



COUNTY COORDINATOR - BARINGO  
P.O. BOX 7 - 30400 KABARNET

NLC/BC/ADM/VOL/1/81

21<sup>ST</sup> AUGUST 2023

TO: CHAIRMAN KAMNAROK FARMERS GROUP

RE: HISTORICAL LAND INJUSTICE DETERMINATION.

NLC/HLI/153/2017

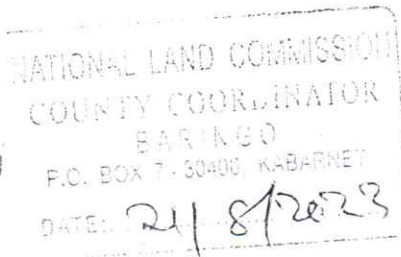
Enclosed find the commission's determination in respect to claim.

YOURS FAITHFULLY

A handwritten signature in black ink, appearing to read 'J.G. M'Nkanata', is written over a rectangular stamp area.

J.G.M'NKANATA

COUNTY COORDINATOR - BARINGO



REPUBLIC OF KENYA



NATIONAL LAND COMMISSION

In the matter of Article 67(2) (e) of the Constitution of Kenya  
In the matter of section 15 of National Land Commission Act  
In the matter of Historical Land Injustice  
Reference No. NLC/HLI/153/2017

Kamnarok Farmers Group.....Claimant

Versus

Kenya Wildlife Service..... 1<sup>st</sup> Respondent

County Government of Baringo.....2<sup>nd</sup> Respondent

Ministry of Tourism and Wildlife .....3<sup>rd</sup> Respondent

Ministry of Education..... Interested Party

✓ Ministry of Lands, Housing, Public Works and Urban  
Development..... Interested Party

Determination

Investigative Hearings: 01/04/2021, 09/04/2021

Panel: Commissioner Hon. Esther Murugi Mathenge  
Commissioner Reginald Okumu  
Commissioner Prof James K. Tuitoek

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### Appearances:

- i. Kamnarok Farmers Group representing themselves.
- ii. Kenya Wildlife Service representing themselves.
- iii. Baringo County Government representing themselves.
- iv. Ministry of Education
- v. Ministry of Lands, Housing, Public Works and Urban Development
- vi. Ministry of Tourism and Wildlife

### The Parties

1. The claimants describe themselves as farmers within Baringo County.
2. The 1<sup>st</sup> Respondent is established under the Wildlife Management and Conservation Act of 2013.
3. The 2<sup>nd</sup> Respondent is established under Article 176 of the Constitution of Kenya.

### The Background

4. The claimants claim to be a 15,000 group calling themselves Kamnarok Farmers Group. They claim that they inhabited their ancestral land approximately 87.7 km squared in Baringo County. They further claim that their community land was gazetted as a National Game Reserve irregularly which has caused them and continues to cause them so much tension between themselves and Kenya Wildlife Service (KWS) and the County government of Baringo. They allege that KWS has threatened to evict the community members occupying the area deemed to be part of the national reserve.
5. The Kamnarok Farmers Group claim the subject land to be their ancestral land that was allegedly irregularly allocated to KWS. The land now forms part of Lake Kamnarok National Game Reserve which is under the management of KWS. Lake Kamnarok Game Reserve is situated within Baringo County.

### Claimant's Case

6. The claimants claim to be registered and mandated by the community encompassing the seven sub-locations in Barwesa Ward, Baringo North Sub-County traversed by the Kamnarok National Reserve.
7. They claim that the subject parcel which is approximately 87.7 kilometers squared gazetted in 1983 is their community land and that they inhabited and cultivated long and

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its delineation has caused and continues to cause an imminent threat of forceful eviction of the people who are occupying the area deemed to be part of the reserve.

8. They note that until 14/06/1983, Kamnarok National Reserve was a trust land under the then Baringo County Council (BCC) unknown to the residents that the government through the Minister for Tourism and Wildlife one Hon. Elijah Mwangale gazetted Kamnarok National Reserve through Legal Notice No.101 of 1983 boundary delineated plan number 216/47. It is only in 1990 that they learnt of gazettelement following a quit and eviction notice to the 985 families within three locations.
9. They further stated that they resisted attempts by Baringo County Council and KWS declaring the farmers as squatters or illegal on land now designated a National Reserve.
10. They further state that despite appeals by the community to the former County Council of Baringo and KWS regarding the Land Dispute Conflict, all mediations and talks engaged to date have not yielded any success.
11. They also aver that the Wildlife Conservation and Management Act and the Wildlife Act have put in place measures that have left the local community defenseless against elephants, lions, crocodiles, wild foxes, hyenas and dangerous predators. They note further that KWS and other global bodies interested in eco-tourism have signed an agreement for preservation of wild animals.
12. They note further that these agreements favor wildlife than human beings and that the agreements are pro-animals influenced by colonial wildlife legislation which KWS inherited and positioned wildlife as privately owned but tell the people wildlife is a public resource.
13. They also state that it is against the interest of the people when public resources are owned privately and community property is freely transferrable and decisions on resources uses are decentralized and that communities who lost their land and lived with wildlife for a long time are shunned aside and benefits of the natural resource and coordination of revenue are accomplished by a private company known as KWS.
14. They further noted that the discovery of oil in Block 12A got entrance with a lot of government backed force and the local administration took the role of trustees or original land owners until now the prospector has received a permit from relevant authorities like the commissioner of lands, mines and geology department. They claim further that exploitation of resources remain largely unknown and unsupported by policies legislated by the National Government.

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15. They therefore prayed for:

- a) A revocation of Kamnarok National Reserve.
- b) The community land be re-demarcated as per the 1980 declaration that began at Muchukwo, Katibel, Kapluk Adjudication Sections.
- c) Restrict KWS from denying farmers access to their ancestral land.
- d) Stop harassment, torture, illegal arrests and arraigning people in court on false accounts such as trespass, felling trees, burning charcoal, fetching of sand and natural salt licks.

**Response by the Ministry of Tourism and Wildlife and KWS**

16. The Ministry of Tourism Wildlife and KWS informed the Commission that Lake Kamnarok Game Reserve came into existence around 1980 when the then County Council of Baringo requested the then Minister of Wildlife to gazette the area as a game reserve. They noted that all the necessary steps were followed before the said gazette which included a full council approval. They further noted that the game reserve is fully managed by KWS with an outpost at Barwessa with the County Government of Baringo having theirs at Kamnarok area.
17. They further noted that apart from the park hosting several species of wild animals, it also boasts of a snake park with a rich ecosystem. They noted that the park remains a major source of revenue to the County Government of Baringo, KWS and by extension the National Government.
18. They further noted that the boundary dispute has been in existence since 1988 and several attempts by KWS to secure the park have been unsuccessful. They also noted that on or about the year 2009, the then Baringo County Council issued a public notice to all the people living within the park to vacate. However, due to politics, the eviction never took place.
19. They appealed to the Commission to order those living within the game reserve do vacate to enable KWS continue with the ongoing fencing project.

**Response by Ministry of Lands and Physical Planning (MOLPP)**

20. On the part of MOLPP the Commission was informed that in 1980, five adjudication areas within Baringo County were declared. These were Kuikui, Barwessa, Keturwo, Konoo and Kapluk registration sections.

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21. However, the process stalled midway since part of the adjudication sections were gazetted in 1983 as part of the Lake Kamnarok Game Reserve. The only way out of this overlap, they noted was to amend the adjudication section to exclude areas covered by the game reserve. This they claim was done and allowed for the completion of the adjudication process.

### **Taskforce on Lake Kamnarok Game Reserve**

22. The Governor of Baringo County, His Excellency Hon. Benjamin Cheboi appointed an 18 member Task Force in May 2015 to unravel the long standing dispute between Kamnarok Community and the previous Baringo County Council whose successor in title is Baringo County Government.
23. The Taskforce had a number of terms of references encapsulated as questions to be addressed. The questions were:
- a) What is the legality between the gazettelement of the National Reserve of 1983 and the 1980 declaration of Kapluk Land Adjudication Section?
  - b) How will the genuine land owners in the reserve as at 1983 be identified, compensated and/or resettled?
  - c) What will happen to those whose lands have been demarcated?
24. After collecting and collating information from the public, the claimants and all stakeholders, the Taskforce in their report of February 2017 made a raft of recommendations summarized as follows:
- a) The Taskforce established that there are two legal notices. The declaration of Kapluk Land Adjudication Section of 1980 and the 1983 Gazettelement of Lake Kamnarok Game Reserve. It is clear that there is an overlap as the two legal notices are contradicting each other. Two options can be considered.
    - i. The first one is that the gazette boundary for the National Reserve remains as proposed by the community during the public hearings in Kaptilomwo and Keturwo Sub-Locations and thus electric fencing be considered. The County Government and the KWS to thus recognize and adequately compensate the affected people in Muchukwo and Katibel Sub-location whose land had been demarcated.
    - ii. The second is that the area under the overlap occasioned by the two contradicting legal notices be excised from Lake Kamnarok National Reserve.
  - b) The National Government and Baringo County Government should take cognizant

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that by the time the 1983 gazette was done, Kapluk Adjudication Section had been declared in 1980. Consequently, compensation for affected land owners is recommended. This includes both those with land registration numbers and without land registration numbers.

- c) The county government to provide priority employment opportunities for the community and come up with a revenue sharing mechanism in favor of the community from the proceeds of the game reserve.
  - d) The county government to carry out a verification exercise to determine the number of households that were within the gazette game reserve as at 14/06/1983.
  - e) All public facilities be relocated outside the boundaries of the game reserve as gazetted whose cost should be met by KWS, the county government and Baringo North CDF.
  - f) The county and national governments to develop Lake Kamnarok National Reserve Management and Development Plans and to include the community in decision making processes.
  - g) The County Government to conduct an analysis of the biodiversity and economic benefits of various habitats in the Reserve.
  - h) Conduct civic education programs to the community on the existing legislations on land, environment, wildlife and tourism for enhanced peaceful human-wildlife co-existence.
  - i) Security enforcement agencies to stop any human activities that degrades the environment and its biodiversity.
  - j) Tarmacking of roads from the Kapkokwony-Muchukwo and Ainabmoi-Barwessa main road that gives access to the Lake for tourism.
  - k) The county government and national government through the Ministry of Lands and Physical Planning to work speedily to give title deeds for all lands that have been surveyed outside the Kamnarok Game Reserve.
25. The Baringo County Assembly also received the Taskforce report and considered it after it was tabled on 20/11/2019 through a motion by the Chairperson of the Trade, Tourism, Commerce and Cooperatives Committee for adoption by the full house. The Committee largely agreed with the report and made the following recommendations.
- a) The gazetted boundary to remain unchanged and be fenced off within the next 12 months after adoption of the report.

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- b) Security enforcement agencies to stop any human activities that degrades the environment and its biodiversity.
- c) The government to provide opportunities for increased community support, benefit sharing opportunities and enable limited resources access for local communities adjacent to the Reserve. This could include using royalties to support community projects and initiatives.
- d) The County Government to conduct an analysis of the biodiversity and economic benefits of various habitats in the Reserve.
- e) The county and national governments to develop Lake Kamnarok National Reserve Management and Development Plans and to include the community in decision making processes.
- f) Conduct civic education programs to the community on the existing legislations on land, environment, wildlife and tourism for enhanced peaceful human-wildlife co-existence.
- g) Conduct a mapping exercise of the Reserve edge to identify threat hot spots and provide focus for protection efforts.
- h) Development projects within the protected areas will be carried out in accordance with sustainability criteria and EIA reports in a way that guarantees the preservation of the area's characteristics and integrity of its surroundings.
- i) That all public amenities within the boundaries of the Reserve county and national governments to look for resources to relocate them outside.
- here j) Genuine land owners as at 14<sup>th</sup> June, 1983 be identified through existing community structures and other government agencies for compensation and or resettlement.

#### Findings of the Commission

- 26. The Commission through its own independent investigations established that the total area of Kapluk Adjudication Section which was declared in 1980 is 149 square kilometers. This area covers Kapluk, Katibel and Muchukwo sub-locations.
- 27. The Commission also established that 4,500 people benefited from land demarcation in the Adjudication Section.
- 28. Furthermore, the Commission established that 87.7 square kilometers was gazetted as K  m  narok National Reserve in 1983 but it resulted in an overlap of 25 square kilometers with the Kapluk Adjudication Section. We noted too that the areas affected by the

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overlap are Katibel Sub-location and parts of Muchukwo Sub-location south of Lake Kamnarok National Reserve.

29. It was also found out that by the time Kamnarok Game Reserve was gazetted, 560 people had been demarcated land in the adjudication section within the overlapped area of 25 square kilometers (**see Appendix I containing the list of the 560 individuals affected by the gazettelement of the Reserve**).
30. The overlap stalled the whole adjudication exercise and to-date title deeds have not been processed for the all of Kapluk adjudication section.

### Analysis

31. The Commission panel has examined the documents submitted, heard the parties and undertaken independent investigations and now frames the following questions for determination:

- here* a) Whether the claim meets the historical injustice criteria.
- &*  
*here* b) Whether an injustice was occasioned to the claimants and whether they are entitled to any remedies.

a) **Whether the claim meets the historical injustice criteria.**

32. Article 67 (2) (e) of the Constitution and section 15 of the National Land Commission Act gives the commission the jurisdiction to hear cases on historical land injustice. Section 15 (2) of the National Land Commission Act further highlights what constitutes a historical land injustice. This means a grievance;

- here* i. *Occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;*
- here* ii. *Resulted in displacement from their habitual place of residence;*
- here* iii. *Occurred between 15<sup>th</sup> June 1895 when Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> August 2010 when the Constitution of Kenya was promulgated;*
- here* iv. *Has not been sufficiently resolved and subsists up to the period specified under sub clause (iii) above;*

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v. *Meets the criteria set out in subsection 3 of this Section.*

33. Section 15 (3) of the National Land Commission Act provides the criteria in which a historical land claim may be registered and processed by the Commission if it meets the following criteria;

- i. *it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;*
- ii. *the claim has not or is not capable of being addressed through the ordinary court system on the basis that*
  - a. *the claim contradicts a law that was in force at the time when the injustice began; or*
  - b. *the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;*
- iii. *the claimant was either a proprietor or occupant of the land upon which the claim is based;*
- iv. *no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and*
- v. *it is brought within five years from the date of commencement of this Act.*

34. Section 15 (4) of National Land Commission Act further provides conditions under which a historical land injustice complaint shall be permissible where occasioned by;

- a) *colonial occupation;*
- b) *independence struggle;*
- c) *pre-independence treaty or agreement between a community and the government;*

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*here* d) *development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;*

e) *inequitable land adjudication process or resettlement scheme;*

f) *politically motivated or conflict based eviction;*

g) *corruption or other form of illegality;*

h) *natural disaster; or*

i) *other cause approved by the Commission*

✓ 35. We find that this case meets the threshold on what a historical land injustice is as the dispute was occasioned by a violation of a right in land through a law, a declaration and an administrative practice that resulted in the displacement of the claimants from their habitual place of residence as per section 15 (2) (a) and (b) of the National Land Commission Act. The claim also arose within the statutory time frame of 15/06/1895 and 2010 as the claim arose on 14<sup>th</sup> June, 1983 outlined by section 15 (2) (iii) of the National Land Commission Act.

**b) Whether an injustice was occasioned to the claimants and whether they are entitled to any remedies.**

36. The Hansard report from Baringo County Assembly at page 8 states that negotiations about establishing the reserve started in 1970 where the then Minister for Tourism and Wildlife Hon. Shako said that his Ministry was investigating the possibility of turning Kerio Valley into a National Park against the backdrop of wildlife living in the area.

37. The Kapluk Land Adjudication Section was declared in 1980 with a total acreage of 36,818.7 (149 square kilometers). Demarcation was done to completion and 4,500 people were given demarcation numbers. The whole process stalled due to the gazettment of Kamnarok National Reserve through a legal notice No. 101 of 14<sup>th</sup> June, 1983 which partially overlapped the demarcated area. Out of the 149 square kilometers covering the adjudication section declared in 1980, six thousand one hundred and seventy seven acres (25 square kilometers) fell within the overlap (gazette area) with 560 people holding demarcation numbers.

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38. It is also reported in the Hansard and Task Force Report that a meeting was held on 4<sup>th</sup> March, 1982 by the Town, Markets, Works and Housing Committee of Baringo County Council at Chairman's Office. In the meeting under minute number TPMWH/87 it was unanimously approved that Kerio Valley National Reserve be established and a team of 6 members were instructed to visit the proposed area and possibly convene a meeting with the residents to be informed of the proposal.

39. We have perused through all the documents and listened to the parties and we are unable find evidence showing that the meeting between the residents and the team of 6 members from the County Council of Baringo for the establishment of Kerio Valley National Reserve was ever conducted. Sensitizing the public and seeking their participation in the decision making process was key but this was never carried out.

40. It is also stated in the Hansard and the Taskforce Report that on 07/10/1982 that as per parliamentary proceeding number 536 of Thursday 7<sup>th</sup> October, 1982 on land adjudication in Kerio River Basin, the then Minister of Lands and Settlement Hon. GG Kariuki said that the adjudication section would only be carried out when the section of Kamnarok National Reserve boundary is laid out by the Ministry of Tourism and Wildlife. This culminated in the gazettment of Lake Kamnarok National Reserve in 1983 through Legal Notice number 101 of 14<sup>th</sup> June, 1983 and the government vested the management of the reserve to the County Council of Baringo. However, when the Kamnarok National Reserve was gazette it overlapped the Kapluk Adjudication section, hence this dispute.

41. The Kapluk Land Adjudication Section was declared in 1980 and the claimants were in occupation of the land. It is clear from the former Minister of Lands and Settlement that the adjudication section would only be completed after the section of Lake Kamnarok National Reserve boundary was carried out as noted above. The Ministry of Lands and Physical Planning in their oral submissions before the Commission indicated that the process stalled midway as part of the adjudication section were gazetted in 1983 as part of the Lake Kamnarok Game Reserve. There were overlaps and the amendment of the adjudication section to exclude areas covered by the game reserve was to be done. The Ministry of Lands officials claimed that this was done. However, no evidence was placed before us to corroborate this assertion. We therefore find that this overlap occasioned an injustice to the claimants as the land they were in occupation of was encapsulated in the Reserve. This amounted to compulsory acquisition yet no form of compensation was paid to the claimants. The claimants were therefore dispossessed of their land by dint of the overlap of the adjudication section and the game reserve. This was in total breach of Article 19 of the 1963 Constitution of Kenya (repealed) obtaining at the time.

42. Moreover, we find that this overlap was occasioned under the behest of the Ministry of Tourism and Wildlife when they gazetted the boundary of Lake Kamnarok National Reserve in 1983 through Legal Notice number 101 of 14<sup>th</sup> June, 1983 hence the historical land injustice.

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43. The law that governs national reserves is the Wildlife Conservation and Management Act No.47 of 2013. This Act repealed the Wildlife (Conservation and Management) Act (Cap 376). Section 35 (1) of the Wildlife Conservation and Management Act provides that:

**“The Cabinet Secretary may upon recommendation of the relevant county government and after consultation with the National Land Commission by notice in the Gazette declare any land under the jurisdiction of a county government to be a national reserve where the land is (a) rich in biodiversity and wildlife resources or contains endangered and threatened species:(b) an important catchment are critical for sustenance of a wildlife conservation area or (c) and important wildlife buffer, zone, migratory route, corridor or dispersal area.”**

44. Section 35(2) of the Act provides that the national reserve declared under subsection (1) shall be managed by the relevant county government. The Eleven Schedule to the Act lists Kamnarok National Reserve as a reserve whose size is 87.7 square kilometers. It follows therefore that Kamnarok National Reserve is under the jurisdiction of the County Government of Baringo the successor to the defunct County Council of Baringo. It also collects revenue from the national reserve.

45. On the other hand the Kenya Wildlife Service (KWS) is established under Section 6 of the Wildlife Conservation and Management Act No.47 of 2013 and is charged with a number of functions under section 7 of the Act. Section 35 (3) allows KWS to enter into any management agreement with a county government for management of a national reserve. We note that Baringo County Government has a management agreement with KWS for managing Kamnarok National Reserve on their behalf.

- here* 46. In the final analysis we find that the claimants have demonstrated that an injustice was occasioned to them and that they are entitled to remedies under the law. The injustice was never sufficiently addressed and subsist until today. We are however alive to the fact that as a country we have a duty to protect our flora and fauna and conserve all our sensitive ecological areas such as Lake Kamnarok National Reserve. It is incumbent upon the Commission to ensure that as we address historical land injustice we do not also fail to protect our biodiversity and environment that sit at the center of public interest and our solemn commitment to sustainable development as a member of the comity of nations.

#### **Recommendations**

47. The Commission under section 15 (9) of the National Land Commission Act recommends as follows :

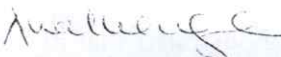
- a) The Ministry of Lands, Public Works, Housing and Urban Development in consultation with the County Government of Baringo to identify the 560 individuals given in **Appendix I** who had benefited from the 1980 Kapluk

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Adjudication Section demarcation exercise but were displaced from their land by the boundary overlap occasioned by the establishment on 14/06/1983 of Kamnarok Game Reserve.

- b) The claimants move out of Kamnarok Game Reserve upon compensation by the Ministry of Tourism and Wildlife and County Government of Baringo after they have been identified and validated as recommended in (a) above as having been displaced. The compensation can either be monetary or alternative land.
- c) The County Government of Baringo should apologize to the affected people.
- d) The County Government of Baringo, the Ministry of Tourism and Wildlife and Ministry of Education to relocate the public schools out of the Kamnarok Game Reserve.
- e) In consultation with the National Land Commission, the County Government of Baringo to work out a benefit sharing formulae with the local community from the income generated out of Kamnarok Game Reserve.
- f) The people or persons who had their parcels of land demarcated outside the overlapped area during the adjudication exercise be issued title deeds by Ministry of Lands.

Dated and delivered at Nairobi this <sup>10<sup>th</sup></sup> day of May, 2023

Signed: 

Commissioner Hon Esther Murugi Mathenge

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Signed: 

Commissioner Reginald Okumu

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Signed: 

Commissioner Professor James K Tuitoek

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