



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

CONSTITUTIONAL PETITION NO. 64 OF 2017

IN THE MATTER OF:

ARTICLES 1, 2, 3, 10, 19, 20, 21, 22(1) & 22 (2) AND 22 (3), 24, 165, 258, 259 & 260 OF

THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF:

**THE ALLEGED VIOLATION AND OR THREATENED, VIOLATION OF
THE FUNDAMENTAL RIGHTS AND FREEDOMS SECURED AND GUARANTEED UNDER**

ARTICLES 10 (2) (B), 27, 43 (1) (f), 40, 47, 53 (1) (b) AND 55 (a) OF

THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF:

THE BASIC EDUCATION ACT NO. 14 OF 2013 AT SECTION 3, 4, 28 AND 30

AND

IN THE MATTER OF:

THE ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015

AND

IN THE MATTER OF:

**THE RELOCATION OF MWAMDUDU PRIMARY SCHOOL,
LOCATED ON PLOT NO. 909/MN/VI IN KINANGO SUB-COUNTY,**

KWALE COUNTY

BETWEEN

- 1. SALIM KOBO GODANI**
- 2. STEPHEN M. K. MBINU**

3. CHARLES M. SHANGA
4. ALI MBAJI KOBO
5. MDOE NYANJE MDOE
6. SADA CHITI
7. HAMISI TSUMA MWERO
8. HASSAN MKUBA

(suing as Board of Management of Mwamdudu Primary School and as

Affected Members of Public Resident at Mwamdudu

Sub-Location Kwale County).....PETITIONERS

VERSUS

1. THE MINISTRY OF EDUCATION
2. THE HON. ATTORNEY GENERAL
3. CHUNKY LIMITED.....RESPONDENTS

AND

1. KAHIA TRANSPORTERS LIMITED
2. TRADE LEAD LIMITED..... INTERESTED PARTIES

JUDGMENT

Parties

1. The Petitioners are members of the Board of Management and officials of Mwamdudu Primary School, which is located in Kinango sub-county, Mwamdudu sub-location, Kwale County.
2. The 1st Respondent is the ministry charged with the responsibility of setting out the education policy and management of Basic education.
3. The 2nd Respondent is the Attorney General who is the principal legal advisor to the National Government.
4. The 3rd Respondent is a limited liability company duly incorporated under the provisions of the Company's Act Cap 485 (repealed)

The Petition

5. The Petitioners' case is that Mwamdudu Primary school (herein after "the school") stands on an 8-acre PLOT NO. 909/MN/VI, which was donated by Mzee Katana Mbinu in collaboration with other village mates like **Mzee Mwanamwenga, Mwanajirani, Rumba Dzuwamwenga and Mgandi Kachongo** all of whom are deceased except **Mzee Jira Mambo**. In 1965, the Mwamdudu Community set up a nursery school in the plot and the following year in 1966, the school was taken over by the government and registered as a public primary school, and currently, the school serves a large population of the Mwamdudu community and residents from Miritini location, Mabanda ya Ngombe in Mombasa County and Kilifi County.
6. The Petitioners aver that since a majority of the pupils in the school are from poor backgrounds, the community around the school together with private entities have contributed toward the development of the school. However, the school has faced many attempts at appropriation of its land as evidenced in the 1985 claim by one Mohamed Dhanji, a continuing demand by Colfax Holdings Limited and currently the 3rd Respondent has acquired title over the school property and has commenced an arbitrary process of relocating the school.
7. It is the Petitioners' case that following the president's directive and the threats to the school's land, they initiated the process of acquiring the title deed of the land the school is built on to no avail, because the process was frustrated by people keen on grabbing the school's property who have connived with compromised government agencies whose desire is to have the school relocated, without regard for the hardship the relocation will cause the children, and the community since they will be required to walk long distances to school and some many even drop out of school.

8. The Petitioners aver that the school is not in the path of the two major government project namely the Standard Gauge Railway and Dongo Kundu By-pass. However, it appears that the Respondents are using the relocation of other schools namely **Mpirani** and **Mariakani Primary School** to create space for the public project as an excuse to push the school out of its prime location to perpetuate private interests other those relying and depending on the school.

9. The Petitioners avers that on 29/05/2017, the Kinango Sub-County Director of Education **Ms. Ruth Mutisya** made a phone call to the Head teacher of the school and director her inter-alia to take an inventory of all the schools assets and to ensure that the report is handed to her by 5/06/2017. The Head teacher was also directed to stop any school repairs and forthwith consult with the head teachers for Mpirani and Mariakani Primary school for advice on relocation.

10. The Petitioners' case is that they were not involved and/or consulted before the decision to relocate the school was made since on 27/09/2017, the 3rd Respondent wrote to the school's Board of Management and parents teachers committee requesting for a consultative meeting on relocation after a decision had been made by the 1st Respondent on 25/09/2017.

11. It is the Petitioners' case that the elevation of the 3rd Respondent's private interests over the public interest of thousands of pupils and members of the public right to a fair administrative action reeks to the high heavens, and is a violation of Articles 10, 40, 43, 47, 53 and 55 of the Constitution. Further, the Petitioners aver that the failure to issue a title deed to the school is discriminatory, oppressive and goes against national values, the principles of good governance, transparency, accountability stipulated under Article 10 of the Constitution and is a violation of the Petitioner's right to property since they have been in occupation of the suit property since the year 1965.

12. The Petition is supported by the Affidavit sworn on 14/12/2017 by the 1st Petitioner who is the chairman of the School Board of Management and he swears the affidavit on his behalf and on behalf of his co-Petitioners. The Petition prays for the following orders:

a) A declaration that the Petitioners, citizens, community and children rights of persons who are dependent and reliant on Mwamdudu Primary School under Article 10, 27, 43,53, 55, 40 and 47 of the Constitution have not only been threatened with violation but have actually been violated and continue to be violated.

b) ABANDONED

c) That this honourable court be pleased to issue a permanent prohibitory injunction to restrain the Respondents either by themselves or through their agents, servants, proxies employees, acolytes and/or accomplices from in any way interfering with, relocating, demolishing, causing damage, obstructing, and/or in any other way interfering with Mwamdudu Primary School located on plot no. MN/VI/909 and or causing the amelioration or negative waste degradation and damage to its environment and structures in purported implementation of the relocation of Mwamdudu Primary school.

d) costs

The Response

13. The 3rd Respondent opposed the Petition vide Replying Affidavit sworn on 18/07/2018 by **Harji Govind Ruda** who is the 3rd Respondent's Director. The deponent avers that the 3rd Respondent is the registered owner of the property known as **Plot No. MN/VI/909 and registered as C.R.7239/1** (hereinafter "the property") having acquired the same from one **Sadrudin Mohamed Dhanji**. Therefore, none of the people alleged to have donated the property to the school had the capacity to donate the property. Nevertheless, the school only stands on a very small portion of the property, which is less than an acre as opposed to the alleged 8 acres.

14. The deponent states that the 3rd Respondent legally acquired the property and it is incongruous for the Petitioners to suggest that the school has faced many attempts to be grabbed. Nevertheless, it is not the intention of the 3rd Respondent to dislodge the school of the property. However, Petitioners are all professional squatters who intend to claim the property on the basis of adverse possession and the Petitioners are well aware that the property is not public land since it has been privately owned since 1924, and therefore, the attempt to acquire title on private property is clearly disingenuous and dishonest and the Petitioners cannot be heard to say that the process of acquiring title was frustrated by people keen on grabbing the property through compromised government agencies.

15. The 3rd Respondent avers that the judgment in **MSA ELC Case No. 87 of 2015 (Stephen M. K. Mbinu & 267 others –vs- Chunky Limited & 3 Others)** speaks for itself, and since the 3rd Respondent enjoys Constitutional protection relating to its proprietary rights, the Petitioners and or the alleged Colfax holding limited have no right to assert any claim over the property. Therefore, the issue of speculation on account of the Standard Gauge Railway and/or Dongo Kundu bypass does not arise.

16. It is the 3rd Respondent's case that this petition is an attempt to grab the 3rd Respondent's property through an abuse of the court process and the school is, and the children are, just pawns in a wider scheme intended to grab the property.

17. In rejoinder, the Petitioner filed a supplementary affidavit sworn on 27/08/2018 by the 1st Petitioner. He reiterated the contents of the affidavit in support of the petition and deponed that the property on which the school is built is the Petitioners' ancestral land occupied by the natives who settled on the said property since 1848, and that the school was established in 1965, and it has enjoyed peaceful occupation until of late. The deponent further avers that it is not true that the school only occupies less than one Acre. The school has two football fields, many buildings spread all over and that before the government approves a rural school to be a public school, it must be situated on more than six acres of land.

18. The deponent avers that the school having existed before the 3rd Respondent's claims means that the 3rd Respondent's title stands on

quick sand since public interest in sustaining the school is overwhelming.

19. The deponent avers that **MSA ELC Case No. 87 of 2015 (Stephen M. K. Mbinu & 267 others v Chunky Limited & 3 Others)** was not decided on merit but on sufficiency of the pleadings and failure to enjoin some parties. Therefore, the said petition does not declare the 3rd Respondent's right over the property.

20. The deponent avers that the children at the school have a right to education and their interests are paramount. The school has complied with requirements by the government agencies and it is still waiting for a response from the 1st and 2nd Respondent. Further, the deponent avers that the Respondents have recognized the children's right to education and that is why 10 acres of land is being offered elsewhere.

21. The 1st and 2nd Interested Parties opposed the petition vide their supporting affidavit in their application dated 5/11/2019, in which they sought to be enjoined as the 1st and 2nd Interested Parties. The affidavit is sworn on 5/11/2019 by **Osman Ahmed Kahia** who is the director of the 1st and 2nd Interested Parties. The deponent avers that the 1st Interested Party is the registered owner of the property compromised in **Title No. C.R. 68637 (Plot No. MN/VI/5153)** and **C.R. 68273 (Plot No. MN/VI/5141)**, while the 2nd Interested Party is the registered owner of **Title No. C.R. 68639 (Plot No. MN/VI/5154)**. The deponent further avers that the aforementioned properties belonging to the 1st and 2nd Interested Parties also share a common boundary, and that the 1st and 2nd Interested Parties have been in occupation of the said properties for some years now, up until when the 3rd Respondent and Curly Wurly Limited trespassed onto the said properties.

22. It is the 1st and 2nd Interested Parties' case that the trespass by the 3rd Respondent resulted into **ELC 273 of 2017, ELC 405 of 2017 and ELC Petition No. 908 of 2018**, and that the said suits seek to determine the proper owners of the subject plots. Nevertheless, investigations by the National Land Commission and Ministry of Lands established that **Title No. C.R. 68637 (Plot No. MN/VI/5153), C.R. 68273 (Plot No. MN/VI/5141)** belonged the 1st Interested Party, while **Title No. C.R. 68639 (Plot No. MN/VI/5154)** belonged to the 2nd Interested Party. However, in strange circumstances, two separate Titles deeds were issued over the aforementioned plots and there can be no doubt that the subsequent Titles were fraudulently issued in contravention of the law and without any regard to sanctity of the 1st and 2nd Interested Parties' Titles deeds guaranteed under the Article 40 of the Constitution and the 1st and 2nd Interested Parties' right to a fair administrative action. Furthermore, the National Land Commission, the Ministry of Land, and the Director of Survey have purported to issue Title over the 1st and 2nd Interested Parties' land located in Mombasa and purport that the plots are located in Kwale.

23. The deponent avers that the 1st and 2nd Interested Parties are the true owner and occupiers of the disputed properties, since the 3rd Respondent's title is a nullity and void. However, the Petitioners herein have conveniently excluded them from the Constitutional petition, which in the Interested Parties' view is an abuse of the court process.

24. In response to the 1st and 2nd Interested Parties Affidavit, the 3rd Respondent filed a Further Affidavit sworn by **Harji Govind Ruda**. The deponent avers that one **Julius Kea Mbawa** filed a **Petition No. 202 of 2018** seeking reports from the Director of Survey and the Directorate of Criminal Investigations in which the court directed the Director of Survey & Directorate of Criminal Investigations to produce a report on the status surrounding ownership of the parcels of Land LR. **MN/VI/5141/MN/ VI5153, MN/VI/909 and MN/VI/910**, and that on 8/06/2021, the 3rd Respondent's advocate was served with a report from one Chief Inspector **Benard Kwarat** from the Director of Criminal Investigations through the Attorney General's office, and the said report has confirmed the genuineness of the 3rd Respondent's Title being **CR. 7239 for Plot MN/VI/909**, and confirming the same as privately held under free hold tenure.

25. The 1st and the 2nd Respondents did not file a Response or participate in these proceedings despite service by the Petitioners.

Submissions

26. The Petitioner's submissions were filed on 23/04/2019 and 26/03/2021, the 3rd Respondent's submissions were filed on 1/03/2021, while the 1st and 2nd Interested Parties' submissions were filed on 3/06/2021.

Determination

27. From the pleadings and submissions filed before this Court by the parties, in my view, the issues for the determination are:

a) Whether the court has the jurisdiction to determine the ownership dispute in relation to the property.

b) Whether the Petitioner have proved the threat of violation and violation of their rights and those of the school-going children to the required standard.

(a) Whether the court has the jurisdiction to determine the ownership dispute in relation to the property.

28. **Mr. Borana** learned counsel for the 3rd Respondent submitted that the investigations report by the Directorate of Criminal Investigations which the 3rd Respondent seeks to rely on, and base its claim of ownership of the property on, raises a possibility of conflicting judgments since jurisdiction on the dispute of the ownership of the property is with the Environment and Land Court.

29. **Mr. Jengo** learned counsel for the Petitioners on the other hand submitted that the issue of ownership of the property is complex. Counsel cited the finding in **William Musembi 13 others v Moi Educational Centre Compaby Ltd & 3 others [2021] eKLR** where the court stated that where the issues of ownership are raised with issues of violation of other Constitutional rights, the High Court can determine the Constitutional issues not relating to ownership and leave the ownership question to the Environment and Land Court. On that basis, **Mr.**

Jengo submitted to this Court that he had abandoned prayer no. (b) of the Petition, which sought a declaration on the ownership of the suit property.

30. **Mr. Omwenga** learned counsel for the Interested Parties and **Mr. Borana** were all in consonance that since the Petitioner's counsel had abandoned prayer No. (b) of the Petition, then the court could go ahead and determined the other alleged violations of the Constitution.

31. It is noteworthy that, in any litigation, jurisdiction is central. A court of law cannot validly take any step without jurisdiction. The Supreme Court stated **In the Matter of Interim Independent Electoral Commission [2011] eKLR** as follows:

“[29] Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

32. The Petitioners having appreciated that this court lacks jurisdiction to entertain questions touching on the ownership of the property in dispute have withdrawn prayer (b) in its petition dated 14/12/2017. However, I find the need to go an extra mile to scrutinize prayer (c) of the Petition, in order to avoid venturing in the territory of the Environment and Land Court.

33. Article 165 of the Constitution establishes the High Court and sets out the scope of its jurisdiction. However, Article 165(5) specifies areas in which the High Court has no jurisdiction, and these include matters that fall under Article 162(2) of the Constitution. The relevant portions of Article 165(5) state as follows:

“(5) The High Court shall not have jurisdiction in respect of matters—

(a) ...

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).”

34. The relevant provisions are in Articles 162(2)(b) 162(2)(3) of the Constitution. They provide as follows:

“162. (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) ...

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”

35. Parliament passed legislation, the Environment and Land Court Act, No. 19 of 2011, pursuant to Article 162(2)(3) of the Constitution, to establish the court envisaged in Article 162(2) (b), and to set out the jurisdiction of the said court as required by Article 162(3). The preamble to the said Act states its objective to be: -

“... to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land; and to make provision for its jurisdiction functions and powers and for connected purposes.”

36. The scope and jurisdiction of the Environment and Land Court is set out in Section 13 of the Environment and Land Court Act, which states as follows:

“13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to the environment and land.

2. In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes –

a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents,

valuations, mining, minerals and other natural resources;

b. relating to compulsory acquisition of land;

c. relating to land administration and management;

d. relating to public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

e. any other dispute relating to environment and land.”

37. In view of everything that I have said above, I hereby declare that prayer (b) turns on ownership, use and occupation of land, and I, sitting as a Judge of the High Court, have no jurisdiction to handle it the same applies to prayer (c) of the Petition that touches on the environment, use, and occupation of the property. Therefore, the only prayer left for determination by this Court is prayer (a) of the Petition.

(b) Whether the Petitioner have proved the threat of violation and violation of violation of their rights and those of the school-going children to the required standard.

38. **Mr. Jengo** submitted that it is clear that the 1st Respondent’s officials in consonance with the 3rd Respondent are putting their personal interests before the public and as a result, public interest has been relegated and as a result the right to education of the children of the school guaranteed under Article 43(1) (f) of the Constitution is under threat as a result of the proposed relocation of the school. Further, counsel submitted that in matters involving children, the best interest of the Children is always supreme.

39. **Mr. Borana** submitted that the instant petition was res-judicata as the parties in the said petition are similar to those in **ELC No. 87 of 2015**, which was dismissed. Further, counsel submitted that the disputed plot is Plot No. MN/VI/909 in both **ELC No. 87 of 2015**, and the instant petition. Therefore, the Petitioners are seeking a second bite of the cherry in the guise of seeking to stop the relocation of the children of Mwamdudu primary school.

40. From the proceedings herein, it can be discerned that the dispute between the 3rd Respondent and the 1st and 2nd Interested Parties is an ownership and/or boundary dispute of **Plot No. MN/VI/909**. Various reports from the National Land Commission, The Director of Survey, and The Directorate of Criminal Investigations have been produced in a bid to demonstrate who the genuine owner of the suit properties is. The jurisdiction to determine the said ownership rests elsewhere as previously held in this judgment. Nevertheless, one thing that can be gleaned from the dispute between the 3rd Respondent and the Interested Parties is the fact that the property in dispute is not public land.

41. The Supreme Court in **Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] eKLR** held as follows:

*“...On the right to private property and socio-economic rights the Appellate Court held that the trial Court had correctly decided on the issue of adverse possession and determined that the appellants did not have any legitimate claim to the suit property. However, the Court noted that the High Court had failed to consider the tension between socio-economic rights and the right to private property in the Kenyan context. It faulted the trial Court for adopting a mechanistic approach to precedent in relying on the Indian case of *Olga Telis & Others v. Bombay Municipal Corporation (1985) Supp. SCR 51* and the South African Constitutional Court case of *Irene Grootboom & others v. The Government of the Republic of South Africa & Others (2001)**

(1) SA 46. It noted that these cases involved interpretation of Constitutional provisions of the respective countries and that similar provisions are not found in the Kenyan Constitution.

*[42] In addressing the tension between the realization of socio-economic rights and the right to private property, the Appellate Court surveyed the emerging jurisprudence as illuminated in various judicial decisions in Kenya; to wit, *Susan Waitthera Kariuki & 4 Others v. Town Clerk Nairobi City Council & 2 Others* Petition No. 66 of 2011; *Satrose Ayuma & 11 Others v. The Registered Trustees of the Kenya Railways Staff Retirement Pension Scheme & 2 Others, Nairobi HC Petition No. 65 of 2010*, *Ibrahim Sangor Osman v. Minister of State for Provincial Administration & Internal Security Constitutional Petition No. 2 of 2011*; and *Veronica Njeri Waweru & 4 Others v. The City Council of Nairobi & Others, Nairobi Petition No. 58 of 2011.**

[43] The Court opined that the enforcement and implementation of socio-economic rights cannot confer propriety rights in the land of another and that the realization of socio-economic rights does not override the provisions of the Limitation of Actions Act (Cap 22 of the Laws of Kenya). It noted further that in the interpretation of the Constitutional Articles on socio-economic right, more so in the absence of a legal framework, it is not the role or function of the Courts to re-engineer and redistribute private property rights. Such a role, according to the Appellate Court, lay squarely in in the province of the Executive and Legislature.”

42. The Supreme Court went on to observe as follows after stating the above:

[150] This scenario has inevitably led to the emergence of the so called “informal settlements”, an expression that describes a habitation by the “landless”. In their struggle to survive, many Kenyans do occupy empty spaces and erect shelters thereupon, from within which, they eke their daily living. Some of these settlements sprout upon private land, while others grow on public land. It is these “settlers” together with their families who face the permanent threat of eviction either by the private owners or State agencies. The private owners will raise ‘the sword of title’, while the State agencies will raise ‘the shield of public interest’.

So where does this leave the right to housing guaranteed by Article 43 of the Constitution?

[151] While we are in agreement with the submission to the effect that, an illegal occupation of private land, cannot create prescriptive rights over that land in favour of the occupants, we don't think the same can be said of an "illegal occupation" of public land. To the contrary, we are of the considered opinion, that where the landless occupy public land and establish homes thereon, they acquire not title to the land, but a protectable right to housing over the same..."

43. Similarly, In the case of **Patrick Mbau Karanja v Kenyatta University [2012] eKLR** Lenaola, J (as he then was) expressed himself as follows in regard to when the Constitutional interpretative mandate of the Court may be invoked: -

"I should only say this as I conclude; in Francis Waitthaka -vs- Kenyatta University Petition No. 633 of 2011, this Court was categorical that it is imperative that the Bill of Rights and the Constitutional interpretative mandate of this Court should not be invoked where other remedies lie. Further the Court also cited with approval, the decision in Teitinnang -vs- Ariong (1987) LRC (const.) 517 where it was held as follows: -

"Dealing now with the questions, can a private individual maintain an action for declaration against another private individual or individuals for breach of fundamental rights provisions of the Laws? The rights and duties of individuals, and between individual, are regulated by private laws. The Constitution, on the other hand, is an instrument of government. It contains rules about the government of the Country. It is my view, therefore that duties imposed by the Constitution under the fundamental rights provisions are owned by the government of the day, to the governed. I am of the opinion that an individual or group of individuals, as in this case, cannot owe a duty under the fundamental rights provisions to another individual so as to give rise to an action against the individual or group of individuals. Since no duty can be owed by an individual or group of individuals to another individual under the fundamental rights provisions of the Constitution no action for a declaration that there has been a breach of duty under that provision can lie or be maintained in the case before me, and I so hold".

44. This Court needs not re-invent the wheel, since under Article 163(7) of the Constitution, this Court is bound by the decisions of the Supreme Court. Consequently, I find that the Petitioners cannot sustain a claim for breach of fundamental rights and freedom and breach of social economic rights against a private person who is occupying private land. Therefore, the Petitioners' claim could only be sustained against the 1st and 2nd Respondent who have not participated in these proceedings. Nevertheless, the property in dispute being private property, the participation of the 1st and 2nd Respondents in these proceedings would have been inconsequential in relation to the Petitioners' claims since the property in dispute is not public land.

45. In the circumstances, I find and hold that the petition herein lacks merit and the same is hereby dismissed. Parties to bear own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED AT MOMBASA THIS 28TH DAY OF SEPTEMBER 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Mr. Borana for 3rd Respondent

Ms. Ondiek holding brief Mr. Omwenga for Interested Party

Mr. Jengo for Petitioners

Ms. Peris Court Assistant