under article 169(1)(d) of the Constitution should be transitioned to the Judiciary from the Executive.

### **Held**

1. The dispute in question was within the mandate of the 3<sup>rd</sup> respondent (Parliament) and it could be handled by the 3<sup>rd</sup> respondent in liaison with the 2<sup>nd</sup> respondent (the Attorney General.) The petitioner wanted to compel the 2<sup>nd</sup> and 3<sup>rd</sup> respondent to take the necessary legislative action. An invitation made to a court to exercise powers with respect to constitutional roles reserved to other organs of Government was barred by the principle of separation of powers and the principle of non-justiciability.



- Nonetheless, there were constitutionally permissible situations in which the court could interfere. For example, in situations where fundamental rights and freedoms or other constitutional provisions were violated.
2. Pursuant to article 261(1) of the Constitution and the Fifth Schedule to the Constitution, any legislation whose timeline was not specified under the Constitution was to be passed within five years of the promulgation of the Constitution. Therefore, the laws which were contemplated to be passed under article 169 of the Constitution had to be so passed by August 2015. From the position taken by Parliament, it was clear that it was not keen on passing the necessary legislation. It was obvious that nothing could be forthcoming if the matter was left in the sole hands of Parliament. The petitioner could not, hence, be accorded the appropriate forum to adjudicate the dispute if the matter was left to Parliament.
  3. The petitioner alleged a contravention of the constitutional provisions of article 169(2) of the Constitution by the 3<sup>rd</sup> respondent and the petitioner, therefore raised serious constitutional issues. The petition was not framed in the Bill of Rights language as a pretext to gain entry into court.
  4. The petition was ripe for court determination and as such an exception to the principle of non-justiciability and the doctrine of exhaustion was applicable.
  5. Article 169 of the Constitution provided a list of subordinate courts and it included local tribunals established by statute, other than the courts established as required under article 162(2) of the Constitution.
  6. To understand the context in which the term 'local tribunals' was used in article 169(1)(d) of the Constitution it was necessary to consider the *ejus dem generis rule* of interpretation. That rule assisted the court in reconciling any incompatibility between specific and general words. The rule accomplished the purpose of giving effect to both specific and general words by treating the particular words as indicating the class and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.
  7. Article 169(1) of the Constitution enumerated a class of entities before mentioning the local tribunals. They were Magistrates Courts, the Kadhis' Courts, the Court Martial and any other court. Of much importance was that the title in article 169(1) described subordinate courts to include the local tribunals. Subordinate court were courts subordinate to the superior courts and they dealt with the formal settlement of disputes between parties. Therefore, the local tribunals referred to in the enumeration in article 169(1)(d) of the Constitution were courts of law and they possessed the following qualities; -
    - a. They were courts of law;
    - b. They were subordinate to the superior courts;
    - c. They were not advisory in nature;
    - d. They were not administrative tribunals;
    - e. They were not presided over by or they did not include a judge of the superior courts in their membership; and,
    - f. They were formed under an Act of Parliament.
  8. The local tribunals under article 169(1)(d) of the Constitution excluded the following class of tribunals:
    - a. the tribunals formed under the Constitution;
    - b. all administrative and advisory tribunals;
    - c. All tribunals whose membership included a judge of the superior courts; and
    - d. all other informal tribunals not formed under the Constitution or any Act of Parliament.
  9. Most of the disputes handled by the local tribunals involved the Executive. As such, the Executive had an obvious advantage as it was responsible for the appointment and removal of the members. In such



- circumstances, the Executive ought not to be the appointing authority. Instead, that duty ought to be undertaken by an independent entity.
10. Local tribunals were subordinate courts and their affairs, just like the other subordinate courts, ought to be managed by the Judiciary through JSC. In doing so, the constitutional dictates would be achieved. It would create transparency in the appointment and removal of members of the tribunals which would be done in accordance with the law and the Constitution.
  11. The appointment and removal of members of the local tribunals falling under article 169(1)(d) of the Constitution by the Executive contravened the principle of separation of powers and was contrary to article 50(1) of the Constitution. That state of affairs also infringed on the independence of the Judiciary.
  12. The local tribunals, which were subordinate courts, under the administration of the Executive ought to be transitioned to the Judiciary. The rationale for that was provided under article 160(1) of the Constitution which provided that the Judiciary would not be subject to the control or direction of any person in the exercise of judicial authority.
  13. The Chief Justice was the head of the Judiciary pursuant to article 161(2)(a) of the Constitution. Article 171 of the Constitution established the JSC. One of the functions of JSC was to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice. JSC, therefore, was supposed to support the Judiciary in discharging its constitutional mandate. In doing so, JSC had to remain true to the Constitution.
  14. Members of local tribunals, and in line with the *ejus dem generis rule*, fell within the category of 'other judicial officers' under article 172(1)(c) of the Constitution. Such officers had to be appointed by the JSC. For such appointments to be made by the JSC it was necessary to transition the tribunals to the Judiciary. Under article 169(2) of the Constitution, there was need for a statute to assist in the transition.
  15. The 2<sup>nd</sup> respondent through the Kenya Law Reform Commission (KLRC) undertook steps towards achieving the transition. The KLRC established the Committee on Review of the Rationale for the Establishment of Tribunals in Kenya whose efforts resulted in the formulation of the Tribunals Bill, 2017 which was pending Cabinet approval. Through the JSC, the Judiciary constituted the Judiciary Working Committee on the transition and restructuring of the Tribunals Working Committee. The Committee eventually came up with a Draft Tribunals Bill, 2015. The JSC managed to transition 20 local tribunals from the Judiciary to the Executive. Further, the 3<sup>rd</sup> respondent engaged the JSC in discussions about the Tribunals Bill 2017.
  16. The petitioner's prayer for a declaration of unconstitutionality of any law that did not vest the duty to appoint or remove any members of the local tribunals created under article 169(1)(d) of the Constitution in JSC, was not specific. There were many statutes constituting the tribunals. An order that lacked specificity could have effects that were too detrimental. For instance, those statutes made provision for matters other than the tribunals and annulling them would result in immense disruptions and confusion.
  17. The petitioner's prayer for the court to annul all appointments to the tribunals under article 169(1)(d) of the Constitution which was not made by JSC could not be granted as the members it targeted were not parties to the petition. The grant of such an order would therefore, contravene articles 47 and 50(1) of the Constitution.

*Petition partly allowed with no orders as to costs.*

### **Orders**

- i. *The amended petition was justiciable and the court had the jurisdiction to deal with the issues therein.*
- ii. *The local tribunals created under article 169(1)(d) of the Constitution were subordinate courts in Kenya.*



- iii. *The appointment and removal of members of the local tribunals created under article 169(1)(d) of the Constitution by the Executive violated the principle of separation of powers, contravened the right to fair hearing under article 50 of the Constitution and infringed on the independence of the Judiciary.*
- iv. *The local tribunals under article 169(1)(d) of the Constitution had to be transited to the Judiciary and the appointment and removal of their members be undertaken by the Judicial Service Commission.*
- v. *A declaration that any new appointment or removal of a member of any of the tribunals under article 169(1)(d) of the Constitution had to be undertaken by the Judicial Service Commission.*
- vi. *The Attorney General and Parliament, being the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein, were directed to take proactive steps within their respective dockets towards propagating the Tribunals Bill with a view of transiting the local tribunals under article 169(1)(d) of to the Judiciary. To that end, the Attorney General and Parliament were to file affidavits within 6 months of the judgment detailing the steps taken.*
- vii. *Upon filing of the affidavits in (vi) above, the Deputy Registrar of the court was to schedule the matter for mention on the basis of priority.*

## Citations

### Cases

#### Kenya

1. *Commission for the Implementation of the Constitution v National Assembly of Kenya & 2 others* Petition 496 of 2013; [2013] KEHC 6919 (KLR) — Mentioned
2. *Communication Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* Petition 14, 14A, 14B & 14C of 2014 (Consolidated); [2014] KESC 53 (KLR) — Explained
3. *Institute of Social Accountability & another v National Assembly & 3 others; Commission for the Implementation of the Constitution (Interested Party)* Petition 71 of 2013; [2015] KEHC 6975 (KLR) — Followed
4. *Judicial Service Commission v Mutava & another* Civil Appeal 52 of 2014; [2015] KECA 741 (KLR) — Explained
5. *Kenya Ports Authority v Ramogi & 8 others* Civil Appeal 166 of 2018; [2019] KECA 305 (KLR) — Mentioned
6. *Lemeiguran & Others v General & Others* Miscellaneous Civil Application 305 of 2004; [2006] KEHC 713 (KLR) — Explained
7. *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* Petition 3 of 2018; [2021] KESC 34 (KLR) — Explained
8. *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* Petition 15 & 16 of 2015 (Consolidated); [2017] KESC 2 (KLR) — Explained
9. *Ngugi & 19 others v Attorney General & 2 others* Petition 254 of 2019; [2020] KEHC 8819 (KLR) — Explained
10. *Swaka v Director of Public Prosecutions & 2 others* Constitutional Petition 318 of 2011; [2013] KEHC 5422 (KLR)— Followed

#### South Africa

1. *Affordable Medicines Trust & others v Minister of Health & others* [2005] ZACC 3; 2006 (3) SA 247 (CC) - (Explained)
2. *Minister of Health & others v Treatment Action Campaign (TAC) & others* (2002) 5 SA 721; (2002) 5 LRC 216 - (Explained)

### Texts

1. Burke, J., Allsop, P., (Eds) (1953), *Stroud's Judicial Dictionary* London: Sweet & Maxwell 3rd Edn
2. Garner, BA., (Ed) (2009), *Black's Law Dictionary* St Paul Minnesota: West Group 9th Edn p 594
3. Garner, BA., (Ed) (2014), *Black's Law Dictionary* St Paul Minnesota: Thomson Reuters 10th Edn para 1737



4. Sutherland, JG., (Ed) (2018), *Statutes and Statutory Construction* London: Forgotten Books 3rd Edn para 4910

## **Statutes**

### ***Kenya***

1. Capital Markets Authority Act (cap 485A) In general - (Cited)
2. Constitution of Kenya articles 1(1)(3)(c); 3; 10(2); 20(4)(5); 23(3)(b); 24(3); 26(1); 27; 47; 50(1); 73(2)(a); 97(1)(c); 119; 144(3); 150(2); 158(4); 159(1)(2); 162(2); 165; 168(5)(a)(b); 169(1)(2)(a)(b)(c)(d); 171; 172(2)(a)(b); 232(1)(g); 251(4); 261(1); Schedule 5- (Interpreted)
3. Gold Mines Development Loans Act (cap 311) In general - (Cited)
4. Insurance Act (cap 487) In general - (Cited)
5. Interpretation and General Provisions Act (cap 2) section 23(3)(b) - (Interpreted)
6. Land Control Act (cap 302) In general - (Cited)
7. Land Disputes Tribunals Act (repealed) (cap 303A) In general - (Cited)
8. Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (cap 301) In general - (Cited)
9. Magistrates' Court Act (cap 10) In general - (Cited)
10. Non-Governmental Organizations Co-ordination Act (cap 134) In general - (Cited)
11. Petition to Parliament (Procedure) Act (cap 7E) In general - (Cited)
12. Prisons Act (cap 90) In general - (Cited)
13. Restrictive Trade Practices, Monopolies and Price Controls Act In general - (Cited)
14. Seeds and Plant Varieties Act (cap 326) In general - (Cited)
15. State Corporations Act (cap 446) In general - (Cited)
16. Sugar Act, 2001 (Act No 10 of 2001) In general - (Cited)
17. Tourist Industry Licensing Act (cap 381) In general - (Cited)
18. Transport Licensing Act (Repealed) (cap 404) In general - (Cited)
19. Value Added Tax Act (cap 476) In general - (Cited)
20. Water Act (cap 372) In general - (Cited)
21. Wildlife Conservation and Management Act (cap 376) In general - (Cited)

### ***South Africa***

Co-operatives Act, 2005 (Act No 14 of 2005) In general - (Cited)

## **Advocates**

*Miss Lipo* for the 1<sup>st</sup> respondent

*Mr Moimbo* for the 2<sup>nd</sup> respondent

*Mr Mbarak* for the 3<sup>rd</sup> respondent

*Mr Dudley Ochiel* for the interested party

## **JUDGMENT**

### **Introduction:**

1. The gist of the amended petition subject of this judgment is the Constitution, composition and operation of the local tribunals in Kenya.
2. The petitioner, Okiya Omtatah Okoiti, posits that all tribunals in Kenya must be constituted and regulated by the Judicial Service Commission, the 1<sup>st</sup> respondent herein (hereinafter referred to as 'the 1<sup>st</sup> respondent or JSC').



## The Petition:

3. It is the petitioner's case that Tribunals in Kenya suffer lack of unanimity in many aspects. Although the Tribunals fall under article 169(1)(d) of the [Constitution](#), many of them are under the direct control and regulation of the Executive. To him, that infringes on the principle of separation of powers as, in most cases, the Executive is a party to the disputes before such Tribunals. The petitioner contends that the Tribunals as constituted have varied terms of service and different rules of procedure. That, whereas some adopt formal procedure akin to that of courts, others are informal thus impacting negatively on access to justice and equal justice to all.
4. The petitioner is further aggrieved that some of the Tribunals do not provide for, and as such, violate a litigant's right of appeal to superior courts. In addition, the petitioner contends that the respondents have, without any reasonable cause, failed and/or refused to transition the Tribunals from the Executive arm to the Judiciary in accordance to the Constitution.
5. In the main, the amended petition prays for the following: -
  - (i) A declaration that:
    - a) Tribunals established pursuant to article 169(1)(d) of the [Constitution of Kenya, 2010](#) are not part of the Executive machinery, nor are they independent adjudicatory bodies, but are subordinate courts which are an integral part of the Judiciary.
    - b) The Judicial Service Commission is exclusively responsible for appointing and removing member of the tribunals established pursuant to article 169(1)(d) of the [Constitution of Kenya 2010](#), for establishing their rules of procedure and for doing anything incidental thereto to ensure their smooth operations as courts of law.
    - c) The doctrine of separation of powers under the Constitution of Kenya is an absolute bar to the Executive and its agencies, or any other entities who are not the Judicial Service Commission, being mandated by Parliament to appoint or remove any members of tribunals crated under article 169(1)(d) of the [Constitution of Kenya, 2010](#).
    - d) Any law which vests in the executive and its agencies, or in any other entities who are not the Judicial Service Commission, the mandate to appoint or remove any members of tribunals created under article 169(1)(d) of the [Constitution of Kenya 2010](#) is unconstitutional and, therefore, invalid, null and void *ab initio*.
    - e) The budget for tribunals should be a line budget in the Judiciary.
    - f) Parliament has failed to enact necessary legislation pursuant to article 169(2) to give effect to article 169(1)(d) within the time specified in the Fifty Schedule to the Constitution.
  - (ii) An Order
    - a. Annulling all appointments to tribunals created under article 169(1)(d) of the [Constitution](#) which were not made by the Judicial Service Commission through a competitive process.
      - a1. Compelling Parliament and the Attorney-General to enact legislation pursuant to article 169(2) to give effect to article 169(1)(d) of the [Constitution](#) within three months, and to report the progress to the Chief Justice.



- a2. That if Parliament fails to enact legislation pursuant to article 169(2) to give effect to article 169(1)(d) of the Constitution within three months, the Chief Justice shall advise the President to dissolve Parliament and the President shall dissolve Parliament.
  - b. Compelling the Judicial Service Commission to immediately but not later than three months re-constitute all tribunals created under article 169(1)(d) of the Constitution upon Parliament enacting legislation pursuant to article 169(2) to give effect to article 169(1)(d).
  - c. Suspending order (a) above for a period of six months to allow for a smooth transition.
  - d. Compelling the respondent to bear the costs of this suit.
- (iii) Any other relief the court may deem just to grant.
6. The petitioner tendered oral submissions in the matter.

### **The Responses:**

7. The amended petition is opposed and conceded to in equal measure.
8. The 1<sup>st</sup> respondent filed a replying affidavit sworn on August 30, 2028 by Anne Amadi, the Chief Registrar of the Judiciary and the Secretary to JSC.
9. JSC took the position that it has no role to play in respect of constitutional Tribunals created under articles 144(3), 150(2), 158(4), 168(5)(a) or (b) and article 251(4) of the Constitution. In the case of local tribunals as under article 169(1)(d) of the Constitution, JSC posits that the Tribunals are indeed subordinate courts within the Judiciary by virtue of articles 1(3)(c), 20(4) & (5) 24(3), 50(1), 159(1) & 2 164(3)(b), 165, 169(1)(d), 171 and 172 of the Constitution. These Tribunals are, hence, subject to control by JSC.
10. Despite lack of transitional legislation on the local tribunals, JSC enumerated the efforts it has so far taken to ensure that those tribunals are transitioned into the Judiciary. It also acknowledges that its efforts led to the transitioning of 20 local tribunals from the Executive to Judiciary and that it is now JSC which deals with the appointment and removal of the members of those tribunals. JSC vehemently denied that it has failed to put in place the necessary legislative measures to transit the Tribunals since the legislative mandate is vested with the Parliament.
11. The 1<sup>st</sup> respondent also filed written submissions and a List of Authorities both dated May 18, 2020. It, *inter alia*, prayed for an order in the nature of structural interdict.
12. The 2<sup>nd</sup> respondent, the Hon. Attorney General, partly opposed the petition. It relied on the affidavit of Joash Dache, the Commission Secretary of the Kenya Law Reform Commission and Chairperson of the Committee on Review of the Rationale for the Establishment of Tribunals in Kenya.
13. The 2<sup>nd</sup> respondent agrees with the petitioner that under article 169(1)(d) of the Constitution local tribunals are classified as subordinate courts. It also agrees that the local tribunals need to be transitioned to the Judiciary from the various Ministries and Government Departments. However, to attain this, the 2<sup>nd</sup> respondent contends that an Act of Parliament pursuant to article 162(2) of the Constitution is to be enacted.
14. The concerted efforts taken by the 2<sup>nd</sup> respondent in liaison with the 1<sup>st</sup> respondent to come up with the Tribunal Bill, 2017 were enumerated. The Bill is about to be taken to the cabinet for approval.



15. On the remedies sought by the petitioner, the 2<sup>nd</sup> respondent posits that the declaration of unconstitutionality of the various statutes constituting the Tribunals will deprive persons serving in those tribunals their right to fair administrative action and fair hearing.
16. The period of 6 months prayed for the transition, is deposed to be too short since financial/fiscal cycle is mid-way its implementation and that the financing of the transition of the tribunals must be budgeted for. The 2<sup>nd</sup> respondent called for the dismissal of the petition, but added that if the declaration of unconstitutionality is issued, then the court ought to consider structural interdicts instead and allow for a period of 2 years to fastrack the passage of the Tribunals Bill into law.
17. The 2<sup>nd</sup> respondent further relied on the decisions in *John Sakwa v Director of Public Prosecutions, Attorney General & 2 others* [2013] eKLR and *The Institute of Social Accountability & another v National Assembly & 4 others* [2015] eKLR in urging the court to suspend any declaratory orders of unconstitutionality and instead give the parties time to regularize the transitional regime.
18. The 3<sup>rd</sup> respondent opposed the amended petition. It filed Grounds of Opposition on February 13, 2019.
19. The 3<sup>rd</sup> respondent posits that there is no mandatory requirement for Parliament to enact any specific or general law governing tribunals in Kenya. As such, the amended petition does not disclose any violation of the Constitution and ought to be dismissed.
20. It denied that article 261 providing for the dissolution of Parliament for failure to enact laws apply to this case because all such laws required to govern the Judiciary under schedule five to the Constitution have so far been enacted including the *Magistrates Court Act, 2015* as required under article 169(1) a-c of the *Constitution*.
21. The 3<sup>rd</sup> petitioner contends that if the petitioner is of the view that there should be a general codifying law regulating tribunals, then the right avenue would be, to first petition Parliament under article 119 of the *Constitution* and the *Petitions to Parliament Act, 2012* for the enactment of the said law.
22. It is also submitted that there is no need of any court supervision as Parliament is in the process of dealing with the Tribunals Bill and that the petition is caught up by the doctrine of exhaustion and ripeness.
23. The 3<sup>rd</sup> respondent denies that JSC has the mandate to appoint all the members of all Tribunals as alleged. It submits that the petition ought to be dismissed. However, in the event the petition is sustained, then the court is called upon to consider issuance of structural interdicts.

#### **Issues for Determination:**

24. Having carefully considered the material presented before court by the parties including the submissions and the decisions referred to, I discern the following issues for determination: -
  - (i) Whether the Petition is Justiciable.
  - (ii) The nature of the local tribunals under article 169(1)(d) of the *Constitution*.
  - (iii) Whether the appointment and removal of members of the local tribunals under article 169(1) (d) of the *Constitution* by the Executive violate the principle of separation of powers and violates the right to fair hearing under article 50 of the *Constitution*:
  - (iv) Whether the local tribunals under article 169(1)(d) of the *Constitution* should be transited to the Judiciary:



- (v) Remedies.
25. I will deal with the issues in seriatim.

**(i) Whether the Petition is Justiciable:**

26. The issue of non-justiciability is raised by the 3<sup>rd</sup> respondent. It is hinged on the doctrines of ripeness and exhaustion.
27. A three judge bench in Nairobi Constitutional Petition No 254 of 2019, *Kiriro Wa Ngugi & 19 others v Attorney General & 2 others* [2020] eKLR comprehensively addressed the entire concept of non-justiciability. The concept entails the doctrines of Political Question Doctrine, the Constitutional-Avoidance Doctrine; and the Ripeness Doctrine.
28. Speaking to Ripeness doctrine, the learned judges stated as follows: -

107. The doctrine focuses on the time when a dispute is presented for adjudication. The *Black's Law Dictionary* 10th Edition, [*supra*] at page 1524 defines ripeness as:

The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made

108. Courts should therefore frown upon disputes that are hypothetical, premature or academic which have not fully matured into justiciable controversies.

109. The Court of Appeal in *National Assembly of Kenya & another v Institute for Social Accountability & 6 others* Nairobi Civil Appeal 92 of 2015 [2017] eKLR, faulted the constitutional court for adjudicating upon hypothetical matters. The court held:

[72] The broad questions which were raised in the consolidated petitions, namely, – division of functions, powers and authority; the equitable sharing of revenue of national government, whether the Amendment Bill concerned county government and the role of the Senate in the legislative process, are questions which relate to inter-governmental relations and which should have been raised by either government in the appropriate forum and in case of a dispute such a dispute should have been resolved by the designated institutions through the prescribed mechanism. This is one peculiar case where the Constitution stipulates that a dispute should be in essence be resolved by other institutions through a prescribed mechanism before the jurisdiction of the High Court can be invoked.

[74] Furthermore, questions such as division of functions, division of revenue, legislative process and budget process are essentially political questions which fall within the political question doctrine; and which the Constitution has assigned to other political institutions for resolution and created institutions and mechanisms for such resolution.

110. In *National Assembly of Kenya & another v The Institute for Social Accountability & 6 others* [*supra*] the Court of Appeal held:

[73] Since there was no actual live dispute between the national and county governments about CDF and if any, the mechanisms for resolving such disputes



was not employed, the questions which were brought to High Court for determination had not reached constitutional ripeness for adjudication by the court. In reality, TISA and CEDGG invented a hypothetical dispute which was brought to court in the guise of unconstitutionality of CDFA.

111. In *Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others* Nairobi Constitutional Petition No 453 of 2015 [2016] eKLR, Onguto J stated:

[27] Effectively, the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases..... The court is prevented from determining an issue when it is too early or is simply out of apprehension, hence the principle of ripeness. An issue before court must be ripe, through a factual matrix for determination.

29. On the doctrine of exhaustion, a 5-Judge Bench in Mombasa High Court Constitutional Petition No 159 of 2018 consolidated with Constitutional Petition No 201 of 2019 [2020] eKLR elaborately dealt with the doctrine. The court stated as follows: -

52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. This encourages alternative dispute resolution mechanisms in line with article 159 of the Constitution and was aptly elucidated by the High Court in *R v Independent Electoral and Boundaries Commission (IEBC) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the court opined thus:

42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words:

Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

43. While this case was decided before the Constitution of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine.

This is *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that:

It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion



doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The *ex parte* applicants argue that this accords with article 159 of the Constitution which commands courts to encourage alternative means of dispute resolution.

30. The court also dealt with the exceptions to the doctrine of exhaustion. It expressed itself as follows: -

59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R v Independent Electoral and Boundaries Commission (IEBC) & others ex parte The National Super Alliance Kenya (NASA) (supra)*, after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited* case (*supra*), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau & 9 others v Aelous (K) Ltd and 9 others.*)

60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

61. The second principle is that the jurisdiction of the courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.

62. In the instant case, the petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the court, it is not barred by the doctrine of



exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.

31. The foregoing was buttressed by the Court of Appeal in Mombasa Civil Appeal No 166 of 2018 tKenya Ports Authority v William Odhiambo Ramogi & 8 others[2019] eKLR.
32. There is no doubt that the dispute in the amended petition falls squarely within the mandate of the 3<sup>rd</sup> respondent which can be accomplished in liaison with the 2<sup>nd</sup> respondent.
33. It is also clear that the petitioner seeks to inter-alia to compel the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to take steps to enact the necessary legislation towards the transitioning of the Tribunals.
34. Whereas an invitation of this court to exercise its powers against the constitutional roles reserved for two organs of government is barred by the principle of non-justiciability and is also an affront to the doctrine of separation of powers, there are constitutionally permissible situations where this court may interfere. It does so if there is actual or threatened violation of the rights and fundamental freedoms guaranteed under the Constitution, or in instances where it is demonstrated that there are violations of other provisions of the Constitution whose enforcement are not mere ‘bootstraps’ or merely framed in Bill of Rights language as a pretext to gain entry to the court.
35. A careful reading of the parties’ pleadings, submissions and decisions referred to reveal that there is consensus that the local tribunals under article 169(1)(d) of the *Constitution* are surbordinate courts. Under sub-article 2, Parliament shall enact legislation conferring jurisdiction, functions and powers on the surbordinate Courts.
36. Pursuant to article 261(1) of and the fifth schedule to the *Constitution*, any legislation whose timeline was not specified under the Constitution was to be passed within five years of the promulgation of the Constitution. It is common knowledge that the Constitution of Kenya was promulgated in August 2010. Therefore, constitutionally speaking, the laws which were contemplated to be passed under article 169 of the *Constitution* had to be so passed by August 2015. It is now 6 years post the calibrated constitutional timeline.
37. One of the petitioner’s contention is that Parliament has not enacted the required legislation since the promulgation of the Constitution 11 years ago. Parliament on its part contends that there are no timelines set for such enactment. The Parliament’s contention is, hence, settled by the express provisions of article 261(1) of and the Fifth Schedule to *Constitution* which provides for a maximum period of five years within which any other legislation required to be passed under the Constitution must be so passed. From the position taken by Parliament, it is clear that Parliament is not keen on passing the necessary legislation. It is obvious that nothing may soon be forthcoming if this matter is left in the sole hands of Parliament. The petitioner cannot, hence, be accorded the appropriate forum to adjudicate the dispute if the matter is left to Parliament.
38. The petitioner is in essence alleging contravention of article 169(2) of the *Constitution*. The petition raises serious constitutional issues and their resolution is not mere bootstraps. Further, the petition is not merely framed in Bill of Rights language as a pretext to gain entry to the court. In other words, the Petition is ripe for court’s determination. As such, the exception to the principle of non-justiciability must be upheld.
39. This court will, therefore, not lend a deaf ear to a party who knocks on its legal doors alleging infringement or threat to infringement of its rights and fundamental freedoms as guaranteed under the Bill of Rights or contravention or threats of violation of the Constitution unless the applicability of the principle of non-justiciability is otherwise proved.



40. In the circumstances of this case, there are valid and holding exceptions to the principle of non-justiciability and the doctrine of exhaustion. This court is, hence, vested with the requisite jurisdiction to deal with the petition.

41. The issue is hence answered in the affirmative.

**(ii) The nature of the Local Tribunals under article 169(1)(d) of the Constitution:**

42. The *Black's Law Dictionary*, 10<sup>th</sup> Edition at paragraph 1737 defines a Tribunal as follows: -

1. A court of justice or other adjudicatory body.
2. The seat, beat, or place where a judge sits.

43. The dictionary also defines an administrative tribunal as follows: -

1. A court-like decision-making authority that resolves disputes, esp. those in which one disputant is a government agency or department; an administrative agency exercising *quasi-judicial function*.
2. A government division established to implement legislative policy.

44. A committee was set-up by the 2<sup>nd</sup> respondent through the Kenya Law Reform Commission to undertake *inter alia* a comprehensive status analysis of the existing tribunals in Kenya. That was sometimes in June 2014. The committee tendered its report titled The Report of the Committee on the Review of the Rationale for the Establishment of Tribunals in Kenya (hereinafter referred to as 'the KLRC Report') sometimes in December, 2015. The KLRC Report noted that there are over 60 Tribunals in Kenya. These tribunals are variously created by Acts of Parliament.

45. According to article 1(1) of the *Constitution*, all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. In sub-article 3 the sovereign power is delegated to the following organs: -

- (a) Parliament and the legislative assemblies in the county governments;
- (b) The National executive and the executive structures in the county governments; and
- (c) The Judiciary and independent tribunals.

46. Article 3 obligates every person to respect, uphold and defend the Constitution. In article 10, the Constitution creates the national values and principles of governance that bind all state organs, state officers, public officers and all persons whenever any of them applies or interprets cases the Constitution, enacts, applies and interprets any law or makes or interprets public policy decisions.

47. Chapter 10 of the *Constitution* is on the Judiciary. Article 159(1) states as follows: -

Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

48. Article 169 of the *Constitution* states as follows: -

- (1) The subordinate courts are-
  - (a) the Magistrates courts
  - (b) the Kadhis' courts



- (c) the Courts Martial; and
  - (d) any other court or local tribunal as may be established by an act of parliament, other than the courts established as required by article 162(2)
- (2) Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause 1
49. The foregoing lists the subordinated courts in Kenya. They are the Magistrates Courts, the Kadhis Courts, the Court Martial and any other court or local tribunal established by law.
50. In order to understand the context in which the term ‘local tribunal’ is used in article 169(1)(d) of the [Constitution](#), there is need to look at one of the rules of interpretation. That is the *ejus dem generis* rule.
51. The *ejus dem generis* rule is an interpretational principle in law. It is a rule of construction that guides court in reconciling any incompatibility between specific and general words.
52. [Stroud's Judicial Dictionary](#) 3<sup>rd</sup> Edition, defines the principle as follows:
- Where a statute, or other document, enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces ‘other’ persons or things – the word ‘other’ will generally be read as ‘other such like’, so that the persons or things therein comprised may be read as *ejus dem generis* with, and not of a quality superior to, or different from, those specifically enumerated.
53. The [Black's Law Dictionary](#), Garner A Bryan, 9<sup>th</sup> Edition, Thomson Reuters 2009 at page 594 defines the doctrine in the following manner: -
- A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items on the same class as those listed. For example, in the phrase horses, cattle, sheep, pigs, goats, or any other farm animals, the general language or any other farm animals – despite its seeming breadth – would probably be held to include only four-legged, hooved mammals typically found on farms, and thus would exclude chickens.
54. Therefore, where general words follow specific words in an enumeration describing the legal subject, *ejus dem generis* principle requires that the general words are construed to embrace only objects similar in nature to those enumerated by the preceding specific words.
55. The rule, therefore, accomplishes the purpose of giving effect to both the specific and the general words by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.
56. In his treatise titled [Sutherland Statutory Construction](#) 3rd Edition, 1984, Horrack Sutherland states at paragraph 4910 that for the doctrine to apply, the following conditions must exist: -
- (i) That statute contains an enumeration by specific words;
  - (ii) The members of the enumeration constitute a class;
  - (iii) The class is not exhausted by the enumeration;
  - (iv) A general term follows the enumeration; and



- (v) There is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.
57. The Court of Appeal in Nairobi Civil Appeal 351 of 2012 *Commissioner for the Implementation of the Constitution v Attorney General & 2 others* [2013] eKLR clearly brought out the application of the doctrine. Before it was the question whether ‘the marginalized’ fell within the category of persons named in article 97(1)(c) of *the Constitution*. The said article is in respect of Membership of the National Assembly and states as follows: -
97. (1) The national Assembly consists of-
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with article 90, to represent special interests including the youth, persons with disabilities and workers; and
58. The learned judges of appealspoke to *ejus dem generis* in reference to the High Court decision in *Rangal Lemeguran & others v Attorney General & others* [2006] eKLR, where in interpreting the term special interests the High Court observed as follows: -
- Although the *Constitution* does not define special interests contemplated by section 33(1) [of the former Constitution] they include those interests which have not been taken care of by the election process and which are vital to the effectiveness of the democratic elections in terms of adequate representation for all-in a democracy. In other words, the special interests mean those interests which the normal electioneering process has failed to capture and represent.
59. The judges then agreed with the proposition that ‘the marginalized’ fell into the group anticipated by the article 97(1)(c) of the *Constitution*. The judges had the following to say on the doctrine: -
- .... there are some clear categories of people that qualify to be viewed as representing special interests, namely:
- (i) ethnic minorities
- (ii) the youth;
- (iii) the blind;
- (iv) the deaf;
- (v) the physically disabled.

We can on our part add that religious minorities, linguistic or cultural minorities and racial minorities fall seamlessly into the category of special interests while the Constitution has also in the wisdom of the framers and the people of Kenya made inclusion of “workers” as a special interest group.

From what we have said so far, it should be obvious that for a class of persons to qualify to be called a special interest worthy of special representation under our constitutional framework, they must be a class as can fairly be said to have suffered marginalization and disadvantage keeping them away from the centre of the political process. That, to us, is the logical, rational nexus that at once attracts and glues such a class into proper location in both section 34(9) of the Elections Act and article 97(1) (c) of the Constitution.



That being our view of the matter, we agree with the appellant that an interpretation of article 97(1)(c) of the *Constitution* invites the application of the ejus dem generis rule. The youth, persons with disabilities and workers clearly fall in the category of the marginalized, the disadvantaged and the vulnerable-those not sufficiently empowered to muscle their way, generally speaking, into the inner sanctums of political and state power. They are the natural underdogs in the rough and tumble of the political jungle more likely than not to be elbowed out of the centre and off the field unless special affirmative and protective measures be taken to aid them.

60. Back to this case, article 169(1) of the *Constitution* enumerates a class of entities before mentioning the local tribunals. They are Magistrates Courts, the Kadhis Courts, the Court Martial and any other court. Of much importance is that the title in article 169(1) describes subordinate courts to include the local tribunals.
61. The entities Magistrates Courts, the Kadhis Courts, the Court Martial and any other court fall under a special class. They are subordinate courts. These subordinate courts are subordinate to the superior courts and deal with formal settlement of disputes between parties. They are not advisory in nature and are set-up with the adversarial system of dispute resolution in mind. As such, the local tribunals referred to after the enumeration in article 169(1)(d) of the *Constitution* can only be courts in law.
62. The local tribunals, therefore, possess the following qualities: -
  - (i) They are courts of law;
  - (ii) They are subordinate to the superior courts;
  - (iii) They are not advisory in nature;
  - (iv) They are not administrative tribunals;
  - (v) They are not presided over by or include a judge of the superior courts in their membership;
  - (vi) They are formed under an Act of Parliament;
63. The foregoing analysis, therefore, excludes the following class of Tribunals: -
  - (a) The Tribunals formed under the Constitution;
  - (b) All administrative and advisory tribunals;
  - (c) All tribunals whose membership includes a judge of the superior courts;
  - (d) All other informal tribunals not formed under the Constitution} or any Act of Parliament.
64. Examples of Tribunals which do not fall under article 169(1)(d) of the *Constitution* include: -
  - (i) Tribunal created under article 144(3) and 150(2) of *Constitution* for the removal of the President or Deputy President on grounds of incapacity;
  - (ii) Tribunal created under article 158(4) of the *Constitution* for the removal of the Director of Public Prosecutions;
  - (iii) Tribunal created under article 168(5)(a) or (b) of the *Constitution* for the removal of the Chief Justice or other Judges of the superior courts;
  - (iv) Tribunal created under article 251(4) of the *Constitution* for the removal of commissioners or holders of independent offices.



- (v) Any administrative Tribunal;
  - (vi) Any informal tribunal.
65. From the above analysis, it is clear that the local tribunals created under article 169(1)(d) of the Constitution are subordinate courts and not advisory or administrative tribunals. These local tribunals are created under statutes.

**(iii) Whether the Appointment and Removal of members of the Local Tribunals under Article 169(1)(d) of the Constitution by the Executive Violate the Principle of Separation of Powers and Violates the Right to Fair Hearing under Article 50 of the Constitution:**

66. As stated above, the local tribunals contemplated under article 169(1)(d) of the Constitution must be anchored in Acts of Parliament or statutes. Such constituting statutes ought to provide for *inter alia* the constitution, appointment, removal and the term of the members of those tribunals.
67. The manner of appointment and removal of the members of the local tribunals is one of the disputes in this matter.
68. The petitioners posit that in most of the local tribunals, which are subordinate courts, the members are appointed and removed by the Executive instead of the Judiciary through the JSC. The petitioner further posits that such state of affairs does not only infringe upon the doctrine of separation of powers, but also infringes the rights of those whose disputes are dealt with under those tribunals in terms of the right to fair hearing under article 50 and the right to a fair administrative action under article 47 of the Constitution. It is contended that the manner in which the members of the local tribunals are appointed further infringes upon the basic structure of the Constitution.
69. In buttressing the argument, the petitioner argues that in most cases the Executive is a party in those disputes hence the impartiality of the members of the local tribunals is always highly compromised. It is also contended that the members are also removed at the whim of the Executive or in instances where the members do not champion the interests of the appointing authority.
70. The petitioner also avers that the appointments are in breach of articles 73(2)(a), 172(2)(a) & (b) and 232(1)(g) as read with articles 10(2) and 27 of the Constitution, as they are not done through a competitive, objective and inclusive process thus stripping them of impartiality and independence. He posits that such appointments must be made by JSC.
71. In response, whereas JSC supports the transition of the local tribunals to the Judiciary, it submits that according to section 31 and 33 of the sixth schedule to the Constitution and section 23(3)(b) of the Interpretation and General Provisions Act, the statutes which govern the appointments made in the impugned Tribunals are yet to be repealed and as such the appointments would still be valid as a matter of law.
72. JSC further submits that the best way forward is that pending the regularization of the Local Tribunals, any appointments and removal of members of such tribunals be undertaken by itself.
73. The 2<sup>nd</sup> respondent did not respond to the issue. Instead, it threw its weight on the efforts made by the respondents towards transitioning of the local tribunals into the Judiciary.
74. The 3<sup>rd</sup> respondent maintained that the petition be disallowed.
75. From the pleadings and the parties' submissions, there is a general consensus that indeed the need for separation of powers between the Executive and the Judiciary in respect to the local tribunals is necessary. I echo the position.



76. There is no doubt that most of the disputes handled by the local tribunals involve the executive. As such, the executive has an obvious advantage given that it is the one responsible with the appointment and removal of the Members. In such circumstances, the executive ought not to be the appointing authority. Instead, that duty ought to be undertaken by an independent entity. As said, justice should not only be done, but should also be seen to be done.
77. It is worth-noting that such a state of affairs where the Executive overreaches and takes over the mandate of the Judiciary infringes on the independence of the Judiciary.
78. The converse is the remedy. Since the local tribunals are subordinate courts, then their affairs, just like the other subordinate courts, ought to be managed by the Judiciary through JSC. In doing so, the constitutional dictates shall be achieved. Needless to say, there will be transparency in the appointments of members. The removal of members will also be done in accordance with the Constitution and the law. In sum, there will be compliance with the Constitution.
79. I must reiterate that any exercise of power must be in accordance with the Constitution. In *Affordable Medicines Trust and Others v Minister of Health and Others* [at para 18] [2005] ZACC 3; 2006 (3) SA 247 (CC) at paras 49, 75 and 77, Ncgobo CJ held thus: -

The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power.

80. The South African Constitutional Court in *Minister of Health and others v Treatment Action Campaign and others* (2002) 5 LRC 216, 248 further held that: -

and the law, which they must apply impartially and without fear, favour or prejudice. The Constitution requires the State to respect, protect, promote, and fulfil the rights in the Bill of Rights. Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. In so far as that constitutes an intrusion into the domain of the executive that is an intrusion mandated by the Constitution itself.

81. In this case, it is clear that the appointment and removal of members of the local tribunals falling under article 169(1)(d) of the *Constitution* by the Executive contravenes the principle of separation of power and is contrary to article 50(1) of the *Constitution*. That state of affairs also infringes on the independence of the Judiciary.

**(iv) Whether the Local Tribunals under article 169(1)(d) of the Constitution should be Transited to the Judiciary:**

82. Flowing from the foregoing issue, there is no dispute that the local tribunals, which are subordinate courts, currently under the administration of the executive ought to be transited to the Judiciary.



83. The rationale thereof is in article 160(1) of the Constitution. The article states as follows: -

In the exercise of judicial authority, the Judiciary, as constituted by article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.

84. The Chief Justice is the head of the Judiciary pursuant to article 161(2)(a) of the Constitution. Article 171 of the Constitution establishes the JSC. One of the functions of JSC is to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice. JSC, therefore, is supposed to support the Judiciary in discharging its constitutional mandate. In doing so, JSC must remain true to the Constitution. As stated in See the Court of Appeal in Judicial Service Commission v Mbalu Mutava & another [2015] eKLR) : -

... JSC is not part of the national executive as defined in article 130(1). Thus, although JSC is not a substructure of the national executive to which sovereign power is delegated, it is nevertheless subject to the Constitution and the law and like other independent commissions and independent offices, has the duty to protect the sovereignty of the people (see article 249(1)(a).

85. Another function of JSC is in article 172(1)(c) of the Constitution. It provides as follows: -

appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament;

86. Having demonstrated that the local tribunals are part of the subordinate courts, suffice to say that the members of such tribunals, and in line with the *ejus dem generis* rule, fall within the category of 'other judicial officers' under article 172(1)(c) of the Constitution. Such officers must, hence, be appointed by JSC.

87. In order to enable such appointments to be undertaken as commanded by the Constitution, there is no doubt that the local tribunals must be transitioned to the Judiciary. According to article 169(2) of the Constitution, there is need for an Act of Parliament to aid in the transition.

88. As said, the position is agreed upon by the respondents. Each of the respondents has undertaken steps towards achieving the transition. JSC has through the Judiciary constituted the Judiciary Working Committee on the transition and restructuring of the Tribunals Working Committee. The Committee eventually came up with a Draft Tribunals Bill, 2015. As at now, JSC has managed to spearhead the transition of 20 local tribunals from the executive to the Judiciary.

89. On its part, the 2<sup>nd</sup> respondent through the Kenya Law Reform Commission established the Committee on Review of the Rationale for the Establishment of Tribunals in Kenya. The effort resulted in the Tribunals Bill, 2017 which Bill is still in the deliberative stages and is scheduled to be presented to the Cabinet.

90. There is evidence that the 3<sup>rd</sup> respondent through its Justice and Legal Affairs Committee has had dealings with JSC towards discussing the Tribunals Bill, 2017.

91. Section 3 of the Tribunal Bill, 2017 provides as follows: -

The purpose of this Act is to provide a legislative framework to-

a. Rationalize and regulate Tribunals



- b. Streamline the governance and operations of Tribunals;
  - c. Provide for a reasonable standard for establishment of Tribunals
  - d. Set appropriate qualifications for chairpersons and members of Tribunals;
  - e. Bring all Tribunals under a single administrative regime and coordinate the functions of Tribunals.
  - f. Enhance access to justice; and
  - g. Improve quality of service delivery by Tribunals.
92. The Bill further make many other provisions towards attaining the transition. Of particular importance is that section 20 of the Bill provides for the appointment of the Chairpersons and members of the Tribunals by JSC.
93. In sum, for the reason that the local tribunals established under article 169(1)(d) of the Constitution are subordinate courts, then they must be transited to the Judiciary.

**(v) Remedies:**

94. This case presents a unique set of circumstances. Whereas this court appreciates the call to jolt into action the other arms of Government to fulfil their constitutional mandates, the court must be cautious not to overstep its bounds. In other words, this court should not take over the functions of the other constitutional organs in the name of upholding the Constitution.
95. The Petitioner prays for a declaration of unconstitutionality of any law that does not vest the duty to appoint or remove any members of the local tribunals created under article 169(1)(d) of the Constitution in JSC.
96. Currently, there are so many statutes constituting the tribunals. The prayer sought is not specific. The petitioner seeks an *omnibus* order. The danger of granting such an order is the lack of specificity whose effects may be too detrimental. For instance, the constituting statutes make provision for other matters and issues as well. Annuling the entire statutes and not the specific sections thereof, will result to immense disruptions and confusions. Further, the inevitable question is why should the sections which have nothing to do with the appointment and removal of the members of the tribunals in the various statutes be annulled? This court declines the invitation by the petitioner.
97. There is also a prayer to annul all appointments to the tribunals under article 169(1)(d) of the Constitution which were not made by JSC. I, as well, find some difficulty in granting the order. The reason is that those targeted members did not participate in this petition. Granting such an order will, hence, be in contravention of articles 47 and 50(1) of the Constitution.
98. The petitioner further prays for an order to compel Parliament and the Hon Attorney General to enact the necessary legislation under article 169(2) of the Constitution within 3 months.
99. Whereas JSC and the 2<sup>nd</sup> respondent posit for a longer period of 1 year and 2 years respectively due to the process involved in the law-making process, the 3<sup>rd</sup> respondent takes the position that the Constitution does not provide for the time within which such a legislation ought to be made. As such, the 3<sup>rd</sup> respondent contends that the process should be left in the hands of the respondents.



100. The 3<sup>rd</sup> respondent's argument is squarely countered by article 261(1) of and the fifth schedule to the Constitution which obligated Parliament to pass any legislation which no timelines had been set in the Constitution within 5 years of the promulgation of the Constitution.
101. The Constitution has by now been in place for the last 11 years. During that period, the progress, if any, has been very minimal. It is not clear, from the approach proposed by the 3<sup>rd</sup> respondent, how long it will take for the legislation to be put in place. This is, therefore, a case which, in my view, calls for the court's supervision in the nature of structural interdicts.
102. The Supreme Court of Kenya in Petition No 3 of 2018, Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] eKLR, considered the place of structural interdicts as an effective remedy in certain specific constitutional disputes.
103. In that case, the appellant, Mitu-Bell Welfare Association instituted a suit in the High Court on behalf of the residents of Mitumba village, who lived near Wilson Airport, Nairobi. It claimed violation of the rights to shelter and housing of the said residents when they were evicted and their houses destroyed by the respondents.
104. Before the Supreme Court was the question whether the High Court was right in directing the Honourable Attorney General and The Commissioner for Lands to provide, 'by way of affidavit, within 60 days of judgment, the current state policies and programmes on provision of shelter and access to housing for the marginalized groups such as the residents of informal and slum settlements.'
105. In the Court of Appeal, the foregoing directive by the High Court was held to be erroneous on the ground that the court was *functus officio* upon rendering its judgment. The Court of Appeal faulted the High Court for delivering a judgment then reserving outstanding matters to be dealt with by the same court. It emphasized that, save for limited exceptions provided in law, delivery of judgments marked the end of litigation and jurisdictional competence of the court.
106. In resolving the above diametrically opposed findings, the Supreme Court delimited the place of structural interdicts. It first examined the powers of the High Court in respect of the orders it can issue pursuant to article 23(3) and 165(3)(d) of the Constitution and in so doing it made reference to its earlier decision in Petition No 14, 14A, 14B and 14C of 2014 (Consolidated), Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others; where it was observed that: -
- .... a close examination of these provisions (article 23(3) and 165(3)(d) of the Constitution) shows that the Constitution requires the court to go even further than the US Supreme Court did in the *Marbury*, and that article 23(3) grants the High Court powers to grant appropriate relief "including" meaning that this is not an exhaustive list....
107. The court further reproduced the findings in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others where orders in the nature of structural interdicts were issued as follows: -
- (d) The 1st appellant shall, in exercise of its statutory powers, and within 90 days of the date hereof, consider the merits of applications for a BSD licence by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents, and of any other local private sector actors in the broadcast industry, whether singularly or jointly.
- (e) The 1st appellant (CAK) shall, in exercise of its statutory powers, ensure that the BSD licence issued to the 5<sup>th</sup> appellant herein, is duly aligned to Constitutional and statutory imperatives.



- (f) The 1st appellant (CAK), in exercise of its statutory authority, shall, in consultation with all the parties to this suit, set timelines for the digital migration, pending the International Analogue Switch-Off Date of June 17, 2015.
- (g) Upon the course of action directed in the foregoing orders (d & e) being concluded, the 1st appellant (CAK) shall notify the court through the Registry; and the Registrar shall schedule this matter for mention on the basis of priority, before a full Bench.
108. To further buttress propriety of structural interdicts, the learned judges referred to its decision in Petition No 15 & 16 of 2015; [2017] eKLR; *Francis Karioko Muruatetu another v Republic* where the following orders were made: -
- (b) This matter is hereby remitted to the High Court for re-hearing on sentence only, on a priority basis, and in conformity with this judgment.
- (c) The Attorney General, the Director of Public Prosecutions and other relevant agencies, shall prepare a detailed professional review in the context of this judgment and Order made with a view to setting up a framework to deal with sentence-re-hearing of cases similar to that of the petitioners herein. The Attorney General is hereby granted twelve (12) months from the date of this Judgment to give a progress report to this court on the same.
109. The learned judges, however, gave a rider on the manner in which structural interdicts or supervisory orders must be exercised. It gave the following parameters: -
- [122] Having stated thus, we hasten to add that, interim reliefs, structural interdicts, supervisory orders or any other orders that may be issued by the courts, have to be specific, appropriate, clear, effective, and directed at the parties to the suit or any other State Agency vested with a constitutional or statutory mandate to enforce the order. Most importantly, the court in issuing such orders, must be realistic, and avoid the temptation of judicial overreach, especially in matters policy. The orders should not be couched in general terms, nor should they be addressed to third parties who have no constitutional or statutory mandate to enforce them. Where necessary, a court of law may indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions.
110. Taking cue from the foregoing findings and directions, it is clear that the High Court in *Mitu-bell* case (*supra*) was right in issuing orders for parties to report back to court post-judgment. Accordingly, this court is vested with jurisdiction to issue structural and supervisory interdicts in order to uphold the Constitution.
111. This petition being one of such instances, this court shall consider such a relief.
112. On costs, as the matter is a public interest litigation, there shall be no order as to costs.

**Disposition:**

113. Flowing from these findings and conclusions, the disposition of the amended petition dated December 18, 2018 is as follows:
- (a) The amended petition is justiciable and this court has the jurisdiction to deal with the issues therein.



- (b) The local tribunals created under article 169(1)(d) of the [Constitution](#) are subordinate Courts in Kenya.
- (c) The appointment and removal of members of the local tribunals created under article 169(1)(d) of the [Constitution](#) by the Executive violates the principle of separation of powers, contravenes the right to fair hearing under article 50 of the Constitution and infringes on the independence of the Judiciary.
- (d) The local tribunals under article 169(1)(d) of the [Constitution](#) must be transferred to the Judiciary and the appointment and removal of their members be undertaken by the Judicial Service Commission.
- (e) A declaration hereby issues that any new appointment or removal of a member of any of the Tribunals under article 169(1)(d) of the [Constitution](#) must be undertaken by the Judicial Service Commission. For certainty, such local tribunals include: -
  - a) Board of Review established under the [Prisons Act](#)
  - b) Business Premises Tribunal established under the [Landlord and Tenant \(Shops, Hotels & Catering Establishments Act\)](#)
  - c) Provincial Land Control Appeals Board established under the [Land Control Act](#).
  - d) Central land Control Appeals Board established under the [Land Control Act](#)
  - e) [Mines Development Loans Act](#)
  - f) Seed and Plants Tribunal established under [Seeds and Plant Varieties Act](#)
  - g) Sugar Arbitration Tribunal established under the [Sugar Act](#)
  - h) Water Resources Management Authority established under the [Water Act](#)
  - i) Water Appeal Board established under the [Water Act](#)
  - j) Water Service Board established under the [Water Act](#)
  - k) Wildlife Conservation and Management Services Appeals Tribunal established under the [Wildlife Conservation and Management Act](#)
  - l) Tourist Appeal Board established under the [Tourist Industry Licensing Act](#)
  - m) Transport Licensing Appeal Tribunal established under [Transport Licensing Act](#)
  - n) State Corporations Appeals Tribunal established under the [State Corporations Act](#)
  - o) Value Added Tax Appeals Tribunal established under [Value Added Tax Act](#)
  - p) Capital Markets Tribunal established under the [Capital Markets Authority Act](#)
  - q) Insurance Appeals Tribunal established under the [Insurance Act](#)
  - r) Co-operative Tribunal established under the [Co-operatives Act](#)
  - s) Hotels and Restaurants Appeals Tribunal established under the Hotels and Restaurants Act
  - t) Kenya Bureau of Standards established under the Standards Act



- u) Restrictive Trade Practices Tribunal established under the *Restrictive Trade Practices, Monopolies and Price Controls Act*
  - v) Land Disputes Tribunals established under the Land Disputes Tribunal
  - w) Land Disputes Appeal Committee established under the *Land Disputes Tribunals Act*
  - x) Non-Government Organizations Co-ordination Board established under the *Non-Governmental Originations Co-ordination Act*
- (f) The Hon Attorney General and the Parliament, being the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein, are hereby directed to take proactive steps within their respective dockets towards propagating the Tribunals Bill with a view of transiting the local tribunals under article 169(1)(d) of the *Constitution* to the Judiciary. To that end, the Hon Attorney General and the Parliament shall file affidavits within 6 months of this judgment detailing the steps taken.
- (g) Upon filing of the affidavits in (f) above, the Deputy Registrar of this court shall schedule this matter for mention on the basis of priority.
- (h) There shall be no order as to costs.

114. Those are the orders of this court.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MARCH, 2021**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:-

Okiya Omtatah Okoiti, the petitioner in person.

Miss Lipo, Counsel for the 1<sup>st</sup> respondent.

Mr. Moimbo, Counsel for the 2<sup>nd</sup> respondent.

Mr. Mbarak, Counsel for the 3<sup>rd</sup> respondent.

Mr. Dudley Ochiel, Counsel for the interested party.

Elizabeth Wamboi – Court Assistant.





This is the Exhibit Marked "EK-4"  
 Referred to in the Annexed Affidavit Declaration  
 of Emily Kinama  
 Sworn / declared before me  
 this 22 day of Jan 2026  
 at Nairobi  
 Commissioner For Oaths

**Attorney General v Okoiti & 3 others (Civil Appeal E416 of 2021)  
 [2025] KECA 309 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KECA 309 (KLR)

**REPUBLIC OF KENYA  
 IN THE COURT OF APPEAL AT NAIROBI  
 CIVIL APPEAL E416 OF 2021  
 F TUIYOTT, AO MUCHELULE & GV ODUNGA, JJA  
 FEBRUARY 21, 2025**

**BETWEEN**

**THE HONOURABLE ATTORNEY GENERAL ..... APPELLANT**

**AND**

**OKIYA OMTATA OKOITI ..... 1<sup>ST</sup> RESPONDENT**

**JUDICIAL SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**THE PARLIAMENT OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**KATIBA INSTITUTE ..... 4<sup>TH</sup> RESPONDENT**

*(An appeal from the Judgment and Decree of the Constitutional and Human Rights Division Court of the High Court at Nairobi (Mrima J.) dated 11th March 2021 in High Court Petition No. 197 of 2018)*

**The local tribunals established under article 169(1)(d) of the Constitution are subordinate courts and ought to be under the Judiciary**

*The appeal was against the decision of the trial court which held that; the local tribunals established under article 169(1)(d) of the Constitution were subordinate courts and must be transited to the Judiciary. The court held that the ejusdem generis rule applied to both statutory interpretation as well as constitutional interpretation. The court further held that the tribunals contemplated in article 169(1)(d) ought to be under the Judiciary. The court also highlighted the elements of structural interdicts.*

Reported by Kakai Toili

**Constitutional Law** – interpretation of the Constitution - interpretation of article 169(1)(d) of the Constitution – where article 169(1)(d) provided that local tribunals as may be established by an Act of Parliament were subordinate courts - whether the tribunals contemplated in article 169(1)(d) of the Constitution ought to be under the Judiciary – Constitution of Kenya, article 169(1)(d).



**Constitutional Law** – justiciability – non-justiciable issues – distinction between lack of merit and non-justiciability - whether an issue was not justiciable if it had no merit - whether the issue about whether Parliament was enjoined to enact legislation to transit tribunals from the various Ministries and Government Departments to the Judiciary, was a justiciable issue.

**Statutes** – interpretation of statutes – ejusdem generis rule – nature and applicability – whether the ejusdem generis rule applied to both statutory interpretation as well as constitutional interpretation.

**Constitutional Law** – Parliament - legislative mandate of Parliament – delay in enactment of legislation to give effect to a constitutional right - whether a delay of more than 10 years in enacting a legislation geared towards the realization of a constitutional right was unreasonable - Constitution of Kenya, article 259(8).

**Constitutional Law** – constitutional reliefs – structural interdicts - what were the elements of structural interdicts - Constitution of Kenya, article 23.

### **Brief facts**

The petition at the trial court was based on the contentions: that although tribunals fell under article 169(1) (d) of the Constitution, many of them were under the direct control and regulation of the Executive and that infringed on the principle of separation of powers as, in most cases, the Executive was a party to the disputes before such tribunals. At the trial court, the 1<sup>st</sup> respondent sought for among other orders; a declaration that tribunals were subordinate courts; and that the Judicial Service Commission (the 2<sup>nd</sup> respondent) was exclusively responsible for appointing and removing members of the tribunals, for establishing their rules of procedure and for doing anything incidental thereto to ensure their smooth operations as courts of law.

The trial court allowed the petition and held that; the local tribunals were subordinate courts; the appointment and removal of members of the local tribunals by the Executive violated the principle of separation of powers, contravened the right to fair hearing and infringed on the independence of the Judiciary; the local tribunals must be transited to the Judiciary and the appointment and removal of their members be undertaken by the 2<sup>nd</sup> respondent; and directed the Attorney General and the Parliament to take proactive steps within their respective dockets towards propagating the Tribunals Bill with a view of transiting the local tribunals to the Judiciary and to file affidavits within 6 months of the judgment detailing the steps taken. Aggrieved, the appellants filed the instant appeal.

### **Issues**

- i. Whether the tribunals contemplated in article 169(1)(d) of the Constitution, which provided that local tribunals established by an Act of Parliament were subordinate courts, ought to be under the Judiciary.
- ii. Whether an issue before court could be justiciable if it was found to have no merit.
- iii. Whether the issue on whether Parliament was enjoined to enact legislation to transit tribunals from the various Ministries and Government Departments to the Judiciary, was a justiciable issue.
- iv. Whether a delay of more than 10 years in enacting a legislation geared towards the realization of a constitutional right was unreasonable.
- v. What were the elements of structural interdicts?
- vi. What was the nature and applicability of the *ejusdem generis* rule?
- vii. Whether the *ejusdem generis* rule applied to both statutory interpretation as well as constitutional interpretation.

### **Relevant provisions of the Law**

#### **Constitution of Kenya**

#### **Article 169 - Subordinate courts**

(1) *The subordinate courts are—*

(d) *any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162(2).*



## Held

1. A party to an appeal ought not to agitate a different case from the one taken before the trial court. An appellate court only interfered with the decision of the trial court where it was alleged that the trial court erred in arriving at findings contrary to the case as presented by the appellant at the trial court. Where the trial court made findings, which were in accord with the case as presented by the appellant, the appellant could not be heard to complain that the trial court erred. Form D of the First Schedule to the Court of Appeal Rules contemplated that the party giving the notice of appeal was one aggrieved by the decision either wholly or in part.
2. The rules of pleadings required parties to put forward to the court the entire case they intended the trial court to determine so as to give the court and the opposite side an opportunity of answering to the same. Where a party, before the trial court, did not contest an issue before the trial court, the opposite party was lulled into a false sense of security either that he did not have to deal with the same or deal with it as adequately or as vigorously as he could have done. That was the same as conducting proceedings by ambush.
3. While, in interpreting the Constitution, a court was not necessarily bound by the positions taken by the parties before it, it was disingenuous for a party who had taken a particular position before the trial court to make an about-turn on appeal and adopt a position diametrically opposed to the one taken before the trial court and the basis of which the dispute was determined.
4. While the doctrine of separation of powers was an important one in a constitutional democracy, it could not be used to avoid the obligation of a court to prevent the violation of the Constitution. The right and the duty of the court to protect the Constitution were derived from the Constitution, and the instant court could not shirk from that duty. Article 2(4) of the Constitution enjoined the court to determine a question whether an omission to undertake a step contravened the Constitution.
5. Justiciability must be distinguished from merit. An issue was not justiciable merely because it had no merit. A justiciable issue may well turn out to be unmerited. However, that did not bar the court from interrogating its merit. In the case, the issue about whether Parliament was enjoined to enact legislation in order to transit tribunals from the various Ministries and Government Departments, a duty that the appellant itself acknowledged, contravened the letter and the spirit of the Constitution was a justiciable issue.
6. Article 169(1)(d) of the Constitution applied to all local tribunals contemplated thereunder whether new or existing. The trial court was alive to the difficulties raised by the appellant and the 3<sup>rd</sup> respondent if the tribunals were to be immediately transited to the Judiciary. Therefore, the trial court gave a six months window period for the process to be undertaken. The process that was to be undertaken was the enactment of the relevant law and the transitioning of the tribunals to the Judiciary. The period was sufficient to trigger the transition.
7. According to the *ejusdem generis* rule, where there were general words following particular and specific words the general words must be confined to things of the same kind as those specified. According to the rule when a series of particular words in a statute was followed by general words, the general words were confined by being read as the same scope of *genus* as (*ejusdem generis* with) the particular words. The specific words must apply not to different objects of a widely differing character but to something which could be called a class or kind of objects. Where that was lacking, the rule could not apply, but the mention of a single species did not constitute a *genus*.
8. While the widest construction possible, in its context, should be given according to the ordinary meaning of the words used, it was widely accepted that the principles which governed the construction of statutes also applied to the interpretation of constitutional provisions. Therefore, the *ejusdem generis* rule applied to both statutory interpretation as well as constitutional interpretation. Consequently, local tribunals in article 169(1)(d) of the Constitution must be treated in the same manner as the courts set out under article 169(1) of the Constitution.



9. It was not by coincident that article 159(1) of the Constitution provided that judicial authority was derived from the people and vested in, and shall be exercised by, the courts and tribunals established by or under the Constitution. Article 160(1) of the Constitution provided that in the exercise of judicial authority, the Judiciary, as constituted by article 161, shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority.
10. The entire Constitution had to be read as an integrated whole, and no one particular provision destroying the other but each sustaining the other. That was the rule of harmony, rule of completeness and exhaustiveness and rule of paramountcy of the Constitution. The tribunals contemplated in article 169(1)(d) ought to be under the Judiciary.
11. Article 169(2) of the Constitution did not prescribe timelines within which legislation contemplated thereunder was to be enacted. However, the fact that the Constitution itself enjoined Parliament to enact a legislation conferring jurisdiction, functions and powers on subordinate courts established under article 169(1), was a clear manifestation of the seriousness with which the drafters of the Constitution treated such legislation. For the realisation of the constitutional right to access justice under article 48 of the Constitution, it was imperative that the enactment of an instrument conferring jurisdiction, functions and powers on subordinate courts be treated with urgency.
12. In interpreting a constitutional provision either containing a fundamental right or geared towards the realisation of a constitutional right such as article 169(2) of the Constitution, the court should adopt a dynamic, progressive and liberal or flexible approach keeping in view the ideals of the people and socio-economic and political-cultural values so as to extend the benefit of the same to the possible maximum.
13. In the absence of prescribed timelines for enacting legislation pursuant to article 169(2) of the Constitution, article 259(8) of the Constitution came into play to compel the enactment of the contemplated legislation to be undertaken. The drafters of the Constitution had in mind circumstances such as the one in hand when they inserted that article in the Constitution. More than 10 years delay in enacting a legislation geared towards the realisation of a constitutional right, in the instant case, the right of access to justice, was unreasonable and could not be countenanced and the trial court was justified in compelling the 3<sup>rd</sup> respondent to undertake its constitutional obligation.
14. In directing that affidavits be filed, the trial court was issuing structural interdict which strictly speaking, was not a remedy but a mode of the realization of a remedy or relief. Article 23 of the Constitution provided that a court may grant appropriate relief, including a declaration of rights when confronted with rights violations and an appropriate relief must mean an effective remedy for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution could not properly be upheld or enhanced.
15. One of the remedies which was recognized in jurisdictions with similar constitutional provisions as Kenya's article 23 of the Constitution was what was called structural interdict. In essence, structural interdicts (also known as supervised interdicts) required the violator to rectify the breach of fundamental rights under court supervision. Five elements common to structural interdicts had been isolated in that respect:-
  1. The court issued a declaration identifying how the Government had infringed an individual or group's constitutional rights or otherwise failed to comply with its constitutional obligations.
  2. The court mandated Government compliance with constitutional responsibilities.
  3. The Government was ordered to prepare and submit a comprehensive report, usually under oath, to the court on a pre-set date. That report, which was to explicate the Government's action plan for remedying the challenged violations, gave the responsible State agency the opportunity to choose the means of compliance with the constitutional rights in question, rather than the court itself developing or dictating a solution. The submitted plan was typically expected to be tied to a period within which it was to be implemented or a series of deadlines by which identified milestones had to be reached.



4. Once the required report was presented, the court evaluated whether the proposed plan in fact remedied the constitutional infringement and whether it brought the Government into compliance with its constitutional obligations. As a consequence, through the exercise of supervisory jurisdiction, a dynamic dialogue between the Judiciary and the other branches of Government in the intricacies of implementation may be initiated. That stage of a structural interdict may involve multiple Government presentations at several 'check in' hearings, depending on how the litigants respond to the proposed plan and, more significantly, whether the court found the plan to be constitutionally sound. Structural interdicts thus provided an important opportunity for litigants to return to court and follow up on declaratory or mandatory orders.
5. After court approval, a final order (integrating the Government plan and any court ordered amendments) was issued. Following that fifth step, the Government's failure to adhere to its plan (or any associated requirements) essentially amounted to contempt of court. In essence, structural interdicts required the violator to rectify the breach of fundamental rights under court supervision.
16. The High Court had the jurisdiction to ensure that its decision was implemented by way of structural interdict.
17. In light of the concession by the appellant as regards the manner in which the tribunal system was operating, it could not lie in the mouth of the appellants to posit that there was no evidence to that effect and that the trial court's decision was based on assumptions.
18. The 3<sup>rd</sup> respondent could have resorted to rule 96(1) of the Court of Appeal Rules if it wanted to agitate the issues not placed before the trial court. That rule provided that a respondent who desired to contend on an appeal that the decision of the superior court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of the respondent's contention. The 3<sup>rd</sup> respondent never took advantage of the provision and could not submit on anything else apart from the appeal. In any case that provision was only beneficial where issues were raised before the trial court but were not addressed. It was not an avenue for a party to invent a totally new cause of action at an appellate level.

*Appeal dismissed.*

### **Orders**

*No order as to costs.*

### **Citations**

#### **Cases**

1. Commissioner for the Implementation of the Constitution v Attorney General, Independent Electoral and Boundaries Commission & Kenya Paraplegic Organisation Civil Appeal 351 of 2012; [2013] KECA 8 (KLR) — (Explained)
2. Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others (Petition 14, 14A, 14B & 14C of 2014 (Consolidated); [2014] KESC 53 (KLR)) — (Explained)
3. Equity Bank Limited v West Link Mbo Limited Civil Application 78 of 2011; [2013] KECA 320 (KLR) — (Explained)
4. Geonet Technologies Limited v Ministry of ICT, Innovation and Youth Affairs, State Department of ICT & Innovation, Attorney General & Huawei Technologies (Kenya) Company Limited; Com Twenty- One Limited (Interested Party) Constitutional Petition E392 of 2021; [2022] KEHC 26978 (KLR) — (Explained)
5. Independent Electoral and Boundaries Commission & another v Mule & 3 others Civil Appeal 219 of 2013; [2014] KECA 890 (KLR) — (Explained)



6. Institute of Social Accountability & another v National Assembly & 4 others Petition 71 of 2013; [2015] KEHC 6975 (KLR) — (Mentioned)
7. Jayne Mati & another v Attorney General & 2 others Petition 108 of 2011; [2011] KEHC 4304 (KLR) — (Explained)
8. Kenya Ports Authority v William Odhiambo Ramogi, Asha Mashaka Omar, Gerald Lewa Kiti, Attorney General, Cabinet Secretary, Ministry of Transport & Infrastructure, Kenya Railways Corporation, Muslims for Human Rights, Maina Kiai & County Government of Mombasa Civil Appeal 166 of 2018; [2019] KECA 305 (KLR) — (Mentioned)
9. Kiriro Wa Ngugi & 19 others v Attorney General, Cabinet Secretary, Foreign Affairs & Kenya International Boundaries Office Petition 254 of 2019; [2020] KEHC 8819 (KLR) — (Mentioned)
10. Macharia & another v Kenya Commercial Bank Limited & 2 others Application 2 of 2011; [2012] KESC 8 (KLR) — (Explained)
11. Mary Kitsao Ngowa & 36 others v Krystalline Limited Civil Appeal 21 of 2015; [2015] KECA 286 (KLR) — (Explained)
12. Mate & another v Wambora & another Petition 32 of 2014; [2017] KESC 1 (KLR) — (Explained)
13. Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) Petition 3 of 2018; [2021] KESC 34 (KLR) — (Explained)
14. Moses Kipkolum Kogo v David Malakwen Civil Appeal 74 of 1998; [1998] KECA 11 (KLR) — (Explained)
15. Muthinja ,Geoffrey & Robert Banda Ngombe v Samuel Muguna Henry, John Jembe Mumba, John Maroo, John Columbus Gikunda M'mwanjah, Bernard Njiru Arozon, Samuel Chivatsi Munga, James Marangu M'muketha & 1750 others Civil Appeal 10 of 2015; [2015] KECA 304 (KLR) — (Mentioned)
16. National Assembly of Kenya & another v Institute for Social Accountability & 8 others Civil Appeal 92 & 97 of 2015 (Consolidated); [2017] KECA 170 (KLR) — (Mentioned)
17. Richard Kanyago, Express Kenya Limited & Peter Kanyago v David Mukii Mereka Civil Appeal 94 of 2001; [2001] KECA 204 (KLR) — (Mentioned)
18. Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae) Advisory Opinion Reference 2 of 2013; [2013] KESC 7 (KLR) — (Explained)
19. Swaka ,John v Director of Public Prosecutions, Attorney General & Minister of Justice, National Cohesion and Constitutional Affairs Constitutional Petition 318 of 2011; [2013] KEHC 5422 (KLR) — (Mentioned)
20. Trusted Society of Human Rights Alliance v Attorney General & 2 others; Matemtu (Interested Party); With Kenya Human Rights Commission & another (Amicus Curiae) Petition 229 of 2012; [2012] KEHC 2480 (KLR) — ( Explained)
21. Wanjiru Gikonyo, Paul Kemunche Masese & Edwin Mutemi Kiama v National Assembly of Kenya, Senate of the Republic of Kenya, Cabinet Secretary of the National Treasury, Attorney General & Affirmative Action Social Development Fund Board Petition 453 of 2015; [2016] KEHC 5536 (KLR) — ( Mentioned)

### **Regional Court**

Republic v El Mann [1969] EA 357 — (Explained)

### **Uganda**

1. Tinyefuza v. Attorney General (Constitutional Petition No. 1 of 1996; [1997] UGCC 3 — (Explained)
2. Kamurasi v Accord Properties Ltd [2000] 1 EA 90 (SCU) — (Mentioned)
3. Kigula and others v Attorney-General Constitutional Petition No. 6 of 2003; [2005] UGCC 8; [2005] 1 EA 132 — (Explained)

### **South Africa**



1. Affordable Medicines Trust and others v Minister of Health and others [2005] ZACC 3; 2006 (3) SA 247; 2005 (6) BCLR 529 — (Mentioned)
2. Doctors for Life International v Speaker of the National Assembly and others [2006] ZACC 11; 2006 (12) BCLR 1399; 2006 (6) SA 416 — (Followed)
3. Fose v Minister of Safety & Security [1997] ZACC 6; 1997 (7) BCLR 851; 1997 (3) SA 786 — (Explained)
4. Minister of Health and others v Treatment Action Campaign and others [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 —( Mentioned)
5. Philip Tormey v Ireland And The in which Attorney General the Supreme Court of Ireland (1985 WJSC-SC 1565) — (Explained)
6. R v Edmundson [1859] 28 LJMC 213 at 215 —( Explained)

#### Statutes

1. Constitution of Kenya — articles 1(3)(c); 2(4); 20(1); 23(3); 24(3);44(3); 48; 50; 94; 119; 144(3);150(2); 158(4); 159(1); 159(2)(d);160(1); 162(4);164(3)(b)168(5)(a)(5)(b); 169(1)(d)(2); 171; 172; 251(4); 259(1)(d)(8); 261 — (Interpreted)
2. Court of Appeal Rules, 2010 (Repealed) (cap 9 Sub Leg) — rule 74(3) — (Interpreted)
3. Court of Appeal Rules, 2022 (cap 9 Sub Leg) — rule 88 — (Interpreted)
4. Petitions to Parliament (Procedure) Act (cap 7E) — In general (Cited)
5. Statutory Instruments Act (cap 2A) — In general — (Cited)

#### Texts

1. Garner, BA., (Ed) (2009), Black's Law Dictionary (St Paul Minnesota: West Group 9th Edn)
2. Jack Jacob Current Legal problems (1960), The present Importance of Pleadings (Current Legal Problems, at P 174)

#### International Instruments

1. African Charter on Human and Peoples' Rights (Banjul Charter), 1981 — article 7
2. The Human Rights Committee General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial — article 14

#### Advocates

None mentioned

## JUDGMENT

1. By an amended petition dated December 18, 2018, the 1<sup>st</sup> respondent, Okiya Omtata Okioti, the petitioner in the High Court Petition No 197 of 2018, sought the following orders:-
  - i. A declaration that:
    - a. Tribunals established pursuant to article 169(1)(d) of the *Constitution of Kenya*, 2010 are not part of the Executive machinery, nor are they independent adjudicatory bodies, but are subordinate courts which are an integral part of the Judiciary.
    - b. The Judicial Service Commission is exclusively responsible for appointing and removing member of the tribunals established pursuant to article 169(1)(d) of the *Constitution of Kenya* 2010, for establishing their rules of procedure and for doing anything incidental thereto to ensure their smooth operations as courts of law.



- c. The doctrine of separation of powers under the [Constitution of Kenya](#) is an absolute bar to the Executive and its agencies, or any other entities who are not the Judicial Service Commission, being mandated by Parliament to appoint or remove any members of tribunals created under article 169(1)(d) of the [Constitution of Kenya](#), 2010.
  - d. Any law which vests in the executive and its agencies, or in any other entities who are not the Judicial Service Commission, the mandate to appoint or remove any members of tribunals created under article 169(1)(d) of the [Constitution of Kenya](#) 2010 is unconstitutional and, therefore, invalid, null and void *ab initio*.
  - e. The budget for tribunals should be a line budget in the Judiciary.
  - f. Parliament has failed to enact necessary legislation pursuant to article 169(2) to give effect to article 169(1)(d) within the time specified in the Fifty Schedule to the [Constitution](#).
- ii. An order
- 1. Annulling all appointments to tribunals created under article 169(1)(d) of the [Constitution](#) which were not made by the Judicial Service Commission through a competitive process.
    - a1. Compelling Parliament and the Attorney-General to enact legislation pursuant to article 169(2) to give effect to article 169(1)(d) of the [Constitution](#) within three months, and to report the progress to the Chief Justice.
    - a2. That if Parliament fails to enact legislation pursuant to article 169(2) to give effect to article 169(1)(d) of the [Constitution](#) within three months, the Chief Justice shall advise the President to dissolve Parliament and the President shall dissolve Parliament.
    - b. Compelling the Judicial Service Commission to immediately but not later than three months re-constitute all tribunals created under article 169(1)(d) of the [Constitution](#) upon Parliament enacting legislation pursuant to article 169(2) to give effect to article 169(1)(d).
    - c. Suspending order (a) above for a period of six months to allow for a smooth transition.
    - d. Compelling the respondent to bear the costs of this suit.
  - iii. Any other relief the court may deem just to grant.
2. The petition was based on the contentions: that although tribunals play a critical part in adjudication and resolution of disputes, in Kenya they are incapable of delivering quality administrative justice to the people; that the plethora of tribunals is confusing and compounding to both lawyers and ordinary Kenyans yet the justification of tribunal system is to enable citizens to access administrative justice easily, speedily, cheaply and fairly; that the tribunals are constituted and operate as part of the administration whose decisions are normally called into question without adequate mechanisms for accountability, leading to great variations in decision making; that there are more than 100 tribunals all established under different pieces of legislation, all discharging judicial functions in one form or another, and operating under various administrative structures; that tribunals in Kenya suffer lack of unanimity in many aspects; that although tribunals fall under article 169(1)(d) of the [Constitution](#),



many of them are under the direct control and regulation of the Executive; that this infringes on the principle of separation of powers as, in most cases, the Executive is a party to the disputes before such tribunals; that the tribunals as constituted have varied terms of service and different rules of procedure and whereas some adopt formal procedure akin to that of courts, others are informal thus impacting negatively on access to justice and equal justice to all; that some of the tribunals do not provide for, and as such, violate a litigant's right of appeal to superior courts; and that the respondents in the petition, without any reasonable cause, had failed and/or refused to transition the tribunals from the Executive arm to the Judiciary in accordance to the Constitution.

3. In opposing the petition, the 2<sup>nd</sup> respondent's secretary and the Chief Registrar of the Judiciary, Anne Amadi, filed a replying affidavit sworn on August 30, 2018 in which it was deposed: that the 2<sup>nd</sup> respondent had no role to play in respect of constitutional tribunals created under articles 144(3), 150(2), 158(4), 168(5)(a) or (b) and article 251(4) of the Constitution; that in the case of local tribunals such as the ones created under article 169(1)(d) of the Constitution, the tribunals are indeed subordinate courts within the Judiciary by virtue of articles 1(3)(c), 20(4) & (5) 24(3), 50(1), 159(1) & 2 164(3)(b), 165, 169(1)(d), 171 and 172 of the Constitution hence subject to control by the 2<sup>nd</sup> respondent; that despite lack of transitional legislation on the local tribunals, the 2<sup>nd</sup> respondent had made efforts to ensure that 20 local tribunals are transitioned into the Judiciary from the Executive; and that it had not failed to put in place the necessary legislative measures to transit the tribunals since the legislative mandate is vested with the Parliament.
4. The Attorney General, the appellant herein, who was sued as the 2<sup>nd</sup> respondent in the petition relied on the affidavit of Joash Dache, the Commission Secretary of the Kenya Law Reform Commission and Chairperson of the Committee on Review of the Rationale for the Establishment of tribunals in Kenya. In that affidavit, the appellant averred: that under article 169(1)(d) of the Constitution local tribunals are classified as subordinate courts and need to be transitioned to the Judiciary from the various Ministries and Government Departments; that, however, to attain this, an Act of Parliament pursuant to article 162(2) of the Constitution is to be enacted; that it had made concerted efforts with the 2<sup>nd</sup> respondent to come up with the *Tribunal Bill, 2017* (the Bill) which was about to be taken to the Cabinet for approval; that the declaration of unconstitutionality of the various statutes constituting the tribunals would deprive persons serving in those tribunals their right to fair administrative action and fair hearing; that the period of 6 months sought for the transition was too short since financial/ fiscal cycle was mid- way its implementation and that the financing of the transition of the tribunals must be budgeted for; that while the petition should be dismissed, in the event that the court were to issue a declaration of unconstitutionality as sought, the court should to consider structural interdicts instead and allow for a period of 2 years to fast-track the passage of the *Bill* into law. In this regard, reliance was placed on the decisions in *John Sakwa v Director of Public Prosecutions, Attorney General & 2 others* [2013] eKLR and *The Institute of Social Accountability & another v National Assembly & 4 others* [2015] eKLR in urging the court to suspend any declaratory orders of unconstitutionality and instead give the parties time to regularize the transitional regime.
5. The 3<sup>rd</sup> respondent, Parliament of Kenya, opposed the amended petition by way of grounds of opposition dated February 13, 2019 in which it asserted: that there is no mandatory requirement for Parliament to enact any specific or general law governing tribunals in Kenya and as such, the amended petition did not disclose any violation of the Constitution and ought to be dismissed; that article 261 of the Constitution that provides for the dissolution of Parliament for failure to enact laws does not apply to this case because all such laws required to govern the Judiciary under schedule five to the Constitution have so far been enacted; that if the petitioner is of the view that there should be a general codifying law regulating tribunals, then the right avenue would be, to first petition Parliament under article 119 of the Constitution and the *Petitions to Parliament Act, 2012* for the enactment of the said



law; that there is no need of any court supervision as Parliament was in the process of dealing with the *Tribunals Bill* and that the petition was caught up by the doctrine of exhaustion and ripeness; that the 2<sup>nd</sup> respondent had no mandate to appoint all the members of all tribunals as alleged; and that while the petition should be dismissed, in the event the it was sustained, then the court ought to consider issuance of structural interdicts.

6. After considering the petition, the responses thereto as well as the submissions, the learned Judge picked out the following issues for determination: whether the petition was justiciable; the nature of the local tribunals under article 169(1)(d) of the *Constitution*; whether the appointment and removal of members of the local tribunals under article 169(1)(d) of the *Constitution* by the Executive violate the principle of separation of powers and the right to fair hearing under article 50 of the *Constitution*; whether the local tribunals under article 169(1)(d) of the *Constitution* should be transited to the Judiciary; and what remedies to issue.
7. In his judgement, the learned Judge relied on: Nairobi High Court Constitutional Petition No 254 of 2019 - *Kiroti Wa Nguni & 19 others v Attorney General & 2 others* [2020] eKLR for the position that courts should frown upon disputes that are hypothetical, premature or academic which have not fully matured into justiciable controversies; the case of *National Assembly of Kenya & another v The Institute for Social Accountability & 6 others* Nairobi Civil Appeal 92 of 2015 [2017] eKLR, emphasising that where the questions raised relate to inter-governmental relations and which should have been raised in the appropriate forum and resolved by the designated institutions through the prescribed mechanism, that should be done before the jurisdiction of the High Court can be invoked; *Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others* Nairobi Constitutional Petition No 453 of 2015 [2016] eKLR, highlighting that an issue before court must be ripe, through a factual matrix for determination; and *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that the exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts but also dealt with the exceptions to the doctrine of exhaustion.
8. The learned Judge determined: that in the instant case, the petitioners alleged violation of their fundamental rights which, according to the decision in Court of Appeal in Mombasa Civil Appeal No 166 of 2018 - *Kenya Ports Authority v William Odhiambo Ramogi & 8 others* [2019] eKLR can only be determined by the High Court; that whereas an invitation to the court to exercise its powers against the constitutional roles reserved for two organs of government is barred by the principle of non-justiciability and is also an affront to the doctrine of separation of powers, there are constitutionally permissible situations where the court may interfere; that this applies where there is actual or threatened violation of the rights and fundamental freedoms guaranteed under the *Constitution*, or in instances where it is demonstrated that there are violations of other provisions of the *Constitution* whose enforcement are not mere 'bootstraps' or merely framed in Bill of Rights language as a pretext to gain entry to the court; that the petition raised serious constitutional issues warranting being excepted from the principle of non-justiciability and exhaustion hence the court was vested with the requisite jurisdiction to deal with it; that the local tribunals referred to after the enumeration in article 169(1)(d) of the *Constitution* exclude the tribunals formed under the *Constitution*, all administrative and advisory tribunals, all tribunals whose membership includes a Judge of the superior courts and all other informal tribunals not formed under the *Constitution* or any Act of Parliament; that such excluded tribunals include a tribunal established under article 144(3) and 150(2) of Constitution for the removal of the President or Deputy President on grounds of incapacity, a tribunal created under article 158(4) of the *Constitution* for the removal of the Director of Public Prosecutions, a tribunal created under article 168(5)(a) or (b) of the *Constitution* for the removal of



- the Chief Justice or other Judges of the superior courts, a tribunal created under article 251(4) of the Constitution for the removal of commissioners or holders of independent offices and any administrative or informal tribunal; and that the local tribunals created under article 169(1)(d) of the Constitution are subordinate courts and not advisory or administrative tribunals.
9. The learned Judge further found: that the local tribunals contemplated under article 169(1)(d) of the Constitution must be anchored in Acts of Parliament or statutes which ought to provide for, *inter alia*, their constitution, appointment, removal and the terms of their members; that there is a need for separation of powers between the Executive and the Judiciary in respect to the local tribunals; that in order for justice not only to be done but also be seen as done, the executive ought not to be the appointing authority of the members of the local tribunals and that the duty ought to be undertaken by an independent entity; that on the authority of the case of Affordable Medicines Trust and Others v Minister of Health and Others [2005] ZACC 3; 2006 (3) SA 247 (CC) at paras 49, 75 and 77 and Minister of Health and others v Treatment Action Campaign and others (2002) 5 LRC 216, 248, since the local tribunals are subordinate courts, their affairs, just like the other subordinate courts, ought to be managed by the Judiciary through the 2<sup>nd</sup> respondent; and that the appointment and removal of members of the local tribunals falling under article 169(1)(d) of the Constitution by the Executive contravenes the principle of separation of power and is contrary to article 50(1) of the Constitution and infringes on the independence of the Judiciary.
  10. On the issue whether the local tribunals under article 169(1)(d) of the Constitution should be transited to the Judiciary, the learned Judge found: that the local tribunals are subordinate courts; that the members of such tribunals, in line with the ejus dem generis rule, fall within the category of ‘other judicial officers’ under article 172(1)(c) of the Constitution hence must be appointed by the 2<sup>nd</sup> respondent; that in order to enable such appointments to be undertaken as commanded by the Constitution, the local tribunals must be transited to the Judiciary; and that in accordance with article 169(2) of the Constitution, there is need for an Act of Parliament to aid in the transition.
  11. In his disposition the learned Judge held: that the amended petition was justiciable and the court had the jurisdiction to deal with the issues therein; that the local tribunals created under article 169(1)(d) of the Constitution are subordinate courts in Kenya; that the appointment and removal of members of the local tribunals created under article 169(1)(d) of the Constitution by the Executive violates the principle of separation of powers, contravenes the right to fair hearing under article 50 of the Constitution and infringes on the independence of the Judiciary; that the local tribunals under article 169(1)(d) of the Constitution must be transited to the Judiciary and the appointment and removal of their members be undertaken by the Judicial Service Commission; that any new appointment or removal of a member of any of the specified tribunals under article 169(1)(d) of the Constitution must be undertaken by the 2<sup>nd</sup> respondent, the Judicial Service Commission; that the Attorney General and the Parliament, do to take proactive steps within their respective dockets towards propagating the *Tribunals Bill* with a view of transiting the local tribunals under article 169(1)(d) of the Constitution to the Judiciary and file affidavits within 6 months of the judgment detailing the steps taken; and that upon filing of the said affidavits, the Deputy Registrar of the court to schedule the matter for mention on the basis of priority.
  12. Dissatisfied with the said decision the appellants lodged the instant appeal which they urged us to allow on some 14 grounds. “Ground” 14 is, however, not a ground of appeal but a prayer for reliefs. Ground 11, on the other hand not only sets out the appellant’s grievance but proceeds to expound on the specific instances of the alleged internal inconsistencies. We have time without a number reminded



counsel and parties to adhere to the edict of rule 88 of the Court of Appeal Rules, 2022 which enjoins appellants to

“... concisely set forth under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against”.

The practice of drafting argumentative and embellished grounds was deprecated by the Supreme Court of Uganda in *Kamurasi v Accord Properties Ltd* [2000] 1 EA 90 (SCU) in which the court reiterated that a memorandum of appeal should neither be argumentative nor narrative and the court went on to form a dim view of the way the grounds of appeal were framed and noted that such practice reveals the failure by parties to acquaint themselves with the rules applicable to appeals before the court. See also *Moses Kipkolum Kogo v David Malakwen* Civil Appeal No 74 of 1998. Parties who fail to adhere to our rules risk being penalized as a consequence.

13. Bereft of their argumentative components, the grounds of appeal are that the learned Judge: erred in finding that the petition was justiciable; exceeded his constitutional mandate in characterising and dichotomising tribunals, a power reserved for Parliament; erred in failing to appreciate and hold that article 169(1)(d) of the Constitution is prospective by imputing the term “transitioning” into article 169(1)(d) of the Constitution and applying it in interpreting the same, leading to the erroneous conclusion that that the tribunals as presently constituted are local tribunals, and should be moved to the judiciary; erred in making the order transitioning 24 tribunals to the 2<sup>nd</sup> respondent when the tribunals were established under various statutes, some enacted before the promulgation of the 2010 Constitution hence not contemplated by article 169(1)(d); erred by finding that article 169(1)(d) and (2) of the Constitution requires the appellant and the 3<sup>rd</sup> respondent to transition tribunals to the 2<sup>nd</sup> respondent when the said article does not contemplate the folding up, reconstituting and migrating/transitioning the statutory tribunals as presently constituted; erred in applying the *ejusdem generis* rule of interpretation to give meaning to the term “local tribunal” and in so doing usurped the role of Parliament and violated the principle of separation of powers; erred in invoking article 261(1) as read with the Fifth Schedule and finding that the legislation contemplated in article 169(1)(d) and (2) ought to be enacted by August 2015 when the contemplated tribunals may or may not be established and therefore there cannot be a timeline for their establishment; erred in attempting to define the nature of tribunals under article 169(1)(d) of the Constitution post the public participation exercise contrary to the established legislative processes and the provisions of the Statutory Instruments Act, 2013; erred in making a determination that the *Tribunals Bill*, 2017 is the contemplated legislation under Article 169 of the Constitution; that the judgement lacks internal consistence, is self-conflicting and defeating with the result that its implementation will be an absurdity; erred in directing that the appellant and the 3<sup>rd</sup> respondent file an affidavit in court within six (6) months detailing their efforts to transit the local tribunals without taking into account the active-efforts being currently made; and was speculative as regards his findings on the role of the Executive in the Constitution of the tribunals
14. We heard the appeal on the court’s virtual platform on October 9, 2024 when learned counsel, Mr Emmanuel Bitta, appeared with Mr Okore for the appellant, Mr Okiya Omtata Okoiti, the 1<sup>st</sup> respondent appeared in person, learned counsel, Mr Issa Mansur, appeared with Mrs Sharon Maina for the 2<sup>nd</sup> respondent, learned counsel, Mr Mbarak, appeared for the 3<sup>rd</sup> respondent and learned counsel, Mr Nyawa appeared with Mr Odongo for the 4<sup>th</sup> respondent.
15. The parties relied on their written submissions with brief highlights. Before delving into the issues raised by the parties, it is important to state that a party to an appeal ought not to agitate a different case from the one taken before the trial court. An appellate court only interferes with the decision of the trial court where it is alleged that the trial court erred in arriving at findings contrary to the case as



presented by the appellant at the trial court. Where the trial court makes findings, which are in accord with the case as presented by the appellant, the appellant cannot be heard to complain that the trial Judge erred. Form D of the First Schedule to the *Court of Appeal Rules* contemplates that the party giving the notice of appeal is one aggrieved by the decision either wholly or in part. This court therefore held in *Richard Kanyago & 2 others v David Mukii Mereka* Civil Appeal No 94 of 2001 that where a consent was recorded on special damages it was not open to the appellants to indicate in their notice of appeal that they were dissatisfied with the amount of special damages the superior court awarded with their consent as it would have amounted to reviving an issue which the parties had agreed would not be the subject matter of adjudication by the trial court even if the agreed special damages were conditional on the appellants being found liable. Such a notice was found not to accord with rule 74(3) of the then *Court of Appeal Rules* which required in mandatory terms that the notice does specify whether the intended appeal is against the whole or part only of the decision and if part only, the part complained of, hence the notice of appeal was held to be defective.

16. The rules of pleadings require parties to put forward to the court the entire case they intend the trial court to determine so as to give the court and the opposite side an opportunity of answering to the same. Where a party, before the trial court, does not contest an issue before the trial court, the opposite party is lulled into a false sense of security either that he does not have to deal with the same or deal with it as adequately or as vigorously as he could have done. That is the same as conducting proceedings by ambush. As held by this court in in *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 others* [2014] eKLR which quoted with approval an excerpt from an article by Sir Jack Jacob entitled “*The Present Importance of Pleadings*” where it was stated:-

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice...In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

17. Before the trial court, the appellant’s case was hinged an affidavit sworn by Joash Dache on November 7, 2018. In that affidavit, it was deposed that:

- “3. That it is common ground that:
- a. Under article 169(1)(d) local tribunals are classified as subordinate court;



- b. They need to be transitioned to the Judiciary (*sic*) from the various Ministries and Government Departments through an Act of Parliament pursuant to article 162(2) of the Constitution;
  - c. Currently there exists more than sixty (60) tribunals established under various Acts of Parliament, dealing with the resolution of various disputes arising between various parties concerning various sectors;
  - d. That genuine effort has been made and continues to be made by the Respondents herein to ensure a smooth transition of the various tribunals to the Judiciary.
4. Specifically that the 2<sup>nd</sup> respondent did constitute a Working Committee in June 2014, under the auspices of the Kenya Law Reform Commission to undertake the transition process. Hereto attached and marked 'JD-1' is a letter constituting the Committee dated June 23, 2014.
7. That it can be discerned from the Report (JD-2) that the Tribunal System, as it exists today:-
- a. lacks infrastructure, finance and human resource;
  - b. it lacks a formal legal system for its operations, including the appointment of its members;
  - c. it lacks accountability mechanism and standards of operation.
9. That I am aware that, similarly the judiciary constituted a Judiciary Working Committee on the Transition and Restructuring of the Tribunals Working Committee (JWCT-T) to undertake the exercise of ensuring a structured transition of the tribunals from the Executive to the Judiciary.
10. That the Judiciary Working Committee on the Transition and Restructuring of the Tribunals Working Committee (JWCT-T) established by the 1<sup>st</sup> respondent and the Working Committee established by the 2<sup>nd</sup> respondent worked in collaboration and eventually came up with a *Tribunals Bill*. The *Bill* is yet to become law.
16. That the 2<sup>nd</sup> respondent working with the stakeholders, including the 1<sup>st</sup> respondent, came up with a *Draft Tribunal Bill* in 2015 and the same was improved on and became the *Tribunals Bill, 2017*. It addresses the challenges noted by the committee and attempts to align the operations of Tribunals in Kenya with the Constitution. Hereto annexed and marked 'DJ-3' is a copy of the 2017 *Bill*.
16. That I am advised by my counsel on record, which advise I believe to be true, that – with respect – the period of six (6) months sought to allow the transitioning of the various tribunals established by statutes and domiciled in various Ministries and Government Departments is too short. This is partly informed by the fact that the financial/fiscal cycle is mid-way on its implementation and financing the transition must be budgeted for.”



18. We have set out, in extenso, the above paragraphs in order to bring out the gist of the appellant's case before the trial court. It is clear that the appellant's case before the trial court was: that under article 169(1)(d) local tribunals are classified as subordinate court; that there currently exists more than sixty (60) tribunals established under various Acts of Parliament, dealing with the resolution of various disputes arising between various parties concerning various sectors; that the Tribunal System, as it exists today lacks infrastructure, finance and human resource as well as a formal legal system for its operations, including the appointment of its members and accountability mechanism and standards of operation; that there is a need to transit the said tribunals to the Judiciary from the various Ministries and Government Departments through an Act of Parliament pursuant to article 162(2) of the Constitution; that That genuine effort has been made and continues to be made by the Respondents herein to ensure a smooth transition of the various tribunals to the Judiciary; that in order to align the operations of Tribunals in Kenya with the Constitution, the *Tribunals Bill*, 2017 was published; and that due to the fact that the financial/fiscal cycle was mid-way on its implementation and financing the transition must be budgeted for, the period of six (6) months sought to allow the transitioning of the various tribunals established by statutes and domiciled in various Ministries and Government Departments is too short.
19. While, in interpreting the Constitution, a court is not necessarily bound by the positions taken by the parties before it, it is disingenuous for a party who has taken a particular position before the trial court to make an about-turn on appeal and adopt a position diametrically opposed to the one taken before the trial court and the basis of which the dispute was determined.
20. Before us, the appellant relied on the cases of Trusted Society of Human Rights v Attorney General and others [2012] eKLR, Jayne Mati & another v Attorney General and another Nairobi Petition No 108 of 2011 and Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR, to stress on the doctrine of separation of powers. It was contended that the dispute before the court was not justiciable as it amounted to the intrusion by the Judiciary on the domain of the legislature which was in the process of carrying out its legislative mandate. According to the appellant, the adoption of the ejusdem generis rule in interpreting what "local tribunals" mean has the absurd consequential effect of usurping the role of Parliament and the legislation contemplated under article 162(4), 169(1)(d) and (2) of the Constitution by categorising and dichotomising tribunals contrary to the constitutional principle of separation of powers. Since there was an ongoing legislative process, it was contended that the petition, contrary to article 94 of the Constitution, offended the internal proceedings of Parliament.
21. The 4<sup>th</sup> respondent's position, which was adopted by the 1<sup>st</sup> respondent, was that based on the decision of the Supreme Court in the case of Speaker of the Senate & another v Hon Attorney General & others [2013] eKLR, the High Court was empowered to intervene where it was shown that there was an imminent threat to the Constitution and hence the High Court did not violate the doctrine of separation of powers; that the High Court has within its powers to determine questions of interpretation of articles 169(1) and (2) of the Constitution and functions and appointment of the tribunals hence the petition was justiciable; that the Constitution mandates the courts to ensure that Parliament does not transgress the limits of its constitutional mandate and engage in illegal exercise of power as was held by this court in the case of In the Matter of the Speaker of the Senate and another [2013] KLR at para 62; that the court cannot run away from the obligation to ensure that state organs act according to the Constitution; that on the authority of the Constitutional Court of South Africa in the case of Minister of Health and others v Treatment Campaign and Others [2002] 5 LRC 216, 248, the appointment and removal of members of local tribunals falling under article 169(1)(d) of the Constitution by the Executive contravenes the principle of separation of power and is contrary to article 50(1) of the Constitution as it infringes on the independence of the Judiciary; that executive appointments to tribunals, particularly when the Executive is involve in disputes, violate the rights



to fair administrative action and fair hearing under articles 47 and 50 of the *Constitution* as well as article 7 of the *African Charter on Human and Peoples' Rights* and the *Human Right's Committee's General Comment No 32*, article 14: Right to equality before courts and tribunals and to fair trial, UN Doc. CCPR/C/GC/32 (2007); that as held by the Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services and 5 Others* [2014] eKLR, the right to fair hearing is also linked to the functional independence of a body.

22. In our view, the answer to the appellant's position on this issue is reflected in the decision of the Constitutional Court of South Africa in *Doctors for Life International v Speaker of the National Assembly and others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC), a decision that resonates with our constitutional architecture, where the Court pronounced itself as follows:

“When legislation is challenged on the grounds that Parliament did not adopt it in accordance with the provisions of the *Constitution*, courts have to consider whether in enacting the law in question Parliament has given effect to its constitutional obligations. If it should hold in any given case that Parliament has failed to do so, it is obliged by the *Constitution* to say so. And insofar as this constitutes an intrusion into the domain of the legislative branch of government, that is an intrusion mandated by the *Constitution* itself. What should be made clear is that when it is appropriate to do so, courts may – and if need be must – use their powers to make orders that affect the legislative process. Therefore, while the doctrine of separation of powers is an important one in our constitutional democracy, it cannot be used to avoid the obligation of a court to prevent the violation of the *Constitution*. The right and the duty of this court to protect the *Constitution* are derived from the *Constitution*, and this court cannot shirk from that duty. As O'Regan J explained in a recent minority judgment, ‘the legitimacy of an order made by the court does not flow from the status of the institution itself, but from the fact that it gives effect to the provisions of our Constitution.’ In order for the founding values that lie at the heart of our Constitution to be made concrete, it is particularly important for this court to afford a remedy, which is not only effective, but which should also be seen to be effective. The provisions of section 172(1) (a) are clear, and they admit of no ambiguity; ‘[w]hen deciding a constitutional matter within its power, a court...must declare that any law or conduct that is inconsistent with the *Constitution* is invalid’. This section gives expression to the supremacy of the *Constitution* and the rule of law, which is one of the founding values of our democratic state. It echoes the supremacy clause of the *Constitution*, which declares that the ‘Constitution is supreme...; law or conduct inconsistent with it is invalid’. It follows therefore that if a court finds that the law is inconsistent with the *Constitution*, it is obliged to declare it invalid...”.

23. Similarly, in *Minister of Health and others v Treatment Campaign and others* (*supra*) the same court pronounced that:

“The primary duty of courts is to the *Constitution* and the law, “which they must apply impartially and without fear, favour or prejudice”. the *Constitution* requires the state to “respect, protect, promote, and fulfil the rights in the Bill of Rights”. Where state policy is challenged as inconsistent with the *Constitution*, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the *Constitution* to say so. In so far as that constitutes an intrusion into the domain of the executive, that is an intrusion mandated by the *Constitution* itself.”



24. Article 2(4) of our Constitution provides as follows:
- “ Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”
25. Clearly article 2(4) enjoins the court to determine a question whether an omission to undertake a step contravenes the Constitution. We must point out that justiciability must be distinguished from merit. An issue is not justiciable merely because it has no merit. A justiciable issue may well turn out to be unmerited. However, that does not bar the court from interrogating its merit. In this case, it is our view and we hold that the issue whether Parliament was enjoined to enact legislation in order to transit tribunals from the various Ministries and Government Departments, a duty that the appellant itself acknowledged, contravened the letter and the spirit of the Constitution was clearly a justiciable issue and we dismiss this ground.
26. According to the appellant, since article 169(1)(d) of the Constitution states that tribunals are to be established by an Act of Parliament, the learned Judge failed to appreciate and hold that article 169(1)(d) and (2) of the Constitution are prospective in nature as guided by the Supreme Court decision in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR. In the appellant’s submission, the tribunals as presently constituted do not require transitioning. Instead they said provisions speak of establishments of other local tribunals in the category and status of Magistrate’s Courts, Kadhis Courts and Court Martial. It was contended that the imputation of the term “transitioning” into article 169(1)(d) of the Constitution and applying it to the interpretation of the same was contrary to the provisions of article 259(1)(d) of the Constitution and goes contrary to good governance as it seeks the removal of the appointment of members of the tribunals from the ambit of the 3<sup>rd</sup> respondent to the 2<sup>nd</sup> respondent without any requirement on the part of the appellant and the 3<sup>rd</sup> respondent to transit the tribunals as currently constituted to the 2<sup>nd</sup> respondent. It was submitted that the tribunals transitioned by the learned Judge were established under various statutes some of which were enacted before the promulgation of the Constitution of Kenya, 2010 and thus were not the tribunals contemplated by article 169(1)(d) of the Constitution.
27. On the other hand, the 4<sup>th</sup> respondent’s case, was that the argument that the current tribunals are preserved is a complete departure from the appellant’s case in the High Court where the appellant agreed that there was a need to transition the local tribunals to the judiciary from the various ministries; that based on the case of Mary Kitsao-Ngowa & 36 others v Krystalline Limited [2015] eKLR parties are bound by their pleadings; that since article 169(2) of the Constitution requires, in mandatory terms, legislative intervention to provide for the jurisdiction, functions and powers of the tribunals as subordinate courts, the transition was not an import by the learned Judge but had constitutional underpinning under article 162(4) of the Constitution.
28. The appellant’s submission on this point is that article 169(1)(d) of the Constitution should only apply to the existing tribunals. Article 169 of the Constitution provides as hereunder:
1. The subordinate courts are—
    - a. the Magistrates courts;
    - b. the Kadhis’ courts;
    - c. the Courts Martial; and



- d. any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by article 162(2).
  2. Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause (1).
29. As stated above, the appellant acknowledged that tribunals contemplated under article 169(1)(d) of the Constitution are subordinate courts and ought to be transited to the Judiciary. In this appeal, the appellant seems to be of the view that the phrase “as may be established by an Act of Parliament” is prospective and futuristic and does not apply to existing tribunals. However, before the trial court, the appellant expressly stated that the tribunals (in reference to article 169(1)(d)) need to be transited to the Judiciary from the various Ministries and Government Departments through an Act of Parliament pursuant to article 162(2) of the Constitution need to be transited to the Judicial (*sic*) from the various Ministries and Government Departments through an Act of Parliament pursuant to article 162(2) of the Constitution. In our view, by adopting the phase ‘transit’ the appellants acknowledged that the application of article 169(1)(d) was not restricted to new tribunals. It was in appreciation of the difficulties that were bound to be encountered in the existing tribunals transition from the Ministries and Government Departments housing them to the Judiciary that the appellant sought for more time rather than the six months proposed by the 1<sup>st</sup> respondent.
30. We are of the view and hold that article 169(1)(d) of the Constitution applies to all local tribunals contemplated thereunder whether new or existing. The learned Judge was alive to the difficulties raised by the appellant and the 3<sup>rd</sup> respondent if the tribunals were to be immediately transited to the Judiciary. Therefore, the learned Judge gave a 6 months window period for the process to be undertaken. The process that was to be undertaken was the enactment of the relevant law and the transitioning of the tribunal to the Judiciary. To our mind the period was sufficient to trigger the said transition.
31. According to the appellant, whereas ejusdem generis is a recognised rule of interpretation as defined by Black’s Law Dictionary, (Garner A. Bryan, 9<sup>th</sup> Ed. Thomson Reuters 2009 at page 594 as cited in the case of Geonet Technologies Limited v Ministry of ICT, Innovations and Youth Affairs, State Department of ICT & Innovation & 2 others, Com Twenty-One Limited (Interested Party) [2022] eKLR, the same ought to be used in tandem and in a manner that promotes the Constitution’s purposes, values and principles; advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; permits the development of the law; and contributes to good governance as provided in article 259 of the Constitution.
32. On this point, it was submitted by the 4<sup>th</sup> respondent that the constitutional design of article 169(1)(d) is to place the local tribunals under the Judicial Service Commission so as to cure the appearance of partiality derived from the fact that the membership of majority of the local tribunals comprise of persons appointed by the Executive so as to preserve the doctrine of separation of powers; that based on the definition of ejusdem generis rule in Black’s Law Dictionary at page 594, the rule is an international principle that guides a court in reconciling any incompatibility between specific and general words and that on the authority of the decision of this court in Commissioner for the Implementation of the Constitution v Attorney General & 2 others [2013] eKLR, the rule is applicable in constitutional interpretation; that ejusdem generis rule is both a statutory and constitutional legal interpretative principle used to resolve conflicts between specific and general terms in a statute and serves as a guideline for courts to harmonise the meaning of general terms by limiting them to the same class or category as the specific terms that precede them.



33. According to the *eiusdem generis* rule, where there are general words following particular and specific words the general words must be confined to things of the same kind as those specified. According to the rule when a series of particular words in a statute is followed by general words, the general words are confined by being read as the same scope of genus as (*eiusdem generis* with) the particular words. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus. See *R v Edmundson* [1859] 28 LJMC 213 at 215.
34. We adopt the position of the Constitutional Court of Uganda in *Kigula and others v Attorney-General* [2005] 1 EA 132 in which the decision in *The Republic v El Mann* [1969] EA 357 was cited, that while the widest construction possible, in its context, should be given according to the ordinary meaning of the words used it is now widely accepted that the principles which govern the construction of statutes also apply to the interpretation of constitutional provisions. We therefore hold that the *eiusdem generis* rule applies to both statutory interpretation as well as constitutional interpretation. Consequently, local tribunals in article 169(1)(d) of the *Constitution* must be treated in the same manner as the courts set out under article 169(1) of the *Constitution*.
35. It is not by coincident that article 159(1) of the *Constitution* provides that:
- Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.
36. Article 160(1) of the *Constitution* provides that:
- In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.
37. One of the cardinal principles for constitutional interpretation was restated the Supreme Court in Advisory Opinion No 2 of 2013 - *The Speaker of The Senate & another v Honourable Attorney General & others* [2013] eKLR, in which the Honourable Chief Justice at paragraph 184 quoted the Ugandan Case of *Tinyefuza v Attorney General* Const Petition No 1 of 1996 (1997 UGCC3) where it was held that:
- “the entire *Constitution* has to be read as an integrated whole, and no one particular provision destroying the other but each sustaining the other. This is the rule of harmony, rule of completeness and exhaustiveness and rule of paramountcy of the written *Constitution*.”
38. This court in *Equity Bank Limited v West Link Mbo Limited* [2013] eKLR cited *Philip Tormey v Ireland* and the in which Attorney General the Supreme Court of Ireland held a view very similar to that of our Supreme Court when it expressed itself as follows:
- “The rule of literal interpretation, which is generally applied in the absence of ambiguity or absurdity in the text, must here give way to the more fundamental rule of constitutional interpretation that the *Constitution* must be read as a whole and that its several provisions must not be looked at in isolation, but be treated as interlocking parts of the general constitutional scheme. This means that where two constructions of the provision are open in the light of the *Constitution* as a whole, despite the apparent unambiguity of the provision itself, the court should adopt the construction which will achieve the smooth and harmonious operation of the *Constitution*. A judicial attitude of strict construction



should be avoided when it would allow the imperfection or inadequacy of the words used to defeat or pervert any of the fundamental purposes of the *Constitution*. It follows from such global approach that, save where the *Constitution* itself otherwise provides, all its provisions should be given due weight and effect and not be subordinated one to another. Thus, where there are two provisions in apparent conflict with one another, there should be adopted, if possible, an interpretation which will give due and harmonious effect to both provisions. The true purpose and range of a *Constitution* would not be achieved if it were treated as no more than the sum of its parts.”

39. Our consideration of the above two provisions lead us to the conclusion that the tribunals contemplated in article 169(1)(d) ought to be under the Judiciary.
40. According to the appellant, the wording of the text in article 169(1)(d) of the *Constitution* contemplate that local tribunals may be established thus negating the trial court’s rationale that there is a timeline for the establishment of the need- based tribunals, that has not been adhered to. On the other hand, it was submitted by the 4<sup>th</sup> respondent that that the process of transiting the tribunals to the Judicial Service Commission is not self-executing but requires legislative intervention as provided under article 169(2) of the *Constitution*; that although the Fifth Schedule to the *Constitution* does not provide for a timeline within which the legislation is to be enacted by Parliament with respect to tribunals, article 158 of the *Constitution* provides in such cases, the act shall be done without unreasonable delay; that the delay of 11 years in enacting legislation giving effect to article 169(1) and (2) of the *Constitution* was unreasonable; that since article 169(1)(d) of the *Constitution* is not prospective, the 14 year delay in enactment of the Bill threatens the right to a fair hearing before independent and impartial tribunals as guarantee in article 50(1) of the Constitution; and that although article 169(1)(d) of the *Constitution* is not included in the Fifth Schedule that stipulated a five year limit for the passage of specific pieces of legislation required to implement the *Constitution*, Parliament’s failure to do so cannot be allowed to continue and that article 259(8) was applicable in the circumstances.
41. It is true that article 169(2) of the *Constitution* does not prescribe timelines within which legislation contemplated thereunder to be enacted. However, the fact that the *Constitution* itself enjoined Parliament to enact a legislation conferring jurisdiction, functions and powers on subordinate courts established under clause (1) of article 169, is a clear manifestation of the seriousness with which the drafters of the *Constitution* treated such legislation. It cannot be gainsaid that for the realisation of the constitutional right to access justice under Article 48 of the *Constitution*, it is imperative that the enactment of an instrument conferring jurisdiction, functions and powers on subordinate courts be treated with urgency. In our view, in interpreting a constitutional provision either containing a fundamental right or geared towards the realisation of a constitutional right such as article 169(2) of the *Constitution*, the court should adopt a dynamic, progressive and liberal or flexible approach keeping in view ideals of the people socio-economic and political-cultural values so as to extend the benefit of the same to the maximum possible. See *Kigula and others v Attorney-General (supra)*.
42. We are therefore of the view that in the absence of prescribed timelines for enacting legislation pursuant to article 169(2) of the *Constitution*, article 259(8) of the *Constitution* comes into play to compel the enactment of the contemplated legislation to be undertaken. The said provision stipulates that:

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 occasion arises.
43. The drafters of the *Constitution*, in our view, had in mind circumstances such as the one in hand when they inserted this article in the *Constitution*. We agree that more than 10 years delay in enacting a legislation geared towards the realisation of a constitutional right, in this case, the right of access to



justice, is unreasonable and cannot be countenanced and the trial court was justified in compelling the 3<sup>rd</sup> respondent to undertake its constitutional obligation.

44. According to the appellant, the learned Judge's direction on the filing of affidavit detailing the appellant and 3<sup>rd</sup> respondent's efforts to promulgate the *Tribunal Bill* amounted to the contemplated transitioning of the mandate to appoint or remove the members of the tribunals to the 2<sup>nd</sup> respondent without the requisite constitutional and statutory foundation contrary to article 261(1) that requires Parliament to enact legislation to govern whatsoever transitions hence impossible to implement.
45. The appellant's position was supported by the 3<sup>rd</sup> respondent which argued: that not all local tribunals are established as part of the Judiciary; that the use of the words "as may be established" as opposed to simply "established" in article 169(1)(d) of the *Constitution* denotes that it is Parliament that can confer the status of a local tribunal as part of the judiciary or establish local tribunals within institutions of the executive including government ministries; that there are other provisions of the *Constitution* that imply or presume the existence of tribunals outside the *Constitution*; that Parliament can establish a local tribunal as an avenue of a fair administrative action within an institution and comply with article 47 without being reconstituted as subordinate courts under the judiciary; that the court failed to adequately consider the unique role of local tribunals in providing accessible, efficient and specialised dispute resolution mechanisms that are distinct from formal judicial system hence the decision limits Parliament's authority by implying that an Act of Parliament cannot establish a tribunal outside the judiciary; that article 152(2)(d) recognise that not all disputes need to be resolved within the rigid confines of the traditional judiciary since it acknowledges the need for flexible, specialised and sector specific approaches to dispute resolution that are often more efficient, accessible and cost-effective than conventional court processes; that by asserting that that all tribunals are part of the judiciary, the High Court's decision effectively narrows the scope of alternative dispute resolution, contradicting article 159(2)(d) and undermining the constitutional directive to promote them; that the High Court's ruling disregards the legislative discretion granted to Parliament under article 169(2) of the *Constitution* to determine the structure and operation of tribunals.
46. The 4<sup>th</sup> respondent's view was that article 23(3) of the *Constitution* empowers the court to grant appropriate relief in any proceedings seeking to enforce fundamental rights and freedoms as appreciated in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others* Petition 3 of 2018; and that the orders granted were proper in the circumstances.
47. In directing that affidavits be filed, the trial court was issuing structural interdict which strictly speaking, is not a remedy but a mode of the realization of a remedy or relief. Article 23 of the *Constitution* provides that a court "may grant appropriate relief, including a declaration of rights" when confronted with rights violations and an 'appropriate relief' must mean an effective remedy for without effective remedies for breach, the values underlying and the rights entrenched in the *Constitution* cannot properly be upheld or enhanced.

As was held by the Constitutional Court of South Africa in *Fose v Minister of Safety & Security* [1997] ZACC 6:

"Appropriate relief will in essence be relief that is required to protect and enforce the *Constitution*. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the *Constitution* are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all important rights."



48. One of the remedies which is now recognized in jurisdictions with similar constitutional provisions as our article 23 is what is called structural interdict. In essence, structural interdicts (also known as supervised interdicts) require the violator to rectify the breach of fundamental rights under court supervision. Five elements common to structural interdicts have been isolated in this respect. First the court issues a declaration identifying how the government has infringed an individual or group's constitutional rights or otherwise failed to comply with its constitutional obligations. Second, the court mandates government compliance with constitutional responsibilities. Third, the government is ordered to prepare and submit a comprehensive report, usually under oath, to the court on a pre-set date. This report, which should explicate the government's action plan for remedying the challenged violations, gives the responsible state agency the opportunity to choose the means of compliance with the constitutional rights in question, rather than the court itself developing or dictating a solution. The submitted plan is typically expected to be tied to a period within which it is to be implemented or a series of deadlines by which identified milestones have to be reached. Fourth, once the required report is presented, the court evaluates whether the proposed plan in fact remedies the constitutional infringement and whether it brings the government into compliance with its constitutional obligations. As a consequence, through the exercise of supervisory jurisdiction, a dynamic dialogue between the judiciary and the other branches of government in the intricacies of implementation may be initiated. This stage of structural interdict may involve multiple government presentations at several 'check in' hearings, depending on how the litigants respond to the proposed plan and, more significantly, whether the court finds the plan to be constitutionally sound. Structural interdicts thus provide an important opportunity for litigants to return to court and follow up on declaratory or mandatory orders. After court approval, a final order (integrating the government plan and any court ordered amendments) is issued. Following this fifth step, the government's failure to adhere to its plan (or any associated requirements) essentially amount[s] to contempt of court. In essence, structural interdicts require the violator to rectify the breach of fundamental rights under court supervision.
49. The Supreme Court in gave the remedy a seal of approval in the case of *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others* (*supra*) where it expressed itself as hereunder:
- “(121) We are however, in agreement with the submissions of the appellant and *Amicus Curiae*, to the effect that article 23 (3) of the *Constitution* empowers the High Court to fashion appropriate reliefs, even of an interim nature, in specific cases, so as to redress the violation of a fundamental right. As this court has already made an authoritative pronouncement on this matter, we shall say no more. While we acknowledge the fact that the *functus-officio* doctrine retains its validity, even vitality, in the majority of cases, Petition No 3 of 2018 49 both criminal and civil, it is our view that in certain situations, this doctrine ought to give way, albeit on a case by case basis. To subject article 23 of the *Constitution* to the limitations of rule 21 of the *Civil Procedure Act*, would stifle the development of courtsanctioned enforcement of human rights as envisaged in the Bill of Rights. Where a court of law issues an order, whose objective is to enforce a right, or to redress the violation of such a right, it cannot be said to have abdicated its judicial function as long as the said orders are carefully and judicially crafted.
- (122) Having stated thus, we hasten to add that, interim reliefs, structural interdicts, supervisory orders or any other orders that may be issued by the courts, have to be specific, appropriate, clear, effective, and directed at the parties to the suit



or any other State Agency vested with a constitutional or statutory mandate to enforce the order. Most importantly, the court in issuing such orders, must be realistic, and avoid the temptation of judicial overreach, especially in matters policy. The orders should not be couched in general terms, nor should they be addressed to third parties who have no constitutional or statutory mandate to enforce them. Where necessary, a court of law may indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions.”

50. It is therefore clear that the High Court had the jurisdiction to ensure that its decision was implemented by way of structural interdict and we find no reason to fault it on that score.
51. It was submitted, on behalf of the appellant that the learned Judge made assumptions as to the manner in which the Executive constitutes the tribunals without any evidence or pleadings by the 1<sup>st</sup> respondent. As stated above, the appellant itself appreciated that Tribunal System, as it exists today lacks: infrastructure, finance and human resource; a formal legal system for its operations, including the appointment of its members; and accountability mechanism and standards of operation. These were the very issues that the 1<sup>st</sup> respondent raised in his petition. In light of the concession by the appellant as regards the manner in which the tribunal system was operating, it cannot lie in the mouth of the appellants to now posit that there was no evidence to that effect and that the learned Judge’s decision was based on assumptions.
52. On behalf of the 3<sup>rd</sup> respondent, it was submitted that since the statutes that govern the appointment of the impugned tribunals are yet to be repealed, the appointments are, as a matter of law, valid until new legislation contemplated under article 169(2) is passed; that the new appointments must, however, be undertaken in conformity with the *Constitution*; that the Judicial Service Commission should be involved and take charge of all new appointments pending enactment of the enabling legislation.
53. We have considered the submissions made by the 3<sup>rd</sup> respondent and in our view, most of those issues were not placed before the trial court. The 3<sup>rd</sup> respondent could have resorted to rule of the *Court of Appeal Rules* if it wanted to agitate the said issues. That rule provides that:

A respondent who desires to contend on an appeal that the decision of the superior court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of the respondent’s contention.
54. The 3<sup>rd</sup> respondent never took advantage of the said provision and cannot submit on anything else apart from the appeal. In any case the said provision is only beneficial where issues were raised before the trial court but were not addressed. It is not an avenue for a party to invent a totally new cause of action at an appellate level.
55. We have on our own re-evaluated the evidence placed before the trial court and the submissions made and we find no reason to fault the learned Judge’s decision which was sound, both in law and in fact. Consequently, we find no merit in this appeal which we dismiss but with no order as to costs.
56. Those are the orders of this court.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**



**A. O. MUCHELULE**

.....

**JUDGE OF APPEAL**

**G. V. ODUNGA**

.....

**JUDGE OF APPEAL**

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

*signed*

**DEPUTY REGISTRAR**





This is the Exhibit Marked ".....EK-5....."  
 Referred to in the Annexed Affidavit Declaration  
 of.....Emily Kinama.....  
 Sworn / declared before me  
 this.....22.....day of.....Jan.....20.....26.....  
 at.....Nairobi.....  
 Commissioner For Oaths

**Katiba Institute & 2 others v Attorney General & another; Judicial Service  
 Commission & 10 others (Interested Parties) (Constitutional Petition  
 268 of 2018 & Petition 251 of 2017 (Consolidated)) [2025] KEHC 1610 (KLR)  
 (Constitutional and Human Rights) (19 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1610 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 CONSTITUTIONAL AND HUMAN RIGHTS  
 CONSTITUTIONAL PETITION 268 OF 2018 & PETITION 251 OF 2017 (CONSOLIDATED)  
 EC MWITA, J  
 FEBRUARY 19, 2025**

**BETWEEN**

**KATIBA INSTITUTE ..... 1<sup>ST</sup> PETITIONER  
 OKIYA OMTATA OKOITI ..... 2<sup>ND</sup> PETITIONER  
 KENYA COALITION FOR WILDLIFE CONSERVATION AND  
 MANAGEMENT ..... 3<sup>RD</sup> PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
 THE NATIONAL ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JUDICIAL SERVICE COMMISSION ..... INTERESTED PARTY  
 THE NATIONAL ENVIRONMENTAL MANAGEMENT  
 AUTHORITY ..... INTERESTED PARTY  
 NATIONAL LAND COMMISSION ..... INTERESTED PARTY  
 KENYA WILDLIFE SERVICE ..... INTERESTED PARTY  
 KENYA RAILWAY CORPORATION ..... INTERESTED PARTY  
 CHINA ROAD AND BRIDGE CORPORATION ..... INTERESTED PARTY  
 MINISTRY FOR TRANSPORT AND INFRASTRUCTURE .... INTERESTED  
 PARTY**



**MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES . INTERESTED PARTY**

**HABITAT PLANNERS TEAM ..... INTERESTED PARTY**

**AFRICA CENTRE FOR OPEN GOVERNANCE ..... INTERESTED PARTY**

**HOMESCOPE PROPERTIES LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. On 16<sup>th</sup> November 2016, the National Assembly passed the Prevention of Torture Bill 2016 which was assented to on 13<sup>th</sup> April 2017 as the *Prevention of Torture Act*, 2017. The Act amended section 129(4) of the *Environmental Management and Co-ordination Act*, 1999 (EMCA). The amendment was challenged in court through Petition No. 251 of 2017 and a conservatory order was issued suspending the coming into operation of that amendment.
2. On 13<sup>th</sup> November 2017 the National Assembly again proposed amendments to sections 125 and 129 of *EMCA* through the Statute Law (Miscellaneous Amendment) (No. 3) Bill, 2017. The Bill was passed by the National Assembly and the Act was assented to by the President on 4<sup>th</sup> April 2018 with a commencement date of 21<sup>st</sup> May 2018.
3. Prior to the amendments, section 129(4) allowed automatic stay of the decision of National Environmental Management Authority (NEMA) once an appeal was lodged before the National Environment Tribunal (NET). Section 125 provided for the appointment of the chairperson and members of the NET.
4. Petition No. 268 of 2018 was again filed to challenge the constitutionality of the amendments to those sections through the Statute Law Miscellaneous (Amendment) Act, 2018. Petition Nos 251 of 2017 and 268 of 2018 were consolidated with Petition 268 of 2018 designated as the lead file.
5. Petition No. 268 of 2018 was filed against the Attorney General while the Judicial Service Commission was named as the interested party. Petition 251 was brought against the National Assembly and the Attorney General as the 1<sup>st</sup> and 2<sup>nd</sup> respondents, respectively. The National Environmental Management Authority, (NEMA), National Land Commission, (NLC) Kenya Wildlife Service, (KWS) Kenya Railway Corporation; China Road and Bridge Corporation; Ministry for Transport and Infrastructure; Ministry of Environment and Mineral Resources; Habitat Planners Team and Africa Centre for Open Governance were named as interested parties.

**Petition No. 268 of 2018**

6. Katiba Institute (the 1<sup>st</sup> petitioner) averred that the Statute Law (Miscellaneous Amendment) Act, 2018 introduced fundamental changes on the functioning of NET; functions of the county governments under the Fourth Schedule and on the duty of the State to protect the environment, thereby impliedly amending other legislations, including The *Judicial Service Act* No. 1 of 2011.
7. It was the 1<sup>st</sup> petitioner's case, that the amendments to section 125 of *EMCA* took away the mandate of the JSC to appoint the chairperson of NET. The amendments to section 129 (3) and (4) of *EMCA*, removed automatic maintenance of status quo upon filing of an appeal before NET; vacated the status



quo orders previously issued automatically; applied retrospectively and required parties to make fresh applications for orders to maintain the status quo of any matter or activity subject to the appeal.

8. The 1<sup>st</sup> petitioner stated that while passing the *Prevention of Torture Act*, the National Assembly also amended section 129 of *EMCA* through section 29 of that Act but the amendments were suspended through a conservatory order issued in Petition No. 251 of 2017.

The 1<sup>st</sup> petitioner asserted that sections 125 and 129 of *EMCA* as amended are unconstitutional for violating various provisions of the *Constitution*. According to the 1<sup>st</sup> petitioner, the amendments to sections 125(1) (b) –(d); section 125(2); 125(4) (c) and 125(5) violated the right to a fair hearing before an independent and impartial tribunal. The sections now provide for appointment of members of NET otherwise than by the JSC. The amendments also gave the Cabinet Secretary powers to remove members of NET.

9. The 1<sup>st</sup> petitioner posited that the amendments were an affront to the independence of the judiciary; usurped the mandate of the JSC and had an effect of amending the *Constitution* by effectively removing NET from being part of the judiciary, a violation of Articles 160(1), 161(1), 162(4), 169(1) (d) and 172 (1) of the *Constitution*.
10. The 1<sup>st</sup> petitioner relied on section 129 of EMCA, Articles 47, 50(1) of the *Constitution*; article 10 of the *Universal Declaration of Human Rights*; article 14 (1) of the *International Covenant on Civil and Political Rights*; and *Human Rights Committee's General Comment No. 32*, article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32(2007)
11. The 1<sup>st</sup> petitioner asserted that the new section 125(1) (a) and (5) took away the constitutional mandate of the JSC to promote and facilitate the independence and accountability of the Judiciary. It also infringed on the requirement for merit-based selections or free and fair elections and diversity in the appointments of members of NET contrary to Articles 10,27, 73(1) (a) and 172(2) (a) of the *Constitution*.
12. The 1<sup>st</sup> petitioner relied on *Republic v Attorney General Ex parte Tom Odoyo Oloo* [2015] eKLR, and Principles IV and V of the *Commonwealth (Latimer House) Principles on the Accountability of and the Relationship Between the Three Branches of Government, 2004*.
13. The 1<sup>st</sup> petitioner argued that section 129(3) (d) (e) as amended contradicts the provisions of Articles 42 and 69(1) (a) and (g) of the *Constitution* by diluting the legislative measure of granting an automatic stay order upon filing an appeal by placing a requirement for an application to maintain the status quo upon filing of appeal. This was a retrogressive measure in protecting the right to a clean and healthy environment. The 1<sup>st</sup> petitioner relied on *Kenya Association of Manufacturers & 2 others v Cabinet Secretary- Ministry of Environment and Natural Resources & 3 others* [2017] eKLR.
14. The 1<sup>st</sup> petitioner further relied on the decision in *Samuel Kamau Macharia v Kenya Commercial Bank Ltd* [2012] eKLR, for the argument that the amended section 129 was unconstitutional for arbitrarily discharging all stay orders previously issued and retroactively divesting already vested rights of parties before NET.
15. The 1<sup>st</sup> petitioner also argued that the amendment to section 129(4) was a nullity having been made in defiance of conservatory orders issued in Petition 251 of 2017. It also contravened Article 10 of the *Constitution*. The 1<sup>st</sup> petitioner relied on the decisions in *Omega Enterprises (Kenya) Limited v Kenya Tourist Development Corporation* Nairobi [1998] eKLR and *Benjamin Leonard MacFoy v United Africa Company Ltd* (1961) 3 All ER 1169.



16. The 1<sup>st</sup> petitioner again relied on *Josephat Musila Mutua & 9 others v Attorney General & 3 others* [2018] eKLR, that it was procedurally invalid for the National Assembly to make fundamental amendments through a Statute Law (Miscellaneous Amendments) Act, depriving the public of the right to reasonable and effective public participation. The Bill was published on 13<sup>th</sup> November 2017 and later published in the Daily Nation on 2<sup>nd</sup> and 4<sup>th</sup> December 2017, giving the public only 5 days to give comments, thereby limiting public participation contrary to Articles 10 and 118 of the *Constitution*.
17. According to the 1<sup>st</sup> petitioner, the amendment to section 129 of affected county governments but there was no concurrence from the Senate. It also exposed the environment to irreversible degradation thereby imposing a substantial burden on the national and county governments in the event of a national disaster. The 1<sup>st</sup> petitioner relied on the decisions in *E W A & 2 others v Director of Immigration and Registration of persons & another* [2018] eKLR and *Biowatch Trust v Registrar Genetic Resources* [2009] ZACC 14.
18. Based on the above arguments, the 1<sup>st</sup> petitioner sought the following reliefs:
  - a. A declaration that the power and the function to appoint the chairperson and other members of the National Environmental Tribunal is an exclusive function of the Judicial Service Commission in accordance with Article 172 (1) (c) and cannot be limited, defined or broadened through statutory sophistry.
  - b. A declaration that section 129(4) is unconstitutional because it violates or threatens to violate the principle of sustainable development under Article 10, and the right to a clean and healthy environment guaranteed by Article 42 of the *Constitution* of Kenya and further its retroactive application violates the rule of law principle under Article 10 of the *Constitution*.
  - c. A declaration that the amendments made on sections 125 and 129 of the *Environmental Management and Coordination Act* No. 8 of 1999 through the Statute Law (Miscellaneous Amendment) Act 2018 were done without meaningful and qualitative public participation in violation of the *Constitution*.
  - d. An order invalidating sections 125(1)(b)-(d); section 125(2); section 125(4)(c); section 125(5); and section 129(4) of the *Environmental Management Coordination Act* No. 8 of 1999.
  - e. An order directing the Judicial Service Commission to make necessary appointments for the Chairperson and members of the National Environment Tribunal in strict compliance with articles 172(1) (c) and 172 (2) (a) and the *Judicial Service Act*.
  - f. Costs of the Petition.
  - g. Any other or further relief that this Honourable Court may deem fit and just to grant in the circumstances.

**Petition No. 251 of 2017.**

19. In this petition, the 2<sup>nd</sup> petitioner argued that sections 24-32 of the Prevention of Torture Bill did not contain a clause proposing amendments to *EMCA*. However, section 29 of the Bill sneaked in an amendment to section 129(4) of *EMCA*.
20. The 2<sup>nd</sup> petitioner asserted that the amendments were sneaked into the *Prevention of Torture Act* without any public participation; the amendments purported to apply retrospectively rendering stay orders previously granted by NET useless; the amendments militated against the provisions of Articles



- 42, 69, 70, 71 and 72 of the Constitution on environmental protection and did not keep with the practice of making minor amendments which did not merit publication of a separate Bill since the amendments were controversial and substantial requiring a standalone Bill and subjected to public participation.
21. According to the 2<sup>nd</sup> petitioner, the amendments through the Prevention of Torture Bill were introduced after NET had granted stay orders in NET Appeal No. 200 of 2017, Okiya Omtatah Okiiti & Another v The National Environment Management Authority & 8 others, to defeat those stay orders.
  22. The 2<sup>nd</sup> petitioner relied on Article 118 of the Constitution and the decisions in Kenya Union of Domestic, Hotels, Education and Allied Workers (Kudhebia Workers) v Salaries and Remuneration Commission (Petition No. 294 of 2013) [2014] eKLR and Law Society of Kenya v the Attorney General (Constitutional Petition No. 3 of 2016) [2016] eKLR
  23. The 2<sup>nd</sup> petitioner again argued that by amending section 129(4) to require aggrieved persons to seek stay orders in the usual manner and convince NET to exercise its discretion, the amendment undermined the precautionary principle.
  24. Based on the above arguments, the 2<sup>nd</sup> petitioner sought the following reliefs:
    - a. A declaration that there is no nexus between the Environment Management and Co-ordination Act 1999 and the Prevention of Torture Act 2017 to warrant the amendment of Section 129 of the Environmental Management and Co-ordination Act 1999 vide section 29 of the Prevention of Torture Act 2017.
    - b. A declaration that it was improper for drastic amendments affecting the Environmental Management and Co-ordination Act 1999, which required the publication of a standalone Bill, to be effected via miscellaneous provisions to the totally unrelated the Prevention of Torture Act.
    - c. A declaration that to the extent that the amendments to section 29(4) of the Environmental Management and Co-ordination Act 1999 apply retrospectively, the said amendments violated the principles of natural justice that form the basis of the Constitution.
    - d. A declaration that the action of introducing the impugned amendment on the floor of the House, when the same was not subject to the bill that was published and was subjected to public participation, was contrary to the letter and spirit of article 10 as read with Article 118 of the Constitution and, therefore, null and void ad initio.
    - e. A declaration that the amendment to section 129(4) of the Environmental Management and Co-ordination Act 1999 vide section 29 of the Prevention of Torture Act 2017 is unconstitutional, and therefore, null and void.
    - h. An order quashing section 29 of the Torture Act for being unconstitutional and, therefore, null and void.
    - i. An order that the costs of this suit be provided for.
    - j. Any other relief the court may deem just to grant.

### 1<sup>st</sup> respondent's case

25. The Attorney General, (the 1<sup>st</sup> respondent), informed the Court that they had filed grounds of opposition dated 11<sup>th</sup> March 2019 and written submissions. These documents are neither in the file nor on the CTS portal.



## 2<sup>nd</sup> Respondent's case

26. The National Assembly, (the 2<sup>nd</sup> respondent), filed grounds of opposition and replying affidavits sworn by Michael Sialai and Jeremiah Ndombi on 22<sup>nd</sup> September 2017 and 9<sup>th</sup> November 2018, respectively. With regard to petition 251 of 2017, the 2<sup>nd</sup> respondent stated that the Prevention of Torture Bill published in the Kenya Supplement No. 187 (National Assembly Bills No. 47) dated 16<sup>th</sup> November 2016, was sponsored by the leader of majority party.
27. The Bill was read for the first time on 1<sup>st</sup> December 2016 and was committed to the Departmental Committee on Justice and Legal Affairs in accordance with Standing Order No. 127(1). The Bill was passed with amendments on 6<sup>th</sup> April 2017 and assented to by the President.
28. The 2<sup>nd</sup> respondent asserted that section 29 of the [Prevention of Torture Act](#) was enacted in accordance with the legislative mandate of Parliament under Articles 94(5), 109 and 124 of the [Constitution](#). In passing the Bill, the 2<sup>nd</sup> respondent considered amendments proposed by the leader of the majority party during the Committee stage.
29. The proposal by leader of majority party to introduce a new clause in the Bill was subjected to the requirements of the Standing Orders and then read for a second time, and thereafter voted for by the House to be included in the Bill after justification for its inclusion.
30. The 2<sup>nd</sup> respondent maintained that the amendment to the Bill was informed by a petition to the Office of the Clerk of the National Assembly which was transmitted to the Office of Leader of the Majority Party to propose inclusion of the concerns raised in an appropriate bill. The leader of majority party had a prior intention to amend section 129(4) of [EMCA](#).
31. The 2<sup>nd</sup> respondent argued that matters relating to NET as provided for in section 129 of the [EMCA](#) and its jurisdiction to hear and determine appeals dated back to 2014 during the consideration of the Environmental Management Co-ordination (Amendment) Bill, 2014.
32. On 11<sup>th</sup> September, 2014 the leader of majority party proposed amendments to the EMCA Amendment Bill to provide that upon filing an appeal, NET may issue orders maintaining the status quo until the appeal is determined. NET could, however, review the orders on application by any party. The amendment was made on the basis that there was need for NET to have powers to determine whether or not to issue stay orders so as to avoid stalling of projects on frivolous and vexatious applications.
33. The 2<sup>nd</sup> respondent explained that the amendment was discussed by the Departmental Committee on Environment, Water and Natural Resources on 11<sup>th</sup> September 2014 and observed that the amendment to section 129 of [EMCA](#) was justified and should be adopted in order to give NET judicial discretion to determine whether or not to issue status quo orders and prevent illegitimate appeals. Both Houses of Parliament exhaustively considered the EMCA Bill 2014 and the Bill went through various stages according to the respective Standing Orders of the Houses. However, the amendment was inadvertently not moved at the time when the Amendment Bill was being considered by the 2<sup>nd</sup> respondent at the Committee of the whole House stage. It was for that reason, that the 2<sup>nd</sup> respondent included the proposal in the Prevention of Torture Bill, 2016.
34. The 2<sup>nd</sup> respondent denied that the amended section 129 limits fundamental rights. Instead, the amendment protects the rights of individuals who lost or stood to lose the right to a fair determination of an application for injunction or stay before NET. The amendment also allows a past beneficiary of the automatic status quo order to apply afresh for a determination of the application on merit. It



- also allows NET adequate opportunity to evaluate past automatic injunctions and deal with those applications on merit.
35. The 2<sup>nd</sup> respondent urged the Court not to interfere with its legislative mandate since section 29 of the *Prevention of Torture Act*, 2017 is in conformity with the *Constitution*. There was no breach of the petitioners' constitutional rights.
  36. Regarding Petition 268 of 2018, the 2<sup>nd</sup> respondent argued that the orders sought will contravene the legislative mandate of Parliament provided for in Article 109 of the *Constitution*. The 2<sup>nd</sup> respondent maintained that the process leading to the enactment of the Statute Law (Miscellaneous Amendments) Act 2018 was lawful; it was sponsored by the leader of majority party and published in the Kenya Gazette Notice Number 172. The Bill was subjected to the first reading on 30<sup>th</sup> November 2017 and thereafter committed to the various Departmental Committees of the National Assembly for consideration.
  37. According to the 2<sup>nd</sup> respondent, the Departmental Committee on Environment and Natural Resources considered the amendments for submission to the Departmental Committee on Finance and National Planning pursuant to the communication from Speaker issued on 20<sup>th</sup> February 2018.
  38. The 2<sup>nd</sup> respondent conducted public participation; called for views from the public on 4<sup>th</sup> December 2017 and the Committee received submissions from the JSC, Cyntonn Real Estate, LLP; Institute for Social Accountability, Kenya Natural Resource alliance, Save Lamu, among other stake holders. The 2<sup>nd</sup> respondent relied on the decisions in *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11;2006 (12) BCLR 1399 (CC);2006(6) SA 416 (CC); *Robert Gakuru & Others v The Governor Kiambu County & 3 others* (2013) eKLR; *Law Society of Kenya v The Attorney General and 10 others* [2016] eKLR; and *Commission for the Implementation of the Constitution v Senate of Kenya & 2 Others* [2013] eKLR, that there was meaningful and effective public participation.
  39. The 2<sup>nd</sup> respondent maintained that the amendment to section 125 was rational since it now gives equal opportunity to members of NET to contest for and elect the chairperson. It also gives the three advocates an opportunity to elect their own chairperson which may help in owning their actions as a tribunal as opposed to a chairperson imposed on them by another institution.
  40. With regard to amendment to section 129, the 2<sup>nd</sup> respondent argued that the amendments were in line with the *Constitution*. The amendments were based on the need for NET to have powers to determine whether or not to grant status quo orders so as to avoid stalling projects based on frivolous and vexatious applications. The amendments did not limit any fundamental rights.
  41. The 2<sup>nd</sup> respondent further argued that Petition No. 251 of 2017 had been overtaken by events and was moot following the enactment of the Statute Law (Miscellaneous Amendments) Act, 2018.
  42. On the constitutionality of the impugned amendments, the 2<sup>nd</sup> respondent maintained that the Statute Law (Miscellaneous Amendments) Bill, 2017 was passed in accordance with the *Constitution* and Standing Orders. The 2<sup>nd</sup> respondent relied on the decisions in *Murang'a Bar Operators and Another v Minister of State for Provincial and Internal Security and 2 others* [2011] eKLR and *Mugambi Imanyara and another v Attorney General & 5 others* [2017] eKLR.
  43. The 2<sup>nd</sup> respondent maintained that there is no law barring it from enacting legislation through a Statute Law (Miscellaneous Amendments) Act and the scope of amendments is not limited to minor amendments as the petitioners alleged.



44. The 2<sup>nd</sup> respondent relied on Article 186 (1) of the Constitution; section 22 of Part I of the Fourth Schedule to the Constitution and the decisions in Pevans East Africa Limited & Another v Chairman, Betting Control & Licensing Board & 7 others [2018] eKLR and National Assembly of Kenya & another v Institute for Social Accountability & 6 others [2017] eKLR to argue that the amendments did not require concurrence of the Senate. The amendments were made within the mandate of the national government; the Constitution has allocated the duty to determine whether legislation concerns the counties to the Speakers of both Houses of Parliament and any interference from the Court would be usurpation that mandate.
45. The 2<sup>nd</sup> respondent again relied on Articles 117, 124 and 165(3) (d) (ii) of the Constitution, the Parliamentary Powers and Privileges Act, 2017 and the decisions in John Harun Mwau v Andrew K. Mullei & 3 Others [2009] eKLR; Prebble v Television New Zealand Limited [1195] 1 AC 32; Speaker of the Senate & another v Attorney General & 4 others [2013] eKLR and Patrick Ouma Onyango & 12 others v Attorney General and 2 others [2005] eKLR, to urged the Court not to interfere with its mandate unless there is a violation or threat to violate the Constitution, which has not been demonstrated.

### 1<sup>st</sup> Interested party's case

46. The 1<sup>st</sup> interested party (the JSC) filed a replying affidavit sworn by Anne A. Amadi on 29<sup>th</sup> January 2019 in support of the consolidated petitions. The JSC stated that the amendments to EMCA through the Statute Law (Miscellaneous Amendment) Act 2018 disregarded Articles 169(1) (d) and 172(1) (c) of the Constitution.
47. According to the JSC, the amendments should have vested the power of appointment of the other members of NET with it in conformity with Article 169(1) (d) of the Constitution. The effect of the amendments is that NET comprised of five members would have three members appointed by the Cabinet Secretary in violation of the Constitution. This means the three members could influence the election of the chairperson and the operations of NET thereby undermining its independence contrary to Articles 160(1), 161(1), 162(4), 169(1) (d) and 172(1) (c) of the Constitution.
48. The JSC asserted that the amendments to section 125(1) and (5) undermined the independence of the Judiciary and was an affront to its constitutional mandate. Even prior to the amendments to section 125(1) (a) of EMCA, section 7 (1) and (2) of the Sixth Schedule to the Constitution vested on it the responsibility of appointing members of NET. The amendments also violated the supremacy clause in Article 2(4) of the Constitution.
49. The JSC relied on the decisions in Karabunga v Attorney General [2014] UGCC 13; Speaker of the Senate & Another v Attorney General & Others (Advisory Opinion Reference No.2 of 2013) [2013] eKLR and Hugh Glenister v President of the Republic of South Africa & 11 Others CCT No. 48 /10 for the argument that the amendments to sections 125(1) and (5) of the EMCA set a bad precedent that would erode and diminish the constitutional mandate of the JSC.
50. Relying on Article 2(4) of the Constitution and the decisions in Law Society of Kenya v Attorney General & Another [2016] eKLR; Timothy Njoya & 17 others v Attorney General & 4 Others [2013] eKLR and Philip K. Tunoi & another v Judicial Service Commission & Another [2015] eKLR, the JSC argued that the Statute Law (Miscellaneous Amendments) Act, 2018 was subject to the Constitution and in the event there is a conflict between the provisions of a statute and the Constitution, the Constitution prevails



51. The JSC contended that the object of the Statute Law Miscellaneous (Amendments) Act was intended to correct anomalies, inconsistencies, outdated terminologies or errors which are minor and noncontroversial amendments to a number of statutes at once. In so far as it substantively amended EMCA, the amendments are invalid. The JSC relied on the decision in Law Society of Kenya v Attorney General & Another (*supra*) and urged the Court to allow the petition.

#### **5<sup>th</sup> and 9<sup>th</sup> interested parties' case**

52. The 5<sup>th</sup> and 9<sup>th</sup> interested parties opposed the consolidated petitions through grounds of opposition. They contended that under section 13 of the Interpretation and General Provisions Act, the sections of the Prevention of Torture Act that amended EMCA which are the subject of Petition No. 251 of 2017 remain amended rendering the cause of action moot.

53. The 5<sup>th</sup> and 9<sup>th</sup> respondents maintained that in enacting the Statute Law (Miscellaneous Amendments) Act 2018, the National Assembly lawfully discharged its mandate under Article 94(1) of the Constitution. They asserted that the period granted for the public to consider and give views on the Bill was reasonable and there was adequate public participation.

54. The 5<sup>th</sup> and 9<sup>th</sup> interested parties argued that the amendments to sections 125 and 129 of EMCA constituted minor amendments and were properly included in the Statute Law (Miscellaneous Amendments) Act 2018. According to the 5<sup>th</sup> and 9<sup>th</sup> interested parties, the amendment to section 125 of EMCA requiring the chairperson and vice chairperson to be elected in a democratic manner was consistent with Articles 10(2)(a) and 50 of the Constitution.

55. The 5<sup>th</sup> and 9<sup>th</sup> interested party took the position that the petitioners did not specifically plead the manner in which the amendments to section 129 of EMCA threatened the precautionary principle. They maintained that amendments to sections 125 and 129 did not require concurrence of the Senate.

56. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 11<sup>th</sup> interested parties did not file responses and did not take part in these proceedings.

#### **Determination**

57. Upon considering the consolidated Petitions and arguments by parties, I have identified the following issues for determination. Whether EMCA could be amended through the Prevention of Torture Act; whether the amendment of sections 125 and 129 through the Statute Law (Miscellaneous Amendments) Act, 2018 violated the Constitution; whether there was meaningful public participation and whether the amendment to section 129(4) of EMCA could act retrospectively.

#### **Amendments through the Prevention of Torture Act**

58. The petitioners argued that although sections 24-32 of the Prevention of Torture Bill did not contain an intention and clause for amending section 129 of EMCA, section 29 of the Prevention of Torture Bill sneaked in an amendment to section 129(4) of EMCA without public participation. The amendment purported to apply retrospectively rendering *status quo* orders previously granted by NET useless. This they argued, militated against Articles 42, 69, 70, 71 and 72 of the Constitution on environmental protection. Further, that the amendment did not keep with the practice of making minor amendments which did not merit publication of a separate Bill.

59. According to the 2<sup>nd</sup> petitioner, the amendments through the Prevention of Torture Bill were introduced a day after NET had granted stay orders in NET Appeal No. 200 of 2017, Okiya Omtatah



*Okoiti & Another v The National Environment Management Authority & 8 others*, to defeat those orders.

60. The respondents argued that Petition No. 251 of 2017 had been overtaken by events and was moot following the enactment of the Statute Law (Miscellaneous Amendments) Act, 2018. Regarding the amendment to section 129(4), the respondents supported the amendment and argued that section 29 of the *Prevention of Torture Act* was enacted in accordance with the legislative mandate of Parliament under Articles 94(5), 109 and 124 of the *Constitution*. A new clause was introduced to the Bill and subjected to the requirements of the Standing Orders. It was voted by the House to be included in the Bill following justification for the inclusion.
61. According to the respondents, the amendment was intended to ensure that NET has powers to determine whether or not to issue stay orders so as to avoid stalling of projects based on frivolous and vexatious applications. The 2<sup>nd</sup> respondent admitted that the Prevention of Torture Bill, 2016 as published did not include a proposal to amend section 129(4) of *EMCA*. The proposed amendment was introduced on the floor of the House.
62. I have perused the Prevention of Torture Bill, 2016. It was said to be:

A Bill for AN ACT of Parliament to give effect to Article 25 (a) and 29(d) of the *Constitution* and to the principles of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; to provide for the prevention, prohibition and punishment of acts of torture and cruel, inhuman or degrading treatment or punishment; reparations to victims of torture and cruel, inhuman or degrading treatment or punishment; and for connected purposes.

63. The Bill did not contain a proposal for amending any of the sections in *EMCA*. This fact was also admitted by the 2<sup>nd</sup> respondent who stated that the proposal to include an amendment to section 129(4) of *EMCA* was introduced on the floor of the House. The amendment to section 129(4) of *EMCA* changed the position regarding maintaining *status quo* on an appeal being filed before NET.
64. Prior to the impugned amendment, section 129(4) provided as follows:

Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

The import of subsection (4) was that once an appeal was filed before NET, there would be an automatic status quo in the matter until the appeal was heard and determined.

65. Section 29 of the *Prevention of Torture Act* introduced an amendment to section 129 of *EMCA* as follows:

Section 29; The *Environmental Management and Co-ordination Act* is amended in section 129 by deleting subsection (4) and substituting therefor the following new subsections-

- (3) upon any appeal to the Tribunal under this section, the Tribunal may if satisfied-
- (a) upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
  - (b) upon application by any party, review any orders under paragraph (a).
- (4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (4) shall lapse upon commencement of this section unless the



Tribunal, upon application by a party to the appeal issues fresh orders maintaining the status quo in accordance with subsection (4).

66. It is important to point out here, that from the preamble to the Bill, there was no express intention to amend any sections in EMCA. Further, EMCA could not be said to be connected with the Prevention of Torture Act. Sections 27 to 30 of the Bill were clear on the statutes and sections that were to be amended, (or repealed as the case may be), to bring them into conformity with the Preventions of Torture Act.
67. The statutes to be amended were: The Schedule to the Extradition (Contiguous and Foreign governments) Act; The Extradition (Commonwealth Countries) Act; The Chiefs Act and The Children Act.
68. In the memorandum of objects and reasons, the Bill stated that the principal object of the Bill was to implement Kenya's obligation under the United Nations Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment and all other international conventions to which Kenya is a party.
69. The Bill further sought to establish the necessary institutional mechanisms for the support and assistance of victims of torture and cruel, inhuman or degrading treatment or punishment to ensure just and effective punishment of offenders convicted of offences under the Act.
70. The memorandum of objects and reasons also stated that Part V (clauses 25-32) would, among others, amend or repeal some sections of the statutes referred to in the memorandum. EMCA was not one of those statutes since it was not in any way connected with prevention of torture. It was therefore not available for the 2<sup>nd</sup> respondent to amend a statute through a Bill that had no connection or nexus with such a statute.
71. The other issue taken up by the petitioners was that the amendment was not subjected to public participation; was to act retrospectively; affect orders that had already been issued by NET and reopened those cases for reconsideration to the disadvantage of parties in whose favour status quo orders had been issued.
72. The 2<sup>nd</sup> respondent maintained that the amendment was proper since NET would have discretion to reconsider applications and determine whether to issue fresh status quo orders or not. On public participation, the 2<sup>nd</sup> respondent maintained that the amendment was made in accordance with Standing Orders without stating whether or not public participation was conducted.
73. There is no denial that no intention was expressed in the Bill to amend EMCA. The 2<sup>nd</sup> respondent admitted as much and stated that the amendments were introduced on the floor of the House. The 2<sup>nd</sup> respondent did not in any way suggest that there was public participation with regard to the amendment to section 129 of EMCA. The argument that the amendment was to act retrospectively was also not contested as it is clearly discernible from the text of the amendment. All the 2<sup>nd</sup> respondent stated was that NET would have an opportunity to reconsider applications and determine whether or not to reissue status quo orders.
74. The 2<sup>nd</sup> respondent could not introduce amendments to EMCA on the floor of the House which had nothing to do with the Bill that had been subjected to public participation and was being debated, without conducting fresh public participation on those particular amendments. This was clearly and without a doubt, in violation of Articles 10 and 118 of the Constitution.



75. Regarding retroactivity, the amendment was to affect status quo orders that had been issued on filing of appeals. The general rule is that the law is always forward looking and an amendment should not affect already accrued rights.

76. In *Republic v Registrar of Companies & 2 others; Ex Parte Schindler Limited* [2020] eKLR, the court stated on the issue:

[22.] The general rule is that, in the absence of an express provision to the contrary, statutes should be considered as affecting future matters only; and more especially that they should if possible be so interpreted so as not to take away rights actually vested at the time of their promulgation. A further reason for its existence is that the creation of new obligation or an imposition of new duties by the Legislature is not lightly assumed. Thus, a statute is presumed not to apply retrospectively, unless it is expressly or by necessary implication provided otherwise in the relevant legislation. Unless a contrary intention appears from new legislation which repeals previous legislation, it is presumed that no repeal of an existing statute has been enacted in relation to transactions completed prior to such existing statute being repealed.

I agree with the above exposition of the law.

77. With regard to the case at hand, I agree with the petitioners that to the extent that the impugned amendment was to set aside all *status quo* orders already issued in favour of parties and reopen such matters for fresh applications for status quo, was clearly in violation of the principle of non-retroactivity application of the law. The amendment was to affect already accrued rights of parties who had obtained *status quo* orders, without affording them a hearing, in violation of their accrued rights.

78. That is not all: The amendment would result into unintended consequences by causing further delays as NET would face a floodgate of applications leading to delays in determination of the pending appeals. What would for example happen where *status quo* orders had been issued, the appeal had been heard and a decision reserved. Such state of affairs never anticipated in judicial proceedings would interfere with the progression of cases. The amendment would also violate the principle in Article 159 (2)(b) that justice should not be delayed.

### **Statute Law Miscellaneous (Amendments) Act, 2018**

79. The petitioners argued that the Statute Law (Miscellaneous Amendments) Act, 2018 was used to introduce fundamental changes on the functioning of NET; affect functions of county governments under the Fourth Schedule to the *Constitution* and the duty of the State to protect the environment thereby indirectly amending other legislations, including The *Judicial Service Act*. According to the petitioners, a Statute Law (Miscellaneous Amendments) Act is only used to make minor changes but not to introduce substantive amendments to statutes which would otherwise require stand-alone Bills.

80. The petitioners further argued that the amendments to section 125 of *EMCA* took away the powers of the JSC to appoint the chairperson and members of NET; the amendments violated the right to a fair hearing before an independent and impartial tribunal as the amendments introduced appointment of members of NET otherwise than by the JSC.

81. The petitioners further argued that just like the amendments introduced by The *Prevention of Torture Act*, the amendment to section 129 (3) and (4) of *EMCA*, removed automatic status quo on filing of appeals before NET and were to apply retrospectively by requiring parties to make fresh applications for status stay orders.



82. The petitioners asserted that section 129(3) (d) (e) as amended contradicted the provisions of Articles 42 and 69(1) (a) and (g) of the Constitution by diluting the legislative measure of granting automatic status quo orders on filing an appeal by requiring that an application for maintaining status quo be made once an appeal is filed. This, they argued, was a retrogressive measure in protecting the right to a clean and healthy environment.
83. The petitioners maintained that the amendments were void because they were made in contravention of existing conservatory orders that had been issued in petition No. 251 of 2017.
84. The respondents on their part, asserted that the process leading to the enactment of the Statute Law (Miscellaneous Amendments) Act, 2018 was lawful; the Bill was published in the Kenya Gazette; was subjected to the first reading on 30<sup>th</sup> November 2017 and thereafter committed to Departmental Committees for consideration.
85. According to the respondents, the Departmental Committee on Environment and Natural Resources considered the amendments to EMCA for submission to the Departmental Committee of Finance and National Planning pursuant to the communication from the Speaker issued on 20<sup>th</sup> February 2018. The 2<sup>nd</sup> respondent then conducted public participation; called for views from the public on 4<sup>th</sup> December 2017 and the Committee received submissions from among others, the JSC, Cyntonn Real Estate LLP; Institute for Social Accountability, Kenya Natural Resource alliance and Save Lamu.
86. The Bill went through the second reading on 13<sup>th</sup> March 2018 and 14<sup>th</sup> March 2018 and was committed to the Committee of the whole House and read a third time on the same day and passed. It was assented to by the President on 4<sup>th</sup> April 2018.
87. Regarding amendments to section 125, the respondents maintained that the amendments were rational since they give equal opportunity to members of NET to contest for, and elect the chairperson and vice chairperson. They also give the three advocates an opportunity to elect a chairperson of their choice as opposed to a chairperson imposed on them by another institution.
88. On the amendments to section 129, the respondents argued that the amendments were in line with the Constitution; the amendments were based on the need for NET to have powers to determine whether or not to grant status quo orders so as to avoid stalling projects based on frivolous and vexatious applications. The amendment to section 129(4) did not limit any fundamental rights.
89. I have considered respective parties' arguments on the amendments made through the Statute Law (Miscellaneous Amendments) Act, 2018. The first issue here, is whether it was appropriate to amend EMCA through the Statute Law (Miscellaneous Amendments) Act. Whereas the petitioners and 1<sup>st</sup> interested party argued that it was not, the 2<sup>nd</sup> respondents and the 5<sup>th</sup> and 9<sup>th</sup> interested parties took the position in favour of using the Statute Law (Miscellaneous Amendments) Act.
90. A Statute Law (Miscellaneous Amendments) Act, as the name suggest, is used to make minor changes to several laws at the same time as an omnibus legislation. The amendments are supposed to be minor and not substantive in the sense that they do not affect the substance of the laws affected. The changes to be made may be clerical and correction of errors or terminologies that would not require substantive and stand-alone Bills. In other words, a Statute Law (Miscellaneous Amendments) Act should not be used to make substantive amendments which would otherwise require stand-alone Bills and extensive public participation.
91. Addressing this issue in Law Society of Kenya v the Attorney General, Constitutional Petition No. 3 of 2016,[2016]eKLR the Court stated that "omnibus amendments in the form of Statute Law



Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.”

92. This position was followed in *Josephat Musila Mutua & 9 others v Attorney General & 3 others* [2018] eKLR, where the Court stated that a Statute Law (Miscellaneous Amendments) Act should not be used to make serious or substantial amendments to a statute or legislation. A statute Law (Miscellaneous Amendments) Act is used for correcting errors, inconsistencies or anomalies in a statute. The Court observed that substantive amendments should be introduced through a normal Bill and be subjected to public participation where the amendments are critical and affect rights and fundamental freedoms.
93. In the present petition, there is no dispute that the amendments were introduced through a Statute Law (Miscellaneous Amendments) Act. The amendments were not aimed at correcting errors, inconsistencies or anomalies in the statute. They were substantive and affected the composition of NET and its functioning which should have been done through a stand-alone Bill and subjected to meaningful and effective public participation.
94. The respondents argued that public participation was conducted and for that reason, the amendments complied with the *Constitution*. To this, the petitioners countered that there was no reasonable, meaningful and effective public participation.

### **Public participation**

95. Public participation is one of the national founding values in Article 10. Article 118(b) of the *Constitution* provides that Parliament “shall facilitate public participation and involvement in the legislative and other business of parliament and its committees.” That is, public participation is not an option but a constitutional imperative in the legislative processes.
96. While the petitioners argued that members of the public were not give sufficient time to engage and present their views, the respondents posited that the public submitted views on the Bill in compliance with the *Constitution*.
97. According to the petitioners, the Bill was first published in the Kenya Gazette on 13<sup>th</sup> November 2017. It was then published in the Daily Nation on 2<sup>nd</sup> and 4<sup>th</sup> December 2017 giving the public only 5 days to give their comments which limited public participation in violation of Articles 10 and 118 of the *Constitution*.
98. Whether or not there was public participation is a question of fact and the burden is on the State organ responsible to conduct public participation to demonstrate that indeed, there was reasonable, meaningful and effective public participation. Since the *Constitution* obligates Parliament to facilitate public participation in its legislative processes and other businesses, public participation must be real and not an illusory. It must not be done to merely fulfil a constitutional requirement. People must be given a reasonable opportunity to have meaningful engagement and give views that would have an effect in the legislative outcome.
99. I agree with the Court’s observation in the case of *Moses Munyendo & 908 Others v The Attorney General and Minister for Agriculture* [2013] eKLR, that the National Assembly has a broad measure of discretion on how to achieve the object of public participation and that how public participation is effected will vary from case to case. However, it must be clear that a reasonable level of participation was afforded to the public.
100. In *Robert N. Gakuru & Others v Governor Kiambu County & 3 others* [2014] eKLR, the Court stated that public participation ought to be real and not illusory and ought not to be treated as a



mere formality for the purposes of fulfilment of the Constitutional dictates. It behoves the body enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively.

101. In *Kiambu County Government & 3 others v Robert N. Gakuru & Others* [2017] eKLR, the Court of Appeal affirmed the High Court decision and stated:

[20.] The issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. the *Constitution* in Article 10 which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation.

102. In *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11, Ngcobo, J. stated that facilitation of public involvement in the legislative process means taking steps to ensure that the public participate in the legislative process.

103. In *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6, the Court held that:

For the opportunity afforded to the public to participate in a legislative process to comply with section 118(1), the invitation must give those wishing to participate sufficient time to prepare. Members of the public cannot participate meaningfully if they are given inadequate time to study the Bill, consider their stance and formulate representations to be made. Two principles may be deduced from the above statement. The first is that the interested parties must be given adequate time to prepare for a hearing. The second relates to the time or stage when the hearing is permitted, which must be before the final decision is taken. These principles ensure that meaningful participation is allowed. It must be an opportunity capable of influencing the decision to be taken. The question whether the notice given in a particular case complies with these principles will depend on the facts of that case.

104. The principle laid in the above decisions is that a reasonable opportunity is offered to the members of the public and all interested parties so that they know about the issue and have an adequate say on it.
105. Public participation being a founding value recognized in Article 10 of the *Constitution*, Article 118 provides for public participation and involvement in the legislative businesses making it a constitutional imperative in all legislative processes.
106. The petitioners argued that members of the public were only given 5 days within which to receive the Bill, read and present their submissions. The respondents did not deny that members of the public were only given 5 days to submit views. According to the 2<sup>nd</sup> respondent who was responsible for facilitating public participation, submissions were received from, among others, the JSC, Cyntonn Real Estate, LLP; Institute for Social Accountability, Kenya Natural Resource alliance and Save Lamu.
107. In my respectful view, 5 days could not have been sufficient time for members of the public to obtain the Bill, read and understand it, prepare and submit their views on an important issue like amending *EMCA*. The amendments to sections 125 and 129(4) of *EMCA* were significant since they were to affect the functioning of NET; the right to a clean and health environment and environmental protection and were to affect accrued rights, namely; orders of *status quo* that had been granted pending determination of appeals before NET. The public needed more time to read and understand the Bill



so that they could give meaningful views that would inform the outcome of the legislation given the effect the intended amendments were to have on the environmental, justice and accrued rights.

108. I am persuaded, and I agree with the petitioners, that it was not proper for amendments to EMCA to be effected through a Statute Law (Miscellaneous Amendments) Act given the broad nature of those amendments and their effects. The amendments should have been made through a stand-alone Bill so that members of the public would have sufficient time to participate and have an adequate say on the legislative process.
109. That notwithstanding, even though there was an attempt towards conducting public participation, it could not be said to have been reasonable, meaningful and effective public participation. The 5 days given to the public to submit views was in short, a mere formality for the purposes of appearing to have fulfilled a constitutional requirement, a contravention of the essence of Article 10 as read with article 118 of the Constitution.

Constitutional validity of the amendments to sections 125 and 129

### **I. Section 125**

110. The petitioners took issue with the amendments to section 125 on the appointment of members of NET arguing that they violated Articles 159(1), 169(1) and 172 of the Constitution. According to the petitioners, the amendments require that the chairperson be elected by members of NET; all members are to be appointed by the Cabinet Secretary and may be removed by Cabinet Secretary.
111. Prior to the amendments, the chairperson was nominated by the JSC though was appointed by the Cabinet Secretary. The amendments have effectively taken away the mandate of the JSC to appoint the chairperson and members of NET. The 1<sup>st</sup> interested party (the JSC) supported the petitioners' position while the 2<sup>nd</sup> respondent denied that the amendments violated the Constitution.
112. There are established principles to consider when called upon to determine whether a statute or its provision is constitutionally invalid. There is a general but rebuttable presumption that a statute or its provision is constitutional and the burden is on the person alleging unconstitutionality to prove the invalidity. This is because it is assumed that the legislature, as the peoples' representative, understands the problems people face and therefore enacts legislations with the intention of solving those problems.
113. It was thus, held in *Ndynabo v Attorney General of Tanzania* [2001] EA 495, that an Act of Parliament is constitutional and that the burden is on the person who contends otherwise to prove the country.
114. Purpose or effect is also used to determine constitutional validity of a statute or statutory provision. The purpose of enacting a legislation or the effect of its implementation may lead to nullification of a statute or provision if found to be inconsistent with the Constitution. In this regard the Court stated in *Olum and another v Attorney General* [2002] EA thus:

To determine the constitutionality of a section of a statute or Act of parliament, the Court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by the Constitution, the Court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by the Constitution, the impugned statute or section thereof shall be declared unconstitutional.



115. In *The Queen v Big M. Drug mart Ltd*, 1986 LRC (Const.) 332, the Supreme Court of Canada stated that:

Both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. The object is realized through impact produced by the operation and applications of the legislation. Purpose and effect respectively, in the sense of the legislation's object and ultimate impact, are clearly limited, but indivisible. Intended and achieved effect have been looked to for guidance in ascertaining the legislation's object and thus, validity.

116. See also *Centre for Rights Education and Awareness & another v John Harun Mwan & 6 others* [2012] eKLR for the position that in determining whether a statute is constitutional or not, the court must determine the object and purpose of the impugned Act, which can be discerned from the intention expressed in the Act itself.

117. Prior to the impugned amendments, section 125 provided as follows:

1. There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following persons-
  - a. a chairman nominated by the Judicial Service Commission who shall be a person qualified to be a judge of the High Court of Kenya;
  - b. an advocate of the High Court of Kenya nominated by the Law Society of Kenya;
  - c. a lawyer with professional qualifications in environmental law appointed by the minister; and
  - d. two persons who have demonstrated exemplary academic competence in the field of environmental management appointed by the minister.
2. All appointments to the Tribunal shall be by name and by gazette Notice issued by the Minister.
3. The members of the Tribunal shall be appointed at different times so that the expiry dates of their respective terms of office shall fall at different times.
4. The office of a member shall become vacant-
  - a. at the expiry of three years from the date of his appointment;
  - b. if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of member of the Tribunal;
  - c. if he is removed from membership of the Tribunal by the Minister for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and
  - d. if he resigns the office of member of the Tribunal.

118. Following the amendments, section 125 now provides:

- (1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members-



- (a) a person nominated by the Judicial Service Commission, who shall be a person qualified for appointment a judge of the Environment and Land Court of Kenya;
  - (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya;
  - (c) a lawyer with professional qualifications in environmental law appointed by the Cabinet Secretary; and
  - (d) three persons with demonstrated competence in environmental matters, including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs.
- (2) All appointments to the Tribunal shall be by name and by Gazette Notice issued by the Cabinet Secretary.
  - (3) The members of the Tribunal shall be appointed at different times so that their respective dates of their terms of office shall fall at different times.
  - (4) The office of a member of the Tribunal shall become vacant –
    - (a) at the expiration of three years from the date of his appointment;
    - (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;
    - (c) if he is removed from membership of the Tribunal by the Cabinet Secretary for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour and
    - (d) if he resigns the office of member of the Tribunal.
  - (5) The members of the Tribunal shall, in their first meeting, elect from amongst themselves a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson to the Tribunal from amongst all members.
  - (6) The Chairperson and Vice Chairperson shall of opposite gender.
  - (7) In the absence of the Chairperson, the Vice Chairperson shall serve as the acting Chairperson for the duration of the absence of the Chairperson and the acting Chairperson shall perform such functions and exercise such powers as if that person were the Chairperson.
  - (8) In the absence of both the Chairperson and the Vice Chairperson, the members of the Tribunal present may nominate, from among themselves, a person to act as the Chairperson, which person shall have the training and qualifications in the field of law and such person, while acting as the Chairperson, shall perform such functions and exercise such powers as if that person were the Chairperson.
  - (9) The Chairperson may designate the Vice Chairperson and two other members to constitute a separate sitting of the Tribunal.
119. Prior to the impugned amendments, the chairperson was nominated by the JSC while the Law Society of Kenya nominated one lawyer. The Cabinet Secretary appointed three members. The amendments introduced the position of Vice Chairperson and changes to the composition of the Tribunal and appointment of the Chairperson. It also introduced the mode of appointing Vice Chairperson.
120. The amendments took away the mandate of the JSC to appoint the Chairperson. The Cabinet Secretary is now to appoint four persons so that the Tribunal would have six members who are to elect



the Chairperson and Vice Chairperson. All members of the Tribunal will be appointed by the Cabinet Secretary and may be removed by the Cabinet Secretary.

121. Article 159(1) which falls under Chapter 10 of the Constitution headed “The Judiciary”, provides that Judicial authority is derived from the people and vests in, and is to be exercised by the courts and “tribunals” established by or under the Constitution.
122. In that respect, Article 160(1) provides for the independence of the Judiciary so that in the exercise of judicial authority, the Judiciary is only subject to the Constitution and the law and is not subject to the control or direction of any person or authority. Tribunals thus, fall under the subordinate court in accordance with Article 162(4) as read with Article 169(1)(d) being “any other court or local tribunal as may be established by an Act of Parliament.” This placed all tribunals under the Judiciary after the effective date (27<sup>th</sup> August 2010).
123. NET is a tribunal established under EMCA and falls under the Judiciary. In that regard, Article 172(1) of the Constitution provides that the JSC is to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice and “shall-(c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates and other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament.”
124. Members of Tribunals are “other Judicial officers” within the Judiciary who are to be appointed, disciplined and removed by the JSC in accordance with the Judicial Service Act, an Act of Parliament which provides for the administration of the Judiciary.
125. The amendments to the section 125 of EMCA to take away the mandate of appointing members of NET from the JSC and place that mandate to the Cabinet Secretary, as well as the manner of appointing the chairperson and vice chairperson was inconsistent with the Constitution.
126. It is important to also point out that as section 125 stood before the amendments, violated the principles of the independence of the judiciary and the mandate of the JSC. Although EMCA came into force before the 2010 Constitution, after the effective date, section 7 (1) of the Sixth Schedule to the Constitution requires that all law in force immediately before that date would continue to be in force but should be construed with the alterations, adaptations, qualifications and exceptions necessary to bring the law into conformity with the Constitution.
127. Section 7(2) is clear that if with respect to any matter-
  - (a) a law that was in effect before the effective date assigns responsibility to that matter to a different State organ or public officer, and
  - (b) a provision of this constitution that is in effect assigns responsibility for that matter to a different State organ or public officer,The provisions of this Constitution prevail to the extent of the conflict.
128. Tribunals were transited to and became part of the Judiciary. In that respect, appointments of members and officers of tribunals though previously assigned to other public officers, became the constitutional mandate of the JSC. It follows, and I agree with the petitioners, that the amendments to section 125 of EMCA purporting to place the mandate of appointing members of the NET under the Cabinet Secretary violated Articles 159(1), 160(1), 162(4), 169(1)(d) and 172(1)(c) of the Constitution.



## II. Section 129(4)

129. The petitioners again took issue with the amendments to section 129(3) and (4) to take away automatic orders of *status quo* once an appeal is filed before NET. They also faulted the requirement that the amendment to subsection (4) apply retrospectively to orders of *status quo* that had been issued and were in force so that such orders would stand set aside and parties would have to make fresh applications for consideration by NET.
130. The respondents supported the amendments, arguing that they gave NET power and discretion to consider application for stay orders when an appeal is filed before it pending the hearing and determination of the appeal. NET could also review the orders on application by a party.
131. Prior to the amendment, section 129(3) and (4) provided that upon any appeal, the tribunal may-
- a. Confirm, set aside or vary the order or decision in question;
  - b. Exercise any of the powers which could be exercised by the Authority in the proceedings in connection with which the appeal is brought; or
  - c. Make such other order, including on costs as it may deem just.
  4. Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.
132. That meant an automatic status quo would issue once an appeal was filed before NET. This was intended to protect interests of the parties by maintaining the substratum of the case pending the hearing and determination of the appeal.
133. After the amendment, section 129(3) and (4) provide as follows:
- (3) upon any appeal, the Tribunal may-
    - (a) confirm, set aside, vary the order or decision in question.
    - (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
    - (c) make such order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just,
    - (d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
    - (e) if satisfied upon application by any party, review, any orders made under paragraph (a).
  - (4) Any *status quo* automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issues fresh orders maintaining the status quo in accordance with subsection (3)(a).
134. Of significance, was the amendment to section 129(4) [EMCA](#) to render any *status quo* orders that had been previously issued on the appeal being filed to have lapsed and requiring parties to apply afresh before NET and NET to consider whether to issue fresh orders maintaining the status quo or not. This amendment was the same amendment that had been introduced through the [Prevention of Torture Act](#).



135. As the Court has already stated earlier in this judgment, the law is always forward looking and should not act retrospectively where it is to affect rights and fundamental freedoms. Before the amendment, section 129(4) provided for automatic *status quo* once an appeal was filed. This did not only maintain the substratum of the appeal, it also conferred rights on parties once the *status quo* orders were issued. The purpose and effect of the amendment was to take away this right and leave parties in a precarious position, notwithstanding the stage their appeals may have reached. The fact that the intention of the amendment was to take away accrued rights is not sustainable in a democratic society governed by the rule of law.
136. As the Court stated in *The Queen v Big M. Drug mart Ltd* (*supra*), both purpose and effect are relevant in determining constitutionality. an unconstitutional purpose or an unconstitutional effect will invalidate legislation as the object is realized through impact produced by the operation and applications of the legislation.
137. There was no explanation why an accrued right was to be taken away in the manner the amendment suggested and without according those with accrued rights ha hearing. This was legislative arbitrariness in violation of the rights of parties and an interference with the independence of the Judiciary in general, and NET in particular.
138. The amendment would also bring in unintended consequences in that all matters before NET where orders had been issued by operation of the law, would all of a sudden be reopened and NET would have to face numerous applications for status quo. For instance, what would happen where there is an order of status quo, the appeal had been heard and a decision reserved. Would NET suspend preparing a decision and go back to consider an application for status quo. This, in my view, IS a clear case of legislative interference with judicial independence.
139. The petitioners again argued and, it is not disputed, that the amendments were made despite subsisting conservatory orders issued in Petition No. 251 of 2017 prohibiting coming into effect section 29 of the *Prevention of Torture Act* which had amended section 129(4), taking away automatic *status quo* once an appeal was filed before NET and requiring parties to file fresh applications for consideration by NET.
140. Indeed, the record shows that the Court Mativo J, (as he then was) had issued a conservatory order in Petition 251 of 2017 suspending section 29 of the *Prevention of Torture Act*, thereby suspending the amendments to section 129(4). The National Assembly was and still is a party in Petition No 251 of 2017 where the orders were issued. That notwithstanding, and despite the orders being in place, the National Assembly (2<sup>nd</sup> respondent), went ahead and introduced the same amendments that had been suspended, in 129(4) of *EMCA*. The National Assembly not only acted in violation of a subsisting court order, it also acted in bad faith with the intention of circumventing the Court order, an action that was null and void.
141. In this respect, and as Lord Denning stated in *Macfoy v United Africa Co. Ltd* (1961) 3 All ER 1169, “If an act is void, then it is in law a nullity. It is not only bad, but incurably bad.”
142. the *Constitution* places judicial authority on the Courts so that court orders must be respected by all. The National Assembly was bound by the orders of the court suspending the amendments made to section 129(4) of *EMCA*. Enacting similar amendments to the same law when Petition 251 of 2017 was pending and the conservatory orders still in place, amounted to acting in contravention of court orders, an act that fell afoul the *Constitution* rendering the amendments invalid.
143. I once again I agree with the petitioners that the amendments violated the *Constitution* and are invalid in terms of Article 2(4) of the *Constitution*.



## Conclusion

144. Having considered the consolidated Petitions; responses and arguments by parties; as well as the Constitution, the law and the decisions relied on, I come to the following conclusions. First, the amendments to sections 125 and 129 of Environmental Management and Coordination Act through Statute Law (Miscellaneous Amendments) Act, 2018 were not subjected to reasonable, meaningful and effective public participation. The period of five (5) days allowed for public participation was not sufficient for members of the public to receive the Bill, read, prepare and submit meaningful views for purposes of effective participation.
145. Second, the amendments of section 125 of the Environmental Management and Coordination Act to remove appointment of chairperson and members of the National Environment Tribunal and their removal from the Judicial Service Commission and to place their appointment and removal to the Cabinet Secretary violated Articles 159 (1), 161(1), (162(4), 169(1) (d) and 172(1) of the Constitution as read with Section 7 (1) and (2) of the Sixth Schedule to the Constitution; amounted to interference with Judicial independence and the independence of the Judicial Service Commission.
146. Third, the amendment to section 129 of the Environmental Management and Coordination Act through the Statute Law (Miscellaneous Amendments) Act 2018 during the subsistence of court orders suspending section 29 of the Prevention of Torture Act which had introduced similar amendments, violated court orders and are unlawful.
147. Fourth, the amendment to section 129 (4) of Environmental Management and Coordination Act through the Prevention of Torture Act which had no nexus with the Environmental Management and Coordination Act and without public participation, violated Articles 10 and 118 of the Constitution.

## Disposal

148. Based on the above conclusions, the court makes the following declarations and orders which it considers appropriate:
1. A declaration is hereby issued that the amendments to section 129(4) of Environment al Management and Co-ordination Act, 1999 through section 29 of the Prevention of Torture Act, 2017 and without public participation violated Articles 10 and 118 of the Constitution was unconstitutional and invalid.
  2. A declaration is hereby issued that the amendments to section 129(4) of the Environmental Management and Co-ordination Act 1999 requiring the amendments to apply retrospectively, violated the principles of natural justice, sustainable development and the rule of law under Article 10 as well as accrued rights thus, is un constitutional, null and void.
  3. A declaration is hereby issued that the appointment of the chairperson, members and staff of the National Environmental Tribunal is the exclusive constitutional mandate of the Judicial Service Commission in accordance with Article 172 (1) (c) of the Constitution as read with the Judicial Service Act. To that extent, the amendments to section 125 of the Environmental Management Coordination Act, to place the mandate to appoint and remove members of the Tribunal on the Cabinet Secretary is unconstitutional, null and void.
  4. A declaration is hereby issued that the amendments to sections 125 and 129 of the Environmental Management and Coordination Act 1999 through the Statute Law (Miscellaneous Amendments) Act, 2018 were done without reasonable, meaningful,



qualitative and effective public participation in violation Articles 10 and 118 of the Constitution; court orders and are therefore invalid.

5. The Judicial Service Commission is at liberty to exercise its mandate to appoint members of the National Environment Tribunal where necessary or as circumstances demand in compliance with Articles 172(1) (c) and 172 (2) (a) and the Judicial Service Act.
6. The consolidated petitions having been brought in public interest, the appropriate order to make is that each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025**

**E C MWITA**

**JUDGE**

