



Lemarkat & 2 others (Suing on behalf of over 300 households resident in Lkotikal sub-location, Nyiro Ward, Ndoto Adjudication area, Samburu County) v Commissioner of Lands & 9 others (Environment & Land Petition 6 of 2023) [2023] KEELC 21638 (KLR) (16 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21638 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ENVIRONMENT & LAND PETITION 6 OF 2023

YM ANGIMA, J

NOVEMBER 16, 2023

(FORMERLY NYAHURURU ELC PETITION NO 17 OF 2017)

IN THE MATTER OF ENVIRONMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUALS UNDER THE BILL OF RIGHTS OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND –

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS, UNDER ARTICLES 19, 20, 21, 22(1), 2(B) AND (4), 23, 24, 40 AND 63 OF THE CONSTITUTION OF KENYA

AND –

IN THE MATTER OF RULES 4, 10 AND 11 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RELIEFS 2013

BETWEEN

RICHARD LEMARKAT 1ST PETITIONER

FREDRICK LENTIMLEI 2ND PETITIONER

FRANCIS LENGWA 3RD PETITIONER

SUING ON BEHALF OF OVER 300 HOUSEHOLDS RESIDENT IN LKOTIKAL SUB-LOCATION, NYIRO WARD, NDOTO ADJUDICATION AREA, SAMBURU COUNTY

AND

THE COMMISSIONER OF LANDS 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT



THE CHIEF LAND REGISTRAR	3 RD RESPONDENT
THE DIRECTOR OF SURVEY	4 TH RESPONDENT
THE DIRECTOR OF LAND ADJUDICATION	5 TH RESPONDENT
THE DISTRICT LAND ADJUDICATION	6 TH RESPONDENT
OFFICER-SAMBURU DISTRICT	7 TH RESPONDENT
LESSEPEN GROUP RANCH	8 TH RESPONDENT
AHMED RAISI LETURA	9 TH RESPONDENT
AHMED RAISI LETURA	10 TH RESPONDENT

JUDGMENT

A. Petitioner's Case

1. By a petition dated 25.05.2016 expressed to be based upon Articles 19, 20, 21, 22(1), (2), (2)(b), 4(4), 23, 24, 40 and 63 of *the Constitution* of Kenya, 2010, and rules 4, 10 and 11 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 the Petitioners sought the following reliefs:
 - a. An order permanently restraining and prohibiting the respondents whether by themselves, their employees, servants or agents or anybody acting under them from alienating, registering, selling and or in any manner whatsoever interfering with all that land known as the Ndoto adjudication section, Samburu.
 - b. An order permanently restraining and prohibiting the respondents by themselves, their employees, servants or agents or anybody acting under then from registering the land known as Ndoto adjudication section in the name of Lessepen Group Ranch.
 - c. An order cancelling the entire adjudication process in Ndoto adjudication section Samburu County.
 - d. An order for a fresh adjudication process at Ndoto adjudication section incorporating and with the involvement of residents of Lkotikal sub-location Samburu County.
 - e. An order for registration of land within Lkotikal sub-location Ndoto adjudication section in the name of individual residents of Lkotikal sub-location and or in the name of the group ranch of their choice.
 - f. An order restraining the 10th respondent Kenya Electricity Transmission Co. Ltd, its servants or agents from disbursing compensation due to land owners of Ndoto adjudication section, Samburu County to Lessepen Group Ranch.
 - g. An order directing the 10th respondent M/S Kenya Electricity Transmission Company Ltd to disburse compensation due to land owners of Lkotikal sub-location to individual households within Lkotikal sub-location and or to a group ranch of their choice.
 - h. Such other or further orders as this court may deem fit and expedient to grant.
 - i. Costs of this petition.



2. The petitioners pleaded that they were residents of Lkotikal sub-location, Nyiro Ward in Samburu County and that they had filed the petition on behalf of about 300 households resident in the area. It was pleaded that in 1978 the Land Adjudication Officer of the then Samburu District declared Ndoto Location as an adjudication Section under Section 5 of the *Land Adjudication Act* (Cap. 284) (the LAA). It was pleaded that the said adjudication section comprised 9 sub-locations, including Lkotikal sub-location.
3. It was pleaded that the residents of Lkotikal had been left out of the land adjudication process which was being undertaken secretly to the advantage of the residents of the sub-locations within Ndoto Ward but to the disadvantage of the petitioners whose sub-location belonged to Nyiro Ward. It was further contended that the respondents (save the 10th Respondent) had conspired to annex Lkotikal sub-location and dispossess the residents of their land and make it part of Ndoto Ward which had already registered a Lessepen Group Ranch (the 8th Respondent) as the holder of the land. The petitioners further pleaded that the 9th respondent who was the Member of County Assembly for Ndoto Ward and the Chairman of the Land Committee of the County Assembly of Samburu was the ring leader of the nefarious scheme to dispossess the residents of Lkotikal of their ancestral land.
4. The petitioners also pleaded that the 10th respondent had embarked on construction of a power transmission line traversing the Ndoto adjudication section as a result of which they intended to pay the entire compensation money to the 8th respondent to the exclusion of the residents of Lkotikal sub-location who were also entitled to part of the compensation.

B. 1st – 7th Respondents’ Responses

5. The Hon. Attorney General entered appearance for the 1st – 7th respondents on 24.06.2016 and filed a replying affidavit sworn by the District Land Adjudication and Settlement Officer, Edward Odhiambo Okoth on 15.05.2019. It was contended that the process of land adjudication in Ndoto adjudication section was undertaken openly, fairly and in accordance with the applicable law. It was asserted that the boundaries of the adjudication section were altered later on to exclude Lkotikal sub-location from Ndoto adjudication section. It was also stated that the land in Lkotikal sub-location was still unregistered community land which had not been adjudicated and that the land held by the 8th respondent was registered community land. The 1st – 7th respondents opposed the cancellation or nullification of the adjudication process for Ndoto adjudication section on the basis that it was undertaken in accordance with the law and concluded a long time ago.

C. 8th Respondent’s Response

6. The 8th respondent filed a replying affidavit sworn by David Lempesie on 14.06.2018 in opposition to the petition. It was pleaded that the petition was incompetent and an abuse of the court process since it did not raise any constitutional issues. It was contended that the petitioners were not members of Ndoto Adjudication Section in Ndoto Ward since they were members of Nyiro Ward whose land had never been adjudicated. It was contended that Nyiro Ward and Ndoto adjudication section were separate and district regions separated by Baringo/South Horr Road.
7. The 8th respondent pleaded that Ndoto adjudication section was lawfully established vide a notice dated 04.04.1978 and that the petitioners had failed to follow the procedures and avenues established under the LAA for the purpose of resolving any issues they may have had with respect to the adjudication process. It was contended that the 28 km power transmission line entirely traversed Ndoto Adjudication section and that the entire compensation offered by the 10th respondent ought to be paid to it for distribution amongst its 564 members. It was further contended that the parties had co-existed



peacefully for many years until the issue of payment of compensation by the 10th respondent arose hence the petitioners were not sincere in filing the petition.

8. It was also pleaded that in 1996 the government of Kenya created Lkotikal sub-location to streamline matters of administration which covered parts of Nyiro Ward and Ndoto Adjudication Section but that did not change the boundaries of Ndoto Adjudication Section as notified in 1978. It was stated that members of Ndoto adjudication section who fell within the newly created sub-location continued being members of Lessepen Group Ranch and their names were retained in the register.

D. 9th Respondent's Response

9. There is no indication of the 9th respondent having entered appearance or having filed an answer to the petition. The record shows that the petition was heard in his absence.

E. 10th Respondent's Response

10. The 10th respondent filed a replying affidavit sworn by Stephen W. Munzyu on 30.08.2016. It pleaded that it was simply holding the compensation amount of Kshs. 25,462,500/= as a stakeholder awaiting the court's determination on who was entitled to be paid the money. It was pleaded that the power transmission line it was constructing was about 21.5 km and that it passed through Lkotikal sub-location as well. It was pleaded that prior to commencement of construction works the 10th respondent had reached an agreement with the 8th respondent and the petitioners on payment of Kshs. 25,642,500/= as negotiated with the 8th respondent but the payment could not be made since the petitioners afterward changed their mind on the location of the boundary between their land and the 8th respondent's land.

F. Petitioners' Further and Supplementary Affidavits

11. The petitioners filed a further affidavit sworn by Richard Lemarkat on 10.12.2018 in reply to the 8th respondent's replying affidavit. The petitioners disputed the location of the boundaries between Nyiro Ward and Ndoto Adjudication Section. It was contended that when Lkotikal sub-location was annexed into Ndoto Adjudication Section vide the adjudication notice of 04.04.1978 there were complaints from members of Nyiro Ward of which Lkotikal was part of in consequence whereof the boundaries were amended vide the notice of 14.09.1978. It was contended that the power transmission line actually traversed the petitioners' Lkotikal sub-location.
12. The petitioners also filed a further supplementary affidavit sworn by Lengaul Jacob Lekurkan on 10.12.2018 in which he stated that he was a former chief of Nyiro Location and that he was aware of attempts to annex Lkotikal sub-location as part of Ndoto Location and Ndoto adjudication section. The petitioners also filed a supplementary affidavit sworn by Richard Lemarkat on 14.11.2019 annexing a copy of their private surveyor's report indicating that the 10th respondent's power transmission line traversed their sub-location.

G. Hearing of the Petition

13. It would appear from the record that the parties agreed to canvass the petition through oral and documentary evidence. The petitioners called 3 witnesses at the trial hereof whereas the 1st – 7th respondents called one witness. The record shows that the 8th respondent called one witness and closed its case whereas the 9th and 10th did not call any evidence.



H. Directions on Submissions

14. Upon conclusion of the trial, the parties were granted timelines within which to file and exchange their respective submissions. The record shows that the petitioners' submissions were filed on 25.07.2023 whereas the 8th respondent's submissions were filed on 18.08.2023. The submissions of the rest of the parties were not on record by the time of preparation of the judgment.

I. Issues for Determination

15. The court has noted that the parties did not file an agreed statement of issues for determination. As a result, the court shall frame the issues from the pleadings, affidavits and documents on record. The court is of the opinion that the following are the key issues which arise for determination in the petition:
- a. Whether the petitioners and the people they represent were wrongfully excluded from the process of land adjudication.
 - b. Whether the land adjudication process in Ndoto adjudication section should be cancelled and repeated.
 - c. Whether the petitioners are entitled to compensation for construction the 10th respondent's power transmission line.
 - d. Whether the petitioners are entitled to the reliefs sought in the petition.
 - e. Who shall bear costs of the petition.

J. Analysis and Determination

a. Whether the petitioners and the people they represent were wrongfully excluded from the process of land adjudication

16. The court has considered the pleadings, evidence and submissions on record on this issue. It was the petitioners' case that as members of Lkotikal sub-location they were wrongfully excluded from the land adjudication process in which their ancestral land was given to Lessepen Group Ranch. It was contended that the adjudication process was shrouded in secrecy and that they did not know about the grabbing of their land until the recent past. It was contended that residents of Ndoto Ward had annexed their Lkotikal sub-location with a view to having it registered in the name of Lessepen Group Ranch with the consequence that they shall be disposed of their ancestral land forever.
17. The petitioners further contended that owing to the secrecy of the adjudication process, they were unable to access any adjudication records for Ndoto adjudication section to enable them to lodge their claims and objections with a view to securing their ancestral land. The petitioners contended that as a consequence, they could not pursue the avenues and remedies provided for under the LAA hence the reason they filed the instant petition.
18. The evidence of the 1st – 8th respondents was to the effect that the Land adjudication process for Ndoto adjudication section was above board and that it was carried out in accordance with the provisions of the LAA. It was pointed out that upon declaration of Ndoto adjudication section vide a notice dated 04.04.1978 there were complaints from residents of Nyiro Ward of which Lkotikal sub-location was part as a result of which the government altered the boundaries of Ndoto adjudication section vide a notice dated 14.09.1978. According to the land adjudication officer who testified at the trial as



DW2 that the purpose of notice dated 14.09.1978 was to exclude Lkotikal sub-location from Ndoto adjudication section.

19. The record shows that during the examination in-chief of PW1, Richard Lemarkat, he stated thus:

“The letter of 14.09.1978 was prepared at the time when land known as Ndoto ‘A’ adjudication when (sic) the boundary was marked. The elders objected to the adjudication boundary of that section. The boundary was adjusted but not according to the desire of the community at the time. The letter of 14.09.1978 was to adjust the anomaly but it was not as per the desire of Lkotikal community...”

20. The record further shows that during cross-examination PW1 stated as follows at page 25 of the typed proceedings:

“The elders filed an objection because the boundary was supposed to follow Baragwel Lagga Eastwards to Baragoi Lagga which are natural features. But during the objection by the elders, the boundaries had not been correctly marked to pass that area. They used a different area as per the adjustment letter which has not served our land issue. The objection was that our land which is Nyiro land was included in Ndoro ‘A’ adjudication section...”

21. It is evident from the material on record and upon the petitioners’ admission that they became aware of the declaration and establishment of Ndoto adjudication section way back in 1978. The evidence on record shows that their elders objected to the boundaries of the adjudication section because they felt that part of their land in Lkotikal had been annexed into Ndoto adjudication section. The material on record further shows that the government adjusted the boundaries by excluding certain areas which were considered to belong to the residents of Lkotikal. The petitioners conceded that the adjustment was made but stated they were not satisfied because they considered the new boundaries as still inadequate to take care of their land issue.

22. The court is fortified in this view by the petitioners’ letter dated 10.04.2016 to the Deputy County Commissioner - Samburu North Sub-County, Assistant Sub-County Commissioner - Nyiro Division among others on the land adjudication dispute between Lkotikal community and Lessepen Group Ranch. In the said letter, it was claimed that the land adjudication officer did not follow due process and did not take “into account the voices and views of Lkotikal community” during the land adjudication process. It was not alleged that the petitioners and the community they represented were not aware of the adjudication process. It was not alleged that the adjudication process was shrouded in secrecy. The substantial complaint was that their views were ignored and the adjudication process was a sham and a mockery of justice.

b. Whether the land adjudication process in Ndoto adjudication section should be cancelled and repeated

23. The court has considered the material and submissions on record on this issue. The petitioners contended that their community or ancestral land was irregularly annexed and made part of Ndoto adjudication section and that they were denied an opportunity to participate in the process of adjudication due to the secrecy with which it was conducted and concluded. It was further contended that because they were kept in the dark during the adjudication process they were unable to utilize the remedial and dispute resolution mechanisms provided for under the LAA within the stipulated timelines or at all. They, therefore, wanted the court to come to their rescue because they were in danger of being dispossessed of their land and being rendered destitute.



24. The respondents, on the other hand, disputed the petitioners' claim and submitted that Ndoto adjudication section was lawfully and regularly established in accordance with the law and that the process of adjudication was conducted over a long period of time in accordance with the LAA. It was contended that the petitioners were fully aware of the process and that they even caused the initial boundaries of Ndoto adjudication section to be altered and adjusted so as to exclude Lkotikal sub-location from the adjudication section. The respondents further contended that it was the duty of the petitioners to pursue their claims during the adjudication process within the mechanisms and institutions established under the LAA. It was the respondents' view that if the petitioners were not satisfied with the boundary adjustment of 14.09.1978 it was their duty to pursue appellate mechanism provided for under the LAA to its logical conclusion.
25. The court has already found and held that the petitioners' community was aware of the establishment of Ndoto adjudication section and of the adjudication process which followed. The court is unable to find any evidence on record to support the petitioners' contention that the process was shrouded in secrecy and that they were not allowed to fairly participate in the process. The material on record shows that they objected to the boundaries of the adjudication section contained in the first notice of declaration dated 04.04.1978. The evidence of PW1 at the trial was to the effect that the adjustment of boundaries vide the notice dated 28.09.1978 did not fully or satisfactorily take care of their interests.
26. The court accepts the evidence of the land adjudication officer (DW2) to the effect that the purpose of the adjustment notice of 28.09.1978 was to exclude Lkotikal Sub-location from Ndoto adjudication section although the notice did not specifically mention Lkotikal sub-location. This is because the petitioners were in agreement that the land in Lkotikal sub-location was still un-adjudicated and unregistered community land, whereas the land in Ndoto adjudication section was adjudicated. The court is of the opinion that if Lkotikal Sub-location was still part of Ndoto adjudication section then there would be no reason why the land therein would remain un-adjudicated whereas the rest of Ndoto was adjudicated.
27. If it was the petitioners' claim that even upon the exclusion of Lkotikal sub-location from Ndoto adjudication section a portion of their ancestral land still remained in Ndoto, then that is an issue which should have been resolved during the land adjudication process in Ndoto adjudication section through the established mechanisms under the LAA. There is no evidence on record to show that the petitioners were prevented by any lawful reason or excuse from following the laid down dispute resolution mechanisms at the opportune time. The court is of the opinion that it should not usurp the powers and functions of the various institutions and offices established by parliament for determination of land rights and claims during the land adjudication process. The court has neither the resources nor the expertise to determine whether any portion of Lkotikal community land was annexed by Lessepen Group Ranch or erroneously left within Ndoto adjudication section after the adjustment of boundaries on 28.09.1978.
28. The court also finds no evidence of any illegality or unconstitutionality during the land adjudication process in Ndoto adjudication section. There was no evidence of violation of the LAA. There was no evidence of violation of the various articles of *the Constitution* which were cited by the petitioners. In the event, the court finds no legal basis for cancellation or nullification of the land adjudication process in Ndoto adjudication section and for a repetition of the same.



c. Whether the petitioners are entitled to compensation for construction of the 10th respondent's power transmission line

29. The petitioners submitted that they were entitled to compensation for loss of vegetation and limited loss of use of land as a result of construction of the 10th respondent's power transmission line traversing Lkotikal sub-location. They submitted that it would be unfair and unjust to have Lessepen Group Ranch receive the entire amount of compensation offered by the 10th respondent whereas their land was also affected. The petitioners relied upon a report by their private surveyor (PW2) which indicated that about 15 km of the power line traversed Lkotikal sub-location. The respondents objected to reliance upon the said report on the basis that the site visit was conducted and a report prepared without the involvement of the other parties or any government surveyor.
30. The court has noted that during cross-examination by the Attorney General's counsel, PW2 stated that he was solely engaged by the officials of Lkotikal community. The 10th respondent was not involved in the process. It was also conceded that he did not involve Lessepen Group Ranch even though the report indicated that the power transmission line traversed about 7.8 km of its land. PW2 further conceded that no government surveyor was involved in the site visit. When questioned by the court PW2 conceded that he was not made aware of any boundary disputes between Lkotikal Community and Lessepen Group Ranch.
31. The court is of the opinion that although the surveyor's report is technically admissible in evidence, it does not have much probative value given the nature of the dispute at hand. The petitioners have since 04.04.1978 disputed the boundaries of Ndoto adjudication section. They were not satisfied with the boundary adjustment of 28.09.1978. They have always believed that part of their land is still held in Ndoto adjudication section. The existence of the boundary dispute was never disclosed to the surveyor hence he relied on the information supplied by the petitioners on the boundaries of Lkotikal land.
32. The material on record shows that the creation of Lkotikal sub-location in 1996 compounded the boundary dispute between the petitioners' community and the 8th respondent. It would appear that although Lkotikal was originally in Nyiro Ward, the new sub-location traversed both Nyiro and Ndoto Wards. That could be the reason why the petitioners who hail from Nyiro believed that part of their community land falls within Ndoto adjudication section in Ndoto Ward. The court, however, agrees with the 8th respondent's submissions that the creation of the sub-location in 1996 or thereabouts did not, and could not, alter the boundaries of Ndoto adjudication section as declared on 28.09.1978.
33. Although the 10th respondent did not testify at the trial, it filed a replying affidavit sworn by Stephen W. Munzyu on 30.08.2016. It is evident from the affidavit that the 10th respondent consulted both Lessepen and the petitioners' community during the process of wayleave acquisition and computation of the compensation payable. It is clear from the said affidavit that the 10th respondent's compensation package of Kshs. 25,462,500/= covered both Lessepen land and Lkotikal sub-location. The power transmission line was said to be about 21.5 km in length affecting about 339.5 acres. The only critical omission in the affidavit is lack of segregation of the acreage which falls within Lkotikal land which remains un-adjudicated and unregistered and the acreage falling within Lessepen land which is adjudicated.
34. The court is satisfied on the basis of the 10th respondent's affidavit that the compensation package of Kshs. 25,462,500/= covers both the 8th respondent's adjudicated land and the petitioners' un-adjudicated Lkotikal sub-location. The court is further of the view that the residents of Lkotikal sub-location are entitled to compensation for their un-adjudicated and unregistered community land. However, their share of compensation should not be paid to the 3 petitioners directly for obvious



reasons. The 3 petitioners are not the only residents of Lkotikal entitled to be paid. The petitioners filed the petition on behalf of about 300 other households of Lkotikal who have not yet been registered as a community under the *Community Land Act*, 2016. The court is thus of the opinion that such compensation should be paid to the county government of Samburu to hold it on behalf of the Lkotikal community and transfer the same to the latter upon its official registration.

35. The final aspect of compensation is the question of apportionment of the money as between the petitioners and the 8th respondent. The court is inclined to agree with the petitioners that apportionment should be on a pro rata basis. The court has noted that whereas the 10th respondent offered to compensate for 339.5 acres at the rate of Kshs. 75,000/= per acre there is no reliable evidence to show what acreage out of that falls within Lkotikal sub-location (the un-adjudicated area) and what acreage falls within Lessepen which is adjudicated. The court is thus inclined to direct the 10th respondent to segregate the acreage on the basis of the official boundaries of Ndoto adjudication section held by the Director of Land Adjudication and Settlement, as amended vide the notice dated 28.09.1978. The 10th respondent shall undertake the said task within a period to be specified by the court and file the relevant report in court.

d. Whether the petitioners are entitled to the reliefs sought in the petition

36. The court has found and held that the petitioners have failed to prove their allegation that they were wrongfully excluded from the land adjudication process. The court has found no evidence that the process was undertaken secretly or in violation of the LAA or *the Constitution* of Kenya. The court has also found that the petitioners have not demonstrated any legal or factual justification for cancellation or nullification of the entire adjudication process and for a repetition of the same.
37. The court has also found and held that the petitioners' Lkotikal community is entitled to a share of the compensation for the construction of the power transmission line traversing their un-adjudicated community land. The court is, however, not inclined to order payment either to the petitioners or the individual residents of Lkotikal sub-location but shall direct that the money should be paid to the county government of Samburu to hold it on their behalf until the petitioners' community is duly registered in accordance with the provisions of the *Community Land Act*, 2016.
38. The court has noted a curious prayer in the petition which seeks an order for the registration of land within Lkotikal sub-location in the name of the individual residents of Lkotikal sub-location or the name of a group ranch of their choice. This is a curious prayer because it was never alleged or demonstrated at the trial that the concerned government agencies and entities had refused to facilitate the adjudication process with respect to Lkotikal sub-location. On the contrary, it was the evidence of PW1 at the trial that the residents of Lkotikal were the ones who had rejected the adjudication of their land. Be that as it may, the court cannot grant an order for such registration of either individuals or groups without any form of adjudication taking place. Moreover, since the enactment of the *Community Land Act*, all concerned parties are obligated to abide by the provisions of the said Act in dealing with unregistered community land. Consequently, the petitioners are obligated to abide by the provisions of the law in obtaining registration of the land they desire to own.
39. The court is thus of the opinion that save for the prayer on entitlement to compensation and any necessary consequential orders, the petitioners are not entitled to the rest of the prayers sought in the petition.



e. Who shall bear costs of the petition

40. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court is of the opinion that since the petitioners have partly succeeded and partly failed in their petition each party to the proceedings should bear its own costs.

K. Conclusion and Disposal Orders

41. The upshot of the foregoing is that the petitioners’ case succeeds on the issue of compensation only but fails in all other respects. As a result, the court makes the following orders for disposal of the petition:
- a. A declaration is hereby made that the residents of Lkotikal sub-location are entitled on a pro rata basis to a share of the compensation package of Kshs. 25,462,500/= tendered by the 10th respondent for the area of 339.5 acres affected by the power transmission line.
 - b. The 10th respondent is hereby directed to segregate the said area of 339.5 acres by indicating the area falling within the 8th respondent’s adjudicated area in Ndoto adjudication section using the official boundaries of Ndoto adjudication section held by the Director of Land Adjudication & Settlement as amended vide the notice dated 28.09.1978. The latter is hereby directed to co-operate and supply the necessary maps, records and documents to the 10th respondent for that purpose.
 - c. The 10th respondent shall file the necessary report in court within 45 days from the date hereof and serve a copy thereof upon all advocates who participated in the proceedings.
 - d. The matter shall be mentioned on 17.01.2024 for the court to undertake the apportionment on a pro rata basis.
 - e. The rest of the prayers sought in the petition are hereby declined.
 - f. Each party shall bear its own costs of the proceedings.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 16TH DAY OF NOVEMBER, 2023.

In the presence of:

Mr. Murimi for the Petitioners

N/A for the Attorney General for the 1st – 7th Respondents

Mr. Gakenia Gicheru holding brief for Mr. Waichungo for the 8th Respondent

N/A for the 9th Respondent

N/A for the 10th Respondent

C/A - Carol

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Y. M. ANGIMA



JUDGE

