



**County Government of Kwale v National Land Commission & 3 others;
Mwangele & 450 others (Interested Parties) (Environment & Land Petition
E004 of 2022) [2025] KEELC 3446 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND PETITION E004 OF 2022**

AE DENA, J

APRIL 29, 2025

**IN THE MATTER ARTICLES 1(4B), 3(1), 6,
10,19,20,21,22,23,40,47,60,61,62,67,68,159,162,174,176,49,250,259
AND 260 OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF SECTIONS 3,9,11,12,13 AND 17 OF
THE GOVERNMENT LAND ACT, CAP280 (REPEALED)**

**IN THE MATTER OF SECTIONS 8,9,12,14,152A
AND 155 OF THE LAND ACT NO. 6 OF 2012**

**IN THE MATTER OF SECTIONS 2,5,6, AND 14 OF THE NATIONAL
LAND COMMISSION (REVIEW OF GRANTS AND DISPOSITIONS
OF PUBLIC LAND) REGULATIONS LEGAL NOTICE NO. 71 OF 2017**

**IN THE MATTER OF SECTIONS 2,3,4,5,6 AND 7 OF
THE FAIR ADMINISTRATIVE ACTIONS ACT,2015**

**IN THE MATTER OF SECTIONS 2,3,4,13,18, AND 19 OF THE
ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011**

BETWEEN

COUNTY GOVERNMENT OF KWALE PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

GREATCOM LIMITED 3RD RESPONDENT

MARUMA HOLDINGS LIMITED 4TH RESPONDENT

AND



JUDGMENT

1. The County Government of Kwale vide a Constitutional Petition dated 12th February 2021 has petitioned this Honorable Court for the following verbatim orders:
 - a. That this Honorable Court be pleased to issue a declaratory order declaring that by failing to accord the Petitioner and the people of Kwale an opportunity to be heard, the 1st Respondent violated the Petitioner's right to a fair hearing;
 - b. That this Honorable Court be pleased to issue a declaratory order that the 1st Respondent violated the Constitution in particular Articles 10(2), 19,25(d), 47(2) and 50(1) of the Constitution of Kenya 2010
 - c. That this Honorable Court be pleased to issue a declaration that the process leading to the acquisition of the title by the 3rd and 4th Respondents over all that parcel of land known as Plot No. 4752/2 was irregular.
 - d. That the Honorable Court be pleased to issue an order for rectification of the Land Register by the cancellation of the fraudulent registration of a lease and a certificate issued to the 3rd and 4th Defendants/Respondents.
 - e. That this Honorable Court be pleased to issue an order of certiorari and quash the decision of the 1st Respondent and compel a reversion of all that parcel of Land known as Plot No. 4752/2 to public purpose.
 - f. The Honorable Court be pleased to issue an order for mandamus directed at the 2nd Respondent and compel a reversion of all the land parcel known as Plot No. 4752/2 to public purpose.
 - g. That this Honorable court be pleased to issue a mandatory injunction to order the 3rd and 4th Respondents whether by themselves or their agents, servants or howsoever otherwise to deliver to the Interested Parties under the supervision of the Petitioner herein vacant possession of all that parcel of land known as No. 4752/2 within 30 days of issuance of this order;
 - h. That the Honorable court be pleased to issue a mandatory injunction against the 3rd Respondents and/or their agents, agents, legal representatives, and/or assigns from continuing to evict residents living in all that property known as Land parcel number 4752/2 Kwale, hereinafter referred to as the "suit land."
 - i. Damages for violations of fundamental rights.
 - j. Petitioner be awarded costs of this suit.
 - k. Interest on j) and k) at courts rates from date of entry of judgment until full payment.
2. The Petition is supported by an affidavit dated 12/02/2021 sworn by Hon. Saumu Beja Mahaja, County Executive Committee Member of Kwale County. The deponent avers that her predecessor during the period of 2013-2017 had engaged the 1st Respondent on the proprietorship of the suit property by Maruma Holdings Limited (popularly known as Mbela Farm) through oral and written correspondence. A copy of a letter dated 18th May 2016 was annexed as "SBM-1".



3. It is deponed that the Petitioner officially lodged a complaint with the 1st Respondent. That the complaint challenged the manner and the procedure of allocation of the suit property to the 4th Respondent as it could not be determined whether the existing lease was surrendered and or had lapsed. They further challenged the irregular extension of the lease in favour of the 4th Respondent for a further term of 932 years commencing 1st December 1981. That the grant and or extension of the lease in favour of the 4th Respondent was not in the best interest of the community and or the settlers who have been in occupation of the suit premises for decades. That the conditions precedent for the granting of the lease were not adhered to by the 4th Respondent.
4. The deponent states that to their surprise the 1st Respondent and its then chairman, communicated its findings and determination on the 8th August 2016 vide a letter addressed to the Petitioner herein without according them an opportunity to be heard. A copy of the said letter was annexed as “SBM-2”.
5. It is also contended that the 1st Respondent through the aforementioned letter made a determination that upheld the title in favor of the 3rd Respondent without addressing the issues raised by the Petitioner herein above. The determination is termed to be devoid of any legal basis.
6. That currently the suit property was in the name of the 3rd Respondent who allegedly purchased the same from the 4th Respondent and the said 3rd Respondent had already commenced eviction of the residents at the Suit land causing a dire humanitarian crisis.
7. The deponent asserts on advice of its counsel on record that the government possessed reversionary interest in the suit property since upon expiry of the leasehold interest in 2013 the same reverted back to the government.
8. That to circumvent the eventuality of the expiry of the initial lease period, the 4th Respondent irregularly sought and acquired leasehold interest in the suit land from 1981 for 932 years thus effectively and illegally converting public land to private land, to the detriment of the public. A copy of Certificate of title for land parcel Number 4752/2 Kwale was annexed as SBM-4.
9. That the Respondents have effectively deprived the Petitioner the benefit and utilization of public resources against the doctrine of legitimate expectation of reversionary interest held by the Petitioner since the petitioner requires the suit land for public use and to further its responsibilities to the residents. It therefore continues to be aggrieved by the continued tortuous activities of the 3rd and 4th Respondents.

Responses To The Petition

10. The 3rd Respondent answered to the petition vide a replying affidavit sworn on 22nd March 2021 by Robert G. Njoroge its Property Manager. The deponent in response to the background of facts in the petition adopted the response of Mrs Beatrice Mbela affidavit sworn on behalf of the 4th Respondent.
11. Responding to the allegation that that the 1st Respondents decision of August 2016 contravened the provisions of Articles 47 on Fair Administrative Action and 50(1) of *the Constitution* on the right to fair hearing, it is deponed that whereas the 3rd and 4th Respondents were represented at the inquiry held at the Kenya School of Government, Matuga by Mr. Mwakisha , the Petitioner was likewise represented by inter alia its then County Executive member of Lands, Mr. Mafimbo who raised no objection whatsoever.
12. It is deponed that the 3rd Respondent learnt of the inquiry above vide a notice carried in the Daily Nation of Wednesday 9/12/2015 which required attendance the following Monday and interested parties were to file their presentations with the NLC by 11/12/2015. That all parties had the same



- one (1) working day to file their representations and were equally disadvantaged in terms of time and especially considering the 3rd and 4th Respondents were the subject of the complaints. That only at the hearing did the 3rd and 4th Respondents find out that the complainant was the County Government of Kwale.
13. It is averred that also present during the above hearing was a delegation of residents from Tiwi said to have been occupying portions of the land. That based on the Petitioner's material presented before court the Petitioner was duly informed of the decision reached on its complaint but has taken no steps to challenge it.
 14. The 3rd Respondent averred that the complaints enumerated in paragraph 25 to 31 of the petition were unfounded. That Mr Mbela issued no letter of allotment to the 4th Respondent and was not Minister for lands before 1998. The court is referred to Beatrice Mbelas depositions in this regard. That from the copy of title deed annexed as RGN1 the 3rd respondent purchased the suit property bonafide in 2013. Citing the provisions of section 14(7) of the NLC Act it is asserted that the title was immune from the NLC mandate.
 15. The 3rd Respondent denies the averments in paragraph 39-41 and states that the suit property had already been alienated to a private individual back in 1914 and title issued and the allotment to a different user can only be with reference to this allocation.
 16. The 3rd Respondent admits that at the time of purchase they were informed about the restriction lodged pursuant to the court order in HCCC 12 of 2004 (OS) which crystalized in a decree to excise 100 acres in favour of the Petitioner and the people it represented. That the 3rd Respondent embarked on the process of compliance to the decree but the subdivision plan was never approved and inquires thereto elicited no responses. The correspondences were attached as RNG 3-5. That within a month of receipt of the 3rd defendant's application for planning permission the petitioner filed the complaint before the NLC challenging the title.
 17. It is further averred that the petition herein in so far as it purports to further the interests of the residents impinges on and is a collateral attack on the decree above. Further that the Petitioner having come into existence in 2010 cannot claim to have been expectant of any reversionary interest as at the time of the extension of the lease, the reversionary interest then being vested in the government of Kenya.
 18. It is deponed that the petitioner and its residents have conducted themselves in a manner inimical to the broader public interest having regard to the need to promote investment and protect private property interests and to entertain the petition would be to promote hooliganism disguised as a quest to protect land rights.
 19. The 4th Respondent responded to the petition vide a replying affidavit of its director Beatrice Mghoi Mbela. It is deponed that as at 1914 there were no war veterans who had just returned to the country from the 1st world war since the said war lasted between 1914 – 1918. That the original 1914 allocation was made to an individual as confirmed by the title documents. That ownership of the suit land has since the year 1914 been passed down through several owners until purchase by the 4th Respondent from Jeremiah Njoroge in 1980.
 20. Reiterating that most of the averments in the petition were a fabrication of facts it is deponed that Darius Mbela was not a minister of lands in 1981 as he became only a member of parliament for the first time in 1988 when he was appointed Minister for Lands & Housing. Further that the original lease had not lapsed as at 1984 or earlier so as to be the subject of surrender. That as a lease of 999 years was permissible prior to the promulgation of *the Constitution* 2010 the original term had been extended to



accord with a lease for 999 less the period already expired since 1914 hence the 932 years. Further that there are no particulars of illegalities or fraud committed in the said extension.

21. The 4th Respondent terms the Petition and the affidavits filed therewith as falsehoods, conjecture and innuendo, with no legal or constitutional basis and were a perpetuation of the animosity with which the Petitioner and the residents have continually treated them.
22. With regard to the decree and consent recorded in the originating summons herein, it is averred that the same was never made in a hurry since the suit had existed for 9 years by then. That no deserving residents were left out by the consent and despite the consent featuring during the hearings with the NLC no issue was raised about the consent. The deponent states that belligerence actions and threats following her husband's death left her disillusioned enough to want to dispose of the property once a reasonable taker materialized.
23. The 1st Respondent filed a preliminary objection on 1/7/2021 dated 30/06/2021. The preliminary objection questioned the jurisdiction of the court for failure to exhaust the dispute resolution mechanism spelt out under Article 67(e) and section 15 of the NLC Act. The court through a ruling dated 5th March 2024 made a finding that it had jurisdiction to hear the petition. Other than the preliminary objection there was no response filed to the petition on behalf of the 1st Respondent despite Mr. Mbuthia having attended court several times on behalf of the 1st Respondent.
24. The 2nd Respondent did not respond to the petition. The record indicates that Ms. Langat State Counsel attended court on 18/7/23 where I directed that she should liaise with counsel for the Petitioner to obtain all the pleadings with a view to responding to the petition.
25. With regard to the Interested Parties the record shows that Ms. Mwasharuti attended court on behalf of the Interested parties at some point but never filed any responses to the Petition. However, at paragraph 6 of the petition, the petitioner seeks to protect the interested parties right to property and who are alleged to have resided in Mbale farm for over three decades.

Submissions

26. The petition was canvassed by way of written submissions. The Petitioners' submissions are dated 22/07/2024 and the 3rd and 4th Respondents 15th October 2024. The rest of the parties did not file submissions.

Petitioners Submissions

27. The Petitioner submitted that the 1st Respondents decision dated 8/8/2016 declaring that the 3rd Respondents held a good title was irrational, illegal and procedurally defective. This was on the basis that it contravened article 47 and 50 (1) of *the Constitution* of Kenya 2010 on fair administrative action and on fair hearing. That residents were not heard and neither were the interested parties served. That Notice was served vide Gazette Notice No. 686 of 17/07/2017 which prejudiced the residents who were mainly illiterate and did not use such medium of communication. That the bare minimum would have been to advertise in the Nation and Standard Newspaper as well as local radio stations or through the Petitioner who would have sensitized them on the legal consequences of non-attendance. Reliance was placed on *Judicial Service Commission v Mbalu Mutava & Another* [2014]eKLR cited in *Kenya Human Rights Commission & Another v Non-Governmental Organizations Coordination Board & Another* [2018]eKLR ; *Republic v Non-Governmental Organizations Coordination Board exparte Evans Kidero Foundation* [2017]eKLR on the tenets of natural justice, adequate notice to persons affected by administrative actions and the consequences of such failure which would be to nullify any decision even if it were right.



28. It is contended that the initial lease was for 99 years and ought to have lapsed in the year 2013 but it was erroneously changed to a 932 years lease which simply meant that a public property had erroneously been turned into a private property. That article 40 of the Constitution must be read to exclude property to have been unlawfully acquired under article 40(6). Citing the provisions of section 44 of the Land Registration Act, it is submitted the respondent has failed to produce any original instrument of surrender any memorial or endorsement thereon and no evidence that the process of extension of lease was followed.
29. It is contended that the actions of 3rd and 4th Respondents including the sale to the 3rd Respondent were to defeat any legitimate claims and evidence of irregular acquisition of the suit property which is out rightly illegal. That the Petitioner is the custodian and legitimate title holder of all public land within Kwale county and thus have locus to pursue public land illegally converted into private land.
30. The Petitioner has cited various authorities to buttress that they are entitled to all the reliefs sought.

The 3rd and 4th Respondent's submissions

31. The 3rd and 4th Respondents submitted inter alia that in an adversarial system the onus of proving each and every allegation on the petition is on the Petitioner. Referring to paragraph 7 of the petition it is submitted the petitioner admitted that it was not clear whether there was a surrender of the lease or whether the original lease was extinguished, yet the burden of proving the facts lay on the Petitioner.
32. It is contended that Dauris Mbela acquired the suit property for value through purchasing the same from one Jeremiah Njoroge and not by allotment from the government. That the evolution of the title is traceable way back to 1914 with the 1st allotment and there was no direct, improper benefit that the said Mr. Mbela would have conferred upon the 4th Respondent on account of any position he held.
33. On whether the 1st Respondent decision dated 8/08/2016 declaring that the 3rd respondent held a good title was irrational, illegal and procedurally defective, it is submitted that the petition before the 1st respondent was brought by the petitioner who attended the gathering and made representations. The residents also attended. This has not been controverted. That assuming the same was lodged by the residents the manner in which the petitions hearing was brought to the attention of the public has not been pleaded as a substantive issue upon which the petition is grounded. Further that both parties were given the same time to respond and which disadvantaged the respondents considering they were not the protagonists.
34. It is submitted that the decision known to the Petitioner was never challenged and to the extent that as at 2015 when the complaint was presented title to the suit property had already passed from the 4th Respondent to the 3rd Respondent by transfer upon purchase and by dint of section 14(7) of the NLC Act the 3rd respondent being an innocent purchaser for value without notice of any defect in title would be insulated. The claim for adverse possession having been settled pretransfer. The court is invited to insulate the interest now vested in the 4th respondent.

Analysis And Determination

35. I have considered the petition before court, the rival affidavits, and submissions on record. The main issue for determination is whether the petition is merited and What are the appropriate orders to issue.
36. The petitioner has from prayer a and b of the petition invited the court to issue a declaratory order that by failing to accord the Petitioner and the people of Kwale an opportunity to be heard, the 1st Respondent violated the Petitioner's right to a fair hearing. In addition, it is also prayed that a



declaration is made that the 1st Respondent violated articles 10(2), 19,25(d), 47(2) and 50(1) of *the Constitution* of Kenya 2010. It is imperative that I rehash these provisions.

37. Article 50 (1) is on fair hearing and provides that; -
- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
38. Article 10 is on National values and principles of governance
- 10(2) The national values and principles of governance include—(a)patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
 - (c) good governance, integrity, transparency and accountability; and
 - (d) sustainable development.
39. Article 47 is on Fair administrative action
- (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.
40. Article 19 is on Rights and fundamental freedoms and states that
- (1) The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.
 - (2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.
 - (3) The rights and fundamental freedoms in the Bill of Rights—
 - (a) belong to each individual and are not granted by the State;
 - (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
 - (c) are subject only to the limitations contemplated in this Constitution.
41. Article 25(d) is on the right to an order of habeas corpus and I don’t find its relevance to the discourse herein.
42. I must observe that while all the above constitutional provisions have been cited the petitioner has substantively only dealt with the article 47 on Fair administrative action as read together with sections 4 (3) and (4) of the *Fair Administrative Action Act* and article 50(1) on fair hearing.
43. The impugned decision according the Petitioners is the 1st Respondent’s determination made in August 2016 with regard to Plot No. 4752 popularly known as Mbela Farm situate in Tiwi within the



Kwale County, declaring the 3rd Respondent held a good title. The decision is termed irrational, illegal and procedurally defective.

44. The petitioner alleges that the 1st Respondent proceeded to make a determination on the complaint without effecting service on the Interested parties herein. That the advertisement vide gazette notice worked to the detriment of the complainants who were illiterate and never relied in such medium of communication. Consequently, they were condemned unheard.
45. The burden of proof in civil cases does not change. In the case of Leonard Otieno v Airtel Kenya Limited [2018] eKLR Justice Mativo persuasively observed thus;-
 47. ‘The general principle governing the determination of cases is that the party who alleges or, as it is sometimes stated, the party who makes the positive allegation, must prove. Moreover, the onus on the Petitioner to establish violation of alleged consumer rights is not a mere formality; it is important. Differently put, the onus lies on the Petitioner to prove every element constituting his cause of action. This includes sufficient facts to justify a finding that his consumer rights were violated.
46. It was incumbent upon the petitioner to prove that the rights of the Interested Party were infringed upon. This right is entrenched under article 50 which I have already highlighted. The National Land Commission (NLC) is established under article 67 of *the Constitution* and operationalized by the *National Land Commission Act*.
47. Section 14 of the *National Land Commission Act* provides for Review of grants and dispositions as follows; -
 1. Subject to Article 68(c)(v) of *the Constitution*, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.
 2. Subject to Articles 40, 47 and 60 of *the Constitution*, the Commission shall make rules for the better carrying out of its functions under subsection (1).
 3. In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.
 4. After hearing the parties in accordance with subsection (3), the Commission shall make a determination.
 5. Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
 6. Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.
 7. No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.
 8. In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of *the Constitution*.
 9. The



48. From the above the 1st step upon receipt of a complaint, the Commission is enjoined to give notice to every person who appears to them to have an interest in the subject of the grant. But the court must first identify the alleged complainant which is an important matter for purposes of service. I spent some time on the petition and the affidavit sworn in support thereto by Saumu Beja Mahaja. It was not clear who lodged a complaint with the 1st Respondent, whether it was the petitioner or the residents. The pleadings show the complaint filed with NLC was instituted by the residents of Tiwi and Diani (see paragraph 18 of the petition) but the same was not annexed. However, at the same time it is deponed at paragraph 3 & 4 of the said affidavit that the County Government of Kwale had formerly lodged a complaint with then Chairman of the NLC. The Petitioner annexed a copy of a letter dated 18/5/2016. The letter is from the Petitioner addressed to the NLC and raises concerns over historical land injustices against the people who had resided in the suit property.
49. The petitioner also annexed the determination of the NLC which states;-
- “The Commission received a complaint from the County Government of Kwale and the people of Kwale regarding the lease to Maruma Farm.....’.
50. Bearing in mind the wording used in the determination above it would therefore be safe to state the Petitioner represented itself as well the people of Kwale and which includes those said to be living in the suit property. For purposes of the suit property both the petitioner and the people resident in the suit property would suffice to be in the category of people who could be deemed to be interested in the grant. They are affected parties.
51. The Petitioner did not avail the alleged Gazette Notice before court. The 3rd and 4th Respondents deny ever seeing the same. But be that as it may I think the issue being raised by the Petitioner was the access to this information for the locals (interested parties). I agree with the Petitioners that the outreach of the Kenya Gazette may not be easily accessible but the legal position is that one is presumed to be duly notified once it is published.
52. But having stated the above, the 1st Respondent found it appropriate to publish a notice in the newspaper. The notice was annexed as BM6 to the affidavit of Beatrice Mbela. The said notice was in respect of Review of Grants & Disposition of public land among other land disputes in Kilifi and Kwale County. Mbela Farm LR No. 4752 which is the suit property was included. The venue was given as Kenya School of Government (Matuga) Monday 14/12/2015. The notice also called upon all interested parties to appear before the Commission and to submit copies of their written presentations. The Petitioners did not comment about this notice at all and whether all the people of Tiwi including the interested parties did not see the newspaper notice. From the petitioner’s pleadings and submissions this is what was contemplated by the Petitioner as the desired module for notice except that they wanted publication in two dailies local radio stations.
53. Based on the foregoing it is my finding that the petitioners claim that the complainants interested parties were not served was not proved to the required standard.
54. But assuming the interested parties saw the notice and attended the hearing at the Kenya School Government Matuga, I think there is a bigger issue which is the need to look at the process and the proceedings. This is where the provisions of the *Fair Administrative Action Act* kick in. The right to fair administrative action in Kenya has a constitutional underpinning and I have already highlighted the content of the constitutional provision.



55. The Court of Appeal in the case of *Benson Wekesa Milimo v National Land Commission & 2 others* [2021] eKLR stated thus;

“In addition, Article 47 of *the Constitution* provides a right to fair administrative action. This right includes, amongst others, the right to administrative action that is lawful, reasonable and procedurally fair, and the right to have prior adequate notice of the nature and reason for the proposed administrative action, and an opportunity to be heard.” (Emphasis is mine)

56. The right to fair administrative action is also safeguarded through the *Fair Administrative Action Act*, 2015. Section 2 thereof defines “administrative action” as including the powers, functions and duties exercised by authorities or quasi-judicial tribunals or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates and defines “administrator” as meaning a person who takes an administrative action or who makes an administrative decision.

57. The Petitioner has also invoked section 4(3) and (4) of the above Act which provide as follows:

“(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—

- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
- (b) an opportunity to be heard and to make representations in that regard;
- (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
- (d) a statement of reasons pursuant to section 6;
- (e) notice of the right to legal representation, where applicable;
- (f) notice of the right to cross-examine or where applicable; or
- (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to—(a) attend proceedings, in person or in the company of an expert of his choice;(b) be heard;(c) cross-examine persons who give adverse evidence against him; and(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”

58. Guided by the above provisions the adequacy of the notice was in my view a relevant factor to put into consideration. The 3rd and 4th Respondents have given a rendition of the efforts they had to put to ensure they prepared and submitted their representation despite the short notice given in the newspaper advertisement. Infact they depone they had only one working day to prepare their submissions and attending the hearing. Clearly the notice was inadequate as corroborated by the 3rd and 4th Respondents.



59. The 3rd and 4th Respondents also state the residents of Tiwi said at the time to be occupying portions of the land attended the hearing including the county representative one Mr. Mafimbo. This deposition was not controverted by the petitioners. However, none of the parties presented the Hansard covering the inquiry held at the School of Government on 15/12/2015. However, a copy of the determination of the Commission was presented by the Petitioner. My reading of the petition reveals it only refers to presentation made by Great Com Ltd (Mbela Farm) by the Counsel appearing for the said company. It makes no reference to any presentation made by the complainants and or the people of Tiwi. The contents show that the Commission based its findings that the current registered owner hold a valid title on the presentation made by Great com Limited. The validity of the lease does not appear to have been interrogated at all and in view of the serious allegations of fraud made that the documents being circulated by locals showing that the lease had expired on 1st January 2013 were fraudulent documents that have no basis at all (see item 5 of the presentation). I state so because the determination does not make any reference to the investigations undertaken by the Commission on the said allegations. Moreover, the determination does not show what those who were alleged to have been present by the 3rd and 4th Respondents stated in response to the issue during the proceedings. It is one thing to attend and a different thing altogether to make representations which are recorded and then considered. The inference that this court can draw from the material presented being the determination is that only one party made presentations during the hearing.
60. I further find support and guided by the following dictum of the court in Republic v National Cohesion and Integration Commission; Chama Cha Mawakili Limited (Exparte) (Judicial Review Application E057 of 2022) [2022] KEHC 10206 (KLR) (Judicial Review) (14 July 2022)
- “Every administrator bestowed with statutory powers to make decisions or to take actions that adversely affected an individual or group of individuals was not to lose sight of the provisions of sections 4 and 5 of the FAAA and to specifically accord such person(s) notice of intended action, hear their views, consider all relevant matters, give reasons for the decision taken and inform them of the right and manner of appeal. The respondent did not follow due process before taking the impugned action. The applicant’s rights enshrined in article 47 of *the Constitution* and operationalized through the FAAA were trampled upon.’
61. Indeed the right to fair hearing is one of the core pillars of natural justice as anchored under article 50 of *the Constitution*. The determination having been made by hearing only one party to the dispute was in my view procedurally wrong and unfair. The Canadian Supreme Court in Baker v Canada (Minister of Citizenship & Immigration) 2 SCR 817 6 cited in Republic v National Land Commission & 6 others; Twei & 4 others (Interested Parties); James Finlays Kenya Ltd & 12 others (Exparte) (Being Members of Kenya Tea Growers Association & Kenya Tea Growers Association) (Judicial Review 3 of 2020 & Environment and Land Judicial Review Case 4 & 5 of 2020 (Consolidated)) [2023] KEELC 16903 (KLR) (20 April 2023) (Judgment) stated thus:
- “The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.”
62. I have already questioned and impugned the adequacy of the notice in terms of the time given in the notice published in the newspaper to prepare and attend the hearing. There cannot have a been a fair



hearing based on the courts observations above. Further the complainants and or interested parties having not been heard means their constitutional right to be heard was violated.

63. In Republic v Registrar Non-Governmental Organizations Coordination Board exparte Evans Kidero Foundation [2017] eKLR referred to by the Petitioners the court stated thus

“Whereas the decision may well be justified on merits, once it is found to violate the rules of natural justice it cannot be permitted to stand. This was the position in Onyango Oloo v Attorney General [1986-1989] EA 456 where the Court of Appeal expressed itself as follows;-.....A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at....’

64. The Court of Appeal in Evans Thiga Gaturu & another v Naiposha Company Ltd & 13 Others [2017] eKLR, also held that a decision arrived at without affording a party a fair opportunity to be heard cannot be allowed to stand and it matters not that the court or tribunal would have come to the same conclusion had it afforded the party a fair hearing.

65. Consequently, this court finds that the 1st Respondents’ determination is illegal null and void.

66. I must now address the Petitioners claims that the 4th Respondents title was fraudulent, illegal and unlawful. According to the petitioners the suit property was allotted to 1st World war veterans in 1914 for a term of 99 years. That the said lease was set to expire in 2013 when the land ought to have reverted to the government of the day but did not. The Petitioners aver that subsequently in 1981 Mr. Darius Mbela who was then Minister for Lands allocated the land to the 4th Respondent company for a period of 932 years in which he was Director under a new survey plan No. 4752/3. That this conversion of public land to private land was illegal and an abuse of office by the said Minister. At paragraph 39 the Petitioner states that the 3rd and 4th Respondents acted in cahoots with the Minister for lands in procuring the unlawful allotment letter and registration over the suit property which was allotted to another user.

67. The Petitioners submit that the right to property under article 40 of *the Constitution* must be read to exclude property to have been unlawfully acquired under 40(6). That *the Constitution* cannot be used to rubber stamp what is unlawful.

68. Again, the burden of proof lay on the Petitioner to prove the fraud and illegalities allegedly perpetrated by the 4th Respondent. It is now trite that fraudulent conduct must be distinctly alleged and distinctly proved at a slightly higher standard than that of a balance of probabilities. The Petitioner pleads at paragraph 12 of the petition that it is not clear whether there was a surrender of the 99 years lease and a fresh one created or whether the 99 was extinguished and a fresh one created in favor of the 4th Respondent. However, the Petitioner also states that what stands out is that a new lease was irregularly created. Clearly this is an admission that the Petitioner does not know what transpired. The petitioners have not offered any evidence that the 4th Respondent in any way acted fraudulently or that any of them misrepresented any fact and which then led them to obtain fraudulent titles. It is not enough to tell the court that there is something amiss, fraud cannot be left to guess work. The legal position has since been established that it not allowable to leave fraud to be inferred from the facts. See Central Bank of Kenya Limited v Trust Bank Limited & 4 Others [1996] eKLR and Vijav Morajaria v Nansingh Madhusingh Darbar & Anor [2000] eKLR, Umilla w/o Mahendra Shah v Barclays Bank International Limited & Anor [1979] KLR,.



69. But I must address the alleged irregularity. The Petitioner annexed certificate of title for Land Reference Number 4752 Kwale as SBM4. Showing Maruma Holdings Limited was registered on 16/3/1984 and the lease was to take effect from 1/12/1981. The 4th Respondent presented to the court transfer (BM1) from Jeremiah Njoroge to Maruma Holding company Ltd executed in May 1980. A certificate of title to Maruma Holding Company Ltd (BM10) was issued on 16/03/1984. This certificate of lease presented by the 4th Respondent shows the said Maruma Holding as the registered proprietor as lessee from the Government of the Republic of Kenya for a term expiring on 1/01/2013. Upto this point the court sees no issue with this title as it demonstrated the correct position which is that the buyer Maruma could only get a residue of the leasehold interest held by Mr. Njoroge the seller and which interest is what Mr. Njoroge could sell in law as comprising his bundle of rights.
70. It is submitted on behalf of Maruma that prior to the 2010 Constitution there existed 999-year leases and that during the transfer to Maruma Holding the original term had been extended to accord with 999 years less the period already expired since 1914 thus the 932 years herein. In this regard the 4th respondent presented a lease registered on 21/5/1984 issued to it by the Commissioner of Lands which reveals it was upon Marumas request granting it a further term of 932 years from 1981.
71. The lease was registered under the Registration of Titles Act chapter 281 of the laws of Kenya now repealed. The Petitioners have referred the court to the provisions of section 44 thereof to buttress the allegations that the 932-year lease to the 4th Respondent was irregular. The provisions of Section 44 are highlighted elsewhere in this judgement.
72. It is submitted by the Petitioner that the respondent has failed to produce any original instrument of surrender any memorial or endorsement thereon and no evidence that the process of extension of lease was followed. For me the burden was still on the petitioner to produce evidence that the process of extension was not followed.
73. But I think the concern by the Petitioner is whether a lease can be extended without surrender of the remainder of the earlier lease. I find it pertinent at this point to highlight the meaning of surrender within the context of the provisions of section 44. In this regard I picked some useful insights from the case of *Fanikiwa Limited & 3 Others v Sirikwa Squatters Group SC Pet No. 32 (E036), 35(E038) and 36(E039) of 2022*. The apex court commenting on section 44 of the RTA stated thus:-
106. Section 44 of the RTA which provided the legal regime for ‘surrender of leases’ stipulated as follows:
- “ (1) Whenever any lease which is required to be registered by the provisions of this Act is intended to be surrendered, and the surrender thereof is effected otherwise than by operation of law, there shall be endorsed upon the lease the word “surrendered”, with the date of surrender, and the endorsement shall be signed by the lessee and the lessor as evidence of the acceptance thereof, and shall be attested by a witness; and the registrar thereupon shall enter in the register a memorial recording the date of surrender and shall likewise endorse upon the lease a memorandum recording the fact of the entry having been so made in the register, and thereupon the interest of the lessee in the land shall vest in the lessor or in the person in whom having regard to intervening circumstances, if any, the land would have been then vested if no such lease had ever been executed; and production of the lease or counterpart bearing the endorsed memorandum shall be sufficient evidence that the lease has been so surrendered: Provided that no lease subject to a charge shall be surrendered without the consent of the chargee.” [Emphasis added]
107. The above provision has received wide judicial interpretation over the years. We will interrogate a sample of such judicial pronouncements. In *Mwinyi Hamisi Ali v Attorney General & another, Civil*



Appeal No 125 of 1997; [1997] eKLR the Court of Appeal (Tunoi, Shah & Bosire, JJA) noted as follows:

“The land in question was held under the Registration of Titles Act, cap 281, laws of Kenya. Section 44 of the Act requires that surrender of land leased by the Government to persons to be registered in order to terminate the interest of the lessees. Registration of such surrender is evidence of surrender.”

108. More recently, in *Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others*, Civil Appeal 51 & 58 of 2016 (Consolidated); [2018] eKLR the Court of Appeal (Githinji, Mohammed & Otieno Odek, JJA) held at paragraph 96 that:

“A surrender of Grant or instrument of title is not compulsory acquisition. The legal framework and procedure for surrender of title to land is different from the legal regime for compulsory acquisition. Section 44 of the RTA is the legal framework for surrender and the Land Acquisition Act is the regime for compulsory acquisition. Surrender cannot be construed and equated to compulsory acquisition.”

109. It is notable that section 2 of the RTA did not define the term “surrender”. However, the concept of surrender is one of long lineage and wide usage in land law. The Black’s Law Dictionary (7th edition) at page 1458 defines “surrender” as follows:

“...3. The return of an estate to the person who has a reversion or remainder, so as to merge the estate into a larger estate... 5. A tenant’s relinquishment of possession before the lease has expired, allowing the landlord to take possession and treat the lease as terminated.”

110. Lord Millett at the House of Lords in *Barrett v Morgan*, [2000] 2 AC 264, aptly noted thus on the nature of ‘surrender of leases’:

“A surrender is simply an assurance by which a lesser estate is yielded up to the greater, and the term is usually applied to the giving up of a lease or tenancy before its expiration. If a tenant surrenders his tenancy to an immediate landlord, who accepts the surrender, the tenancy is absorbed by the landlord’s conversion and is extinguished by operation of law. A surrender is ineffective unless the landlord consents to accept it, and is therefore consensual in the fullest sense of the term.” [Emphasis added]

74. The respondent’s submission is that at this point in time the grant had not lapsed for surrender to kick in. This position is correct in my view. The Certificate of lease presented by the respondents shows an endorsement of the extension of lease. The Petitioners contention is that there is no instrument of surrender therefore making the lease illegal by dint of the provisions of section 44 above. Guided by the above excerpts I think the petitioner has misunderstood the import of section 44 of the repealed RTA. My understanding of the said provisions is that it envisages a scenario where the holder of the leasehold interest intends to surrender the balance of the term before its expiry usually for a specific purpose. In this instant case and according to the 4th respondent there was no intention to surrender and therefore a surrender instrument was not expected. Going by the respondent’s explanation the lease was extended. In my view the residue of the previous lease which was still in the 4th respondents favor is merging into the extension less the period of lease that has been consumed to form one longer lease of 932 years.

75. It is alleged by the Petitioners that as at the year 2013 the 99-year lease expired by effluxion of time and reversionary interest returned to the government of Kenya and by extension the County government petitioner who holds all public land on behalf of the residents of the county. This brings me to the



dichotomy between extension of lease and a renewal of lease. In a scenario where the lease has expired, a fresh application is anticipated and I agree reversionary rights kick in. In an extension the lease has not expired and therefore reversionary rights cannot crystallise. In the instance case the lease had not expired at the time of extension, there was no surrender extinguishing the lessee's interest because that was not the intention and the lease was still in favor of the 4th Respondent as lessee.

76. I had no evidence before court to convince me that the 4th Respondent participated in any irregularity. In any event no evidence was submitted to show that the said Darius Mbela was a Minister of Lands at this point in time and thus abused office by allocating his company the suit property. The law allows an individual to apply for an extension of lease which the 4th Respondent did and was granted as noted on the instrument of title. No evidence was led by the Petitioner to prove the local authority then had objected to the extension. The court can only presume that the extension was lawfully undertaken in the absence of evidence in rebuttal thereof. In this regard I will rely on the case of Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] KECA 27 (KLR) where the Court of Appeal rendered itself thus; -

“86. ‘We note that the 1st to 4th respondents contend that the surrender was unlawful. There is a presumption that all acts done by a public official has lawfully been done and that all procedures have been duly followed. The onus is on the 1st and 4th respondents to prove otherwise. They have failed to do this. A bare allegation that a lawful procedure was not followed is not proof of the allegation. It was open to the 1st to 4th respondents to make an application before the trial court to compel the Commissioner of Lands to produce the original instrument of surrender, the memorial and the endorsement thereon. The 1st to 4th respondents failed to do so.’

87. In our view, a party making a claim for a declaration of title must succeed on the strength of his case and not on the weakness of the defence. We are however cognizant that where the defendant's case supports that of the plaintiff and contains evidence on which the plaintiff may rely, the plaintiff is entitled to rely on and make use of such evidence. In a claim for declaration of title, as the instant case, the onus is on the Petitioners to satisfy the Court on the evidence produced by them that they are entitled to the declaratory orders sought.’

77. Additionally, Section 23 (1) of the Registration of Title Act (repealed) provides as follows; -

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

78. The current law is in Section 26 of the [Land Registration Act, 2012](#), which provides as follows: -

“26. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—



- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original."

79. Arising from the above it follows that when a person has been issued with a Certificate of Title, that title, prima facie, demonstrates that the individual named therein is the proper owner of the freehold or leasehold title noted in the said certificate. The law presumes the title to be a good title and therefore if another person claims that the said title is not genuine, then the burden of proof is upon the person claiming as much. It was incumbent upon the Petitioner to discharge the evidenciary burden, which they have failed to do. For a court to cancel a title, it must be fully convinced that such title is a bad title that cannot be protected. A court cannot cancel a title on the mere statement it was irregular, without anything more.

80. Article 40 of *the Constitution* enshrines the right to property as follows; -

40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property--
- (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5)



- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
81. It was submitted by the Petitioner that article 40 should be read alongside article 40(6) which then would exclude the protection over the 4th and 3rd Respondents title that is unlawfully acquired. As stated hereinbefore there was no evidence to lead me to the conclusion that the title of the 4th Respondent was one that was unlawfully or irregularly acquired so as to make it fall under Article 40 (6). I am therefore of opinion that the 3rd and 4th respondents fully deserve the protection given in article 40.
82. It is therefore the finding of this court that the petitioner has failed to prove to the required standard that the extension of the lease in favor of the 4th respondent was irregular and illegal.
83. The Petitioner further state they had a legitimate expectation that the land would revert to them for use to settle squatters and other public use. The respondent submit that this position cannot sail through as the County did not exist for it to have had legitimate expectation. My considered view on the plea of legitimate expectation raised by the Petitioner is that based on the foregoing analysis it cannot hold or be vindicated. I say so because for the legitimate expectation to have arisen in their favor there ought to have been an actual reversion. In the present case reversion never happened as the lease never expired. One cannot claim legitimate expectation before it accrues.
84. I think I have said enough to demonstrate why the 4th Respondents title cannot be cancelled by this court and must be upheld subject to the fact that after the promulgation of *the Constitution* of Kenya 2010 the 999-year leases were converted into 99-year leases. I therefore see no need to spend time on the 3rd Respondents title its root having been upheld. The 4th Respondent had all the rights to dispose of its interest to a third party. The only issue I must comment on with regard to this transfer to the 3rd Respondent is as it relates to the consent order in the Civil Suit No. 12 of 2004.
85. Mr. Mwazuzu was claiming title to the suit property by way of adverse possession on his own behalf and that of 127 settlers. The suit was settled on 22/4/2013 by consent of the parties and the terms of the settlement have been enumerated in the paragraph 16 of the petition. The consent was before the transfer to Greatcom. It is alleged by the petitioner that the haste with which the consent was recorded led to the locking out of many deserving residents of the suit property. That few persons benefitted to the exclusion of the Interested Parties who have been residing in the suit property since time immemorial.
86. The 3rd Respondent does not deny the existence of the decree under the ELC 12 of 2004(OS). I have reviewed the pleadings in the said OS which were annexed. The suit was brought by Juma Abdalla Mwazuzu for his own behalf and on behalf of all persons living on Land Reference No.4752/2 seeking to be registered thereof as owners in place of the 4th Respondent by way of adverse possession of the portion they occupied. The Respondent in the suit were Maruma Holdings Ltd (sued as the 4th respondent in the current proceedings) and the Commissioner of Lands.
87. The above suit was compromised by consent of the parties. It is noteworthy that the 2nd Defendant in the OS did not enter appearance. The consent is encompassed in a decree dated 22/04/2013 and was to the effect that the Defendant shall subdivide the suit property and give the plaintiffs together with all those people who are squatting on the land 100 acres. The plaintiffs had upto 31/12/2013 to vacate the portion that did not comprise the 100 acres and hand over vacant possession thereof by 1/01/2014. The consent recognizes the suit as a representative suit among other terms as to the subdivision hiving off the 100 acres and subdivision of the same to the beneficiaries.



88. I must first observe that the consent above was recorded about 9 years after the suit for adverse possession was filed and the petitioners allegations pointed at the speed upon which it was executed would in my view be misplaced. I must further add that the consent appears to have covered everybody who lived and cultivated in the land. The Petitioner has alleged that at that time of the consent there were people who were left out and who comprise the interested parties herein. Going by the letter dated 18th May 2016 the Petitioners indicated that the squatters were going to appeal the decision of the court that led to the settlement of the squatters on the 100 acre piece of land. I have not seen any action in this regard neither has this court been seized of any court decree setting aside the consent judgement.
89. Consequently, the court finds itself in a situation where there is an existing valid court decree which it cannot impugn under these proceedings. The consent was a class suit entered on behalf of all the people residing on the said piece of land and this remains the status and position with regard to squatters who live on the suit property. If indeed the Petitioner is of opinion that they need the entire suit property for public purposes including the resettlement of squatters they may in my view in liaison with the National Land Commission and the Settlement Fund Trustee embark on the relevant process as set out in law.
90. With regard to the 3rd Respondent who is now the registered proprietor of the suit property and in view of the existing consent order above, their entitlement and interest should be on the balance of the suit property comprising the 900 acres. The deponent admits that at the time of purchase they were informed about the restriction lodged pursuant to the court order in HCCC 12 of 2004 (OS) which crystalized in a decree to excise 100 acres in favour of the Petitioner and the people it represented. The court has been able to review the correspondence and documents (see RNG 3-5) showing the 3rd Respondent efforts to comply with the decree but the subdivision plan was never approved and inquiries thereto elicited no responses from the Petitioner. This is indeed not acceptable.
91. The upshot of the foregoing is that this petition has only succeeded to the extent that this court has declined to uphold the decision of the 1st Respondent made pursuant to the proceedings at the School of Government in Matuga for the reasons already explained.
92. What orders therefore commend to be made in the circumstances of this case. In considering the orders to issue I will be guided by the following dictum Nancy Makokha Baraza v Judicial Service Commission & 9 Others [2012] eKLR where the Court expressed itself inter alia as follows:
- “The New Constitution gives the court wide and unrestricted powers which are inclusive rather than exclusive and therefore allows the court to make appropriate orders and grant remedies as the situation demands and as the need arises.”
93. Section 13(5) of the *Environment and Land Court Act* also empowers me to make any order and grant any relief as the court deems fit and just.
94. The following orders therefore issue to dispose of this petition.
1. That a declaration hereby issues declaring that the 1st Respondent by failing to accord the Petitioner and the people of Kwale an opportunity to be heard, the 1st Respondent violated the Petitioner's right to a fair hearing and fair administrative action and the said determination be and is hereby nullified.
 2. That the Petitioner, shall within 90 days from the date of this judgement facilitate the consideration and approval of the subdivision scheme of the suit property LR 4752/2 into



two (2) portions measuring 100 and 900 acres as shall be presented by the 3rd Respondent in compliance with the decree in ELC 12 of 2004 (OS).

3. That failure to (2) above and upon expiry of the 90 days the Deputy Registrar Environment and Land Court Kwale shall execute the subdivision scheme to ensure the enforcement of the decree in HCCC 12 of 2004 (OS).
4. That upon completion of the subdivision process above any individual found to be in occupation of the portion hived off in favor of the 3rd Respondent shall voluntarily vacate therefrom within 90 days failure to which the 3rd Respondent shall be at liberty to evict. Provided that any such eviction shall be in accordance with the provisions of section 152E of the Land Act No. 6 of 2012.
5. That in the alternative to 2, 3 and 4 above the parties are at liberty to engage on acceptable terms of hiving off additional land for resettlement of genuine squatters.
6. Due to the public interest nature of the suit I will order that each party bears its own costs.

Orders accordingly.

JUDGEMENT DATED SIGNED AND DELIVERED THIS 29TH DAY OF APRIL 2024

A E DENA

JUDGE

Mr. Simiyu for the Petitioner

Mr. Mwakisha for the 3rd and 4th Respondents

No appearance for 1st Respondent

No appearance the 2nd Respondent

Ms Asmaa Maftah – Court Assistant

