



A LEGAL BRIEF

by The Green Brief

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THE NRT CASE

Isiolo County Community Land Dispute.

Lessons from the NRT Case and what it means for your community conservancy.

Introduction

The case involves 165 petitioners, representing the residents of Merti Sub-County, Chari, and Cherab Wards in Isiolo County who have instituted legal proceedings against multiple respondents including Northern Rangelands Trust(NRT), the County Government of Isiolo, private individuals and state agencies. The petitioners challenge the establishment and management of community conservancies on unregistered community land arguing that the process was undertaken without proper legal procedures, meaningful public participation or adherence to constitutional and statutory requirements.

Background

One Hundred and sixty-five petitioners, representing the residents of Merti Sub-County, Chari, and Cherab Wards in Isiolo County instituted legal proceedings against multiple respondents including Northern Rangelands Trust(NRT), the County Government of Isiolo, private individuals, and state agencies. The petitioners challenged the establishment and management of community conservancies on unregistered community land arguing that the process was undertaken without proper legal procedures, meaningful public participation or adherence to constitutional and statutory requirements.

At the heart of this dispute is the claim that Cherab Community Conservancy and Biliqo Bulesa Conservancy were established in a manner that disenfranchised the local community leading to the loss of ancestral grazing land, interference with traditional pastoral livelihoods, and potential dispossession of community land. They also argued that the respondents failed to follow due process as provided by the Community Land Act, 2016, which requires that unregistered community land be held in trust by the county government until formal registration is completed. The petitioners argued that the allocation and governance of these conservancies have led to loss of access to ancestral grazing land, undermining their traditional pastoral livelihoods and threatening their socio-economic well-being.

The petitioners additionally asserted that the lack of adequate public participation in the decision-making process violates their constitutional rights, particularly under Article 40 (right to property), Article 42 (Right to a clean and healthy environment), and Article 63 (community land rights) of the constitution of Kenya 2010. They also raise concerns over the potential commercialization of community land without their input and the role of private interests in influencing land governance structures.

Key Issues Raised

1. Land Ownership and Community Rights

The petitioners argued that the establishment of community conservancies by the NRT and other parties has led to the alienation of their ancestral and grazing land. They claimed these conservancies were created without proper legal procedures or community consultation, violating the Community Land Act and the Constitution.

The constitution of Kenya 2010 particularly Article 63, explicitly provides for the recognition and protection of community land. It defines community land to include;

1. Land lawfully held, managed or used by specific communities as ancestral lands and traditionally occupied by hunter-gather communities
2. Land lawfully held in trust by county governments on behalf of communities where formal registration has not been completed.

Article 40 further guarantees the right to property, prohibiting the arbitrary deprivation of property unless done under a clear legal framework with compensation. Article 42 adds the guarantee to the right to a clean and healthy environment which is crucial in land disputes involving conservation efforts that restrict traditional land use.

The Community Land Act No. 27 of 2016 operationalizes Article 63 of the Constitution and sets out a structured legal framework for the recognition, protection and registration of community land. The key provisions that have been violated in this case include Section 6(1) which requires that unregistered community land be held in trust by the county government on behalf of the community until it is formally registered. 4

2. Lack of Public Participation

The Northern Rangelands Trust(NRT) and individual respondents are accused of spearheading the establishment and management of the conservancies without consulting the community members. The petitioners further claim that the county government which is legally mandated to hold unregistered community land in trust failed in its duty to ensure the proper participation of the community.

According to the petitioners, the conservancies restrict access to their ancestral grazing land, disrupt their pastoralist way of life and interfere with important cultural sites. They claim that the respondents did not conduct structured or meaningful public participation, making the entire process legally defective.

Public participation is a fundamental constitutional and legal requirement in decision-making processes affecting communities and land use. The Constitution of Kenya 2010 provides in Article 10(2)(a) that public participation is a national value and principle of governance. Article 1(2) affirms that sovereign power belongs to the people and must be exercised either directly or through their elected representatives, ensuring that communities have a say in the decisions affecting them.

Article 63(3) stipulates that unregistered community land must be held in trust by the county government. Meaning that any dealings with such land must be conducted transparently and with the involvement of the community. Additionally, Article 69(1)(d) mandates that the state encourage public participation in environmental governance and decision-making.

The Fair Administrative Action Act 2015 under Sections 4(3) and (4) requires that public bodies provide prior notice, relevant information, and an opportunity for the public to present their views before making decisions that affect them. Similarly, the Environmental Management and Coordination Act (EMCA) 1999 in Section 3 provides every person the right to participate in environmental decision-making while Section 58(2) requires public consultations before projects affecting the environment are approved.

3. Failure to Follow Legal Procedures

The petitioners claim that the County Government of Isiolo(2nd Respondent) failed in its constitutional and statutory duty to protect unregistered community land in Chari and Cherab Ward, Merti Sub-County. According to the petitioners, the County Government of Isiolo as the trustee of all unregistered community land in the county, allowed NRT and other private actors to establish Cherab Community Conservancy without following the legally required procedures.

They argued that instead of ensuring that the land was prosperity registered in accordance with the Community Land Act 2016, the County Government permitted the mapping, surveying and allocation of land for conservancy purposes without involving the community. Additionally, the petitioners efforts to register the community land have been met with obstruction and undue delays from the relevant government bodies. They argue that as long as the land remains unregistered any actions taken to allocate or convert it for conservancy purposes are premature and unlawful.

Both the Constitution of Kenya 2010, the Community Land Act 2016 provide for the statutory framework for the protection, governance and registration of community land as mentioned above. The Land Act 2012 under Section 37 reinforces the requirement that community land cannot be allocated, leased, or converted without compliance with legal procedures. Similarly the Wildlife Conservation and Management Act 2013 under Section 39 allows for the creation of community conservancies but only where there is clear consent from the community and proper adherence to conservation policies.

4. Security Concerns

The petitioners argue that the presence of armed rangers employed by Cherab Community Conservancy and Biliqo Bulesa Community Conservancy is unlawful and has led to intimidation, insecurity, and human rights violations. They claim that these rangers operating under NRT and local conservancy leadership(3rd to 6th respondents) are armed and deployed without proper legal authorization making their activities under the National Police Services Act, 2011. The petitioners contend that security matters, including the protection of community land and wildlife conservation, should fall under the jurisdiction of the national government ,not private conservancy groups.

Further, the petitioners alleged that these armed rangers have been used to suppress community opposition to the conservancies and that their presence has exacerbated local conflicts rather than improved security. They assert that the arming of private security personnel in conservancies has contributed to heightened tensions, increased small arms proliferation, and escalated violence within Isiolo County. Several instances of violence, disappearances, and forced evictions have been linked to conservancy rangers, raising concerns about the unregulated paramilitary-style policing in community lands

The Petitioners claim that the Kenya Wildlife Service has abdicated its role as the statutory body responsible for wildlife protection and security in conservation areas by allowing these private entities to take over security functions. They also claim that the Ministry of Land and Physical Planning and the County Commissioner of Isiolo also failed to intervene despite clear legal violations.

5. Violation of Constitutional Rights

The petitioners claim that their rights under Articles 22, 23, 40, 42, 47, 69, and 73 of the Constitution have been violated. These violations include the right to property, environmental conservation, public participation, and fair administrative action. They argue that their ancestral grazing land has been unlawfully taken away, restricting their traditional pastoralist lifestyle and therefore infringing on their right to own and use community land.

Additionally, they claim that decisions regarding the conservancies were made without meaningful public participation, denying them an opportunity to be consulted on matters of direct impact on their livelihoods and land tenure security. They also highlight that the environmental implications of the conservancies have not been adequately assessed, raising concerns that their right to a clean and healthy environment is being violated. Further, they argue that the The County Government of Isiolo and Kenya Wildlife Service and other state actors failed in their legal duty to protect community land and regulate environmental management leading to an unconstitutional deprivation of their land rights and environmental protections.

Respondents' Arguments

The respondents raised multiple arguments in defense of the conservancies. Northern Rangelands Trust filed a preliminary objection asserting that the court lacked jurisdiction to entertain the petition due to the existence of Alternative Dispute Resolution Mechanisms under Section 117 of the Wildlife Conservation and Management Act 2013 and Section 42 of the Community Land Act 2016.

NRT argued that there is no legal requirement for the declaration of gazettelement of a community conservancy making the petition misconceived and incomplete. It further contended that the petitioners do not have power over community land use decisions and the land in question is unregistered community land owned collectively by all community members. The NRT maintained that conservancies are legitimate land use models supported by community members and that the petitioners cannot dictate how the land should be utilised.

Regarding public participation the NRT asserted that the conservancies were created through voluntary decisions by local communities and that the petitioners deliberately avoided grassroots engagement forums. The County Government of Isiolo argues that it had no role in the establishment of the conservancies and any claims against it were unfounded. The respondents also defended the presence of the rangers arguing that they assist in conservation efforts.

The respondents urged the court to dismiss the petitioner arguing that the petitioners had failed to demonstrate any actual harm suffered as a result of the conservancies.

Analysis

At the core of this dispute is whether the establishments of the Cherab Community Conservancy and Biliqo Bulesa Community Conservancy complied with the constitutional and statutory requirements for land governance, environmental protection and administrative fairness. The petitioners argue that their land rights, security and participation in decision-making has been undermined through an irregular process facilitated by the County government of Isiolo and Northern Rangelands Trust.

One of the fundamental legal failures in this case is the lack of genuine public participation in the establishment of the conservancies. The Constitution of Kenya under articles 10, 63 and 69 mandates broad based community involvement before any changes are made to land use particularly in community land matters

The Community Land Act 2016 further reinforces this obligation by requiring that decisions affecting community land be made with the direct involvement and approval of the affected community members. The petitioners contend that no meaningful consultation took place as the respondents only engaged select individuals and failed to conduct an open, inclusive and transparent process. Courts have previously held that public participation must be substantive and not a mere formality. In both the the African Commission on Human and Peoples Rights v Republic of Kenya (Ogiek Case) and In Centre for Minority Rights Development (Kenya) & Minority Rights Group International (On behalf of the Endorois Welfare Council) v Kenya, the courts set a legal precedent affirming that indigenous communities have collective rights over their ancestral land and cannot be evicted without Free, Prior and Informed Consent (FPIC)

The above cases established that governments must consult and involve indigenous groups in land use decisions affecting their territories. Both rulings also emphasised that conservation and development projects cannot override indigenous land rights, reinforcing the principle that environmental protection must be balanced with the protection of traditional land tenure systems.

Closely linked with the lack of public participation is the County Government of Isiolo's failure to follow the legal procedures for community land governance. Article 63(3) of the Constitution states that unregistered community land shall be held in trust by county governments until it is formally registered. The Community Land Act under Sections 6 and 8 expressly prohibits county governments from allocation, disposing of or altering the use of unregistered community land without first completing the registration process.

In *Republic v County Government of Kiambu Ex Parte Robert Gakuru & Another* (2016) eKLR, the court nullified a county government decision for failing to engage the public in a meaningful way. The petitioners also invoke Article 69 which mandates the State to promote sustainable environmental conservation and public participation in decision making. They argue that by allowing private actors to control conservation areas without proper consultation the county government of Isiolo has acted contrary to this constitutional obligation.

Another critical issue raised by the petitioners is the security concerns posed by the presence of armed conservancy rangers. The Constitution under Article 239 established the National Police Service as the sole authority responsible for maintaining security and public order. They argue that the rangers deployed within the conservancies operate as a private armed force, intimidating community members and unlawfully restricting their movement within their ancestral grazing land.

Beyond the procedural and security concerns, the petitioners argue that the conduct of the The County Government of Isiolo and other government agencies violates the principles of leadership and integrity under Article 73. Public officials are required to exercise authority in a manner that upholds transparency, accountability and the rule of law. The county officials acted in bad faith by permitting establishment of conservancies without adhering to legal procedures, public consultation or environmental compliance.

Court's Determination

The court determined that the petition met the constitutional threshold as the petitioners had demonstrated clear allegations of rights violations and had locus standing to bring the case. It ruled that the alternative dispute mechanisms were inadequate for resolving fundamental constitutional issues raised. The court found that the establishment of the Cherab and Biliqo Bulesa Community Conservancies was procedurally flawed particularly due to the lack of meaningful public participation. It emphasized that this omission violated Articles 10,40,42,63 and 69 of the Constitution of Kenya 2010 which guarantee community land rights, environmental governance and public participation in decision

The court also found serious irregularities in documentation. It noted that the Petition was filed on 4th October 2021, vide its Replying Affidavit in response to the Petitioners, further Supporting Affidavit NRT adduced TL1, the Certificate of Registration for Cherab Conservancy which indicated its date of registration as 28th May 2021; TL2, the community awareness documentation setting out details of alleged meetings which is dated the 5th January 2023; TL3 an EIA Report for the proposed Cherab Conservancy. The report that was supplied to the court was not signed and dated. TL4 is the NEMA License No. NEMA/EIA/PSL/22788 issued on the 18th November 2022, for the construction of Cherab Community Conservancy Headquarters.

It noted that the EIA Report submitted by the NRT was unsigned and undated, raising doubts about whether the project had undergone proper environmental assessment. More importantly the documents do not address the issue of creation of conservancies under the Wildlife Management and Conservation Act and the Environment Management and Coordination Act. There was also no disclosure of any approvals from the relevant bodies authorizing NRT to establish a conservancy. Additionally the NEMA license for construction was issued after the petition was filed suggesting that statutory approvals were sought retroactively rather than in compliance with legal requirements.

The court stated:

“The evidence by the 1st Respondent through the annexures was all prepared after the Petitions was filed, but more importantly, the documents do not address the issue of creation of conservancies in the suit lands as required under the Wildlife Management and Conservation Act and the Environment and Coordination Act”

The Court further held that the County Government of Isiolo failed in its constitutional and statutory duty under Article 63(3) of the Constitution of Kenya and Section 6(1) of the Community Land Act, 2016. As the trustee of unregistered community land, it was required to protect community land rights until formal registration was completed. However, the county government allowed NRT and other private actors to proceed with mapping, surveying and conservancy operations without following due process. The court found that this amounted to a breach of trust and contributed to alienation of community land without lawful authority.

In addition to these findings, the court acknowledged that the establishment of the conservancies had a disproportionate impact on the petitioners as indigenous pastoralist communities. The court highlighted that the restriction of access to ancestral grazing land and conversion of communal land into conservancies disrupted traditional pastoralist mobility and land use practices. This, the court noted, amounted to a threat to the socio-economic and cultural survival of this community, in contravention of Articles 40,44 and 63 of the Constitution as well as international protections under the African Charter of Human Rights. Based on these findings, the court declared the conservancies unlawfully established.

In furtherance the court held that the deployment of armed conservancy rangers was unlawful as it contravened national security laws and operated outside the framework of the National Police Service Act. The court emphasized that only the state security organs-the Kenya Defense Forces, National Intelligence Services and National Police Service- have the constitutional authority to maintain national security as provided in Article 239 of the Constitution. The National Police Service Act further provides that any provides that any National Police Reservist(NPR) must be properly vetted, trained, supervised and recorded in a formal government database.

However, NRT failed to provide any evidence that its rangers were ;

1. Properly registered as police reservists
2. Voted and trained in accordance with the law, and
3. Supervise by the National Police Service

As a result, the court concluded that these rangers were operating outside the legal framework, effectively acting as an authorized private armed force. The Court also noted that under Section 87 of the Wildlife Conservation and Management Act, any entity managing armed personnel for wildlife protection must maintain a register of all conservation rangers. However, neither NRT nor Kenya Wildlife Service provided any such records, indicating a lack of regulatory authority. Based on these findings the court issued a permanent injunction barring the 1st, 3rd, 4th , 5th, and 6th Respondents from operating or deploying rangers in a any part of Chari and Cherab Ward, Merti Sub-County.

As reliefs the court declared the conservancies unlawfully established and issued a permanent injunction barring the respondents from carrying out conservancy operations, mapping, surveying or allocating community land without proper legal procedures. It orders the County government of Isiolo to facilitate proper registration of the Community land under Community land Act 2016 and directed KWS to assume regulatory oversight of conservancy operations. The rangers were also barred from operating in the conservancy and the petitioners were awarded general damages for loss of land use and community disruption.



A STEP-BY-STEP GUIDE TO ENSURE COMPLIANCE WITH KENYAN LAW AND PREVENT CONFLICTS.

For anyone managing or planning to establish a community conservancy, avoiding legal disputes—like those in *Osman & 164 Others v. Northern Rangelands Trust (NRT) & Others*—requires a proactive, legally compliant, and community-inclusive approach.

To help you navigate this, we've put together a step-by-step guide to ensure compliance with Kenyan law and prevent conflicts.

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