



**Nathoo & another v National Land Commission & 2 others; Kenya
Forest Service (Interested Party) (Environment & Land Petition
91 of 2018) [2023] KEELC 22417 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22417 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION 91 OF 2018

AA OMOLLO, J

DECEMBER 14, 2023

**IN THE MATTER OF: ENFORCEMENT OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 22(1) AND (4), 23 AND 165 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 1, 2, 22, 27, 40, 47 AND 50(1) OF
THE CONSTITUTION**

AND

**IN THE MATTER OF SECTION 14 OF THE NATIONAL LAND COMMISSION
ACT, 2012 AND 68(C)(V) OF THE CONSTITUTION**

AND

**SECTIONS 6 AND 11 OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF
2015**

BETWEEN

TAJDIN ALIBHAI NATHOO 1ST PETITIONER

NOORDIN ALIBHAI NATHOO 2ND PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

CHAIRMAN OF NATIONAL LAND COMMISSION 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT



AND

KENYA FOREST SERVICE INTERESTED PARTY

JUDGMENT

1. The Petitioners filed a Petition dated the 24th December 2018 and amended on 20th August, 2019. The Petitioners pray for the following orders:
 - a. A Declaration that the revocation of the titles to the suit property is illegal and in contravention of fundamental rights and freedoms of the individual under Articles 27, 28, 40 and 47 of the Constitution and Section 14(7) of the National Land Commission Act, 2012.
 - b. A Declaration that the Petitioner are the legal and rightful owners and hold indefeasible titles to the suit property until the contrary is ordered by the High Court.
 - c. An order of mandamus to compel the Respondents to rescind and reverse the order revoking titles to the suit property namely Titles Number L.R. 21326/1, 21326/2, 21326/3, 21326/4, 21326/5, 21327 and 21328 as published in Vol CXIX-No. 97 Nairobi of 17th July, 2017.
 - d. A declaration that there be restitution of the Petitioners' property and titles to the suit property.
 - e. In the alternative to prayer 2, 3 and 4 above, an order compelling the Respondents to compensate the Petitioners the sum of 8,500,000,000/- being the current market value of the Petitioners property whose titles have been unlawfully and irregularly revoked.
 - f. Compensation for damages to the Petitioners as a result of infringement of their fundamental rights and freedoms.
 - g. Costs of the Petition.
 - h. Any other or orders.
2. The Petition is supported by the facts and grounds set out on the face of it and is further supported by an Affidavit sworn on the same date by one TAJDIN ALIBHAI NATHOO, the 1st Petitioner herein. He deposed that the Petitioners purchased the suit properties from one Umakant Maneklal Khamar, having done due diligence with the 3rd Respondent and being assured that he was the legitimate owner. The Petitioners further did a background search with the Ministry of Environment and Natural Resources, who through the Forest Department Headquarters communicated on 3rd September, 1997 that the property was not within the forest area and it could be developed. He annexed a copy of the said letter as TAN-2.
3. He deposed that consequently the Petitioners took and enjoyed possession and ownership of the properties and until 16th September, 2015 when a notice of a complaint by the Kenya Forest Service (the Interested Party herein) was placed in the Daily Nation Newspaper. A similar Notice was placed in the same paper of 17th November, 2015 inviting all affected parties to a hearing of the complaint on 29th September, 2015. The Petitioners stated that they attended the hearing even though they were unable to obtain particulars of the complaint from the 1st Respondent, who advised them to await copies from the Kenya Forest Service.



4. He averred that after waiting a whole day, they were informed in the evening that the hearing would not proceed due to failure by Interested Party to show up. The 1st Respondent's Vice Chairman indicated that the Petitioners would receive communication for another hearing date, which communication never came. He deposed further that they wrote 3 letters to the Interested Party having been advised to try and settle the dispute with them, but their letters went unanswered, only for the Petitioners to be informed by their Counsel of the Gazette Notice issued by the 2nd Respondent directing the 3rd Respondent to revoke the Petitioners titles in the suit properties.
5. The 1st Petitioner deposes that the 2nd Respondent purported to rely on Section 14 of the [National Land Commission Act, 2012](#) in making its recommendation, yet under the said Section 14, they had a right to be heard by the Commission and to present their documents for review before the making of the decision but they were not afforded such opportunity. He stated that if the 1st Respondent had afforded them a hearing, it would have arrived at a different finding, as the law does not allow it to cancel the title of a bonafide Purchaser without notice, which the Petitioners are, hence their title is indefeasible and not for cancellation.
6. The Petitioners pleaded that Section 14 only allows the Commission to cancel titles that were acquired unlawfully, and in doing so, it is to be guided by the principles set out under Articles 47 of [the Constitution](#). It is the Petitioners' case that the 1st Respondent's decision as communicated by the 2nd Respondent to the 3rd Respondent lacked the principles set out under Article 47 especially lawfulness, reasonability and procedural fairness. The 1st Petitioner averred that if the decision is allowed to stand, it would be financially detrimental to them as the properties, which are a lifetime investment, measure 17 acres and have an estimated value of KShs. 1.19 Billion. It is his position that if the Respondents wanted to acquire the land, they could have compensated the Petitioners for the said value.
7. The 1st Petitioner deposes that they had a legitimate expectation that the 1st Respondent would follow procedures laid down by the law and act in accordance with rules of natural justice to ensure fairness. That one such rule is not to condemn a man unheard; and that the Petitioners deserved a fair hearing, equal treatment without bias and discrimination and any decision to the contrary is invalid. He also deposed that unless this court intervenes, the Petitioners' rights to acquire and own property, right to a fair and just hearing before an impartial/independent tribunal stand violated. Further that the Petitioners' Constitutional rights have and continue to be violated and they stand to lose their properties in an un-procedural and inhumane procedure.

Interested Party's Affidavit

8. The 2nd Respondent in reply to the petition filed an affidavit sworn by Evans Kegonde on 25th March 2022, who deposed that the suit land is public land within Karura Forest which is the upper catchment area of rivers such as Rui Ruaka, Karura, Getathuru and Thirirka. He stated that suit property forms part of the gazetted Karura forest, therefore, the Petitioners clearly obtained the fraudulent registration of the suit property in its entirety.
9. Mr Kegonde averred that Karura forest was declared as a forest reserve vide proclamation no. 44 of 30th April 1932 with the forest area covering approximately 1062.7 Hectares. That on 29th May 1964, Karura forest was declared as central forest vide Legal Notice Number 174. It is their case that the government had earlier exercised a portion of 18.62 hectares thereto for the headquarters of Survey of Kenya vide Legal Notice No. 289 of 1956 leaving Karura Forest with 1044.08 hectares. In addition, on or around 1989, the Government of Kenya through the ministry of Natural Resources required about 20 acres of land to facilitate USAID to construct its head office and the process of delineation was initiated.



10. That the Director of forestry demarcated approximately 20.03 acres for the purpose of degazettement for which the ministry followed the due process. However, the USAID withdrew its request and hence the process of alienation became unnecessary and was not completed. Thus, the suit property remains the central forest herein referred as Karura Forest as per the legal notice 174 of 29th May, 1964. He added that no gazette notice was ever effected to delineate the Karura Forest for allocation to any person.
11. It is asserted on behalf of the Interested Party that the suit properties that the Petitioners claim were all acquired, obtained and registered in disregard of the law, procedure and authority. Consequently the title rightfully remains within Karura Forest and the Petitioners' titles stand revoked. For the above reason, the suit properties were cited in the Ndung'u Report. He also averred that the suit properties are the property of the government and were not available for allocation.
12. Mr. Kegonde also deposed that the 1st Respondent was mandated under Article 68 (c)(v) and Section 14 of the National Land Commission Act to review dispositions in land and make a ruling as to the legality or otherwise thereof. He asserted that the Petitioners ought to have filed Judicial Review proceedings to quash the 1st Respondent's decision, yet they opted for this petition as they were caught up with limitation of actions and thus the Petition ought to be dismissed with costs.

Petitioners' Supplementary Affidavit

13. The 1st Petitioner swore a Supplementary Affidavit on 1st December, 2022 in response to the Interested Party's Affidavit by reiterating the contents of the Supporting Affidavit. He then stated that the suit properties are not part of Karura Forest as alleged by the Interested Party and relied on the letter annexed to his previous Affidavit marked as TAN-2. The Petitioners aver that Karura Forest is fenced and the suit properties fall outside the fenced area. He stated that the gravamen of their Amended Petition is the disregard of Section 14, the 1st Respondent revoked their titles without affording them a hearing.
14. He deposed further that despite claims by the Respondents and Interested party that the land is a gazetted forest, the Petitioners had paid rates and land rent to the Nairobi City County and Ministry of Lands respectively and annexed the receipts thereto. That the Respondents have not challenged the Petitioners' assertion that there was no procedural compliance in the revocation of the titles which action thus violated their constitutional rights. He contended that the reason they did not file Judicial review proceedings is because the issues raised in the Petitioners' pleadings are purely constitutional and fall within the jurisdiction of the court and the petition is properly before this court. He urged the court to grant the orders sought.

Submissions

15. On 5th July, 2021, the court gave directions that the Petition would be heard by way of written submissions and parties were directed to file and serve their submissions.
16. The Petitioners' submissions are dated 1st December 2022. On the contention that the Petitioners ought to have filed Judicial Review proceedings seemed to challenge the court's jurisdiction to hear the matter, Counsel argued that jurisdiction flows from the constitution as held by the Supreme Court in Samuel Kamau Macharia & Ano. vs Kenya Commercial bank Limited & 2 Others (2012) eKLR. Article 162(2)(b) of the Constitution created the Environment and land Court, while under Section 162(3) parliament was to determine its jurisdiction, pursuant to which it enacted the Environment and Land Court Act. That Section 13(7) thereof outlines the reliefs that the court has power to grant which includes prerogative orders.



17. Counsel relied on Daniel N. Mugendi vs Kenyatta University & 3 Other (2013) eKLR, which held that the ELC when dealing with disputes of environment and land could decide claims of breaches of fundamental rights. Counsel further cited Meshack Moturi Siro suing through Janet Siro holder of Power of Attorney No. 2954 vs National Land Commission & 2 Others (2021) eKLR, which held similarly. He submitted that the choice of a petition therefore was not intended to avoid limitation of actions. He further submitted that where a party seeks relief under Section 13(7) of the *Environment and Land Court Act*, they are not bound by the timelines imposed in judicial review proceedings (Penina Nduta Karongo (suing as the legal representative of the estate of Eunice Wanjiru Munga) vs Samuel Mwaura Felix Kariuki & 3 Others (2017) eKLR).
18. As to whether the Petitioners' rights were infringed, Counsel submitted that the fact that the title over the suit properties was cancelled arbitrarily without the Petitioners being heard remains uncontroverted. He argued that the decision to revoke the Petitioners title was an administrative action subject to Article 47 of *the Constitution* and Section 14(3) of the *National Land Commission Act*. Further, that as was held in Robert Mutiso Lelli and Cabin Crew Investments Ltd vs NLC & 3 Others (2017) eKLR and Tinek limited & Ano. vs NLC & 4 Others; Khalif Kurie Heris Engen & 2 Others (Interested Parties) (2020) eKLR once the Petitioners claimed they were not afforded a hearing, the burden shifted to the Respondents to prove that due process was followed. It was submitted that although the Petitioners had adduced evidence that they pursued the Respondents to have the hearing rescheduled, the Respondents had failed to discharge their burden of proof.
19. Counsel also submitted that the matters raised in the Interested Party's Replying Affidavit ought to be brought up at the hearing before the NLC. He submitted that if the Petitioners had been granted a hearing, the NLC would have considered their evidence. That no man should be condemned unheard, and the court in Msagha vs Chief Justice & 7 Others HCMCA No. 1062 of 2004 (2006)2 KLR 553, held that it matters not that the same decision would have been arrived at if the procedure was followed. He further argued that courts have not hesitated to quash a decision of the NLC purportedly made under Section 14 without adhering to rules of natural justice, and relied on Ngoingwa Company Limited vs NLC & 2 Others (2021) eKLR and Aaron Kitura Matti & 2 Others vs NLC & 2 Others (2021) eKLR.
20. Counsel concluded by submitting that the Petitioners had demonstrated that the Respondents' decision contained in Gazette Notice of 17th July, 2017 revoking the titles was made without compliance with *the constitution* and the law, is ultra vires and ought not to be allowed to stand (Sceneries Limited vs NLC (2017) eKLR). That upon quashing the decision, the court do find that the Petitioners remain the registered owners of the suit properties (Aaron Kitura Matti & 2 Others vs NLC & 2 Others (2021) eKLR). He urged the court to allow the Amended Petition.

3rd Respondent and Interested Party's Submissions

21. The Attorney General filed submissions on behalf of the 3rd Respondent and the Interested Party dated 6th February, 2023. He submitted that the suit properties fall within the Karura Forest which was declared a forest reserve vide proclamation No. 44 of 30th April, 1932 and later gazetted as central forest on 29th May, 1964 vide legal notice number 174 which to date has not been de-gazetted. They argue that the suit properties were alienated for USAID hence any alleged acquisition is fraudulent as it was not available for alienation or allocation to the alleged previous registered owners who are alleged to have sold to the Petitioners herein, yet they are not parties to this suit. That the suit properties were mentioned at page 675 of the Ndungu Report, the suit land was found to have been unlawfully acquired and the said report has not been quashed.



22. The A-G submitted further that the NLC is a constitutional commission with power under Section 14 of the [National Land Commission Act](#) to review grants and dispositions of public land (as defined under Article 62 (1)(a)(b) and (g) of [the Constitution](#)), to ensure their propriety and legality. Counsel laid out the process by which the Commission receives and handles complaints on land dispositions. He continued that the suit properties are public land that was not legally acquired as their acquisition offends Article 62(4) of [the Constitution](#). He relied on *Norbixin Kenya Limited vs The Hon Attorney General NRB Civil Suit No 1814/20002*.
23. It was submitted that the Petitioners sought the declaration of the constitutional violations, which is not proved under Article 162 of [the Constitution](#), to evade the detailed process that their claims would be subjected to by the ELC on the process of acquisition of the suit properties. That however, the petition herein would not settle the detailed dispute emanating from the Respondent's affidavit. Since the suit properties were once public land, the 1st Respondent had jurisdiction to review the grant guided by the provisions of Articles 67, 68 (c) (v) of [the Constitution](#) and Section 14 of the Act. Counsel submitted that the 2nd Respondent had discharged its mandate as provided under the said Section 14 of the NLC Act and Article 68 of [the Constitution](#).
24. Counsel submitted that the right to own property under Article 40(3) of [the Constitution](#) is a qualified under article 40(6) rather than an exclusive right, which provides that the right did not extend to any property that has been found to have been unlawfully acquired. The right was further qualified under Section 26 of the [Land Registration Act](#). He argued that the Respondents had demonstrated that the suit property is part of Karura Forest which has never been de-gazetted for any alienation, and neither was procedure followed in acquisition of the said gazetted land. The Petitioners therefore could not claim to have fool proof title and ownership.
25. Counsel relied on the case of *Adan Abdirahani Hassan & 2 others v. the Registrar of Titles, Ministry of Lands & 2 others* [2013] eKLR and *Chemey Investment Limited v Attorney General & 2 others* [2018] eKLR, arguing that the effect of these decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities, or an avenue for unjust enrichment at the expense of the public. He submitted that the Petitioners' title is void ab initio since the suit property was not available for alienation, thus the Petitioners are not entitled to any rights.
26. He argued that under Section 25 (1) as read with Section 28 of the [Land Registration Act](#) the rights of a proprietor are subject to such interests as listed in the Act that do not require noting on the register. Section 28 provides for overriding interests on land and at paragraph (e) lists the rights of compulsory acquisition as one such overriding interest. He relied on *Cycad Properties Limited vs The Attorney General & Others*, H.C Petition No. 70 of 2010 where it was held in part that:
- “Public lands acquired through compulsory acquisition are amongst the overriding interests stipulated under section 30 of the Registered [Land Act](#) which qualify the indefeasibility of title acquired under the Act as provided in section 28(b) above. The petitioner's titles, to the extent that they comprise land which forms part of the gazetted Karura Forest are defeasible to that extent.”
27. Counsel added that the suit property had initially been gazetted as forest reserve and has never been de-gazetted, and that the previous owners of the suit property never applied for land to be alienated to them. Further, that courts have held that parcels of land that have been compulsorily acquired by the Government for public purpose must be used for the purpose for which they were acquired. Such parcels should not be allocated to private individuals for commercial purposes, and equally the principle applies to any land that is planned and set aside for use as a public utility. He relied on



Republic vs Registrar of Lands in Kilifi ex-parte Daniel Ricci, Malindi HC JR No. 6 of 2013 [2013] eKLR.

28. Counsel concluded by arguing that the Petitioners held an illegal title and they were therefore not entitled to any relief sought. In addition, they had not demonstrated how they had suffered damages as no evidence of loss or damages was exhibited before the court. He submitted that the constitutional provisions cited herein had not been proved. Counsel urged the court to be guided by the decision in *Norbixin Kenya Limited vs Attorney General* (supra), *Kenya National Highways Authority vs Shalien Masood Mughal*, Nrb Court of Appeal 327/1MOTS4 and find that the allocation of the suit property to the Plaintiff and subsequent issue of a title with respect to the property was irregular, unlawful and illegal. Counsel further relied on *York Worldwide Holdings Limited v Kenya Forest Service & another; Friends of Karura Community Forest Association (Interested Party)* [2019] eKLR where it was held that:-

“As can be seen in the foregoing case, courts abhor employment of self-help remedies. In this case however, I am not convinced that the 1st respondent used force or violence to take possession of the suit properties from the petitioner. I am not satisfied therefore that the Petitioners’ right to protection of the law and fair administrative action was violated by the 1st Respondent.”

Determination

29. The gist of the Petition is a on alleged violations of the Petitioners’ rights which had been breached in particular articles 40 and 47 of *the Constitution* and non-compliance of Section 14 (7) of the *National Land Commission Act* which resulted in the revocation of their titles. Article 47 (1) and (2) of *the Constitution* provides thus;
1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action
30. The Petitioner averred that they were not afforded an opportunity to present their case before the revocation of their titles vide gazette notices No. 6862 dated 17th July 2017. The 1st Respondent in the impugned gazette notice stated that they acted within the powers conferred upon it under article 68(c), (v) of *the Constitution* and section 14 of the *National Land Commission Act*. It is not disputed that there was an advertisement in the daily nation newspaper of 16th September 2015 made by the 1st Respondent to which the Petitioners reacted by attending a meeting that had been scheduled for 29th September 2015.
31. The Petitioner pleaded that on this date, no hearing took place for the reasons given by the 1st Respondent that the notice was too short and that the complainant had not provided the complaint in advance. The 1st Respondent has not filed any pleadings to controvert this position put forth by the Petitioner.
32. Subsequent to the publication of the proposed review of grants by the 1st Respondent, the 1st Respondent proceeded to revoke several titles including the suit properties vide gazette notice No. 6862 of 17th July 2017. The gazette read in part;

“... The Commission via public notices in the local dailies invited all interested parties to appear before it to inspect documents and make written or oral representations and



submissions. Subsequently, the Commission has made determinations in respect of the following grants/titles and orders revocation, regularization, upholding of the titles where applicable as is indicated or give further orders.

33. Article 47(2) entitled petitioner to be given written reasons for the action since their titles was going to be revoked. The written reasons in my view was given through the publication in the daily newspaper; and the reason given was that the suit titles comprised part of public land under Karura Forest. Further, section 14(1) of the [National Land Commission Act](#) gave the 1st Respondent powers on its own motion or upon a complaint by the National or County Government to review all grants or disposition of public land to establish their property or legality. What the 1st Respondent failed to do was afford the Petitioners an opportunity to defend themselves before taking the decision to revoke the suit titles. To this extent, 1st Respondent breached article 47 of [the Constitution](#).
34. Once this court finds that the Petitioners' right to be heard was breached, what orders can it give? The Petitioners invited this court under paragraph f of the reliefs sought to declare them as the rightful owners of the suit property and that their titles are indefeasible. It is my considered view that the Petitioners introduced a claim which required them to prove that the suit properties were not government land. The court cannot proceed to declare them as owners of the suit properties merely because they were not heard. Therefore, I proceed to consider whether or not the Petitioners have made a case to warrant the court issuing the declarations sought.
35. As submitted by Mr Motari the state counsel appearing for the 3rd Respondent and the Interested Party, that review of grants and disposition of public land entails the 1st Respondent analyzing the process under which public land was converted to private land and making findings of the legality of the grants in question. The Petitioners title to the suit properties was issued as a grant which means it traces its roots to have originated from public land which then made it an automatic candidate for review pursuant to section 14 of the NLC Act.

The Petitioners argued that had they been given opportunity to make representations to the 1st respondent, their titles would have not been cancelled as section 14(7) of [National Land Commission Act](#) protects them as bonafide purchasers. This brings the question on whether or not the Petitioners have fulfilled the criteria of a bonafide purchaser for value as set out in the Ugandan case of *Katendes Vs Harida & Co. Ltd* (2008) 2 EA 173; "For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- a. he holds a certificate of title;
 - b. he purchased the property in good faith;
 - c. he had no knowledge of the fraud;
 - d. he purchased for valuable consideration;
 - e. the vendors had apparent valid title;
 - f. he purchased without notice of any fraud;
 - g. he was not party to any fraud."
36. In expressing that they are bonafide purchasers the Petitioners pleaded that they did a search on the suit title before purchasing it. They have relied on a letter from the Forestry department that stated that the suit properties did not form part of the Karura forest. The Petitioners also stated that the forest is



fenced with their land falling outside the fence. One of the conditions under the principle of bonafide purchaser is proof of payment of valuable consideration and that the vendors had apparent valid title to pass. In this instant, the Petitioners have not annexed copies of the sale agreement exchanged between them and the previous owner or any document to show proof of payment of a consideration. The execution of a transfer form does not amount in my view to proof of payment of valuable consideration.

37. Further, the authenticity of the previous owner's title was key in this case because the 3rd Respondent and Interested Party has pleaded in their replying affidavit evidence that the suit land comprised part of the land that had been gazette as Karura Forest far back on 29th May 1964. A copy of the gazette notice was provided as evidence that the suit land fell within an area delineated as a public forest and therefore not available for re-allocation. The Petitioner relied on the letter dated 3rd September 1997 by the Chief Conservator of Forests addressed to Maneklal Khamar who is the person that sold land to the Petitioners. This letter was written post the date of registration of title in favour of the said Maneklal Khamar who was registered on 17th March 1996.
38. The Petitioners have not presented any letters they wrote to the relevant ministry or any equivalent to the Forestry Department. They also stated that the forest fence does not touch on their parcels of land. However, fencing is not one of the ways of proof of ownership. The 3rd Respondent and the Interested party have submitted that the suit titles were mentioned at page 465 of the Ndungu Land report of 2005 as having been fraudulently acquired so that the 1st Respondent was not the first government agency to fault the titles of the Petitioners.
39. The Petitioner have placed a lot of weight on the letter dated 3rd September 1997 from the Ministry of Environment and Natural Resources, Forestry Department in pleading their innocence. However, a letter cannot be used to revise a gazette notice and hence the said letter cannot breath life to an illegal process. The petitioners urged this court to rely on the decision in Aoron Kutura Matti & 2 others Vs National Land Commission and 2 others (2020) eKLR and declare the Petitioners as the legal and rightful owners of the suit property.
40. However, in the case of Dina Management Limited vs County Government of Mombasa and 5 Others (2023) eKLR the Supreme court of Kenya at paragraph 17 and 18 stated thus;
 17. There was no evidence produced of the letter to the Commissioner of Lands seeking allocation of the suit property by the first registered owner, and there was no PDP before the survey was done. The allocation of the suit property to the former President was irregular.
 18. Before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, the court could not, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It was not enough for a party to state that they had a lease or title to the property.
41. Like in the Dina Management case cited above, the suit properties were in the neighbourhood of a renowned forest within our nation that the Petitioners ought to have taken cognizance of while doing due diligence such as engaging a private surveyor to advise them and not rely on a letter that may have been intentionally acquired for purposes of disposing the land. Consequently, I reach a finding that the Petitioners failed to prove that a valid title was passed on to them.
42. Although the Petitioners pleaded that their rights under article 47 of *the Constitution* had been breached, there was no prayer made for reliefs under that order. Instead, the petitioners urged the court to grant them reliefs under article 40 on the rights to the suit property. It follows that there is no basis for this court to make the prayers for mandamus and or compensation sought in the reliefs.



43. In conclusion, I find no merit in the amended petition and proceed to dismiss it. Each party shall bear their respective costs.

DATED, SIGNED & DELIVERED NAIROBI THIS 14TH DAY OF DEC, 2023.

A. OMOLLO

JUDGE

