



Mwangi v Narok County Executive Committee & 2 others; Rono (Interested Party) (Environment & Land Petition 58 of 2018) [2023] KEELC 22095 (KLR) (11 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22095 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 58 OF 2018**

CG MBOGO, J

DECEMBER 11, 2023

**IN THE MATTER OF: ARTICLES 10, 19,22(1),23(3), 27,28,40,47
AND 258 (1) OF THE CONSTITUTION OF KENYA, 2010**

AND IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF OR THREAT TO RIGHTS AND FUNDAMENTAL FREEDOMS UNDER INTER ALIA, ARTICLES 40 AND 47 OF THE CONSTITUTION OF KENYA 2010, AND IN THE MATTER OF: PLOT NO. 548 BLOCK 11 IN NAROK TOWNSHIP AND IN THE MATTER OF: A LETTER DATED 16TH AUGUST 2018 FROM THE NAROK COUNTY EXECUTIVE COMMITTEE MEMBER FOR LANDS, URBAN DEVELOPMENT AND PHYSICAL PLANNING TO THE PETITIONER;

BETWEEN

ELIZABETH WANJA MWANGI PETITIONER

AND

NAROK COUNTY EXECUTIVE COMMITTEE 1ST RESPONDENT

**MEMBER FOR LANDS, URBAN DEVELOPMENT AND PHYSICAL
PLANNING 2ND RESPONDENT**

NAROK COUNTY GOVERNMENT 3RD RESPONDENT

AND

EDWARD KIPNGETICH RONO INTERESTED PARTY

JUDGMENT

1. The petitioner filed a petition dated 30th August, 2018 seeking the following reliefs: -

1. A declaration that the petitioner is the owner of Plot No. 548 Block 11 in Narok Township.



2. A declaration that the petitioner's rights under Articles 27,28, 40 and 47 of *the Constitution* have been violated or are threatened by the 1st Respondent's decision as contained in the letter dated 16th August, 2018.
 3. A declaration that the 1st Respondent's decisions and orders contained in the letter dated 16th August, 2018 are unconstitutional, illegal, null and void.
 4. An order for judicial review by way of certiorari to remove to this court and quash the decisions of the 1st respondent contained in the letter dated 16th August, 2018.
 5. An order for judicial review by way of prohibition to prohibit the respondents from taking any action adverse to the petitioner's rights to and interest in plot no. 548 Block 11 in Narok Township.
 6. Any other orders that the court may deem just and equitable to grant.
 7. Costs of the petition.
2. The gist of the petition is that the petitioner is the lawful owner of property known as plot no. 548 Block 11 in Narok Township having purchased the same from Letayian Dikirr and Kitipa S Julius for a sum of Kshs. 700,000/- through a sale agreement dated 12th November, 2012. The petitioner contended that prior to the purchase, she conducted due diligence and confirmed that the records at the then Town Council indicated that the sellers were the owners of the suit property. Further, that prior to the property being transferred to her, the proposed transfer was discussed and approved at a meeting held on 21st November, 2012 and since then, the 2nd respondent has recognized her as the lawful owner with the demand notices of payment of rates addressed to her.
 3. The petitioner contended that she has been paying rates including rates in the amount of Kshs. 3,105/- paid on 12th March, 2018 and has developed the land by constructing a building and connected both electricity and water. Further, she contended that on 16th August, 2018, her daughter received the letter from the 1st respondent informing the petitioner that one Edward Kiprotich, the interested party herein, was the rightful owner of the suit property and was required to vacate the premises within 14th days from the date thereof.
 4. The petitioner further stated that she visited the 1st respondent's office and it was confirmed that she is the lawful owner of the suit property and as such, she is apprehensive that the respondents may take adverse action against her.
 5. The petition has been anchored on Articles 10,19 (1) and (3), 20 (1), (2), 22 (1), 23(3),27, 40(1) and 258 of *the Constitution*. The petition further contended violation of Article 47(1) of *the Constitution* and Section 4(1), (3) and (4) of the Fair Administrative Actions Act.
 6. The petition was supported by the affidavit of the petitioner sworn on even date. The contents of the supporting affidavit are as contained in the petition as summarized above and there would be no need to rehash the same.
 7. The 1st respondent filed its replying affidavit in opposition to the petition which was sworn by Julius Sasai on 27th February, 2019 on its behalf and on behalf of the 2nd respondent. The 1st respondent deposed that the petition disclosed no justiciable constitutional issue or right infringed by the respondents and is a feigned cause of action seeking to vest proprietary rights through non-disclosure of material facts.



8. The 1st respondent further deposed that the 1st allotment of the suit property was to Hellen Murero (DW1) vide a letter of allotment dated 31st August, 2006 who later sold it to the interested party on or about 22nd January, 2009 and there has never been any other transfer of the suit property after the transfer to the interested party. Further, that the 2nd respondent's department of land initiated efforts to resolve the rising of plot disputes through its committee established for that purpose.
9. The 1st respondent further deposed that sometime in the year 2016, the interested party made a complaint to the committee of the 2nd respondent where the petitioner was notified to attend proceedings to make her case. It was its deposition that after hearing the parties and conducting investigations, the petitioner did not produce sufficient original documentation to make her case. Further, that the petitioner lodged an appeal which was heard and dismissed and the earlier decision upheld. In addition, the petitioner being aware of the proceedings, concealed material facts and failed to join the interested party in these proceedings. Further, that the data in the Local Authorities Integrated Financial Operations Management System which indicates payees for statutory dues such as rent and rents or evidence of payment are not conclusive proof of ownership of property.
10. On the 19th May, 2022 the interested party filed his replying affidavit sworn on 23rd April, 2020 in response to the petition. The interested party deposed that he conducted due diligence and confirmed that as at the year 2008, Hellen Murero (DW1) was first issued with an allotment letter dated 31st August, 2006 by way of compensation and thereafter, they entered into a sale agreement. Further, that they visited the ground and was able to confirm that the property was vacant and all the beacons were in place. That after the sale agreement, the suit property was transferred and registered in his names on 29th May, 2009 and a letter of allotment issued to him dated 25th January, 2012.
11. The interested party further deposed that when he took possession, the petitioner was not on the ground and that he has been paying rates to the 2nd respondent who has been issuing him with receipts. He further deposed that sometime in the year 2016, he reported a complaint with the Town Council (sic) which upon hearing the parties, found that he was the lawful owner. Further, that the petitioner lodged an appeal which was heard and the earlier decision was upheld vide the letter dated 21st June, 2017.
12. On 13th October, 2022, the petitioner filed a further affidavit in response thereto which was sworn on 12th October, 2022. The petitioner deposed that the interested party has never taken possession of the suit property as she has developed since she purchased it in the year 2012. Further, that on 20th December, 2021, the 2nd respondent was conducting a verification exercise where every property owner was required to stand on the property and no one went to stand on the suit property to claim ownership. The petitioner further deposed that in the year 2016, she attended a meeting at the 2nd respondent's office where the interested party was present and whereas she produced all the ownership documents, the interested party did not have any documents.
13. The petitioner's case proceeded for hearing on 17th October, 2022 when the petitioner while adopting her respective affidavits sworn on 30th August, 2018 and 12th October, 2022 as her evidence, testified that she bought the suit property from one Letaian Dikirr and Kilipa S Julius and that before purchasing the same, she carried out due diligence and went to view the plot which happened to be near her other property where she had built. She further testified that she asked to be supplied with a copy of allotment letter upon which she went to the county council offices in the company of the two sellers and she was shown that the suit property in question belonged to the 2 sellers. She produced a copy of the allotment letter dated 25th January, 2012 since the original allotment letter was retained by the County Council.



14. The petitioner further testified that together with the sellers, they proceeded to the office of Juliet Maritim (PW1) where they recorded a sale agreement dated 20th November, 2012. Thereafter, they took the sale agreement to the County Council after payment of the purchase price. Further, that the sellers signed the transfer forms and she was advised to await for the allotment letter once it was ready and she paid transfer fees of kshs. 15,000/-. The petitioner testified that on 20th December, 2012, she was summoned to pick her allotment letter bearing her name. That since then, she has been paying the rent to the 2nd respondent who has been issuing her with receipts for payment until 2021 when the County Government did not issue her with a receipt even though the system had her name. It was the petitioner's testimony that she has been in occupation of the plot since December, 2012 and she has built a perimeter wall with a metal gate. Further, that there are iron sheet houses, electricity and water from her borehole are connected to the suit property as can be seen from the photographs produced.
15. The petitioner further testified that in December, 2021 the County Government made an announcement to all plot owners that they would visit all the plots to verify ownership. That on the day their area was to be visited, she went and stood near suit property and the employees of the 2nd respondent went on 20th December, 2021 to verify her property and they stamped her allotment letter after confirming that what she had, tallied with their record. Further, that during this exercise, no one went to claim ownership as she was all alone.
16. The petitioner further testified that the 2nd respondent issued her with a letter dated 20th June, 2017 showing that she was the owner. Thereafter, she prepared development (building) plans, paid for the same and the 2nd respondent approved it. With regard to the interested party's affidavit, it was the petitioner's testimony that according to paragraphs 7 and 8 of the affidavit, the suit property was transferred to him on 29th March, 2008 and it would appear that he had 2 allotment letters. Further, that the date indicated which is 25th January, 2012 is the same date the sellers sold the suit property to her. Further, that the suit property does not belong to the interested party as he could have been issued with 2 allotment letters. Further, that he has not deposited building materials on the plot, that the electricity account is in her name and she has never seen the interested party on the said property.
17. The petitioner admitted that there was a time they were summoned by the 2nd respondent in the year 2016 where she was required to produce the allotment letter and the sellers of the plot and she only managed to locate one Dikirr. That at the county offices, she met a lady who introduced herself as Hellen and a person she identified as her husband whom she knows as employees of the County Council. Further, that she produced her documents and the Minister looked at them and asked Hellen and her husband to produce theirs but they retorted that they had none since they had returned their earlier documents and had not gone for the new ones. Further, that since they had none, they were told to go home.
18. On cross examination, the petitioner testified that she filed this petition because the 2nd respondent indicated that the suit property in question belongs to the interested party and she was not satisfied with the decision of the 2nd respondent. Further, that the only time the County Government heard her was in 2016. Further, that Dikirr was not at any time a councilor but he had an allotment letter which they surrendered and she was issued with another letter. Further, that the allotment issued to Dikirr is dated 25th January, 2012 and hers is dated 20th December, 2012. Further, that the transfer to her name was on 21st November, 2012.
19. The petitioner further testified that she did not appear before the County Government on the material day and she does not know if Dikirr and Julius appeared before the County Government. Further, that she did not retain a copy of the transfer form that the two signed in her favour but she has the



minutes for 21st November, 2012 with her application at page 6 of P. Exhibit No. 1. It was also her testimony that she did not appear in the meeting that approved her application. The petitioner did not know what rates clearance certificate, valuation roll, blue register and black book are. She agreed that she has not called the two sellers as her witnesses and that she did not sue the interested party in this suit. It was also her testimony that she did not have a copy of the notice of validation of the plot ownership and also does not know that all the plots that had ownership dispute were dealt with. She admitted that she told the officials that the plot had ownership dispute when validation was being done and the validation was carried out during the pendency of this suit. She further admitted that she has developed the property and according to the photos which she took, they do not show the time and the date they were taken. She admitted that she sought for the approval to develop the suit property during the pendency of the suit and all the relevant offices approved her application to develop which she paid kshs. 22,012/- and was issued with a receipt dated 8th July, 2022.

20. The petitioner testified that Narok Water & Sewerage Company did not issue her with an approval but she obtained five approvals issued on 7th July, 2022 and 18th July, 2022. Further, that she built the perimeter wall in the year 2013. Further, that the stamp on the document at the time of validation means that the plot is hers. That during the validation exercise, there were 4 to 5 officers who went to validate her ownership. She admitted that the letter dated 18th July, 2022 is a notification of development partition but is not proof of ownership. Further, that she only submitted her plan and paid for the same but did not attend the meeting which approved the minutes of 14th July, 2022. Further, that the approval refers to the plan that she had submitted which shows that it was stamped before the approval of 14th July, 2022. The petitioner further testified that in the year 2021, she was not issued with a receipt for the reason that there was a dispute over the suit property.
21. On re-examination, the petitioner testified that she was summoned on the phone to attend the meeting of the year 2016 and she was not served with a letter. Further, that they were informed through public announcement regarding the validation exercise and she was present but she did not see the interested party. It was her evidence that she took the photos as per the certificate and that she is in occupation of the suit property. Further, that the interested party has not produced any photos. Further, that she has one receipt for all the approvals whose plans are prepared by the experts. Also, that she has never been required to attend the meetings of the County Government where approvals are issued.
22. Juliet Maritim (PW1) while relying on her statement dated 29th June, 2022 as her evidence testified that she prepared a sale agreement on 24th November, 2012 between Lelayian Dikkirr, Kitipa S. Julius and the petitioner for the sale of the suit property. PW1 testified that the sellers appeared in her office together with the petitioner and she witnessed their signatures and executed the agreement. Further, that she saw the original allotment letter and recalls having done a transfer for them. That the said allotment letter was in the name of the sellers and that she also saw the receipt of clearance of the rates in the name of the two sellers.
23. On cross examination, PW1 testified that the payments were made in cash but the sale agreement dated 24th November, 2012 does not indicate it. It was her testimony that she witnessed the money being paid and she counted it. Further, that there were several receipts including the receipt for payment of rates dated 18th April, 2012 of Kshs. 8,050/- for the years 2011 and 2012 issued to the sellers by the County Council of Narok. Further, that in the said receipts, it was not shown the confirmation of ownership from the County Council and one of the sellers was not a councilor or former councilor. It was PW1's testimony that she prepared the transfer form but did not know if a copy is in the court file. According to her, there were no developments on the ground at the time of the transaction. Also, that she does not know of any valuation roll or a blue register.



24. On 29th May, 2023, the interested party while adopting his replying affidavit as his evidence in this petition, testified that he heard that his plot had been transferred from his name to that of another person which information he got from the County Government. It was his testimony that he went to see the then Minister for Lands after which he was issued with a letter indicating that the suit property will remain under his ownership. He also learnt that a person had started fencing his plot that is when he lodged a complaint with the council which then issued him with a letter confirming that the suit property was his.
25. The interested party further testified that he purchased the suit property from one Hellen Murero (DW1) who gave him the original letter of allotment. Further, that there was a sale agreement dated 22st January, 2019 (sic) drafted by S.Mogere and Company Advocates produced as D.Exhibit No. 1. Further, that Hellen Murero (DW1) had the original allotment dated 31st August, 2006 in her own name produced as D. Exhibit No. 2. Further, that the plot was transferred to him through the Town Council and their minutes for 19th March, 2009 produced as D. Exhibit No. 3. In addition, he testified that he was issued with an original allotment letter in his name dated 29th May, 2009 produced as D.Exhibit No. 4. The interested party further testified that Hellen Murero (DW1) surrendered the plot receipts to show that she used to pay the rates to the Council produced as bundle of receipts D. Exhibit No. 5 (a) to (f). The interested party further produced the letters dated 21st June, 2017 and 24th April, 2017 as D exhibit no. 6 and D. Exhibit No. 7 respectively which confirms his ownership of the suit property. Further as per the certified copy of draft valuation roll by the Council, D. Exhibit 8, it shows that Hellen Murero (DW1) was the person in the record at the time when she sold the property to him.
26. On cross examination, the interested party testified that he paid Hellen Murero (DW1) Kshs. 150,000/- through S. Mogere-Advocate but he does not have a receipt as proof of payment. In addition, he does not have any pictures to show how the suit property was at the time of the purchase. Further, he testified that he does not have the consent referred to in the agreement as well as receipts showing that Hellen Murero (DW1) used to pay rates from the year 2005 to the year 2009. Further, the interested party testified that he took possession in the year 2009 yet, as at the year 2012, there was no development on the said property. Further, that he has been paying rates from December 2012 but that he has the receipt dated 31st July, 2012 evidencing payment from the year 2013 to the year 2015.
27. The interested party agreed that the second receipt does not have a stamp of the County Government which is payment of rates for the year 2016 and he does not have receipts from the year 2016 to date. Further, that he does not have evidence to show that he delivered building materials onto the suit property and that he does not have the application for water and electricity connection. He went on to say that he did not have any application for approval to develop the property. Regarding paragraph 14 of his replying affidavit, he admitted that he never wrote any letter of complaint dated 10th November, 2016 but he admitted to have appeared before the Town Committee on 24th April, 2017 and apart from the letter, he does not have minutes of 24th April, 2017. He further agreed that D. Exhibit no. 7 is addressed to him by one Justus Ruto. Further, that the meeting was chaired by Mr. Saisai who is not the one who had written the letter and that the said Mr Ruto was not one of his witnesses in this case. Further, the interested party testified that he cannot confirm if investigations were done by the 2nd respondent. He admitted that the petitioner as per the letter written by one Kwena is the owner of the suit property which letter is copied to the DCI and which he has never challenged. He admitted that he did not develop the property and could not recall his whereabouts on 20th December, 2021 during the validation exercise. Further, that his allotment letter does not have a verification stamp of 20th December, 2021 and that he is also not aware whether the allotment letters of the other persons' present were stamped. Further, he is also not aware if the petitioner has submitted development plans



- to the 2nd respondent and whether they were approved. Further, that he did not have a copy of the appeal to the County Government and that the valuation roll produced is a draft.
28. On re-examination, the interested party informed the court that he purchased the suit property in the year 2009 and he is a resident of Olenguruone. Further, that there was no occupation of the plot in the 2012 and there was no law that required him to take photos of the suit property when he purchased it. That the allotment letter and the sale agreement as well as receipts show that the property is his. He added that he was issued with minutes to show that transfer of the plot to him had been allowed. Further, that he carried out due diligence by checking on the allotment letter, receipts for rates payment and he also visited the ground to confirm the plot on the ground before going to the County Government offices. Further, that there is no claim from the County Government showing that together with Hellen Murero (DW1), they have not paid the rates. He added that the petitioner did not challenge the 2nd respondent's findings that he is the owner of the suit property and neither has he been informed of the law that requires receipt to be stamped.
 29. Hellen Murero (DW1) while adopting her statement dated 8th June, 2022 as her evidence in chief testified that that the suit property initially belonged to her and she sold it to the interested party for a sum of Kshs. 150,000/- and later transferred the property to him after they entered into a sale agreement. Hellen Murero (DW1) referred to a sale agreement-D. Exhibit No. 1, minutes dated 19th March, 2009-D-Exhibit No. 3 and the allotment letter D-Exhibit No. 2 that is in her name. It was her testimony that the suit property was empty before she sold it and also paid rates for the same. Further, that she came to learn of the dispute between the petitioner and the interested party around the year 2016 when she was summoned by the 2nd respondent and confirmed the receipt. Further, that she has never had any dispute with the petitioner as she sold the property in the year 2009 and the interested party took possession of it in the year 2012.
 30. On cross examination, Hellen Murero (DW1) testified that she has been an employee of the 2nd respondent since it was a Town Council as a secretary and now as an administrator. It was her testimony that she applied for the suit property in the year 2005 which application was approved but that she does not have a copy of the same. She admitted that she sold the suit property for a sum of Kshs. 150,000/- but does not have a copy of the receipt as well as the transfer documents which she agreed they would confer interest to the purchaser. Further, that she has not produced the consent through which the plot was transferred to the interested party. Further, Hellen Murero (DW1) testified that there was no one on the suit property when she took charge of the same and that she did not develop the property as well. She admitted that there was an obligation to pay land rates but that she does not have the receipts evidencing payment of the same from the year 2005 to the year 2009.
 31. On being shown the first receipt which is for the year 2006, Hellen Murero (DW1) admitted that it is not evidence of payment of land rates from the year 2005 to the year 2009. She said that the second receipt dated 11th September, 2008, is not evidence of payment or rates from the year 2005 to the year 2009. Further, that the transfer is legitimate but that she does not have the original of the minutes in court. She went on to say that she did not attend the meeting of 19th March, 2009 and she could not tell what transpired in the said meeting. According to her, the minutes are genuine because they are rubber stamped and the members of the meeting are listed. It was also her evidence that it is not strange that the meeting which had one agenda was discussing a transfer of the suit property from her to the interested party. She added that she was only given an extract of the minutes.
 32. Hellen Murero (DW1) disagreed that there was no approval as the Council transferred the suit property to the interested party. She admitted that she did not have evidence to show that the interested party had brought in building materials and that she had applied for the electricity and water



- connection. Hellen Murero (DW1) further admitted that the interested party informed her that he had reported the incident of the petitioner in the year 2016 but he did not show her the report that he made to the County Government. She agreed that she was invited to the County Planning Committee meeting but does not recall the exact month when she attended the said meeting and that she did not have the minutes of the said meeting. While being referred to D. Exhibit no. 7, Hellen Murero (DW1) testified that the CEC Lands chaired the meeting but she could not remember his name.
33. Hellen Murero (DW1) further admitted that the letter dated 24th April, 2019 was signed by Mr Ruto and not by the CEC who convened the meeting. She went on to say that she has heard of the letter dated 10th November, 2016 but she has not seen it. Further, that she did not see the copy of the investigation report by the Town Planning Committee. That according to the letter dated 20th June, 2016, Hellen Murero (DW1) testified that it concerns her because it was written two months after the one by Mr Ruto and she does not know if the 2nd respondent has disowned the letter. She admitted that the last time she was on the suit property was during the sale and she does not know who has developed the same. She added that she did not know if approvals were given for building on the property.
34. On re-examination, Hellen Murero (DW1) testified that she has not been shown the letter from the Directorate of Criminal Investigations and neither has she been shown the entries and the records. Further, that the application form for transfer are kept by the County Registry and she has not been shown evidence that no application was submitted. She went on to say that she has not been shown any evidence that her allocation was irregular. Further, that she was not required to attend the meeting that approved the transfer. She admitted that what she has are copies of the said meeting and that the original minutes are with the County Government. She added that she has not been shown any evidence that no transfer form came from her as the transfer cannot be effected if it has not been approved.
35. On 11th October, 2023, the petitioner filed her written submissions dated 10th October, 2023 where she raised three issues for determination as follows: -
- a. Whether the petitioner has established that her constitutional rights were violated.
 - b. Whether the court should grant the prayers sought by the petitioner.
 - c. Whether the interested party has a valid claim to the suit property.
36. On the first issue, the petitioner submitted that despite swearing an affidavit, Julius Sasai who is an employee of the respondents did not attend court to be cross-examined on his affidavit with the consequence being that the averments contained in their pleadings became mere allegations with no probative value. The petitioner relied on the cases of Noah Makhalang'ang'a Wekesa versus Albert Adome & 3 Others [2013] eKLR and Peter Ngigi Kuria & Another (Suing as the legal representative of the estate of Joan Wambui Ngigi) versus Thomas Ondili Oduol & Another [2019] eKLR and submitted that by failing to call a witness to testify on its case and produce the documents filed, the respondents have failed to satisfy the burden of proof and all the documents filed remain mere allegations, unsubstantiated and unproven.
37. The petitioner further submitted that the letter dated 16th August, 2018 which was served through her daughter is the basis of this petition as it demonstrates flagrant violation of the petitioner's rights as the process communicated through the said letter was not lawful, reasonable and procedurally fair. That administrators must have lawful authority for their decisions as administrative grievances are no longer left to the realm of common law or judicial review but are to be measured against the standards established by *the Constitution*. While relying on the cases of Dry Associates Limited versus Capital Markets Authority & Another [2012] eKLR and Kenya Human Rights Commission



- & Another versus Non- Governmental Organisations Co-ordination Board & Another [2018] eKLR, the petitioner submitted that it is no longer a mere legal requirement but a constitutional one that a person is entitled to be heard and that the action to be taken should meet the constitutional test and as such, the respondents have violated the petitioner's right to fair administrative action.
38. The petitioner further submitted that the respondents did not tender evidence disputing ownership and that the respondents have consistently issued demand notices for rates to the petitioner and it cannot therefore be tenable for the respondents to claim that the suit property is owned by a different individual without showing the basis of their assertions. Reliance was placed in the cases of Arnacherry Limited versus Attorney General [2014] eKLR and Multiple Hauliers East Africa Limited versus Attorney General & 10 Others [2013] eKLR. The petitioner submitted that there was violation or threat to her right to property, violation of her right to human dignity on the part of the respondents. Further, that there was abuse of power and acting in excess of power by the 1st respondent.
 39. On the second issue, the petitioner submitted that she has demonstrated that the suit property belongs to her and as such, she should be granted the prayers sought in the petition.
 40. On the third issue, the petitioner submitted that an interested party has no right to mount a claim as if he was the petitioner as he ought not to take a centre stage in the dispute and demand that the suit property belongs to him. Further, that the issues are between the petitioner and the respondents and the interested party has no role to play in the dispute between them. The petitioner submitted that the court has no jurisdiction to determine any claim that the interested party may have as he chose to participate and is not an actor in the dispute before the court. To buttress this submission, the petitioner relied on the cases of Francis Kariuki Muruatetu & Another versus Republic & 5 Others [2016] eKLR and Marigat Group Ranch & 3 Others versus Wesley Chepkoiyet & 19 Others [2014] eKLR.
 41. On the 4th December, 2023 the interested party filed his written submissions of even date where he raised six issues for determination as listed below: -
 1. Have both the petitioner and the interested party herein been paying plot rent for the suit plot to the then Town Council of Narok and now the County Government of Narok.
 2. Who between Hellen Murero and Letaian Dikirr and Kilipa S Julius was allocated the suit property first.
 3. Who is in occupation.
 4. What is the legal status of allotment letter.
 5. Does this honourable court have jurisdiction to hear and determine this dispute.
 6. Who should bear the costs.
 42. On the first issue, the interested party submitted that the 2nd respondent which is the allocating authority ought to have come forward and assisted the court resolve and or attest the petitioner's right on the matter and from the evidence tendered, the petitioner did not call the two previous owners of the suit property to defend and support her claim. Further, that the court has a solemn duty to consider the ownership documents held by all the parties as well as the records held by the 2nd respondent.
 43. On the second issue, the interested parties submitted that based on the evidence tendered, the suit property was first allocated to Hellen Murero (DW1) on 31st August, 2008 way earlier than Letaian Dikirr and Kitipa Julius who were allocated on 29th May, 2009. Further, that the petitioner did not prove that she had not obtained any formal prior consent to buy the property as it is a requirement



- under special condition no. 6 in the letter of allotment. Further, that the petitioner's allotment letter was irregularly issued and any purported compliance with the regulations does not give her a better title.
44. On the third issue, the interested party submitted that the petitioner has not provided evidence to demonstrate that upon conclusion of the validation exercise, the issue of ownership was determined. Further that no notice of the ground visit was produced to evidence that she was present on the suit property when the exercise was carried out.
45. On the fourth issue, the interested party submitted that none of the two parties claiming ownership of the suit property had any certificate of lease either from the Commissioner of Lands or the 2nd respondent. The interested party relied on the cases of Ravji Karsani Sanghani versus Peter Gakunu Nairobi HCCC 1240/2001 and Wreck Motors Limited versus Commissioner for Land & 3 Others CA No. 71 of 1997.
46. On the fifth issue, the interested party submitted that the allotment process of the suit property by the respondents was a discretionary exercise and disputes relating thereto were subject to a quasi-judicial process by a full council committee meeting. Further, that it has not been demonstrated to the satisfaction of this court that the respondent acted ultra vires its jurisdiction or contrary to its mandate as provided for under the law.
47. On the sixth issue, the interested party submitted that the petitioner may, if she so wishes, move the appropriate forum for the appropriate relief and or exhaust the dispute settlement mechanism of the respondents.
48. I have considered the pleadings, the evidence that was tendered by the parties, the rival submissions as well as the authorities cited by the petitioner and the interested party and, in my view, the issues for determination is whether the petition has merit to warrant grant of the orders sought.
49. It would first and foremost be important for this court to determine the role of the interested party in this case before I move to the merits or otherwise of this petition. The interested party filed an application dated 14th February, 2019 seeking that he be joined as a party in this matter amongst other orders. Kullow, J in his ruling delivered on 23rd October, 2019 made the following consideration: -
- “I have considered the application before me and the submissions filed by the parties. The instant application was filed as a result of petition in which the petitioner alleges that she is the owner of plot no. 548HD Block 11 Narok Township which was later transferred to another party. The interested party on his part claims to be the owner of the land forming the foundation of the petition.”
50. The court then made the following finding:-
- “From the application, I find that the applicant is a person who has interest in the suit land. It shall serve the interest of justice if he is accorded the right to be heard and his inclusion in the suit will assist the court to effectively determine the issue between the parties.”
51. From the above, it will be seen that the court made an observation that the interested party is a person who had an interest in the suit land and therefore was joined in these proceedings. It can be deduced that his presence was of one who claimed ownership and, therefore, is seeking to defend his interest in the suit property.
52. Secondly, the respondents filed their replying affidavit which was sworn on 27th February, 2019 by Julius Sasai. However, this court on the 29th May, 2023, observed that the respondents despite being



- served with the hearing notices and, even though they have a right to be heard, were not quick to put their house in order and as such this court would consider the evidence placed before it in the usual manner.
53. The instant petition was triggered by a letter dated 16th August, 2018 addressed to the petitioner informing her that the suit property is rightfully owned by the interested party and that she has 14 days from the date thereof to vacate.
 54. From the evidence, the interested party purchased the suit property from Hellen Murero (DW1) in the year 2009 vide a sale agreement dated 22nd January, 2009, and has been paying rates since that time. Further, that he took possession and has developed the same. During trial, the interested party produced copies of receipts of rates payment dated 31st July, 2015 for the years 2013 to 2015 and receipt dated 11th February, 2016 for the year 2016. There was no evidence to confirm payment of rates from the years 2017 to date or even as to the time of the filing of the petition.
 55. The suit property having been owned initially by Hellen Murero (DW1), there were conditions set out in letter allocating her the suit property which she needed to meet. From the evidence, there were receipts of payments-D. exhibit No. 5 (a) to (f). The receipt dated 30th May, 2006 was for survey, showing and others as indicated in the sum of Kshs. 8,500/-. The receipt dated 11th September, 2008 was for Kshs. 200 being plot update. The receipt dated 23rd November, 2010 was for new plot issued to the interested party in the sum of Kshs. 2150/- and the receipt dated 29th May, 2009 was for Kshs. 200/- being minute extract.
 56. The letter of allotment said to be issued to Hellen Murero (DW1) read as compensation and it cannot be discerned exactly which compensation save to state as it is written. Within the allocation of a plot letter dated 31st August, 2006, paragraph 5 provided thus: - “If you are unwilling or unable to develop the plot within the period of twenty-four months, it will be automatically forfeited to the council and become available for re-allocation.”
 57. Going by the above requirement vis a vis the evidence by the parties, Hellen Murero (DW1) did not adhere to this requirement more so concerning development of the property. Further, there was no evidence of proof of payment of plot rent for the years 2007,2008 and 2009. The question then is, what took place in between this period? Was the suit property available for re-allocation?
 58. The petitioner testified that she bought the suit property from Letayian Dikirr and Kitipa S Julius vide a sale agreement dated 20th November, 2012. It was her evidence that Letayian Dikirr and Kitipa S. Julius were the owners of the suit property vide an allocation of plot letter dated 25th January, 2012. However, from the receipts of payment of plot rent dated 4th March, 2011, the said Julius Kitipa and Letayian Dikirr may have owned the suit property before the year 2012. This position cannot also be ascertained for the reason that the petitioner did not call them as witnesses in this case.
 59. In the case of Wreck Motors Enterprises versus the Commissioner of Lands & 3 Others Civil Appeal No 71 of 1997, the Court of Appeal held as follows: -

“Title to landed property normally comes into existence after issuance of letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document pursuant to provisions held”.
 60. From the above cited authority and from the evidence of the petitioner and the interested party, it is my finding that the suit property may have been first acquired by Hellen Murero (DW1). However, Hellen Murero (DW1) did not meet the conditions therein and in particular paragraph 5 thereof. I



say so because, it was admitted in trial that Hellen Murero (DW1) did not develop the suit property within the timelines provided therein and further did not provide evidence of payment of the annual rent for the years 2007, 2008 and 2009.

61. In the absence of adherence to the conditions set out in the allocation of plot/allotment issued to Hellen Murero (DW1) dated 31st August, 2006, she extinguished her claim of ownership of the suit property which was then available for re-allocation. The minutes dated 21st November, 2012 indicate that the said Kitipa Sopia and Letayian Dikkirr were the owners of the suit property who then transferred to the petitioner herein and since then, she has complied with the conditions therein as evidenced from the photographs annexed to the supporting affidavit.
62. Arising from the above, this court is satisfied that on a balance of probabilities, the petitioner is the rightful owner of the suit property. The court proceeds to enter Judgement in her favour and against the Respondents and the interested party as hereunder:-
 1. A declaration is hereby issued that the petitioner is the owner of plot no. 548 Block 11 in Narok Township.
 2. A declaration is hereby issued that the petitioner's rights under Articles 27,40 and 47 of *the Constitution* have been threatened and violated by the 1st respondent's decision as contained in the letter dated 16th August, 2018.
 3. A declaration is hereby issued that the 1st respondent's decisions and orders contained in the letter dated 16th August, 2018 are unconstitutional, illegal, null and void.
 4. An order of certiorari is hereby issued to remove to this court and quash the decisions of the 1st respondent contained in the letter dated 16th August, 2018.
 5. Costs of this petition to be incurred by the respondents and the interested party herein.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 11TH DAY OF DECEMBER, 2023.

HON. MBOGO C.G.

JUDGE

11/12/2023

In the presence of: -

CA:Mr. Meyoki

