

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION NO E021 OF 2021



IN THE MATTER OF ARTICLES 2, 19, 20(1)-(4), 22(1), 23(1) & (3), 27, 47(1) and
(2), 60, 63(3), 63(4), 162(2)(b), 258(1) and 259(1) (a) & (b) OF THE CONSTITUTION
OF KENYA, 2010

AND

IN THE MATTER OF RULE 2, 4, 10, 11 AND 13 OF THE CONSTITUTION OF
KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)
PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF THE COMMUNITY LAND ACT, NO. 27 OF 2016

AND

IN THE MATTER OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT,
NO. 47 OF 2013

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE PETITIONER'S
FUNDAMENTAL RIGHTS AND FREEDOMS PROTECTED BY ARTICLES 40(1)
AND 43 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

ABDI SORA BALLA

ISACK ABDUBA FAYO (Suing on their own behalf and on behalf of the
communities in Garba Tulla and Kinna
Wards).....PETITIONERS/APPLICANTS

-VERSUS-

- ADAN DENGE GURACHA.....1ST RESPONDENT
- ISACK GUYO alias MAALIM JILLO.....2ND RESPONDENT
- HASSAN HALAKE.....3RD RESPONDENT
- SALAD BALLA.....4TH RESPONDENT
- MARIAM SEREKA.....5TH RESPONDENT

HASSAN IBRAHIM.....6TH RESPONDENT
KENYA WILDLIFE SERVICE.....7TH RESPONDENT
CABINET SECRETARY FOR TOURISM.....8TH RESPONDENT
CABINET SECRETARY FOR LABOUR AND SOCIAL PROTECTION.....9TH
RESPONDENT
THE ATTORNEY GENERAL.....10TH RESPONDENT

AND

NORTHERN RANGELANDS TRUST.....1ST INTERESTED
PARTY
COUNTY GOVERNMENT OF ISIOLO.....2ND INTERESTED
PARTY

CERTIFICATE OF URGENCY

WE, PHILIP HENRY & ASSOCIATES ADVOCATES, being seized of instructions to act for the Petitioners herein, hereby certify the Notice of Motion application attached hereto as extremely urgent and deserving to be placed before the Honourable Judge immediately for urgent orders on the schedule of grounds appearing below:

1. In an astonishing, confounding, hurried, shambolic and patently illegal process actively and crookedly brokered by the 1st Interested Party, the 1st to 8th Respondents intend to alienate unregistered community land in Isiolo South Constituency traversing the Garba Tulla and Kinna Wards on the pretext that it is a wildlife conservation area, to the detriment of the communities living in the area as it will deny them access to their ancestral grazing land.
2. The 1st to 8th Respondents are purporting to act in the best interests of the community yet they are in fact stooges of the 1st Interested Party which at face value holds itself out as a conservator by day, while fanning tribal conflict and illegally transferring wild animals from other places within Isiolo County to its Lewa Conservancy near Isiolo town by night, all for profit.
3. All land outside the urban areas in Isiolo County in general and in Isiolo South in particular is unregistered community land and as such it cannot be alienated without the involvement of the 2nd Interested Party

and with the consent of registered communities as per the Community Land Act, No. 27 of 2016.

4. Any declaration of the affected land as a wildlife conservation area must be done with the full and informed consent of the community and after a satisfactory, acceptable and credible process of public participation, which has not taken place.
5. **Unless** this court intervenes by granting the conservatory orders sought, the Petitioners and their communities shall suffer alienation of their community land to the 1st Interested Party (through its nominees the 1st to 8th Respondents) in total contravention of their land rights which are protected by this Constitution and further anchored in the Community Land Act, No. 27 of 2016 .

DATED at NAIROBI this ^{15TH} day of ^{SEPTEMBER} 2021

.....
PHILIP HENRY & ASSOCIATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

PHILIP HENRY & ASSOCIATES
ADVOCATES

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communities in Garba Tulla and Kinna Wards).....PETITIONERS/APPLICANTS

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 THE ATTORNEY GENERAL.....10TH RESPONDENT

AND

NORTHERN RANGELANDS TRUST.....1ST INTERESTED
 PARTY
 COUNTY GOVERNMENT OF ISIOLO.....2ND INTERESTED
 PARTY

NOTICE OF MOTION

(Under Articles 22(1), 23(3) and 258 of the Constitution of Kenya; Rule 23 of the Constitution of Kenya(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules,2013 and all other enabling provisions of the law)

TAKE NOTICE that this Honourable Court shall be moved on the.....day of.....2021 at 9.00 O'clock in in the morning, in the forenoon or soon thereafter as Counsel for the Petitioners/ Applicants may be heard on an application for **ORDERS:-**

1. **THAT** this application be certified urgent and service thereof be dispensed with in the first instance.
2. **THAT** pending the hearing and determination of this application *inter-partes*, a conservatory order be and is hereby issued restraining the 7th and 8th Respondents whether by themselves, their agents, servants or anybody claiming or acting through them or under them from gazetting any community land in Kinna and Garba Tulla as a wildlife conservation area or otherwise alienating any community land in Kinna and Garba Tulla Wards for community conservancies in favour of the 1st to 6th Respondents.


3. **THAT** pending the hearing and determination of the petition, a conservatory order be and is hereby issued restraining the 7th and 8th Respondents whether by themselves, their agents, servants or anybody claiming or acting through them or under them from gazetting any community land in Kinna and Garba Tulla as a wildlife conservation area or otherwise alienating any community land in Kinna and Garba Tulla Wards for community conservancies in favour of the 1st to 6th Respondents.
4. **THAT** the costs of this application be provided for.

WHICH APPLICATION is supported by the affidavit of **ABDI SORA BALLA** and based on the following grounds and on such other or further grounds as may be adduced at the hearing hereof:

1. In an astonishing, confounding, hurried, shambolic and patently illegal process actively and crookedly brokered by the 1st Interested Party, the Respondents intend to alienate unregistered community land in Isiolo South Constituency traversing the Kinna and Garba Tulla wards to the detriment of the communities living in the area as it will deny them access to their ancestral grazing land and thereby threaten their right to life.
2. The Respondents purport to act in the best interests of the community yet they are in fact stooges of the 1st Interested Party which at face value holds itself out as a conservator by day, while fanning tribal conflict and illegally transferring wild animals from other places within Isiolo County to its Lewa Conservancy by night, all for profit.
3. All land outside the urban areas in Isiolo County in general and in Garba Tulla and Kinna Wards in particular is unregistered community land and as such it cannot be alienated without the involvement of the 2nd Interested Party and with the consent of registered communities as per the Community Land Act, No. 27 of 2016.
4. Any declaration of the affected community land as a wildlife conservation area must be done with the full and informed consent of the community and after a satisfactory, acceptable and credible process of public participation, which has not taken place.
5. The Community Land Act has not yet been implemented in Isiolo County and as such for as long as the community land in the two wards remains unregistered, there cannot be any valid committees to take charge of the land as contemplated by the Community Land Act.
6. **Unless** this court intervenes by granting the conservatory orders sought, the Petitioners and their communities shall suffer alienation of their

community land to the 1st to 6th Respondents who are stooges of the 1st Interested Party in total contravention of their land rights which are protected by this Constitution and further anchored in the Community Land Act, No. 27 of 2016.

DATED at NAIROBI this 15th day of SEPTEMBER 2021


PHILIP HENRY & ASSOCIATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

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ADVOCATES

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TO BE SERVED UPON:

1. ADAN DENGE GURACHA, ISACK GUYO alias MAALIM GUYO
GARBA TULLA, ISIOLO COUNTY
2. HASSAN HALAKE, SALAD BALLA, MARIAM SEREKA, HASSAN IBRAHIM
KINNA, ISIOLO COUNTY
3. CABINET SECRETARY FOR TOURISM AND WILDLIFE MANAGEMENT
4. KENYA WILDLIFE SERVICE
5. CABINET SECRETARY FOR LABOUR AND SOCIAL PROTECTION
6. THE ATTORNEY GENERAL
7. THE NORTHERN RANGELANDS TRUST
LEWA DOWNS
PRIVATE BAG
ISIOLO
8. COUNTY GOVERNMENT OF ISIOLO
P.O. BOX 36-60300
ISIOLO

NOTE: "If any party does not appear at the time and place above mentioned such orders may be made and proceedings taken as the court shall direct."

.....4TH RESPONDENT
MARIAM SEREKA.....5TH RESPONDENT