



Kasimu & 3 others v Director of Land Adjudication & Settlement & 5 others (Constitutional Petition E002 of 2021) [2023] KEELC 20027 (KLR) (21 September 2023) (Judgment)

Neutral citation: [2023] KEELC 20027 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
CONSTITUTIONAL PETITION E002 OF 2021
LG KIMANI, J
SEPTEMBER 21, 2023**

BETWEEN

**FRIGARSTUS MUTIE KASIMU 1ST PETITIONER
SILVESTER MWAU KASIMU 2ND PETITIONER
MIRIAM MUNEE KASIMU 3RD PETITIONER
AGNES KAMENE KASIMU 4TH PETITIONER**

AND

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT ... 1ST
RESPONDENT
THE LAND ADJUDICATION & SETTLEMENT OFFICER
KITUI 2ND RESPONDENT
THE CHIEF LAND REGISTRAR 3RD RESPONDENT
THE LAND REGISTRAR KITUI 4TH RESPONDENT
THE COUNTY GOVERNMENT OF KITUI 5TH RESPONDENT
PATRICK MUTUKU KASIMU 6TH RESPONDENT**

JUDGMENT

1. Before the court is the petition dated 29th November 2021 where the Petitioners claim that together with the 6th Respondent they are the children of Kasimu Mbatha (Deceased). The deceased acquired and owned land measuring 80.7 hectares in the then un adjudicated area in Yatta in Kitui County where he had settled his entire family. The said area was later declared an adjudication area named Yatta/Ilika Adjudication Section and by the time of the said declaration, the deceased had passed away.



2. The petitioners claim that the family appointed the 6th Respondent to spearhead the process of registration of their interests in the land because the Petitioners were young and their mothers were illiterate. However, the Petitioners state that the 6th Respondent conspired with the 1st and 2nd Respondent's officers to carve out a portion of the deceased's land measuring 0.28 Ha and registered it exclusively and absolutely in his name- instead of having it registered in trust for the family.
3. Further, the Petitioners aver that the 1st and 2nd Respondent's officers in conspiracy with the 6th Respondent split the deceased's land into four portions i.e. Yatta/Ilika/589, Yatta/Ilika/590, Yatta/Ilika/591, Yatta/Ilika/1471 and had the same registered to Sabina Kakee Kasimu, Elis Syombua Kasimu, New East African Church and the 6th Respondent respectively.
4. The Petitioners aver that with the concurrence of the family, part of the deceased's land was donated to the County Government of Kitui for a market known as Ngovu Market. The market was registered as Land Parcel Yatta/Ilika/592 and in return the County Government allocated plot number 21 to the deceased's family. It is claimed that the 6th Respondent conspired with the 5th Respondent's officers to transfer and register Plot number 21 Ngovu market in his name to the exclusion of the Petitioners.
5. The Petitioners state that the outcome of the actions stated had the effect of disinheriting them on account of their age and sex as the 6th Respondent took advantage of his age and status in the family to dispossess and disinherit them of their cultural and land ownership rights, especially in respect of land parcel number Yatta/Ilika/1471 and plot number 21 on Yatta/Ilika/592.
6. They claim that they only found out about the actions of the 6th Respondent in January 2021 when they confronted him and he dismissed them with contempt and failed to explain why he chose to short-change the family. The Petitioners aver that they can only exercise their constitutional rights if they have in possession all the documents, records and information in respect of the adjudication and subsequent issuance of title deeds and allotment letters, which documents are in the custody and possession of the respondents.
7. The Petitioners through their advocates wrote to the 1st, 2nd and 4th Respondents requesting to be supplied with the records, documents and information used in registering the 6th Respondent as the absolute owner of the parcels in dispute.
8. The Petitioners pray that they be issued with certified copies of the documents sought in the letter mentioned above being: The sketch maps drawn during adjudication, proceedings and decisions at every stage of the adjudication process, implementation record affecting Yatta/Ilika Adjudication Section particularly parcel 1471 or any mother title thereof, the certificate of completion of the register, all adjudication records in respect to parcel 1471 Yatta Adjudication Section, Initial allotment letters for plot number 21 Ngovu Market and any transfer documents filed and registered with the 5th Respondent in respect of Plot number 21 in Ngovu Market (Yatta/Ilika/592), All documents used and deposited with the 5th Respondent relevant to the suit parcel including minutes of plot allocation committees in respect of Plot number 21 Ngovu Market (Yatta Ilika/592) and any other information and record held by the Respondents in respect to ownership of Parcel Number Yatta/Ilika/1471 and Plot number 21 Ngovu Market (Yatta Ilika/592) germane and connected to the above.
9. The Petitioners further seek the following orders:
 2. A declaration that the 6th Respondent holds title to Land Parcel Number Yatta/Ilika/1471 and plot number 21 on Land Parcel Yatta/Ilika/592 in trust for the Petitioners and the entire family of the late Kasimu Mbatha.



3. An order of injunction restraining the Respondents from transferring, selling, disposing or in any other way dealing with Land Parcel Number Yatta/Ilika/1471 and plot number 21 on Land Parcel Yatta/Illika/592 without involving and consulting the petitioners,
 4. an order directing the 3rd, 4th and 5th Respondents to note the Petitioner's interest in the register as an overriding interest in Land Parcel Number Yatta/Ilika/1471 and plot number 21 on Land Parcel Yatta/Illika/592 and
 5. The respondents do pay the costs of this petition.
10. The petition is supported by the affidavit of Frigarstus Mutie Kasimu who reiterated the contents of the Petition and stated that their father Kaimu Mbatha (Deceased) was married to two wives known as Sabina Kakee Kasimu and Elis Syombua Kasimu and that the Petitioners and the 6th Respondent are their children. It is claimed that the 6th Respondent took advantage of the petitioner's tender age and their mothers' ignorance to allocate Land Parcel Number Yatta/Ilika/1471 and plot number 21 on Land Parcel Yatta/Illika/592 to himself.
 11. The Petitioners sought to know the reasons for the Respondents' but got no response from them despite serving them with letters requesting information thereof. They state that the information will assist them in prosecuting the petition meritoriously.

The 1st to 4th Respondent's Replying Affidavit

12. Nduati swore a Replying Affidavit on the 8th of November 2022 on behalf of the 1st to 4th Respondents and deposed that he is the Assistant Director of Land Adjudication and Settlement in Kitui and that Land Parcel Nos. Yatta/Ilika 589, 590, 591, 592 and 1471 were recorded in the interests of the parties/beneficiaries after they presented their interests to the 1st Respondent.
13. It was stated that no objection proceedings were ever filed by the petitioners or their representatives in respect of the said parcels of land as provided for in the [Land Adjudication Act](#). He stated that the allegation that the petitioners were minors during the adjudication process should not hold water since their mothers were alive and should have represented their interests.

The 5th Respondents Preliminary Objection.

14. The County Attorney entered an appearance for the 5th Respondent and filed a Notice of Preliminary Objection dated 1st March 2022 on the grounds that the Petition is premature, improperly before this Honourable Court and it offends the provisions of Sections 8, 20, 21, 22 and 23 of the [Access to Information Act](#) No.31 of 2016. They claim that there is an elaborate and special avenue to address disputes arising from the application of the [Access to Information Act](#) No.31 of 2016. The special procedure should be strictly followed.
15. Further, the 5th Respondent state that the Petitioners have never sought the information alleged (the subject matter of this Petition) from the 5th Respondent, under the [Access to Information Act](#) No.32 of 2016. The 5th Respondent further objects to the jurisdiction of this court to hear and determine the Instant Petition.

The 1st -4th Respondents written submissions

16. State Counsel for the 1st to 4th Respondents submitted that since the Petitioners claim that they were minors during the adjudication process, their mother should have registered their interest in the suit land as their representative.



17. Their submission is that the [Land Adjudication Act](#) sets out the procedure through which rights and interests in land are ascertained and recorded. This was held in the case of *Lepore Ole Maito vs. Letwat Kortom & 2 others* (2016) eKLR.
18. Quoting from Section 18(1) of the [Land Adjudication Act](#) Cap 284, they submitted that every person who considers that he has an interest in land within an adjudication section ought to make a claim to the recording officer and point out boundaries to the demarcation officer. The Petitioners did not demonstrate that they made such claim.
19. State Counsel also quoted Section 26(1) of the [Land Adjudication Act](#) which allows any person named in or affected by the adjudication register who considers it to be incorrect or incomplete to file an objection within 60 days, submitting that there is no evidence that the Petitioner filed this objection.
20. Regarding Plot Number 21 on Land Parcel Yatta/Ilika/592, state counsel submitted that the said parcel is registered in the name of the Kitui County Council reserved for Kwakilui Trading Centre and not in the name of the 6th Respondent.
21. The Petitioners and the 6th Respondent had been ordered by the Court to file submissions within 7 days on 16.5.23 but failed to do so.

Analysis and Determination

22. The Court has considered the Petition herein, supporting affidavit, replying affidavit and notice of preliminary objection and submissions filed. It is noted for the record that the 6th Respondent filed a Notice of Appointment of Advocates by the law firm of Nzilu Nzioka & Co. Advocates but they did not file a reply to the petition or written submissions.
23. The 1st to 4th Respondents drew the following as what they consider issues arising for determination;
 - A. Whether the 6th Respondent was procedurally and legally registered as proprietor of land parcel Yatta/Ilika/1471.
 - B. Whether the 6th Respondent is the registered proprietor of plot 21 of land parcel Yatta/Ilika/592.
24. The Court however considers that the issues set out may be consolidated, re-framed as follows;
 - A. Whether the Petitioners' constitutional right of access to information under Article 35 of [the Constitution](#) of Kenya 2010 was violated.
 - C. Whether the Petitioners' Constitutional right under Article 40 of [the Constitution](#) of Kenya 2010 to land parcel Yatta/Ilika/1471 and plot number 21 out of land parcel No. Yatta/Ilika/592 was violated.
25. Constitutional Petitions are premised on Articles 22, 23 and 165 of [the Constitution](#) of Kenya. Article 22(1) provides as follows:

“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.”



A. whether the Petioners' constitutional right of access to information under Article 35 was violated

26. The Petitioners' main contention is that the 1st-5th Respondents have a duty to disclose documents, information and records used in recording the 6th Respondent as the absolute owner of the suit parcels of land and requested in their Advocates letter dated 4.8.2021. The Petitioners claim that they can only safeguard and protect their rights if they have access to the documents, information and records sought in the petition.
27. Article 35(1) of *the Constitution* provides that:
- “ Every citizen has the right of access to—
- (a) information held by the State; and
- (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.”
28. In the case of *Katiba Institute v Presidents Delivery Unit & 3 others* [2017] eKLR the Court held that:
- “The respondents were under both a constitutional and legal obligation to allow the petitioner to access information in their possession and held on behalf of the public. This is an inviolable constitutional right and that is clear from the language of Article 35 of *the Constitution*, and any limitation must meet the constitutional test and only then can one raise limitation as a ground for non-disclosure.”
29. The 5th Respondent filed a Notice of Preliminary Objection to the Petition stating that it offends the provisions of Sections 8, 20, 21, 22 and 23 of the *Access to Information Act* No. 31 of 2016 stating that the elaborate and special avenue to address disputes arising from the application of the *Access to Information Act* was not followed. It was further claimed that the Petitioners never sought the information alleged from the 5th Respondent. The 5th Respondent also objected to the jurisdiction of this Honourable Court to hear and determine this Petition.
30. The Petitioners have annexed to their supporting affidavit as “F.M 8” a letter of demand dated 4-08-2021 from their advocates on record, Messrs. B.M Muyoki & Co. Advocates addressed to the 1st-4th Respondent’s herein requesting for the same particulars as sought in this Petition. There is no record of a response to this letter. The replying affidavit by P. K Nduati the Assistant Director of Land Adjudication and Settlement Officer Kitui on behalf of the 1st to 4th Respondents did not address the issue of failure by the said Respondents to provide the information sought.
31. The court has confirmed that the letter seeking information was not addressed to or received by the 5th Respondent and for that reason, the claim that the 5th Respondent failed to provide the information, documents and records sought cannot succeed against the 5th Respondent
32. The *Access to Information Act* No. 31 of 2011 is the legislation enacted to give effect to the right of access to information by citizens as provided under Article 35 of *the Constitution*. The said Act requires the state and its agencies to make official information freely available to the public. The basic principle of the Act is that all information held by the state and its agencies shall be made available to the public unless reasons exist for withholding it. Section 6 of the Act specifies the reasons that are appropriate for an agency to withhold the requested information. It further governs the handling of requests for information and sets the timeframe within which the request ought to be responded to.



33. A proper request was directed at the 1-4th respondents. In terms of Section 9 of the Act, the respondents were supposed to decide whether to grant or refuse the request within a reasonable time but in any event within 21 days after receiving the request. The person requesting had to be notified of the outcome and the next step that he or she could take.
34. However, if the public officer failed to give a decision on a proper request within 21 days, and no extension had been sought, the public officer was, for the purposes of the Act, deemed as having refused the request as provided under section 9(6) of the Act. And as a consequence of the refusal the Petitioners, therefore, asserted in the petition that the Respondents violated their rights by failing or refusing to provide the Petitioners with the information sought under Article 35(1). The 1st to 5th Respondents are public bodies bound by Article 35 (1) (a) to disclose information sought in terms of Section 4 of the [Access to Information Act](#), 2016.
35. The question determination is whether the petitioners are entitled to the orders sought in their Petition given the preliminary point of law raised that this court lacks jurisdiction under section 14 of the [Access to Information Act](#). The section provides for an avenue for resolving such disputes where there is failure or refusal to provide information required as requested by the petitioners.
36. In the instant petition, it is indisputable that the information being sought is information held or supposed to be held by the 1st to 4th Respondents who are state organs who qualify as public information officers for purposes of Article 35 of [the Constitution](#). The 5th Respondent states that the Petitioners had a remedy under Section 14 of the [Access to Information Act](#) in terms of review of the decision of the entity or person that has refused to provide access to the information that is requested. The said section 14 provides:
- (1) Subject to subsection (2), an applicant may apply in writing to the Commission requesting a review of any of the following decisions of a public entity or private body in relation to a request for access to information—
 - (2) An application under subsection (1) shall be made within thirty days, or such further period as the Commission may allow, from the day on which the decision is notified to the applicant.
 - (3) The Commission may, on its own initiative or upon request by any person, review a decision by a public entity refusing to publish information that it is required to publish under this Act.
 - (4) The procedure for submitting a request for a review by the Commission shall be the same as the procedure for lodging complaints with the Commission stipulated under section 22 of this Act or as prescribed by the Commission.
37. The Commission referred to in Section 14 of the Act is the Commission on Administrative Justice. (CAJ) The entire [Access to Information Act](#) provides an elaborate procedure for request for information and if such request is not acceded to, section 14 thereof provides for the remedy in terms of review of the decision of the entity or person that has refused to provide access to the information that is requested.
38. The 5th Respondent contended that an alternative dispute resolution mechanism has been provided under section 14 such that if the Petitioners believe that their right and request to access Information as per their letter of 4-08-2021 is declined by the Respondents. Under the said Act and Regulations made thereunder, there are elaborate procedures for determining any complaints referred to the Commission and the modes of resolution include Mediation and Conciliation.
39. It is trite that where [the Constitution](#) or statute confers jurisdiction upon a court, tribunal, person or body or any authority, that jurisdiction must be exercised in accordance with [the Constitution](#) or statute.



In *Secretary, County Public Service Board & another v Hulbhai Gedi Abdille* [2017] e KLR the Court of Appeal stated:

“Time and again it has been said that where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime.”

40. In the present Petition, the Petitioners did not make any attempt to engage the alternative dispute resolution mechanism provided by the *Access to Information Act*. Besides the express provisions under section 14 of the *Access to Information Act*, the Court of Appeal had earlier in the case of *Mutanga Tea & Coffee Company Ltd v Shikara Limited and Municipal Council Of Mombasa* stated as follows with regard to use of alternative dispute resolution mechanisms before seeking the court’s intervention.

“The real question then becomes whether an aggrieved party can ignore these elaborate provisions in both the PPA and the EMCA and resort to the High Court, not in an appeal as provided, but in the first instance. This Court has in the past emphasized the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for the resolution of particular disputes. *Speaker Of The National Assembly V. Karume* (supra), was a 5(2)(b) application for stay of execution of an order of the High Court issued in judicial review proceedings rather than in a petition as required by *the Constitution*. In granting the order, the Court made the often-quoted statement that:

“[W]here there is a clear procedure for the redress of any particular grievances prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.” (See also *Kones V. Republic & Another Ex Parte Kimani Wa Nyoike & 4 Others* (2008) 3 KLR (ER) 296).

It is readily apparent that in those cases, the Court was speaking to issues of the correct procedure rather than of the correct forum for the resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by *the Constitution* or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court.”

41. The court went on to state that:

“The reason why *the Constitution* and the law establish different institutions and mechanisms for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. While the Court retains the inherent and wide jurisdiction under Article 165 to supervise bodies such as the 2nd respondent, such supervision is limited in various respects, which I need, not go into here. Suffice to say that it (the court) cannot exercise such jurisdiction in circumstances where parties before it seek to avoid mechanisms and processes provided by law, and convert the issues in dispute into constitutional issues when it is not.”[emphasis added].

42. In *Vania Investment Pool Ltd. V. Capital Markets Authority & 8 Others*, Ca No 92 Of 2014 the Court of Appeal also upheld a decision of the High Court in which the court declined to entertain a judicial review application by an applicant who had failed to first refer its dispute to the Capital Markets Appeals Tribunal.



43. The Court of Appeal in all the above cases found that the learned judges did not err by striking out the applicants'/appellants suits and applications which sought to invoke the original jurisdiction of the High Court in circumstances where the relevant statutes prescribed alternative dispute resolution mechanisms and afforded the appellants the right to access the High Court by way of appeal, which mechanisms the appellants had refused to invoke.
44. Again in the case of *Savraj Singh Chana v Diamond Trust Bank (Kenya) Limited & another* [2020] eKLR, Weldon Korir J observed as follows, persuasively and authoritatively on the provisions of the [Access to Information Act](#). The learned Judge held:

“The preamble of the [Access to Information Act](#), 2016 clearly states that it is an “Act of Parliament to give effect to Article 35 of [the Constitution](#); to confer on the Commission of Administrative Justice the oversight and enforcement functions and powers and for connected purposes.”

The Act deemed it necessary that any issue concerning the denial of information should first be addressed by the Commission on Administrative Justice. Indeed Section 23(2) empowers the Commission on Administrative Justice as follows:-

“The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order-

- a. the release of any information withheld unlawfully;
- b. a recommendation for the payment of compensation; or
- c. any other lawful remedy or redress.”

Section 23(3) of the Act provides that:

“A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.”

“I do not think that Parliament intended to bestow both original and appellate jurisdiction on the High Court in matters where the Commission on Administrative Justice has been given jurisdiction under the [Access to Information Act](#). Section 23(5) of the Act actually provides that an order of the Commission on Administrative Justice can be enforced as a decree. What the Petitioner seeks from this Court is readily available to him before the Commission on Administrative Justice.”

45. The Court agrees with the findings in the above case, especially concerning the provisions of Section 23 of the Act which bestows on this Court appellate jurisdiction from the decision of the Commission on Administrative Justice given under the [Access to Information Act](#) Section 23(5).

B. Whether the Petitioners' Constitutional right to property under Article 40 of [the Constitution of Kenya 2010](#) was violated.

46. The Petition raises the question of whether the 6th Respondent was procedurally and legally registered as proprietor of land parcel Yatta/Ilika/1471 and plot 21 of land parcel Yatta/Ilika/592. They argue that at the time when the land adjudication started, they were aged between 2 and 7 years while the 6th Respondent was aged 39 years. The Petitioners do not give the dates on which the area was declared an adjudication section.



47. The 1st-4th Respondents argue and the Court agrees that the [Land Adjudication Act](#) has an elaborate dispute resolution mechanism process that the Petitioners could have engaged with through their mothers as their representatives to agitate their rights. The question of whether the Petitioners' mothers were illiterate or not and whether the 6th Respondent was appointed as a family representative are facts that in the Court's view have not been proved especially considering that the said mothers had their respective parcels of land registered in their names.
48. With regard to this issue the court follows the position taken by Courts while considering the right of access to information emphasizing the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for the resolution of particular disputes. The Court's position is that the Petitioners through their mothers had the opportunity to object to the adjudication register as provided for under Article 26 of the [Land Adjudication Act](#) CAP 284 which provides that;
- “ Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.
- (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”
49. Indeed the dispute resolution mechanism under the [Land Adjudication Act](#) commences from the time when the demarcation officer is under a duty under Section 15 of the Act to submit to the committee any boundary dispute which he is unable to resolve. If a committee is unable to decide on a matter before it, it refers it to the arbitration board for decision as provided under Section 21.
50. A decision in objection proceedings under Section 26 of the Act is appealable to the Minister under Section 29 of the Act and the decision of the Minister is said to be final. This position was restated in the case relied on by the 1st-4th Respondents Lepore Ole Maito –vs- Letwat Kortom & 2 Others [2016] eKLR where it was held that:
- “The [Land Adjudication Act](#) sets an elaborate procedure through which the rights and interests of all persons are to be established and once that process and procedure is followed and completed the determination of such rights and interests is final. The Act provides an appropriate mechanism for the resolution of any disputes. The Minister is the apex in that dispute resolution mechanism and once an appeal is made to the Minister and determined under the provisions of Section 29 of the Act, such determination is deemed final and is not subject to any appeal. A party therefore aggrieved by the Minister's decision can only challenge such determination by way of judicial review and not otherwise if he considers the Minister acted wrongly or exceeded his jurisdiction.”
51. The court is further guided by the decision in Mutanga Tea & Coffee Co. Ltd (supra) and other authorities cited above for the finding that in this case there exists a clear procedure for the redress of the particular grievances herein prescribed by [the Constitution](#) of Kenya and under the [Land Adjudication Act](#) and the Petitioners did not show any reason why the procedure provided was not strictly followed.
52. As observed earlier, the Petitioners confirm that their mothers Sabina Kakee Kasimu, and Elis Syombua Kasimu were alive when land adjudication was going on. The two were awarded land parcel numbers



Yatta/Ilika/589, and Yatta/Ilika/590 respectively. The said parcels of land measure 37.94 Hectares and 40.70 Hectares respectively. In the court's view the said mothers would have objected to the award of the parcels of land Yatta/Ilika/1471 and plot number 21 to the 6th Respondent had they considered the two parcels to be family land and allocation to the 6th Respondent as unlawful.

53. The question of whether or not the petitioners' mother Sabina Kakee Kasimu were illiterate are questions of fact that in the court's view have not been proved. In any event had they been illiterate they would not have been able to secure for themselves land measuring 37.94 Ha and 40.70 Ha respectively as compared to what the 6th respondent acquired measuring 0.06 Ha and a plot. It is noted that registration of the three parcels was done on the same date, 1st July 2009, though the title deeds came out on different dates.
54. In the Court's view and the circumstances of this case, the process of land adjudication was the legally recognized process that could confer individual title to trust land and the arising titles could be protected under Article 40 of *the Constitution* of Kenya 2010. The *Land Adjudication Act* is mandated to provide for the ascertainment and recording of rights and interests in community land (formerly trust land). Until rights and interests were ascertained and recorded the same could not be enforced or upheld under Article 40 of *the Constitution*.
55. For the foregoing reasons, the Court concludes that the Petition herein is not properly before this court, the constitutional violations said to have been committed by the Respondents have not been proved and the petition is found to have no merit and the same is hereby dismissed.
56. Costs are awarded to the 1st to 5th Respondents.

DELIVERED, DATED AND SIGNED AT KITUI THIS 21ST DAY OF SEPTEMBER 2023.

L. G. KIMANI

JUDGE

ENVIRONMENT AND LAND COURT

Judgement read in open court and virtually in the presence of;

Musyoki: Court Assistant

B. M. Musyoki for the Petitioners

M/S Bundu holding brief for M/s Nyawira for 1st - 4th Respondents

