



Masaa v Cabinet Secretary, Ministry of Tourism and Wildlife & 5 others; Amboseli Conservation Program & 4 others (Interested Parties) (Constitutional Petition E737 of 2025) [2025] KEHC 19235 (KLR) (Constitutional and Human Rights) (30 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E737 OF 2025**

B MWAMUYE, J

DECEMBER 30, 2025

IN THE MATTER OF: ARTICLES 1,2,3,10,19,20,21,22,23,27,40,42,47,62,67,69, 73,129,159, 165 (3)(B)(D), 174, 186, 187, 189, 232, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE VIOLATION AND/OR THREATENED VIOLATION OF ARTICLES 10, 27, 40, 62,67,69 69 AND 232 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: SECTION 24, 25, 27, 28 AND 29 OF THE INTERGOVERNMENTAL RELATIONS

ACT, (CAP. 265F)

AND

IN THE MATTER OF: GAZETTE NOTICE NO. 15230 & 15231 PUBLISHED IN KENYA GAZETTE VOL. CXXVII—NO. 219 DATED 24TH OCTOBER, 2025

AND

IN THE MATTER OF: THE DEED OF TRANSFER OF MANAGEMENT FUNCTIONS RELATING TO AMBOSELI NATIONAL PARK FROM THE NATIONAL GOVERNMENT TO THE COUNTY GOVERNMENT OF KAJIADO

BETWEEN

JOSEPH KASAU MASAA PETITIONER

AND



**THE CABINET SECRETARY, MINISTRY OF TOURISM AND
WILDLIFE 1ST RESPONDENT**

THE COUNTY GOVERNMENT OF KAJIADO 2ND RESPONDENT

**THE CHAIRPERSON, INTERGOVERNMENTAL RELATIONS TECHNICAL
COMMITTEE 3RD RESPONDENT**

THE HON ATTORNEY GENERAL 4TH RESPONDENT

THE NATIONAL LAND COMMISSION 5TH RESPONDENT

THE KENYA WILDLIFE SERVICE 6TH RESPONDENT

AND

AMBOSELI CONSERVATION PROGRAM INTERESTED PARTY

THE AFRICAN WILDLIFE FOUNDATION INTERESTED PARTY

THE EAST AFRICAN WILDLIFE SOCIETY INTERESTED PARTY

THE AFRICAN CONSERVATION CENTRE INTERESTED PARTY

OKIYA OMTATA OKOITI INTERESTED PARTY

*(Ruling on the Petitioner/Applicant's Notice of Motion Application dated 11/11/2025
and the 1st and 4th Respondents' Notice of Preliminary Objection dated 04/11/2025)*

RULING

Background

1. The Petitioner/Applicant moved this Court by way of a Petition and a Notice of Motion application both dated 11th November 2025, challenging the constitutionality and legality of Gazette Notices Nos. 15230 and 15231 of 24th October 2025 and a Deed of Transfer dated 14th October 2025, which collectively purport to transfer the management functions of Amboseli National Park from the National Government to the County Government of Kajiado.
2. The Petitioner is seeking the following orders;
 1. Spent
 2. That pending the full hearing and determination of this Application, a Conservatory Order be and is hereby issued suspending, halting, and/or staying the implementation, operation, and effect of Gazette Notice No. 15230 published in the Kenya Gazette Vol. CXXVII—No. 219 dated 24th October, 2025, purporting to effect a Deed of Transfer of Management Functions Relating to Amboseli National Park from the National Government to the County Government of Kajiado;
 3. That pending the full hearing and determination of this Application, a Conservatory Order be and is hereby issued suspending, halting, and/or staying the implementation, operation, and effect of Gazette Notice No. 15231 published in the Kenya Gazette Vol. CXXVII—No. 219 dated 24th October, 2025, purporting to delineate functions relating to the Management



of Amboseli National Park from the National Government to the County Government of Kajiado;

4. That pending the hearing and determination of the Application herein, a Conservatory Order be issued maintaining the status quo ante, restraining the Respondents, their agents, servants or assigns from implementing, enforcing, or in any way acting upon the Deed of Transfer dated 14th October, 2025 on the Transfer of the Management Functions Relating to Amboseli National Park from the National Government to the County Government of Kajiado.
5. That pending the full hearing and determination of this Petition, a Conservatory Order be and is hereby issued suspending, halting, and/or staying the implementation, operation, and effect of Gazette Notice No.15230 published in the Kenya Gazette Vol. CXXVII—No. 219 dated 24th October, 2025, purporting to effect a Deed of Transfer of Management Functions Relating to Amboseli National Park from the National Government to the County Government of Kajiado;
6. That pending the full hearing and determination of this Petition, a conservatory order be and is hereby issued suspending, halting, and/or staying the implementation, operation, and effect of Gazette Notice No.15231 published in the Kenya Gazette Vol. CXXVII—No. 219 dated 24th October, 2025, purporting to delineate functions relating to the Management of Amboseli National Park from the National Government to the County Government of Kajiado;
7. That pending the hearing and determination of the Petition herein, a Conservatory Order be issued maintaining the status quo ante, restraining the Respondents, their agents, servants or assigns from implementing, enforcing, or in any way acting upon the Deed of Transfer dated 14th October, 2025 on the Transfer of the Management Functions Relating to Amboseli National Park from the National Government to the County Government of Kajiado.
8. the costs of and incidental to this Application shall abide in the outcome of the Petition herein; and
9. such other, further, alternative, incidental and/or appropriate relief(s) as the Honourable Court may deem just and expedient.

3. The Petitioner challenges the legality and constitutionality of the purported transfer of management functions of Amboseli National Park from the National Government to the County Government of Kajiado, effected through Gazette Notices Nos. 15230 and 15231 of 24th October 2025 and the accompanying Deed of Transfer. The Petitioner contends that Amboseli National Park is public land and a nationally protected area vested in, and held in trust by, the National Government under Articles 62(1)(g), 62(3), 67(2)(a), 69(1), 186, and Part I of the Fourth Schedule to *the Constitution*, read together with the *Wildlife Conservation and Management Act*. It is asserted that management and protection of national parks and wildlife is an exclusive national function, incapable of unilateral devolution to a county government through a Gazette Notice or executive agreement.
4. The Petitioner further argues that the impugned transfer contravenes the constitutional framework governing public land, intergovernmental relations, and the distribution of functions. In particular, it is alleged that the transfer offends Articles 62(4), 187, 189, and 260 of *the Constitution*, in that public land may only be disposed of or otherwise dealt with pursuant to an Act of Parliament, and that functions constitutionally reserved to one level of government cannot be transferred by agreement. The Petitioner maintains that the National Land Commission, as the constitutional custodian of public land, was not involved, contrary to Articles 62(3) and 67(2)(a) and the *Land Act*, 2012. Additionally, the statutory requirements under the *Intergovernmental Relations Act*, including



public participation, parliamentary oversight, and proper gazettlement procedures, were allegedly not complied with, rendering the process procedurally and substantively unlawful.

5. It is also the Petitioner's case that the transfer undermines environmental protection, the doctrine of public trust, and Kenya's national and international conservation obligations. It is contended that the transfer effectively downgrades a national park to a county-managed reserve without compliance with statutory safeguards under the *Wildlife Conservation and Management Act*, exposing a globally significant ecosystem to irreversible harm. Given that the Deed was due to take effect imminently and preparatory steps had commenced, the Petitioner asserts that the intended transfer poses a real and immediate risk to Amboseli National Park, public land governance, and constitutional order, warranting urgent conservatory relief to preserve the status quo pending determination of the Petition.
6. The Petitioner submits that this Court is seized of jurisdiction under Article 165(3)(d) of *the Constitution* and that the application meets the settled threshold for conservatory orders. Conservatory relief, being a public law remedy, is granted where a petition raises arguable constitutional issues, denial of relief would render the petition nugatory, and the public interest demands intervention. The Petition is neither frivolous nor speculative, but raises weighty questions on devolution, public land, intergovernmental relations, environmental protection, and the constitutional limits of executive power.
7. On the merits, it is argued that the impugned Gazette Notices and Deed of Transfer purport to unlawfully transfer management of Amboseli National Park, a national park and public land held in trust by the National Government, to the County Government of Kajiado. Such transfer allegedly violates Articles 62, 186, 187, and Part I of the Fourth Schedule of *the Constitution*, as well as the *Wildlife Conservation and Management Act*, the *Land Act*, and the *Intergovernmental Relations Act*. It is submitted that management and protection of national parks and wildlife are exclusive national functions; that the National Land Commission was unlawfully excluded; that statutory approval and meaningful public participation were absent; and that the transfer effectively downgrades a national park without parliamentary sanction.
8. The Petitioner contends that, unless conservatory orders are granted, the Petition will be rendered nugatory, as implementation of the transfer is imminent and would occasion irreversible harm to a nationally and globally significant ecosystem, undermine constitutional governance, and prejudice the public interest. Maintaining the status quo, where the Park remains under the Kenya Wildlife Service, causes no prejudice to the Respondents, while the public interest overwhelmingly favours restraint of an allegedly unconstitutional process pending determination of the Petition.

1st and 4th Respondents' Preliminary Objection

9. Contemporaneously, the 1st and 4th Respondents filed a Notice of Preliminary Objection dated 4th November 2025 (filed on 4th December 2025), contesting the Court's jurisdiction on the basis that the dispute falls within the exclusive remit of the Environment and Land Court and statutory dispute-resolution mechanisms under the *Wildlife Conservation and Management Act*.
10. The Respondents opposed the Petition and Notice of Motion dated 11th November 2025 on the grounds that:
 1. The High Court lacks jurisdiction by virtue of Articles 162(2)(b) and 165(5)(b) of *the Constitution*, as the predominant constitutional question concerns Article 62(g) on public land and Article 63 on community land; and



2. Insofar as the Petition concerns wildlife management, protection, or conservation, the High Court's jurisdiction is ousted by Section 117(1) and 117(2) of the *Wildlife Conservation and Management Act* 2014 [Revised by 24th Annual Supplement (Legal Notice 221 of 2023) on 31 December 2022].
11. In their written submissions, the 1st and 4th Respondents contended that the dispute falls within the exclusive mandate of the Environment and Land Court.
12. They submitted that the Petition concerns constitutionality and legality of the transfer of management functions over Amboseli National Park, a public land and protected area under Article 62(1)(g), implicating land use, environmental conservation, and wildlife management. Relying on Articles 162(2)(b) and 165(5)(b), section 13 of the *Environment and Land Court Act*, and section 117 of the *Wildlife Conservation and Management Act*, they argued that Parliament deliberately reserved such disputes to specialised environmental and land fora.
13. They further relied on the “predominant purpose test” articulated by the Court of Appeal in *Co-operative Bank of Kenya Limited v Patrick Kang’ethe Njuguna & 5 Others* [2017] eKLR, contending that the predominant purpose relates to land and environmental governance, thereby ousting the High Court’s jurisdiction.
14. The Respondents urged the Court to uphold the Preliminary Objection and strike out the Petition and the application in limine.

2nd Respondents’ Case

15. The 2nd Respondent, through its County Attorney, averred that it is a constitutionally established County Government under Article 176, with functions delineated under Articles 186 and 187, and that Article 187 allows transfer of functions where they may be more effectively performed by another level, subject to law and constitutional accountability.
16. It further averred that the transfer was prompted by historical injustices suffered by the Maasai community, whose ancestral land had been unprocedurally converted to a National Park in 2005. Following a petition by the Maasai, a Presidential Directive was issued directing transfer of management functions to Kajiado County while retaining national ownership, aiming to integrate local communities in conservation and remedy historical marginalization.
17. The 2nd Respondent stated that the transfer process involved planning, stakeholder engagement, alignment with conservation and legal frameworks, public participation, and adherence to resource-follow-function principles under Article 187(2)(a). The Deed of Transfer was duly executed, witnessed, and gazetted, ensuring procedural compliance.
18. It is contended that allegations of discrimination, inadequate public participation, and unlawful transfer of national functions are unsubstantiated. The transfer involved delineation of management functions, with no change in land ownership, status, or national rights. Granting conservatory orders would interfere with constitutionally sanctioned devolution and undermine public interest.
19. The 3rd Respondent filed a Replying Affidavit but later withdrew it on 3rd December 2025.

Petitioner’s Rebuttal

20. In rebuttal, the Petitioner maintained that the application for conservatory orders is meritorious and that the Respondents failed to controvert the core constitutional violations.



21. According to him, the burden lay on the Respondents, particularly the National Government, to demonstrate compliance with Article 187, which they failed to do. Reliance on Presidential directives, historical grievances, or section 35 of the *Wildlife Conservation and Management Act* is legally untenable, as Amboseli is a national park and public land constitutionally and statutorily reserved to the National Government, with the National Land Commission mandated to address historical injustices.
22. The Petitioner submitted that the transfer is tainted by illegality, discrimination, and procedural impropriety. Exclusion of the National Land Commission, absence of meaningful public participation, and assignment of park revenues to a single county offend Articles 10, 27, 62, 67, and 69, as well as the *Wildlife Conservation and Management Act* and the *National Land Commission Act*. The transfer effectively converts a national park into community land without parliamentary sanction, undermining the doctrine of public trust and equitable sharing of resources.
23. On jurisdiction, the Petitioner contended that the Preliminary Objection is misconceived. The predominant question is the constitutionality of an intergovernmental transfer of a national function and the legality of executive action, squarely within the High Court's mandate under Article 165(3) (d)(ii) and (iii). Statutory dispute-resolution mechanisms cannot oust this jurisdiction.

Analysis and Determination

24. Having considered the pleadings, affidavits, submissions, and authorities, two issues arise:
 - i) Whether this Court has jurisdiction to hear and determine the Petition and interlocutory application; and ii) Whether the Petitioner has met the threshold for conservatory orders.

Whether this Court has jurisdiction to hear and determine the Petition and interlocutory application

25. Jurisdiction is fundamental. As stated in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, without jurisdiction a court must down its tools.
26. The Respondents' objection relies on Articles 162(2)(b) and 165(5)(b), section 13 of the *Environment and Land Court Act*, and section 117 of the *Wildlife Conservation and Management Act*, arguing that the dispute concerns matters reserved for specialised fora.
27. However, as held in Mohamed Ali Baadi & Others v Attorney General & 11 Others [2018] eKLR which held that it is not the mere mention of land or environment that ousts the jurisdiction of the High Court, but whether the dispute is predominantly about land and environment.
28. Similarly, the Court of Appeal in Co-operative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR articulated the "predominant purpose test", emphasizing that jurisdiction depends on the substantial question presented.
29. Applying that test here, the gravamen of the Petition is not ordinary land or environmental regulation, but constitutional questions concerning:
 - e) Legality of executive action via Gazette Notices.
 - d) Role of independent constitutional commissions, particularly the National Land Commission; and
 - c) Management of public land held in trust under Article 62;



- b) Constitutional limits of intergovernmental agreements;
- a) Distribution of functions under Articles 186 and 187;

30. These issues fall squarely within the High Court's interpretive mandate under Article 165(3)(d)(ii) and (iii).

31. In *Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 Others* [2012] eKLR, the Supreme Court affirmed that the High Court's original jurisdiction to interpret *the Constitution* cannot be lightly ousted. Further, in *Mwanzia v Rhodes* [2023] KEHC 2688 (KLR), the Court held that statutory mechanisms cannot bar the High Court where substantial constitutional issues are raised.

32. Accordingly, section 117 of the *Wildlife Conservation and Management Act* cannot shield allegedly unconstitutional executive action. As held in *Republic v Karisa Chengo & 2 Others* [2017] eKLR, statutes must yield to *the Constitution*.

33. The Preliminary Objection is therefore misconceived and devoid of merit.

Whether the Petitioner has met the threshold for conservatory orders.

34. Conservatory orders are public law remedies aimed at preserving constitutional values and the rule of law. As held in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR: "Conservatory orders are not granted on the basis of irreparable harm alone, but on the inherent merit of a case, bearing in mind the public interest, constitutional values, and the proportionate magnitudes of relevant causes."

35. Similarly, in *Centre for Rights Education and Awareness (CREAW) v Speaker of the National Assembly & 2 Others* [2017] eKLR, the Court held that an applicant must demonstrate: a *prima facie* case with likelihood of success; that the Petition will be rendered nugatory if orders are not granted; and that public interest favours relief.

36. On the first limb, the Petitioner has demonstrated weighty constitutional issues. Management of national parks and wildlife is expressly vested in the National Government under Part I of the Fourth Schedule, and Amboseli National Park is public land held in trust under Article 62(3). Exclusion of the National Land Commission, absence of parliamentary sanction, and reliance on Gazette Notices raise serious constitutional questions.

37. On the second limb, the Deed of Transfer was due to take effect imminently, and preparatory steps had commenced. As held in *Okiya Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 Others* [2018] eKLR, where implementation is imminent, the Court must act to prevent a *fait accompli*.

38. On the third limb, public interest overwhelmingly favours re-establishment and preservation of the *status quo ante*. Amboseli is a nationally and globally significant ecosystem. In *Kenya Small Scale Farmers Forum v Cabinet Secretary, Ministry of Education & 5 Others* [2015] eKLR, the Court held that where public resources and constitutional governance are at stake, public interest tilts in favour of restraint.

39. Maintaining the Park under existing management or the *status quo ante* management causes no prejudice to the Respondents, while proceeding with the transfer risks irreversible practical, legal, and constitutional harm were the Petition to succeed.



Disposition

40. Having already found that the 1st and 4th Respondents' Notice of Preliminary Objection dated 04/11/2025 is without merit and that this Court has jurisdiction to hear and determine both the Petition as well as any interlocutory applications therein, and in light of the foregoing analysis of the Petitioner/Applicant's Notice of Motion Application dated 11/11/2025, it follows that the Preliminary Objection should be dismissed and that the Application for conservatory orders should be allowed.
41. Consequently, and for the reasons set out earlier in this Ruling, this Court issues the following Orders with respect to the Petitioner/Applicant's Notice of Motion Application dated 11th November, 2025, and the 1st and 4th Respondents' Notice of Preliminary Objection dated 4th November, 2025:
 - a. The 1st and 4th Respondents' Notice of Preliminary Objection dated 04/11/2025 is found to be without merit and the same is dismissed with costs in the cause;
 - b. The Petitioner/Applicant's Notice of Motion Application dated 11/11/2025 is found to be merited and this Court determines it by issuing orders that:
 - i. Pending the full hearing and determination of the Petition dated 11/11/2025 herein, a conservatory order be and is hereby issued suspending, halting, and/or staying both Gazette Notice No. 15231 published in the Kenya Gazette Volume CXXVII-No/ 219 dated 24/11/2025 as well as its operation, implementation and/or effect with respect to the subject matter of the Petition herein;
 - ii. Pending the full hearing and determination of the Petition dated 11/11/2025 herein, a conservatory order be and is hereby issued restoring and re-establishing the status quo ante that obtained before the execution of the impugned Deed of Transfer dated 14/10/2025 and ordering that the status quo that obtained with respect to the operations and management of Amboseli National Park before the impugned actions and decisions that are the subject matter of the Petition dated 11/11/2025 herein shall apply pending full hearing and determination of the Petition herein; AND
 - iii. Costs of the Application shall be in the cause; AND
 - c. Directions on the expedited hearing and determination of any other pending interlocutory applications, if any, and/or the Petition shall be issued separately.

Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAIROBI VIRTUALLY ON THIS 30TH DAY OF DECEMBER, 2025.

BAHATI MWAMUYE MBS

JUDGE

