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REPUBLIC OF KENYA  
PEOPLE'S PETITION TO THE EXECUTIVE OF THE COUNTY GOVERNMENT OF  
KITUI, THE COUNTY ASSEMBLY OF KITUI AND THE NATIONAL ENVIRONMENT  
MANAGEMENT AUTHORITY

TO;

- 1. THE COUNTY SECRETARY  
COUNTY GOVERNMENT OF KITUI  
KITUI
- ✓ 2. THE CLERK  
COUNTY ASSEMBLY OF KITUI  
P.O. BOX  
KITUI.
- 3. THE DIRECTOR  
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
POPO ROAD  
NAIROBI.



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*17/5/2023*

**PETITION FOR COMPLAINE WITH THE RULE OF LAW AND ENACTMENT OF  
LAWS ON CONTROL, REGULATION AND MANAGEMENT OF SAND  
HARVESTING ACTIVITES IN KITUI COUNTY**

We the promoters undersigned do present our petition to the County Government of Kitui, the County Assembly of Kitui and the National Environment Management Authority as follows;

**ACKNOWLEDGING** that the Constitution of Kenya is the Supreme law of our land and binds all the persons and state organs in all levels of the government and that by virtue of Article 10 of the Constitution all state organs, state officers, public officers and all persons are bound to observe and practise national values some of them being patriotism, national unity, sharing and devolution of power, the rule of law and sustainable development among others;

**CONSIDERING** that sustainable development entails use and exploitation of natural resources in a manner that promotes and protects interests of present and future generations;

**OBSERVING** that the County of Kitui is endowed with rich natural resources among them rivers rich in sand the same being the most exploited and posing potential danger in killing the ecosystem of the County;

**CONSIDERING** that Article 42 of the Constitution provides that every person has a right to clean and healthy environment which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated under Article 69 and to have obligations relating to the environment fulfilled under Article 70;

**CONSIDERING** that Article 69 of the Constitution obligates in mandatory terms the government to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources and ensure equitable sharing of the accruing benefits, encourage public participation in the management, protection and conservation of the environment, establish systems of environment impact assessment, environmental audit and monitoring environment, eliminate processes and activities that are likely to endanger the environment and utilise environment and natural resources for the benefit of the people of Kenya;

**AND WHEREASE** Article 70 of the Constitution provides that if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect of the same matter;

**AND WHEAREAS** in exercise of their rights under Article 42 and 70 and upon recognising that the government of Kitui has for long violated the environmental rights of the people of Kitui in the manner they had treated the sand harvesting activities, a section of the people of Kitui filed in Kitui Environment and Land Court, petition number 12 of 2021 against the County Government of Kitui and the County Assembly of Kitui in which the court on 22-02-2023 issued the following orders among others;

- A. A declaration be and is hereby issued that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents have violated Article 10 of the Constitution in the manner in which they have dealt with issuance of permits,

licences, and allowed sand harvesting activities in Tiva River in Kitui County especially in Ndumoni, Tanganyika, Nyanyaa and Tiva areas.

- B. A declaration be and is hereby issued that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents have infringed and violated the constitutional rights of the Petitioners and persons living in Ndumoni, Tanganyika, Nyanyaa and Tiva areas as provided in Article 42 of the Constitution by failing to follow the existing laws and guidelines and/or pass, enact or legislate laws, regulations and rules or guidelines to govern and regulate sand harvesting in Kitui County.
- C. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents have violated the provisions of Articles 60(1)(c), 60(1)(e), 69(1)(a), 69(1)(f), 69(1)(g), 69(1)(h), 69(2) and 201(a) of the Constitution in the manner they have handled and dealt with sand harvesting activities in Kitui especially in Ndumoni, Tanganyika, Nyanyaa and Tiva areas.
- D. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents have violated the Petitioners' rights under Article 35(1) and (b) of the Constitution by failing to supply information requested for vide the Petitioners' Advocates' letter dated 7-08-2020 and an order is hereby issued directing the said Respondents to supply the information requested within ninety days from the date of this judgment.
- E. A declaration is hereby made that the Petitioners are entitled to participate in making, formulating, developing of laws, rules, regulations and guidelines to govern sand harvesting activities in Kitui County.
- F. An order is hereby issued directed at the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to comply with the Environmental Management and Co-ordination Act No. 8 of 1999, the National Sand Harvesting Guidelines and all other provisions of the law regulating harvesting and transporting of sand and report on compliance be filed in court within ninety days from the date of judgment. The said report to include measures taken to rehabilitate and restore the River Tiva in areas or sites near Ndumoni, Tanganyika, Nyanyaa and Tiva in Kitui County.

G. Conservatory orders be and are hereby issued restraining the Respondents either by themselves or through their agents, servants, employees, proxies or any other person from licensing, permitting, allowing or in any other way exploiting resources more particularly sand harvesting from Tiva River in areas or sites near Ndumoni, Tanganyika, Nyanyaa and Tiva in Kitui County pending filing of the reports herein.

H. Prayers (e) and (f) of the petition dated 11<sup>th</sup> September 2020 are disallowed.

I. Costs of the petition are awarded to the Petitioners to be paid jointly and severally by the 1<sup>st</sup> 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents.

**AND UPON** realising and discovering that there is a vacuum in the laws such that enforcement any intended regulation of sand harvesting activities in Kitui County will be an uphill task for the government and the lack of the laws regulating the sand harvesting activities has been the main hindrance to enforcement of controls and the players in the sand harvesting business have exploited this vacuum to the detriment of the people of Kitui;

**AND WHEREAS** the court decree in the above petition has been served upon the Executive of the County Government of Kitui, the County Assembly of Kitui and the NEMA but there have been no efforts to comply with the court orders and instead the sand harvesting activities have been escalated to higher levels;





**AND WHEREAS** all the rivers in Kitui County suffer the same fate if not worse as Tiva River and need to be protected the same way as decreed by the court in the above stated petition and there is need to prevent waste of public funds in funding further and similar litigations which the people of Kitui in other areas are contemplating to file; and

**CONSIDERING** that failure to comply with the court decree puts the County Government of Kitui and the people of Kitui in a situation where dissolution of the entire government is likely to be based and in order to stop such an eventuality there is need to observe the rule of the law;

NOW WE THE PEOEPLE OF KITUI signing this petition call upon the County Government of Kitui, the County Assembly of Kitui and NEMA to;

- a. Fully comply with the court orders as enshrined in the decree of the court in Kitui Environment and Land Court petition number 12 of 2021 dated 22-02-2023;
- b. Extend the effects and execution of the court decree in the above stated petition to all rivers and wet areas within the Kitui County;
- c. Within 30 days from the date of presentation of this petition, organize forums, seminars, public barazas and engage the people of Kitui in finding ways of regulating and controlling sand harvesting activities in Kitui County;
- d. Within thirty days of presentation of this petition originate, draft, draw and actualise a legislation and firm policies for purposes of regulating and controlling sand harvesting activities in Kitui County; and
- e. Pass a legally binding legislation and regulations to govern, control and regulate sand harvesting activities within Kitui County.

This humble petition is presented to the County Assembly of Kitui and the Executive arm of the County Government of Kitui with humility and respect but firmly acknowledging that failure to take action as petitioned in this matter, the people of Kitui shall exercise their sovereign powers directly by taking appropriate legal processes as enshrined in the Constitution, the Electoral Laws, the County Government Act and all other enabling laws of Kenya.

Name	signature	contacts
① Francis MUSILI KAVITA		0727122134
② Alex LAMBDA NUKU		0728480848
③ ERGOS NJALWA		0707099323
④ JONAN MUKOKA		0792928044