



**Langat & 2 others (Suing for themselves and on behalf of 89 others - as per list attached to the petition) v National Land Commission & 2 others; Ngoito (Interested Party) (Constitutional Petition 13 of 2021) [2023] KEELC 16852 (KLR) (17 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16852 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
CONSTITUTIONAL PETITION 13 OF 2021**

**EM WASHE, J**

**APRIL 17, 2023**

**BETWEEN**

**KIPTONUI ARAP LANGAT ..... 1<sup>ST</sup> PETITIONER**

**KIPKOSGEI ARAP NGWOLOMET ..... 2<sup>ND</sup> PETITIONER**

**CHEPKIYOK ARAP CHESIMET ..... 3<sup>RD</sup> PETITIONER**

**SUING FOR THEMSELVES AND ON BEHALF OF 89 OTHERS - AS PER LIST  
ATTACHED TO THE PETITION**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF SURVEY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KIPTERKECH OLE NGOITO ..... INTERESTED PARTY**

**JUDGMENT**

1. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners herein in their own capacity and on behalf of 89 other persons who have been enumerated in the List Attached (hereinafter referred to as “the Petitioners”) filed a Petition dated 10/04/2019 (hereinafter referred to as “the Petition”) seeking for the following Orders; -
  - i. A declaration do and is hereby issued that any purported cancellation of any title(s) resultant upon the subdivision of the original plot No. 69 by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents or any person(s) or entities in purported compliance with and/or enforcement of the determination



of the 1<sup>st</sup> Respondent in case No.NLC/HIJJ017/2017 is null and void ab initio and of no legal effect and consequence.

- ii. An order of judicial review in the nature of certiorari do and is hereby issued to bring into this Honourable Court for the purpose of quashing the determination of the 1<sup>st</sup> Respondent encapsulated in Gazette Notice Vol.CXXI- No.27 of 01/03/2019 in the case of NO.NLC/HIJJ017/2017.
  - iii. Be reason of the judgement of this Honourable Court in Nakuru ELC Petition No. 032 of 2011 , an Order of prohibition do and is hereby issued to restrain the 1<sup>st</sup> Respondent, its assigns, derivatives or any other person or entity acting under the direction and/or authority of the 1<sup>st</sup> Respondent from re-entering, re-hearing, re-considering, receiving and/or howsoever dealing with any complaint by members of the family of the late Ledama Ole Lekoko, the interested party or any other persons acting under their title, purportedly arising from the adjudication and registration process relating to Plot.No. 69 at Olosakwana “B”area.
  - iv. Costs of this Petition be borne by the 1<sup>st</sup> Respondent in any event.
2. The Grounds adduced in the Petition can be summarised as follows; -
- a. The Petitioners were the registered owners of various parcels of properties created out of Plot No. 69 within Olosakwana “B” registered area.
  - b. The 1<sup>st</sup> Defendant without the any due regard to the rules of natural justice and/or fair hearing made a recommendation through its determination in the Case known as NLC/HIJJ017/2017 to cancel the parcels of land created from Plot.No.69 within Olosakwana B registered area.
  - c. The Recommendation to cancel the Petitioners properties created out of the Plot.No. 69 within Olosakwana B registered area resulted to the publication of the Gazette Notice No. CXXI- 027 of 01/03/2019 by the 2<sup>nd</sup> Defendant herein.
  - d. The proceedings undertaken by the 1<sup>st</sup> Respondent on the instigation of the Interested Party known as NLC/HIJJ017/2017 were actually Res judicata to the judgement pronounced in NAKURU PETITION NO. 32 OF 2011.
  - e. Further to that, the Petitioner stated that the claim filed by the Interested Party before the 1<sup>st</sup> Respondent included parties that did not have capacity to be sued in their own names and therefore the entire claim, proceedings and/or determination thereof was null and void ab initio.
  - f. In addition to the above, the Petitioners state that they were not notified of the charges and/or claims against their properties by either the 1<sup>st</sup> Defendant and/or Interested Party to enable them prepare their appropriate defences and/or responses as appertains their registration as owners of the affected properties.
  - g. The Petitioners in essence claim that their right to participate and/or be given a chance to defend themselves were infringed and the determination by the 1<sup>st</sup> Respondent contained in the proceedings known as NLC/HIJJ017/2017 condemned them unheard.
  - h. As a result of this unlawful proceedings by the 1<sup>st</sup> Respondent known as NLC/HIJJ017/2017 and the subsequently the publication of the Gazette Notice No. CXXI-No.27 of 01/03/2019



by the 2<sup>nd</sup> Respondent infringed the Petitioners' rights to own property as envisaged under Article 40 of the Kenyan Constitution, 2010.

- i. Consequently therefore, the Petitioners prayer is that the recommendation contained in the determination of the 1<sup>st</sup> Respondent made on 7<sup>th</sup> February 2019 together with the Gazette Notice No. CXXI- No. 27 of 01/03/2019 by the 2<sup>nd</sup> Respondent be held null and void and quashed thereof.
  - j. Further to that, the Petitioners also seek the Court to declare the proceedings undertaken by the 1<sup>st</sup> Respondent in NLC/HIJJ017/2017 Res judicata to the decision pronounced in NAKURU PETITION NO. 032 OF 2011 on the 21/02/2014.
3. The Petitioners attached the following supporting documents to their affidavit on support of their Petition for the Court's perusal; -
- i. A list of the persons affected and who have consented to the Petitioners listed herein to file this Petition on their behalf against the respondents and Interested Party thereof.
  - ii. A copy of the Gazette Notice No. CXXI- No. 27 dated 1<sup>st</sup> March 2019.
  - iii. A letter dated 21<sup>st</sup> March 2019 from the firm of Nyamurongi & Company, Advocates on behalf of the Petitioners to the 1<sup>st</sup> Respondent herein.
  - iv. A copy of the Determination by the 1<sup>st</sup> Respondent of the proceedings known as NLC/HLI/017/2017 pronounced on the 7<sup>th</sup> February 2019.
  - v. A copy of the Objection Proceedings and determination of the Land Adjudication & Settlement Officer relating to the Plot.No. 69 within Olosakwana Adjudication Section pronounced on the 18.05.1993.
  - vi. A copy of the Title Deed issued to the 1<sup>st</sup> Petitioner issued on the 24<sup>th</sup> May 2010 for the property known as L.R.NO.Transmara/Olosakwana "B"/289.
  - vii. A copy of the Title Deed issued to the 2<sup>nd</sup> Petitioner issued on the 31<sup>st</sup> May 2010 for the property known as L.R.NO.Transmara/Olosakwana "B/242.
  - viii. A copy of the Title Deed issued to the 3<sup>rd</sup> Petitioner issued on the 24<sup>th</sup> of May 2010 for the property known as L.R.NO.Transmara/olosakwana "B"/274.
  - ix. Copy of the judgement pronounced in Nakuru Constitutional & Judicial Review Application No. 32 of 2011 pronounced on the 21/02/2014.
  - x. A copy of the Certificate of Finality issued on 2<sup>nd</sup> February 2010 by the Director of Land Adjudication and Settlement in relation Olosakwana "B" Adjudication Section.
  - xi. A copy of a Title Deed issued on the 24<sup>th</sup> July 2010 to one Kipruto Arap Keter in relation to the property known as L.R.NO.Transmara/Olosakwana "B"/267.
  - xii. A copy of a Title Deed issued on the 9<sup>th</sup> of September 2010 to one Kipiangat A.tuimising relating to the property known as L.R.NO.Transmara/Olosakwana "B"/249.
  - xiii. A copy of the Consent and/or Authority to swear from the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners in favour of the 1<sup>st</sup> Petitioner dated 9<sup>th</sup> April 2019.
4. The Petition was duly served on all the Respondents and the Interested Party.



5. The 1<sup>st</sup> Respondent in opposition of the Petition filed a Replying Affidavit sworn by one Okenyi Samuel Odari on the 25<sup>th</sup> July 2019.
6. The 1<sup>st</sup> Respondent in the Replying Affidavit filed on the 25<sup>th</sup> of July 2019 advanced the following grounds in opposition to the Petition herein.
  - i. The 1<sup>st</sup> Respondent is an independent Commission established under Article 67 (1) of *the Constitution* of Kenya and operationalised through the *National Land Commission Act*, No. 5 of 2012.
  - ii. The fundamental functions of the 1<sup>st</sup> Respondent is to manage public land on behalf of the National and County Governments.
  - iii. Further to that, Article 67(e) of the Kenyan Constitution, 2010 gives a mandate to the 1<sup>st</sup> Respondent to initiate investigations, on its own initiative or on a complaint, into the present or historical land injustices, and recommend appropriate redress.
  - iv. In other words, the 1<sup>st</sup> Respondent in exercise of its mandate is a quasi-judicial body within the meaning of Article 159 (1) of the Kenyan Constitution, 2010.
  - v. The 1<sup>st</sup> Respondent confirmed that the Interested Party herein lodged a complaint and assigned it the number NLC/HLI/017/2017.
  - vi. The Interested Party's complaint was that the property known as Plot.No. 69 was allocated to one Ledama Ole Lekano family way back in 1977.
  - vii. However, in the year 1978 to 1979, tribal clashes occurred between the Maasai and Kipsigis communities which forced Ledama Ole Lekano and his family to be displaced and as a result of this displacement, other persons took possession and disposed the family of Ledama Ole Lekano from their ancestral land.
  - viii. The Interested Party's position was that the Objection proceedings which were lodged against the allocation of Plot.No. 69 in the name of Ledama Ole Lekano and subsequently sub-divided it into various plots were illegal and irregular.
  - ix. Further to that the 1<sup>st</sup> Respondent stated that all the procedures and/or requirements entitled in a fair hearing were adhered to including the service of the charges against the Petitioners and/or beneficiaries of the resultant plots from Plot.No. 69 within Olosakwana "B" Adjudication Section.
  - x. Consequently therefore, the 1<sup>st</sup> Respondent position is that the recommendation to cancel all those resultant titles of Plot.No. 69 within Olosakwana "B" Adjudication Section was lawful and the Gazette Notice No. CXXI No. 27 of 01/03/2019 by the 2<sup>nd</sup> Respondent is legitimate and binding.
  - xiv. In reference to Nakuru Constitutional & Judicial Review Application No. 032 OF 2011, the 1<sup>st</sup> Respondent admitted that the judgement pronounced on 21/02/2014 was not brought to their attention prior to making its determination of 7<sup>th</sup> February 2019.
  - xv. However, the 1<sup>st</sup> Respondent submission is the determination pronounced on the 07/02/2019 in NLC/HLI/017/2017 dealt with historical injustices and did not touch on issues determined in the proceedings known as Nakuru Constitutional & Judicial Review Application No. 032 OF 2011 through the judgement pronounced on the 21/02/2014.



- xvi. The 1<sup>st</sup> Respondent also stated that the Interested Party was never a party to the proceedings known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011 and can not therefore be barred from investigating the complaint regarding the historical injustice thereof.
- xvii. In conclusion therefore, the 1<sup>st</sup> Respondent sought the Petition to be dismissed with costs thereof.
7. The other party to oppose the Petition herein is the Interested Party who filed a Replying Affidavit on the 20<sup>th</sup> June 2019.
8. The grounds upon which the Interested Party opposed the Petition can be summarised as follows; -
- i. The 1<sup>st</sup> Respondent is legally mandated under the Kenyan Constitution, 2010 and the National Land Commission Act, No. 5 of 2012 to address issues of present and/or past historical injustices in Kenya.
  - ii. Further to that, the Interested Party stated that the 1<sup>st</sup> Respondent was allowed under the Constitution and statute to be a quasi-judicial body in the exercise of its mandate thereof.
  - iii. The Interested Party reiterated that the property known as Plot.No. 69 within Olosakwana “B” Adjudication Section was allocated to the family of Ledama Ole Lekomo by virtue of being ancestral land in the year 1977.
  - iv. However, in 1978-1979 there were tribal clashes between the Maasai and Kipsigis communities which resulted to the family of Ledama Ole Lekomo to be displaced and instead new people to take possession and settle on the same.
  - v. It is these new persons that took possession during the tribal clashes that filed objections against the family of Ledama Ole Lekomo at the Land Adjudication & Settlement Officer who decided that the Plot No. 69 within Olosakwana “B” Adjudication Section be sub-divided thereafter.
  - vi. The Interested Party position is that the purported Objection hearings and determination pronounced by the Land Adjudication & Settlement Officer as regards the sub-division of Plot.No. 69 within Olosakwana Adjudication Section was illegal and irregular.
  - vii. The Interested Party’s efforts to challenge the actions of the Land Adjudication & Settlement Officer in various government offices was unsuccessful until the complaint was taken up by the 1<sup>st</sup> Respondent on the 29/05/2015.
  - viii. The Interested Party stated that all the parties in the complaint were notified of the charges and proceedings thereof hence the determination pronounced on the 9<sup>th</sup> of February 2019 was lawful and valid.
  - ix. Similarly, the Gazette Notice No. CXXV- No. 027 dated 01/03/2019 by the 2<sup>nd</sup> Defendant was again legitimate and lawful before the eyes of the law.
  - x. As regards the Nakuru Constitutional And Judicial Review Application No. 032 OF 2011, the Interested Party indicated that their father Ledama Ole Lekoko passed away in the 1980s and could not therefore be a party to the said processing filed in the year 2011.
  - xi. The Interested Party further indicated that the late Ledama Ole Lekoko was not also notified of the Objection proceedings undertaken by the Land Adjudication & Settlement Officer.



- xii. In concluding the Interested Party's opposition to the Petition, it was stated that the 1<sup>st</sup> Interested Party had the mandate to investigate and make determination on past and present historical injustices and any unlawful allocation of land should be corrected accordingly.
- xiii. The Interested Party then sought for the Petition to be dismissed with costs thereof.
9. The parties were then directed to prepare, file and exchange written submissions in support of their positions thereof.
10. The Petitioners herein filed their submissions on the 20/12/2022, the 1<sup>st</sup> Respondent filed theirs on 02/03/2023 and the Interest Party filed his on the 23<sup>rd</sup> of January 2023.
11. The Court has gone through the Pleadings herein, the evidence adduced produced herein and the submissions by the parties herein and it is clear that the Petition herein is one of a constitutional nature.
12. The issues for determination in this Petition and the responses filed by the 1<sup>st</sup> Respondent and the Interested Party can be outlined as follows; -
- Issue No. 1- Does This Court Have Jurisdiction To Hear And Determine This Petition Before Court?
- Issue No. 2- Did The Actions Of The 1<sup>st</sup> And 2<sup>nd</sup> Respondents Herein Infringe On The Petitioners Rights Under Article 10,19,20,21,23,24,40,43 (1), 47 (1) (2) &of The Kenyan Constitution,2010?
- Issue No. 3- Did The Proceedings Known As Case No. Nlc/hjl/017/2017 Undertaken By The 1<sup>st</sup> Respondent And The Interested Party Comply With The Provisions Of The Sections 4 And 5 Of The Fair Administrative Action Act, Cap No.4 Of 2015?
- Issue No. 4- Did The 1<sup>st</sup> Respondent Have Jurisdiction To Adjudicate The Interested Party's Complaint Regarding Plot.no.69 Within Olosakwana "b" Adjudication Section In View Of The Judgement Pronounced In Nakuru Constitutional & Judicial Review Application No. 032 Of 2011?
- Issue No.5- Is The Petitioner Entitled To The Reliefs Sought In The Petition Herein?
- Issue No. 6 - Who Bears The Costs of This Petition?
13. The Court having identified the above issues for determination, it will now proceed to evaluate the evidence placed before it and make the appropriate conclusions thereof.
- Issue No. 1- Does This Court Have Jurisdiction To Hear And Determine This Petition Before Court?
14. The first issue for determination is whether this Court has jurisdiction to entertain this Petition of not.
15. The Petitioners in their Petition plead that this Court has jurisdiction to hear and make determinations on the issues raised therein.
16. The 1<sup>st</sup> Respondent as well as the Interested Party have on the other hand challenged the use of a Petition to determine matters of ownership and title contrary to Section 13 of the Environment & Land Act, Cap 19 of 2011.
17. Consequently, the 1<sup>st</sup> Respondent and the Interested Party submit that the Court is not seized of jurisdiction to hear and determine this particular Petition.
18. The facts contained in the Petition herein point to the Petitioners position that the proceedings undertaken by the 1<sup>st</sup> Respondent on instigation of the Interested Party known as Case No. NLC/HIJ/017/2017 did not conform with various Articles in the Kenyan Constitution,



2010, the Fair Administration Act, No. 4 of 2015 and were actually Res Judicata to the judgement pronounced Nakuru Constitutional & Judicial Review Case No. 032 OF 2011.

19. Consequently therefore, the Petitioners prayers is that both the proceedings undertaken by the 1<sup>st</sup> Respondent on instigation of the Interested Party known as Case No. NLC/HIJ/017/2017 and the subsequent Gazette Notice Vol.CXXI- No. 27 of 01/03/2019 by the 2<sup>nd</sup> Defendant be declared null and void ab initio and of no legal effect.
20. Secondly, an Order of Judicial Review in the nature of Certiorari be hereby granted to quash both the determination of the 1<sup>st</sup> Respondent in the proceedings known as Case No. NLC/HIJ/017/2017 as well as the Gazette Notice Vol.CXXI – No. 027 dated 01/03/2019.
21. The issues raised by the Petitioner hereinabove are clearly matters of constitutional determination regarding the compliance of Constitutional principles provided in our Constitution.
22. The Petitioners are inviting the Court to evaluate the manner in which the Complaint filed by the Interested Party with the 1<sup>st</sup> Respondent and assigned Case No. NLC/HIJ/017/2017 was conducted in view of the Constitutional requirements and whether the outcome thereof can be said to be compliant with the provisions of *the Constitution*.
23. The 1<sup>st</sup> Respondent and the Interested Party are of a contrary view that the issues in the Petition are not of a constitutional nature but merely determination of ownership and title to land.
24. The 1<sup>st</sup> Respondent and the Interested Party are of the view that Section 13 of the *Environment and Land Court Act*, No. 19 of 2011 should provide the appropriate avenues for resolving the Petitioners issues without necessarily having to filed a Constitutional Petition as has been done in this proceeding.
25. In the cited case of Republic-versus- Chief Land Registrar & Another (2019) eKLR, the Court held as follows; -

“Jurisdiction is determined on the basis of the pleadings and not the substantive merits of the case. In the event of the Court’s jurisdiction being challenged at the outset, the applicant’s pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the Court’s competence.”
26. Applying the above rational which this Court concurs with, it is clear that the Petitioners pleadings in this proceeding point to the determination of whether or not various constitutional rights were infringed by the 1<sup>st</sup> Respondent in its duty as a quasi-judicial body while dealing and determining the Interested Party’s complaint registered as NLC/HIJ/017/2017.
27. Having arrived at the determination the Petitioner’s claim is one of a constitutional nature, is this Court couched with the relevant jurisdiction to hear and determine the same?
28. Article 165 (1) as read with Article 165 (3) (d) provides jurisdiction to the High Court of Kenya to handle all matters dealing with the interpretation of *the Constitution* including the question of whether anything said to be done under the authority of this Constitution or any other law is inconsistent with, or in contravention of this Constitution.



29. In the celebrated case of *Karisa Chengo & Others-versus- Republic (2015)* eKLR, the Court of Appeal prescribed that the Environment & Land Court as well as the Employment and Labour Relations Court had equal status as the High Court of Kenya referred under Article 165 of the Kenyan Constitution, 2010 save for the parity of being specialised Courts as provided Article 162 (2) of the Kenyan Constitution, 2010.
30. In the case of *Sollo Nzuki vs. Salaries and Remuneration Commission & 2 others (2019)* eKLR, Hon. Justice Odunga faced with similar matter held that: -

“Similarly, pursuant to Article 23(3) of *the Constitution* as read with Section 12(3) of the *Employment and Labour Relations Court Act*, it is my view that the Employment and Labour Relations Court can grant reliefs in a constitutional petition. However, the jurisdiction to do so is confined to matters falling within Article 41 of *the Constitution* as read with section 12 of the *Employment and Labour Relations Court Act*. The Court cannot therefore purport to entertain petitions outside the aforesaid matters as its jurisdiction is limited only in so far as employment matter and matters related thereto are concerned. In my view the matters which fall within the ambit of Article 162(2) of *the Constitution* must be matters within the exclusive jurisdiction of the said specialised courts. However, as stated above, the Employment and Labour Relations Court may not embark on a generalized handling of Petitions but is entitled to and is jurisdictionally empowered to address such matters if they arise directly and in relation to the matters within the court’s jurisdictional competence and specialization. Accordingly, where the matters raised fall both within their jurisdiction and outside, it would be a travesty of justice for the High Court to decline jurisdiction since it would mean that in that event a litigant would be forced to institute two sets of legal proceedings. Such eventuality would do violence to the provision of Article 159 of *the Constitution*. As was held in Nairobi High Court Petition No. 613 of 2014 – Patrick Musimba vs. The National Land Commission and Others:

“...it would be ridiculous and fundamentally wrong, in our view, for any court to adopt a separationistic view or approach and insist on splitting issues between the Courts where a court is properly seized with a matter but a constitutional issue not within its obvious exclusive jurisdiction is raised.”

The Musimba decision therefore concluded on this issue that:

“...both the High Court and the ELC Court have a concurrent and or coordinate jurisdiction and can determine constitutional matters when raised and do touch on the environment and land. Neither *the Constitution* or the ELC Act limit the High Court’s jurisdiction in this respect while a closer reading of the ELC Act reveals that the ELC Court’s jurisdiction was in 2012 limited by Parliament in so far as constitutional issues touching on land and environment are concerned but the Court of Appeal in Mugendi expressed the view that the ELC when dealing with disputes concerning the environment and land may also deal with claims of breaches of fundamental rights touching on the subject at hand. We hold that in matters of constitution the ELC has jurisdiction not just when it involves clean and healthy environment but also land.”



31. In conclusion therefore, it is the Court's finding that this Court has the jurisdiction to hear this Petition before it and make the appropriate orders thereof.

**Issue No. 2- Did The Actions Of The 1<sup>st</sup> And 2<sup>nd</sup> Respondents Herein Infringe On The Petitioners Rights Under Article 10,19,20,21,23,24,40,43 (1), 47 (1) (2) &of The Kenyan Constitution,2010?**

32. The second issue before this Court is whether or not the Petitioners rights under Article 10,19,20,21,23,24,40,43 (1),47 (1) and (2) of the Kenyan Constitution, 2010 were infringed by the manner and/or subsequent determination of the Interested Party's Complaint filed with the 1<sup>st</sup> Respondent known as Case No. NLC/HJJ/017/2017?
33. The facts as presented by the Petitioners are that the 1<sup>st</sup> Respondent upon receipt of the Complaint by the Interested Party and registration of the Case No. NLC/HJJ/017/2017 failed to notify them of the said charges and/or allow them to participate in the said proceedings thereby pronouncing a determination which affected their rights to own property in contravention to Article 40 of the Kenyan Constitution, 2010.
34. The Petitioners further claim that the unilateral hearing and determination of the proceedings known as NLC/HJJ/017/2017 before the 1<sup>st</sup> Respondent deprived them of their right to a fair hearing as envisaged under Article 47 and 50 of the Kenyan Constitution, 2010.
35. The 1<sup>st</sup> Respondent and the Interested Party on the other hand dispute this allegations and state that the Petitioners were duly notified of the Interested Party's complaint and were given an opportunity to participate in the proceedings of the Complaint which has been registered as NLC/HJJ/017/2017.
36. Consequently therefore, the determination pronounced on the 1<sup>st</sup> Respondent on the 7<sup>th</sup> of February 2019 were lawful and in compliance with the Constitutional requirements thereof.
37. Article 10 of the Kenyan Constitution, 2010 provides for the National Values and principles that guide all state organs, state officers, public officers and all other persons applies or interprets this Constitution, enacts, applies or interprets the law and/or makes or implements public policy decisions.
38. Article 19 of the Kenyan Constitution, 2010 provides that the Rights and Fundamental Freedoms is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies.
39. Articles 20,21,22,23 and 24 of the Kenyan Constitution, 2010 provides for the Application of the Bill of rights, Implementation of the Rights and Fundamental Freedoms, the enforcement of the Bill of rights, the Authority of the Courts to uphold and enforce the Bills of Rights and lastly, the Limitation of rights and fundamental freedoms thereof.
40. Article 40 of the Kenyan Constitution, 2010 protects the right to acquire and own property within the Republic of Kenya.
41. Article 43 of the Kenyan Constitution, 2010 provides for the protection of economic and social rights to every citizen of the Republic of Kenya.
42. Article 47 of the Kenyan Constitution, 2010 requires that every citizen is accorded fair administration action especially in instances where there is a possibility of an adverse finding.



43. Lastly, Article 50 of the Kenyan Constitution, 2010 enshrines the Right to Fair hearing to every citizen of Kenya during the resolution of any dispute before any Court of law of, if appropriate, another independent and impartial tribunal or body.
44. Turning to the facts and evidence placed before this Court, it is not in dispute that the Interested Party filed a Complaint with the 1<sup>st</sup> Respondent and was assigned Case No. NLC/HLI/017/2017.
45. The claim by the Interested Party was of Historical Injustice melted on the family of one Ledama Ole Lekano who had been allocated a piece of land known as Plot.No. 69 within Olosakwana “B” Adjudication Section.
46. According to Paragraph 17 of the Replying Affidavit of the 1<sup>st</sup> Respondent filed on the 25<sup>th</sup> of June 2019, there is an allegation that the Notices of the Investigative hearings dated 16<sup>th</sup> April 2018 and 4<sup>th</sup> September 2018 were duly served on all the parties through local land.
47. This paragraph is very key in the determination of this Petition as it touches on the Petitioners rights under Article 47 and 50 of the Kenyan Constitution, 2010.
48. From a plain reading of Paragraph 17 of the 1<sup>st</sup> Respondent’s Replying Affidavit dated 25<sup>th</sup> June 2019, there is no mention of serving the Petitioners herein with the Complaint lodged by the Interested Party to enable them prepare and file an appropriate defence thereof.
49. Further to that, Paragraph 17 of the 1<sup>st</sup> Respondent’s Replying Affidavit dated 25<sup>th</sup> June 2019 alleged to have served the Notices of the Investigative hearing dated 16<sup>th</sup> April 2018 and 4<sup>th</sup> September 2018 on all the Petitioners herein as well as the other Respondents thereof.
50. However, this paragraph does not provide details of the person who effected the service, the location where the Petitioners were served, the manner in which service was effected and most importantly, whether the service of the Complaint and/or the Notices of Investigative Hearings dated 16<sup>th</sup> April 2018 and/or 4<sup>th</sup> September 2018 were received and/or not.
51. Turning to the copy of the Determination relating to Case No.NLC/HLI/017/2017, the title of the proceedings reads as follows; -
- “Kiptergech Ole Ngortoi For Ledama Ole Lekoko Family..... Claimant -versus- Ministry Of Lands & Physical Planning.....respondent”
52. The above title in the Determination relating to Case No. NLC/HLI/017/2017 clearly confirms that the only Respondent in these proceedings was the Ministry of Lands & Physical Planning and not the Petitioners herein.
53. Yet, when you refer to the recommendations contained in Page 3 of the Determination by the 1<sup>st</sup> Respondent pronounced on the 7<sup>th</sup> of February 2019, it states as follows; -
- “ 1. The Claim is allowed.
2. The Commission recommends that the Chief Land Registrar and the Director of Surveys ensure that the land reverts back to the claimant’s family and all the Resultant Titles with regard to Plot.No. 69 be cancelled.”



54. The use of the words “Resultant Titles” by the 1<sup>st</sup> Respondent in their determination was an acknowledgement that the Plot.No. 69 within Olosakwana Adjudication Section had been sub-divided and titles issued thereof.
55. It therefore goes without saying that any administrative actions either through the Courts of law or quasi-judicial forums as is provided under the National Land Commission must notify the persons who are likely to be affected by such proceedings and allow them to participate in such proceedings as provided under Article 47 and 50 of the Kenyan Constitution, 2010.
56. In essence therefore, the 1<sup>st</sup> Respondent herein has not provided any proof that the Petitioners herein as well as all the other persons provided in the List attached to this Petition who were beneficiaries of the sub-division emanating from Plot.No. 69 within Olosakwana “B” adjudication Section were part of the Respondents in the proceedings known as Case No. NLC/HJJ/017/2017 or notified of the Interested Party’s Complaint or served with the Notices of Investigation hearings as alleged in Paragraph 17 of the 1<sup>st</sup> Respondent’s Replying Affidavit.
57. This omission by the 1<sup>st</sup> Respondent denied the Petitioners and well as the other registered owners of the sub-divisions emanating from Plot.No.69 within Olosakwana “B” Adjudication Section from being granted a chance to file their defence and/or accorded a chance to state their case before the determination by the 1<sup>st</sup> Respondent was pronounced on the 7<sup>th</sup> of February 2019.
58. In addition to the foregoing, the determination pronounced on the 7<sup>th</sup> of February 2019 in the proceedings conducted by the 1<sup>st</sup> Respondent known as Case No. NLC/HJJ/017/2017 had adverse findings against the registered owners of the resultant properties emanating from the sub-division of Plot.no. 69 within Olosakwana “B” Adjudication Section who were not accorded a reasonable and procedurally fair administrative action as envisaged under Article 47 of the Kenyan Constitution, 2010.
59. In essence therefore, the Court hereby finds that the 1<sup>st</sup> Respondent’s procedure and/or determination in the proceedings known as Case No. NLC/HJJ/017/2017 pronounced on the 7<sup>th</sup> of February 2019 contravened and/or infringed the rights of the Petitioners under Article 10,19,20,21,22,23,24,40,43(1),47(1)(2) and 50 of the Kenyan Constitution,2010.

**Issue No. 3- Did The Proceedings Known As Case No. NLC/hjl/017/2017 Undertaken By The 1<sup>st</sup> Respondent And The Interested Party Comply With The Provisions Of The Sections 4 And 5 Of The *Fair Administrative Action Act*, Cap No.4 Of 2015?**

60. On this issue, the Court shall rely of the factual findings of the manner in which the proceedings by the 1<sup>st</sup> Respondent in exercising its quasi-judicial functions under the Case No. NLC/HJJ/017/2017 initiated by the Interested Party was handled.
61. Article 47 of the Kenyan Constitution, 2010 guarantees every person with the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
62. The *Fair Administrative Action Act*, Cap 4 of 2015 seeks to provide the manner and/or proceed of implementing Article 47 of the Kenyan Constitution, 2010 in our day-to-day operations.
63. Section 4(3) of the *Fair Administrative Action Act*, Cap 4 of 2015 provides as follows; -



- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
  - (b) an opportunity to be heard and to make representations in that regard;
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - (d) a statement of reasons pursuant to section 6;
  - (e) notice of the right to legal representation, where applicable;
  - (f) notice of the right to cross-examine or where applicable; or
  - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

64. Section 14 (5)(b) of the *National Land Commission Act*, No. 5 of 2012 in furtherance to the right of Fair Administration Action Act, No. 4 of 2015 provides as follows; -

“By notice in writing, addressed and delivered by a staff of the Commission to any person, direct such a person, in relation to any investigation, to appear before the commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such a person and which are relevant to that investigation.”

65. In this Petition, it is clear that the 1<sup>st</sup> Respondent failed to notify the Petitioners herein of the Complaint lodged by the Interested Party and/or the Investigative Proceedings undertaken thereof in Case No. NLC/HJJ/017/2017 despite the fact that its determination would adversely affect their ownership rights contained in the title deeds they possessed.

66. In *Egal Mohamed Osman vs. Inspector General of Police & 3 Others* [2015] eKLR at page 7 the Court at the time referred to *The Management of Committee of Makondo Primary School and Another vs. Uganda National Examination Board*, HC Civil Misc Application No.18 of 2010, in which the Ugandan Supreme Court stated as follows regarding the rules of natural justice:

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase 'audi alteram partem' literally translates into 'hear the parties in turn', and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means a person against whom there is a complaint must be given a just and fair hearing.”



67. In another case of Onyango Oloo-versus- Attorney General (1986-1989) EA 456, the Court of Appeal expressed itself as follows:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone’s advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio.” [Emphasis mine].

68. In conclusion therefore, the Court hereby makes a finding that indeed the procedure and manner in which the 1<sup>st</sup> Respondent heard and determined the Interested Party’s Complaint known as Case No. NLC/HJJ/017/2017 was in contravention of Article 47 of the Kenyan Constitution, 2010 as well as Section 4 of the *Fair Administrative Action Act*, No. 4 of 2015.

**Issue No. 4- Did The 1<sup>st</sup> Respondent have jurisdiction to adjudicate the Interested Party’s Complaint Regarding Plot.no.69 Within Olosakwana “b” Adjudication Section In View Of The Judgement Pronounced In Nakuru Constitutional & Judicial Review Application No. 032 of 2011?**

69. This issue was raised by the Petitioners herein who pleaded that the proceedings and/or determination by the 1<sup>st</sup> Respondent in Case No. NLC/HJJ/017/2017 pronounced on 9<sup>th</sup> February 2019 were Res Judicata to the proceedings known as Nakuru Constitutional & Judicial Review Application No.032 Of 2011.



70. The Petitioners placed before the Court a Judgement pronounced on 21/02/2014 in the proceedings known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011.
71. The Petitioners claim is that the proceeding known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011 was seeking to address the issue of Historical Injustice affecting the Maasai Community within Olosakwana Adjudication Section.
72. In the proceeding known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011, the Interested Party's father was one of the Petitioners thereof while the subject matter was the legality of the adjudication process of Olosakwana Adjudication Section.
73. The 1<sup>st</sup> Respondent response to this issue was that it was not aware of the judgement pronounced in the proceeding known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011 as it heard and determined the Interested Party's Complaint in Case No. NLC/HJJ/017/2017.
74. Be as it may, the 1<sup>st</sup> Respondent further alleged that the proceedings known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011 did not deal or handle the issue of historical injustice raised in the Complaint known as Case No. NLC/HJJ/017/2017 and therefore their determination pronounced on the 9<sup>th</sup> of February 2019 was not Res Judica.
75. The Interested Party also opposed the Petitioners allegation by stating that the Interested Party herein was never a party of those proceedings known as Nakuru Constitutional & Judicial Review Application No. 032 of 2011 and consequently therefore, the Complaint and determination of the 1<sup>st</sup> Respondent was not Res Judicata to the decision pronounced in the proceedings known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011.
76. In the case of Invesco Assurance Company Limited-versus- Auctioneers Licensing Board & Another; Kinyanjui Njuguna &company Advocates & Another (interested Parties) 2020 eKLR, the Court made the following observations

“The doctrine of res judicata is set out in Section 7 of the [Civil Procedure Act](#). The doctrine ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title.

A close reading of Section 7 of the Act reveals that for the bar of res judicata to be effectively raised and upheld, the party raising it must satisfy the doctrine's five essential elements which are stipulated in conjunctive as opposed to disjunctive terms. The doctrine will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.
- ii. That the former suit was between the same party or parties under whom they or any of them claim.
- iii. That those parties were litigating under the same title.
- iv. That the issue in question was heard and finally determined in the former suit.



- v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”

77. In another case known as Civil Application No. 71 OF 1960 between Siri Ram Kaura-versus-M.j.e Morgan (1961) EA 462 the Court held as follows; -

“The mere discovery of fresh evidence (as distinguished from the development of fresh circumstances) on matters which have been open for controversy in the earlier proceedings is no answer to a defence of res judicata...

The law with regard to res judicata is that it is not the case, and it would be intolerable if it were the case, that a party who has been unsuccessful in litigation can be allowed to re-open that litigation merely by saying, that since the former litigation there is another fact going exactly in the same direction with the facts stated before, leading up the same relief which I asked for before, but it being in addition to the facts which I have mentioned, it ought now to be allowed to be the foundation of a new litigation, and I should be allowed to commence a new litigation merely upon the allegation of this additional fact. The only way in which that could possibly be admitted would be if the litigant were prepared to say, I will show that this is a fact which entirely changes, the aspect of the case, and I will show you further that it was not, and could not by reasonable diligence have ascertained by me before ...

The point is not whether the respondent was badly advised in bringing the first application prematurely; but whether he has since discovered a fact which entirely changes the aspect of the case and which could not have been discovered with reasonable diligence when he made his first application.

It is therefore not permissible for parties to evade the application of Res judicata by simply conjuring up parties or issues with a view to giving the case a different complexion from the one that was given in the former suit.”

78. The Court having the benefit of these two decisions hereinabove, will now proceed to evaluate and make its finding as to whether or not the proceedings undertaken by the 1<sup>st</sup> Respondent on initiation of the Interested Party known as NLC/HJJ/017/2017 were Res Judicata to the proceedings and judgement of Nakuru Constitutional & Judicial Review Application No. 032 Of 2011.

**The first principle of application is whether the suit or issue raised was directly and substantially in issue in the former suit.**

79. Referring to the Complaint filed before the 1<sup>st</sup> Respondent and registered as Case No. NLC/HJJ/017/2017, the Interested Party was raising the issue of Historical Injustice visited upon the family of one Ledama Ole Lekoko during the Adjudication of Olosakwana Adjudication Section.

80. The Interested Party claimed that the property known as Plot.No. 69 within Olosakwana Adjudication Section was unlawfully and irregularly occupied by other persons after the tribal clashes between the Maasai and Kipsigis Communities and thereafter sub-divided.

81. The Interested Party further claimed that the occupation and sub-division of the property known as Plot.No. 69 within Olosakwana Adjudication Section disposed him of their ancestral



family land and therefore should be cancelled and the said land revert part to the family of Ledama Ole Lekoko.

82. Turning to the proceeding known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011, the Petitioners who included one Ledama Ole Lekoko instituted these proceeding seeking for a declaration that there was a History Injustice visited on the Maasai Community during the adjudication of Olosakwana Adjudication Section which violated their Rights and Fundamental Rights as enshrined under Article 19,20,21,22(1)(2)(b) and (4), 23,24,40 and 63 of *the Constitution*.
83. The Issues for determination in the proceeding known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011 were framed as follows; -
  - a. Whether the adjudication process and objectors thereto were in accord with the law.
  - b. Whether the registration process was procedural
  - c. Whether the resultant titles can be impeached
  - d. Whether the Petitioners rights to ownership of land were infringed.
  - e. Whether the Petitioners rights as indigenous people, and citizens of kenya were breached in terms of the United Nations Declaration of the Rights to Indigenous People.
  - f. Conclusion.
84. A comparison of the issues raised by the Interested Party in his Complaint to the 1<sup>st</sup> Respondent in Case No. NLC/HJJ/017/2017 and those in the proceeding known as Nakuru Constitutional & Judicial Review Application No. 032 Of 2011, the Court is of the view that the issues raised and canvassed in the proceeding known as NLC/HJJ/017/2017 are directly and substantially similar to those in Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.

**That the former suit was between the same party or parties under whom they or any of them claim.**

85. The second principle is to confirm if the parties in the proceeding instituted by the Interested Party before the 1<sup>st</sup> Respondent known as NLC/HJJ/017/2017 related to the same party or parties as the previous proceedings known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.
86. In the proceeding known as NLC/HJJ/017/2017, the Claimant is one Kipterkech Ole Ngoitoi on behalf of the family of Ledama Ole Lekoko.
87. The Respondent therein was the Ministry of Land & Physical Planning thereof.
88. In the former proceeding known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011, Ledama Ole Lekoko is Petitioner No. 8.
89. The Respondents are outlined as Commissioner of Lands, The Honourable Attorney General, the Chief Land Registrar, the Director of Survey, Director of Land Adjudication, the District Land Registrar, Transmara, the District Land Adjudication Officer, Transmara.
90. The Claimant in the proceeding before the 1<sup>st</sup> Respondent known as NLC/HJJ/017/2017 was indeed Kipterkech Ole Ngoitoi but on behalf of Ledama Ole Lekoko and his family.



91. As earlier pointed out, Ledama Ole Lekoko was the 8<sup>th</sup> Petitioner in the proceedings known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.
92. It can therefore be safely concluded that the Claimant in the proceeding before the 1<sup>st</sup> Respondent known as Case No. NLC/HJJ/017/2017 came from the same family as the 8<sup>th</sup> Petitioner in the proceeding known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.
93. On the other hand, the Respondent in the proceeding before the 1<sup>st</sup> Respondent known as NLC/HJJ/017/2017 was the parent Ministry known as the Lands & Physical Planning.
94. In the proceeding known as Nakuru Constitutional & Judicial Review Application Case No. 032 OF 2011, the Defendants therein are various departments of the Ministry of Land and Physical Planning.
95. The Court's observation is that whatever determination that was directed to the Respondent in the proceeding undertaken by the 1<sup>st</sup> Respondent known as NLC/HJJ/017/2017 would have to be implemented by the Respondents outlined in the proceeding known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.
96. In other words, the Respondent in the proceedings undertaken by the 1<sup>st</sup> Respondent in the case known as NLC/HJJ/017/2017 were one and the same as those outlined in the proceedings known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.

**That those parties were litigating under the same title.**

97. Another principle that needs to be determined is whether or not the parties in the two proceedings are litigating under the same title.
98. According to the Claimant in the proceedings conducted by the 1<sup>st</sup> Respondent known as NLC/HJJ/017/2017, the title upon which the Complaint is lodged was that of ancestral land.
99. The Claimant title emanated from their occupation of the area known as Olosakwana Adjudication Section and in particular Plot.no. 69 within Olosakwana Adjudication Section.
100. The Claimant further challenged the illegal occupation and sub-division of Olosakwana Adjudication Section and in particular Plot.No. 69 to other persons who included the Petitioners herein.
101. In the former proceedings known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011, the Claimant's father known as Ledama Ole Lekoko was also claiming ownership rights under the title that the area around Olosakwana Adjudication Section was their ancestral land.
102. The Claimant's father Ledama Ole Lekoko also claimed historical injustice visited upon them by the unlawful occupation and submission of the entire Olosakwana Adjudication Section to strangers.
103. Clearly therefore, both the Claimant in the 1<sup>st</sup> Respondent's proceedings known as NLC/HJJ/017/2017 and the father Ledama Ole Lekoko in the proceedings known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011 both litigated under the same title of being the ancestral owners of the area known as Olosakwana Adjudication Section



thereof and historical injustices visited on them by the sub-division of the said Adjudication Section.

**That the issue in question was heard and finally determined in the former suit.**

104. The Judgement in the former suit known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011 was pronounced on the 21/02/2014 thereby fully determining the issues therein with finality.
105. The Respondents herein as well as the Interested Party have not challenged the determination in the judgement pronounced in Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011 and therefore it is safe for this Court to conclude that all the issues there were determined with finality.

**That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”**

106. The last principle applicable is the establish whether the two proceedings were heard and determined by a court of competent jurisdiction.
107. Indeed, in the proceedings known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011, the issue of historical injustice would be heard under Article 23 of the Kenyan Constitution and Section 13 of the Environment & Land Court Act, No. 19 of 2011.
108. On the other hand, the Complaint by the Interested Party lodged at the 1<sup>st</sup> Respondent’s Offices was heard and determined pursuant to Article 67(3) of the Kenyan Constitution, 2010 as read with Section 15 of the National Land Commission Act, No. 5 of 2012.
109. In essence thereof, both the Court and the National Land Commission has jurisdiction to heard and determine issues of historical injustices in terms of the Constitution and Act No.5 of 2012.
110. In conclusion therefore, the Court is of the considered view that the proceedings instituted by the Interested Party before the 1<sup>st</sup> Respondent known as NLC/HJJ/017/2017 was indeed Res Judicata to the proceedings and judgement pronounced in Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.

**Issue No.5 - Is The Petitioner Entitled To The Reliefs Sought In The Petition Herein**

111. Based on the determination in issues No.1, 2,3 and 4, it is the Court is of the considered finding that indeed the proceedings undertaken by the 1<sup>st</sup> Respondent under Case No. NLC/HJJ/017/2017 violated and/or infringed the rights of the Petitioners herein and were in fact Res Judica the proceedings and judgement of the case known as Nakuru Constitutional & Judicial Review Application Case No. 032 Of 2011.
112. Consequence therefore, the Petitioners are entitled to the reliefs sought for in this Petition.

**Issue No. 6- Who Bears The Costs Of This Petition?**

113. Lastly, the costs of a proceeding usually follow the outcome thereof.
114. In this Petition, the Petitioners having successfully litigated the same, the costs will be borne by the 1<sup>st</sup> Respondent and the Interested Party herein.



## **Conclusion.**

115. The Court upon evaluation of the pleadings filed herein together with the evidence adduced in this Petition dated 10<sup>th</sup> April 2019, the following Orders are hereby pronounced in determination of the issues herein; -
- a. an order of judicial review in the nature of certorari be and is hereby issued quashing the purported the proceedings undertaken by the 1<sup>st</sup> respondent in the case known as nlc/hjj/017/2017 and the subsequent determination pronounced on the 7<sup>th</sup> february 2019 forthwith as being null and void.
  - b. an order of judicial review in the nature of a certorari be and is hereby issued quashing the gazette notice known as cxxi-no.27 published by the 2<sup>nd</sup> respondent on the 01/03/2019 forthwith.
  - c. the 2<sup>nd</sup> respondent is further hereby ordered and/or directed to reinstate all the records and/or titles purportedly cancelled through the gazette notice known as cxxi-no.27 published on the 01/03/2019 in favour of the petitioners herein forthwith.
  - d. the proceedings undertaken by the 1<sup>st</sup> respondent known as nlc/hjj/017/2017 and the determination pronounced on the 7<sup>th</sup> february 2019 were res judicata to the proceedings and judgement pronounced on the 21/02/2014 in nakuru constitutional & judicial review case no.032 of 2011.
  - e. the costs of the petition shall be borne by the 1<sup>st</sup> respondent and the interested party.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 17<sup>TH</sup> APRIL, 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Ngeno/mempe

Advocate For The Petitioner: Mulisa H/b For Kebungo

Advocate For The Respondents: Ranah For 2<sup>Nd</sup> & 3<sup>Rd</sup>

Respondents

