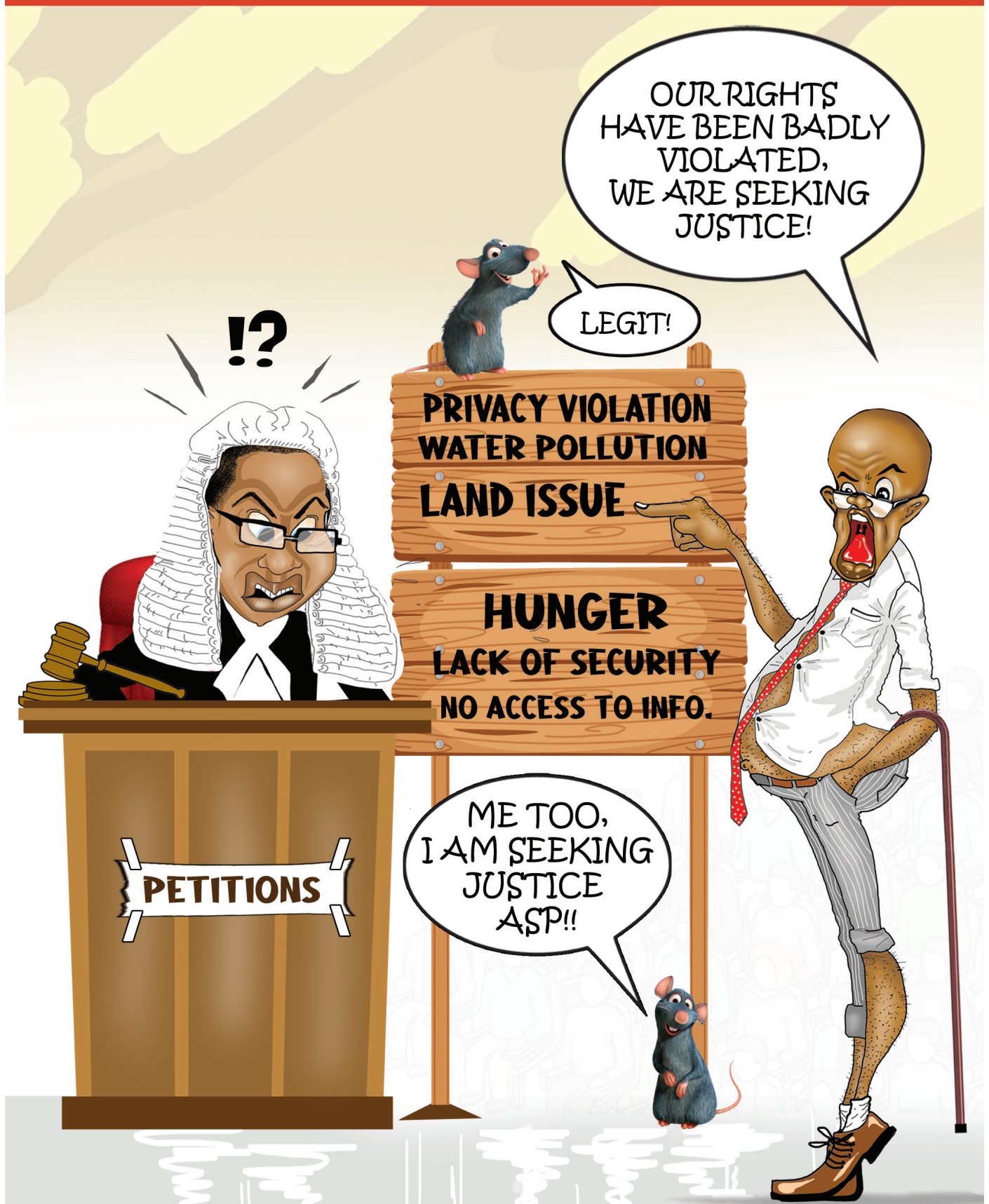


# MARERENI PETITION



**KITUO CHA SHERIA**  
**LEGAL ADVICE CENTRE**  
*we care for justice*

### 1. What is the form under which the case was filed?

- The case was filed in the form of a Constitutional Petition.

### 2. What is the number assigned to the Petition in Court?

- The case is filed as **Petition No. 11 of 2020.**

### 3. Where has the Petition been filed?

- At the Lands and Environment Court in Mombasa.

### 4. Who are the people who filed the Petition?

- The case was filed by Community Members in Magarini Sub County under two organizations:
  - a. Malindi Rights Forum 1<sup>st</sup> Petitioner;
  - b. Kubuka Farmers Association 2<sup>nd</sup> Petitioner.

### 5. Who has been sued in the case?

- **The people/institutions who have been sued in the case are called the Respondents.**



## 6. Who are the Respondents?

### - The Respondents are:

- |  |                              |
|--|------------------------------|
| a. National Land Commission                      | 1 <sup>st</sup> Respondent;  |
| b. The Chief Land Registrar                      | 2 <sup>nd</sup> Respondent;  |
| c. The Attorney General of the Republic of Kenya | 3 <sup>rd</sup> Respondent;  |
| d. National Environmental Management Authority   | 4 <sup>th</sup> Respondent;  |
| e. Kurawa Industries                             | 5 <sup>th</sup> Respondent;  |
| f. Kensalt Limited Company                       | 6 <sup>th</sup> Respondent;  |
| g. Krystalline Salt Limited                      | 7 <sup>th</sup> Respondent;  |
| h. Kemu Salt Packers                             | 8 <sup>th</sup> Respondent;  |
| i. Mombasa Salt Limited                          | 9 <sup>th</sup> Respondent;  |
| j. Malindi Salt Limited                          | 10 <sup>th</sup> Respondent; |
| k. Solar Salt Works Limited                      | 11 <sup>th</sup> Respondent. |

## 7. Are there any other parties in the case?

Yes, there are other two parties known as the interested parties.

## 8. Who are the interested parties to the Petition?

### The Interested parties are:

- |  |                                   |
|--|-----------------------------------|
| a. County Government of Kilifi               | 1 <sup>st</sup> interested party; |
| b. Kenya National Commission on Human Rights | 2 <sup>nd</sup> interested party. |

## 9. What is the background of the Petition?

### - Background of the Petition:

- a. The Petitioners are Citizens of the Republic of Kenya from Kilifi County occupying the Salt Belt area within Magarini Sub County.
- b. They are registered members of either Malindi Rights Forum or Kubuka Farmers Association.
- c. The members are indigenous inhabitants of the Salt Belt.
- d. Their land was leased by the Government of Kenya to Respondents No 5 to Number 11 Respondents.
- e. The 5<sup>th</sup> to 11<sup>th</sup> Respondents use the land for purposes of salt mining.

## 10. What are the allegations of violations made by the Petitioners against the Respondents?

### - The Petitioners allege that:

- a. They were unjustly, forcefully, illegally divested of ancestral land.
- b. Their land was unconstitutionally allocated to 5<sup>th</sup> to 11<sup>th</sup> Respondent.
- c. They cannot therefore use their land as they would have preferred.
- d. They are unable to use huge chunks of their land despite being fallow because those parcels are in the possession of the Respondents.
- e. The process of dispossessing and evicting them was violent, crude and unlawful.
- f. Evictions were conducted against Petitioners' wish and without notice.
- g. There was no public participation prior to the leasing of the land and at evictions.
- h. The consent of Petitioners was not sought when divesting their land;
- i. The 5<sup>th</sup> to 11<sup>th</sup> Respondents continue to dig trenches without buffer zones.
- j. Failure by state to compensate locals at the point of acquisition of their land rights.
- k. The resulting dusts from the salt mines injure their well being.
- l. The Respondents continue to extend boundaries of the land allocated to the salt companies.
- m. Salt companies fail to share environmental impact Assessment reports.
- n. Their environment was polluted including soil, air and water.
- o. The salt companies have refused to obey court orders.



### 11. What is the timeline under which these violations are happening?

- These violations happened in the past, but some violations are continuing and are likely to affect the future generations, if not addressed.

### 12. Had the Petitioners tried to resolve these matters prior to filing of the case?

- a. Yes, the Petitioners, through Kubuka Farmers Association reported the violations to the President of the Republic of Kenya.
- b. The community also raised them with the Kenya National Commission on Human Rights.
- The Kenya National Commission on Human Rights conducted the Malindi Public inquiry resulting in the 2006 report into Allegations of Human Rights Violations in Magarini, Malindi.
- c. The County Government of Kilifi through the Kilifi County Assembly have equally received these complaints.
- d. The National Land Commission is equally informed of the challenges.



### 13. What did the Kenya National Commission on Human Rights investigate?

- The Kenya National Commission on Human Rights investigated the following:
  - a. Eviction from land owned, occupied and inhabited by the community.
  - b. Health complications.
  - c. Violation of workers' rights.
  - d. Role of police and provincial administration in harassment of the community.
  - e. Environment degradation.

### 14. What are the rights that were violated?

- **The following are some of the fundamental Human Rights of the Community Members which were allegedly violated:**
  - a. The right to life under Article 26 of the Constitution of Kenya.
  - b. Discrimination, unfairly and unjust treatment as provided under article 27 of the Constitution of Kenya.
  - c. The right to dignity of persons as enshrined under Article 28.
  - d. The freedom and security of the person.
  - e. Their privacy of their persons, homes were not respected.
  - f. They were not allowed to freely express themselves, assemble, demonstrate, picket, and petition.
  - g. Their right to access information has been curtailed.
  - h. Their rights to adequate food, freedom from hunger and clean and safe water as provided under article 43(1) have been violated.
  - i. The high saline levels in water bodies in Magarini have reduced access to clean and safe water. This has predisposed them to hunger, reliance on food aid and inadequate safe water for sustenance.
  - j. Their right to protection of their property was violated.
  - k. Right to clean and healthy environment has been curtailed.

### 15. Water and Environment:

- **Water has been polluted and what is left within their reach is unfit for Human Consumption.**

### 16. Which are the areas where water is unfit for human consumption?

- **These include:**

- a. Kadzuhoni River near;
- b. Water samples from Nzingo area;
- c. Water samples from Karisa Katana water pipes;
- d. Water samples from Muyu Wa Kae B;
- e. Water samples from Sudi Kabugi B;
- f. Water samples from Ondu Kinyule;
- g. Water samples from Timboni.

### 17. How was water polluted?

- a. By dumping salt waste and deliberate contamination.
- b. By seepage which happens to neighbouring streams from the salt pans.



### 18. How has violation of Right to access to clean water affected local communities?

- a. Petitioners do not have fresh water fit for human consumption at their disposal as they did before salt firms began mining salt in the area.
- b. Petitioners have to ferry water from far flung areas for human consumption.
- c. The cost of water has increased in the area.

### 19. What other forms of environmental degradation have been felt?

- a. The destruction of mangrove trees in the Salt Belt to create room for salt firms;
- b. Death of natural aquatic animals;
- c. Increased erosion of the area;
- d. Degradation of the soil;
- e. Degradation of the environment.

### 20. What are some of the laws applied in this Petition?

- a. Constitution of Kenya, 2010;
- b. Environmental Management and Coordination Act Cap 387;
- c. Land Act No. 6 of 2012;
- d. National Land Commission Act, No. 5 of 2012;
- e. Kenya National Commission of Human Rights Act 2011;
- f. Local and International precedence.
- g. International Convention on Economic Social & Cultural rights

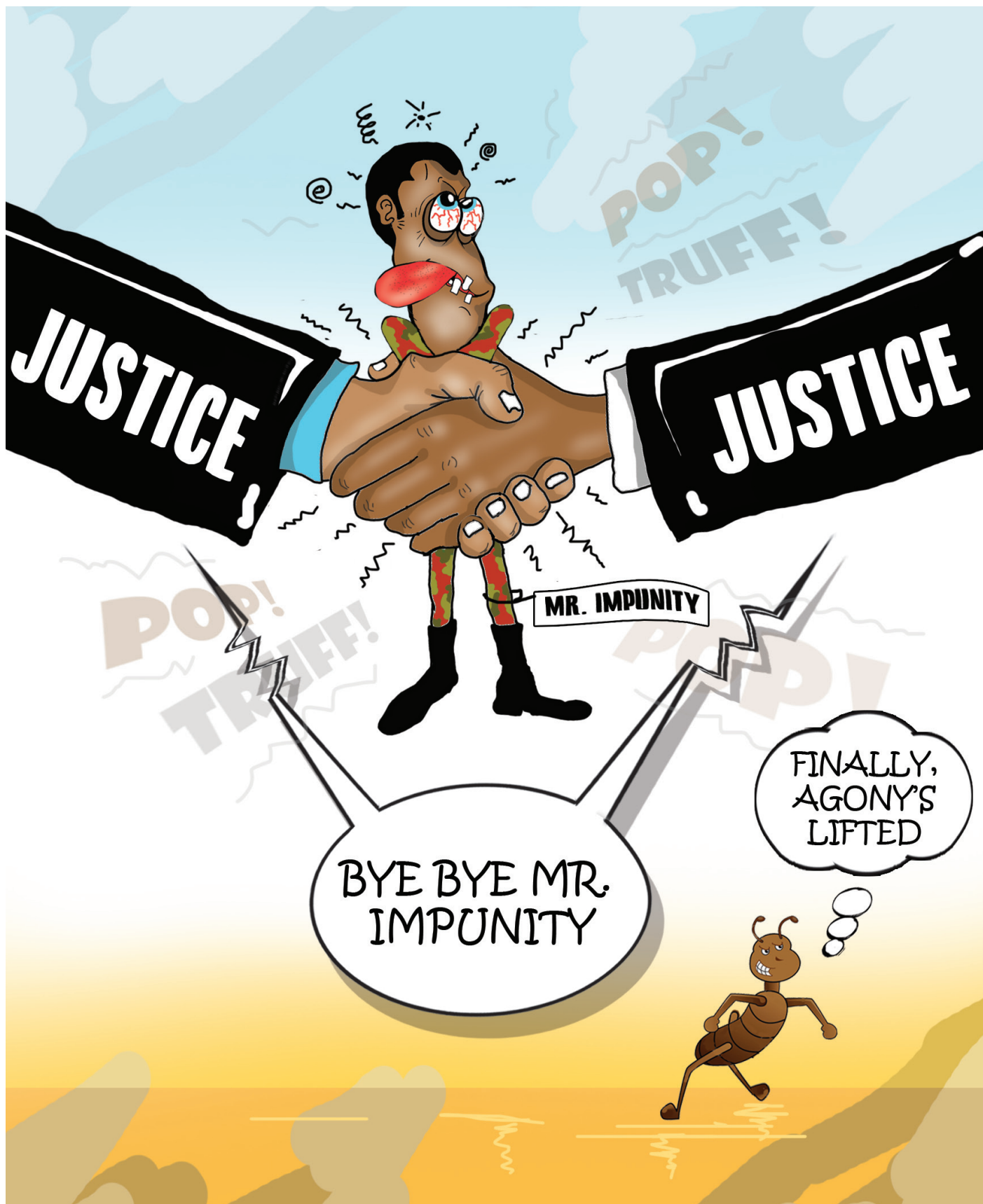
### 21. What are some of the International Instruments to be used?

- **The enlisted International Instruments include:**
  - a. Universal Declaration of Human Rights (UDHR);
  - b. International Covenant on Civil and Political Rights;
  - c. Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT);
  - d. African Charter on Human and Peoples' Rights.

## 22. What are the Prayers by the Petitioners?

**The following are some of the prayers Petitioners seek from court:**

- a. A Declaration that this is a public interest case.
- b. A Declaration that the rights enshrined in Articles 25 (a), 28, 29, 31, 42, 43(1), 69, 70 of the Constitution of Kenya have been and continue to be violated by the Respondents as against the Petitioners herein.
- c. A Declaration that the inhabitants of Magarini within “The Salt Belt” Area were divested and deprived of their rights and interests their land in an unlawful, illegal and unjust manner.
- d. A Declaration that there are ongoing violations of fundamental rights and freedoms touching on ancestral land, right to a clean and healthy environment.
- e. Violations of right to life under Article 26 of the Petitioners.
- f. An Order that NEMA the 4<sup>th</sup> Respondent reviews the Environmental Impact Licenses issued to the 5<sup>th</sup> to 11<sup>th</sup> Respondents.
- g. An Order requiring the 5-11<sup>th</sup> Respondents to provide clean water for the Petitioners which shall include compensation and frequent water supply regulated, organized and supervised by the relevant Government Departments dealing with water to monitor.
- h. An Order that NEMA formulates environmental standards for the Salt firms and the standards.
- i. An Order directing the Commissioner of Lands and National Land Commission to conduct a review of the titles in the salt belt and release all land not under user by the salt firms back to their owners.
- j. An Order directing the National Land Commission to investigate and take remedial action on the historical injustices perspective suffered by the Magarini residents.
- k. An Order for a proper inquiry by Government to investigate and establish the past, present and future threats of violations of rights by the 5<sup>th</sup> to 11<sup>th</sup> Respondents against Magarini Residents of “the salt belt” region whose rights were violated through the activities of the Respondents herein and order for a just compensation, which compensation may include paying of an agreed sum every harvest time for those whose farms were taken over and are being used for salt harvests.
- l. An Order for reparations to be paid to the Petitioners herein.
- m. The costs of this suit to be provided to Petitioners.



#### BRANCH OFFICE - NAIROBI

- 📍 Forced Migration Program (FMP), KCDF House, 4th Floor. Chai/Pamba Road, Pangani
- ☎ Tel: 202451631, 0736867241, 0720806531
- ✉ E-mail: fmp@kituochasheria.or.ke

#### HEAD OFFICE

- 📍 Ole Odume Rd, Off Argwings Kodhek Rd, P.O. Box 7483 - 00300, Nairobi, Kenya.
- ☎ Tel: 254-020-3874220, 387419, 3876290
- 📱 Mobile: 0734874221, 0727773991
- 📠 Fax: 254-020-3876295
- ✉ E-mail: info@kituochasheria.or.ke
- 🌐 Website: www.kituochasheria.or.ke

#### REGIONAL OFFICE - MOMBASA

- 📍 Taratibu Street, Tudor Next to White Rhino Hotel
- ✉ P. O. Box 89065, Mombasa, Kenya.
- ☎ Tel. : 0700638379, 0731129739
- ✉ E-mail: msa@kituochasheria.or.ke