



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELC PETITION NO. 3 OF 2021**

**JOSEPH MUDAMBA OJWANG.....PETITIONER**

**VERSUS**

**JOHN OPONDO ONYANGO.....1ST RESPONDENT**

**LAND ADJUDICATION OFFICER, SIAYA.....2ND RESPONDENT**

**LAND REGISTRAR, SIAYA.....3RD RESPONDENT**

**CHIEF LAND REGISTRAR.....4TH RESPONDENT**

**THE ATTORNEY GENERAL.....5TH RESPONDENT**

**JUDGEMENT**

**Introduction**

1. By way of Petition dated 13/03/2021, the Petitioner instituted suit against the Respondents. The substratum of the dispute revolves around registration of LAND PARCEL NUMBER Siaya/Nyadorera “B”/1940 (“the suit property”) that was previously registered in the name of the Petitioner and his deceased father one Ojwang Radonde Mutamba (deceased) as tenants in common in equal shares and currently registered in the name of Felix Linus Onyango (deceased).

2. In the petition, the 1<sup>st</sup> Respondent is described as a County Adjudication Officer. However, from the 1<sup>st</sup> Respondent’s Replying Affidavit, he is the son of Felix Linus Onyango.

3. The 2<sup>nd</sup> Respondent is described as Land Adjudication Siaya whose office is established within the provisions of the **Land Adjudication Act**. The 3<sup>rd</sup> Respondent is described as the Land Registrar, Siaya whose office is a creature of **Section 14** of the **Land Registration Act**. The 4<sup>th</sup> Respondent is not described in the Petition while the 5<sup>th</sup> Respondent is described as the Attorney General whose office is established by **Article 156** of the Constitution.

4. The Petitioner has sought the following reliefs in the Petition;

*a) A declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents have violated the Petitioner’s rights under the Constitution, the Land Act, the Land Registration Act and the Land Adjudication Act and an order quashing the decision of the 4<sup>th</sup> Respondent.*

*b) A declaration that the rectification, removal and cancellation of the names of the Petitioner and his late father from the suit property was discriminatory, procedural, illegal and unconstitutional and the Petitioner be awarded punitive and general damages.*

*c) A declaration that the conduct of the 4<sup>th</sup> and 5<sup>th</sup> Respondents failed to observe the national values and principles of governance as espoused by Article 10 of the Constitution.*

*d) Costs of the Petition.*

5. In response, the 1<sup>st</sup> Respondent who is represented by the firm of **Olel Onyango Ingutiah Advocates** filed a Replying Affidavit dated 27/07/2021 while the 2<sup>nd</sup> to 5<sup>th</sup> Respondents who are represented by the 5<sup>th</sup> Respondent filed a Replying Affidavit dated 25/05/2021 and sworn by one **Ogola A.O.**; a Land Adjudication Officer.

6. Upon being granted leave, the Petitioner filed a Supplementary Affidavit dated 23/09/2021.
7. As directed by the court, the parties disposed of the Petition by way of written submissions.

#### **The Petitioner's case and evidence**

8. The Petitioner's case is contained in his Petition, Affidavit in support dated 6/04/2021, Supplementary Affidavit dated 23/09/2021 and several documents in support of his case.
9. The Petitioner described himself as an Administrator of the Estate of his father one Ojwang Radonde Mutamba. In summary; it was the Petitioner's case that he and his father inherited the suit property from their ancestors. He described the suit property as either measuring 0.4, 5 or 10 acres. He stated that when **Nyadorera "B"** Sub-location was declared a land adjudication section in the year 1975, the suit property was recorded in his name and that of his father in the year 1977 as tenants in common with equal shares.
10. That there was a dispute over the suit property between his father and Felix Linus Onyango before Ukwala Land Court and Land Elders which proceedings were in his father's favour. Documents in support of these proceedings were never adduced.
11. Felix Linus Onyango unsuccessfully instituted **Case Number 101/77-78** against the Petitioner's father before the Land Adjudication Committee. These proceedings were not adduced before this court. However, a Land Adjudication Report that was presented by the Petitioner confirmed the existence of these proceedings.
12. Aggrieved, Felix Linus Onyango appealed to the Arbitration Board in **A/Board Case No 43/77-78**; his case was dismissed.
13. When the section was published complete, Felix Linus Onyango appealed to the Land Adjudication Officer in case number **169/87-88**. Upon hearing the parties, his appeal was dismissed.
14. He alleged that the land was subsequently registered in his name and his father's as 1<sup>st</sup> registered owners. Though the petitioner alludes that he has adduced an official search certificate in confirmation of this, none was ever presented before this court.
15. It was his case, that upon the registration of his interests within the provisions of **Section 143** of the retired **Registered Land Act**, the title document became final and only a court of law could rectify it.
16. It is the Petitioner's position that the 4<sup>th</sup> Respondent in conjunction with the 1<sup>st</sup> Respondent connived and fraudulently rectified the register of the suit property from his name and that of his father to that of Felix Linus Onyango.
17. Aggrieved by this rectification, the petitioner contends that the respondents are guilty of impunity, dictatorship and abuse of power and his rights to; property, fair administrative action and fair hearing had been infringed contrary to the provisions of **Articles 1, 3, 10, 20 (3), 27, 28, 32, 35, 41, 47, 179, 183, 185, 195, 259 and 235** of the **Constitution**. He contended that the provisions of the Leadership and Integrity Act, Land Act, Land Adjudication Act and Fair Administrative Action Act were equally violated.

#### **The 1<sup>st</sup> Respondent's' case and evidence**

18. The 1<sup>st</sup> Respondent's case is contained in his Replying Affidavit and documents in support of his case.
19. In summary; the 1<sup>st</sup> Respondent was the son of Felix Linus Onyango who died on 15/08/1997 and that the suit property was customary land. He contended that the suit property was previously registered in the Petitioner's name and that of his father Ojwang Radonde Mutamba.
20. Aggrieved by these registrations, he averred that his father pursued various appellate mechanisms resting with **Appeal Case No. 352 of 1996** before the Minister; which his father succeeded after the Petitioner's father failed to attend the hearing. He adduced a copy of the Implementation of the Minister's Decision that was issued pursuant to **Section 29** of the **Land Adjudication Act**. The decision of the Minister has never been quashed or set aside.
21. He asserted that the outcome of the appeal was duly forwarded to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent for implementation; which they did. He averred that the registration of the suit property in his father's name was beyond reproach.
22. He contended that the suit property had been the subject of litigation for over 30 years with each party being given an opportunity to defend their respective positions and that the Petitioner's rights had not been infringed upon. He asserted that the matter was finally determined on 17/09/1999 and this Petition had been filed late in the day.

#### **The 2<sup>nd</sup> – 5<sup>th</sup> Respondents' case and evidence**

23. The 2<sup>nd</sup> – 5<sup>th</sup> Respondents case is contained in their Replying Affidavit and documents in support of their case.
24. In summary; they contended that **Nyadorero "B"** was declared an adjudication section in 1975 and demarcation and survey took a period of 13 years and on 28/04/1988 the section was published as complete.

25. That the suit property was demarcated and surveyed in 1977 and it was recorded in the names of the Petitioner and his father. Thereafter, Felix Linus Onyango followed various appellate mechanisms in accordance with the provisions of the Land Adjudication Act resting with an appeal to the Minister which finally determined the matter with finality on 17/09/1999 in the appellant's favour. They adduced a copy of the Minister's proceedings in support of their case.

26. Subsequent thereafter, the Director of Land Adjudication and Settlement in accordance with the provisions of **Section 29 (3)** of the **Land Adjudication Act** advised the 4<sup>th</sup> Respondent the outcome of the appeal to enable him amend the duplicate adjudication record. A copy of the advice letter was adduced as evidence.

27. That an adjudication record was prepared in the name of the Petitioner and his father subject to appeal. A copy of the adjudication record was adduced as evidence. This adjudication record was forwarded to the 4<sup>th</sup> Respondent who in turn forwarded it to the 3<sup>rd</sup> Respondent for it to prepare a title document. The names of the Petitioner and his father were registered as proprietors subject to restriction of the impending appeal pursuant to the provisions of **Section 28** of the **Land Adjudication Act**.

28. Upon the outcome of the Appeal, the restriction was lifted and the suit property was registered in the name of Felix Linus Onyango in accordance with the decision of the Minister.

29. That **Section 28** and **29 (3)** of the **Land Adjudication Act** empowered the 4<sup>th</sup> Respondent to amend the register in compliance with the determination of the Minister and in essence 1<sup>st</sup> registration was deemed to have occurred after the Minister's decision.

30. They contended that the actions of the 4<sup>th</sup> Respondent were above board and urged the Petitioner to pursue his grievances with the Minister.

#### **Petitioner's rebuttal**

31. In rebuttal to the 1<sup>st</sup> Respondent's Replying Affidavit, the Petitioner filed a Supplementary Affidavit. He contended that he was not made a party to the proceedings before the Minister despite being a co-owner of the suit property.

32. He averred that according to the appeals register, the adjudication report dated 8/02/2021 showed the appeal was **Case No. 353 of 1999** and not **352 of 1999** and that he was never summoned to defend himself. He contended that the appeal was dismissed and that the Respondents colluded to alter his title documents.

33. He asserted that his right to fair hearing as espoused by **Articles 47** and **50** of the **Constitution** were infringed. According to him registration of land under the retired **Registered Land Act** was conducted once adjudication proceedings had been completed.

34. In addition, he asserted that it was questionable how the appeal to the Minister was carried out in 1999 but a restriction was placed on the suit property in 2009. It was the Petitioner's position that since the suit property was registered under **Section 143** of the retired **Registered Land Act**, registration could not have been cancelled except by an order of the court; which was not the case.

#### **The Petitioner's submissions**

35. The Petitioner filed written submissions dated 10/11/2021. He pegged his submissions on three issues he identified for determination: (a) Whether the 3<sup>rd</sup> Respondent had powers to cancel title documents without a court order (b) Whether the Petitioner was accorded a fair hearing and, (c) Whether a dead person could transact and own land.

36. On the first issue, it was the Petitioner's position that the suit property was a 1<sup>st</sup> registration and within **Section 143** of the repealed **Registered Land Act**, the register could only be rectified by a court order and on this, he placed reliance on the authority of **Obiero vs Opiyo & others [1972] EA 227** which held that the title document of a 1<sup>st</sup> registered owner was indefeasible. He also placed reliance on the case of **Republic vs Land Registrar Taita Taveta District & another [2015] eKLR** which held that a Land Registrar did not have jurisdiction to revoke a title document.

37. On the 2nd issue, he contended that contrary to the provisions of **Article 47** and **50** of the **Constitution**, he was never accorded a fair hearing before the Minister and that it was only a stranger who appeared. He relied on the authorities of **Attorney General vs Kituo Cha Sheria & 7 others [2017]**, **Judicial Service Commission vs Mbalu Mutava & another [2014] eKLR** and **Dry Associates Limited vs Capital Markets Authority & another [2012]** that gave voice to the importance of fair administrative action.

38. On the third issue, he submitted that Felix Linus Onyango was long deceased and was incapable of transacting in the suit property. He concluded that the entire process of deregistering him on the suit property was shrouded with fraud.

#### **The 1<sup>st</sup> Respondent's submissions**

39. The 1<sup>st</sup> Respondent filed written submissions dated 4/12/2021. He identified 3 issues for determination; (a) Whether the Petitioner and the 1<sup>st</sup> Respondent had the capacity to sue and be sued (b) Whether the Petitioner had moved the court appropriately and if the suit was time barred and (c) Whether the Petitioner had proved fraud against the Respondents.

40. On the first issue, he contended that the Petitioner did not prove that he had the capacity to act on behalf of his deceased father nor did he produce a limited grant for this purpose. He placed reliance on the cases **Julian Adoyo Ongunga & another vs Francis Kiberenge**

**Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] eKLR and Hawo Shanko vs Mohamed Uta Shanko [2018] eKLR.** He contended that the Respondent ought to have sued the Legal Representative of the Estate of Felix Linus Onyango and not him. He relied on the case of **Mohammed Abushin Mkullu vs Suleiman Abdalla Hassan [2012] eKLR.**

41. On the second issue, the 1st Respondent submitted that the Petitioner ought to have filed an application for judicial review as he is seeking orders to quash the decision of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents. On this, he relied on the cases of **Republic vs County Council of Kwale & another ex parte Kondo & 57 others Mombasa HCMCA Number 384 of 1996** and **Wilson Njuguna Gakuru & another vs National Transport & Safety Authority & 2 others [2016] eKLR.** On the issue of time, he submitted that that the Petitioner's case is time barred because it was filed outside the requisite six-month window period.

42. On the third issue, it was his submission that the Petitioner had not identified the particulars of illegality against him. He posited that a title document was never granted to the Petitioner as there had been a restriction issued over the suit property pending appeal and that due process had been followed by the Respondents.

#### **The 2<sup>nd</sup> – 5<sup>th</sup> respondent's submissions**

43. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed written submissions dated 22/07/2021. Their submissions were based on four issues:

(a) Whether the 4<sup>th</sup> Respondent had the jurisdiction to review, alter and change the register and whether an amendment of title document to the name of the deceased Felix Linus Onyango was unprocedural and fraudulent (b) Whether the said acts violated the Constitution, the Land Act, 2012, the Land Registration Act and the Land Adjudication Act (c) Whether the Respondents infringed on the Petitioner's rights to fair administrative action and, (d) Whether the 1<sup>st</sup> to 4<sup>th</sup> Respondents' actions over the suit property violated **Articles 40, 41, 67 and 179 of the Constitution.**

44. They reiterated the averments in their Replying Affidavit and submitted that the 3<sup>rd</sup> Respondent had to comply with the decision of the Minister in registering the suit property in the names of Felix Linus Onyango and that a 1<sup>st</sup> registration only occurred after determination of an appeal by the Minister.

45. They contended that the Petitioner could not cry foul that his right to fair administrative action was violated when his father failed to adhere to summons from the Minister.

46. The 2<sup>nd</sup> to 5<sup>th</sup> Respondents stated that the award of the suit property to Felix Linus Onyango did not violate the Petitioner's rights under **Articles 40, 41, 67 and 179 of the Constitution** because a title document was never issued to him and his father.

47. It was their submissions that the Petition did not meet the ingredients of the case of **Anarita Karimi Njeru v Attorney General [1979]** and that the Petitioner failed to prove fraud against them. They also placed reliance on the case of **Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR.**

#### **The Petitioner's supplementary submissions**

48. The Petitioner filed supplementary submissions dated 22/01/2022 in response to the 1<sup>st</sup> Respondent's written submissions. On *locus standi*, the Petitioner contended that he was the Administrator of the Estate of Ojwang Radonde Mutamba and that in constitutional cases *locus* was wider than those of other civil cases. In that regard, he cited the case of **Priscilla Nyokabi Kanyua vs Attorney General & Interim Independent Electoral Commission Nairobi HCCP Number 1 of 2010** and **Alfred Njau & 5 others vs City Council of Nairobi [1983] eKLR.**

#### **Analysis and determination**

49. Having considered the Petitioner's and Respondents' pleadings and documents, rival written submissions and authorities cited therein, this court is of the considered view that the issues falling for determination are as follows:

- a) Whether the Petitioner had locus standi to institute suit against the Respondents and whether there was misjoinder of the 1<sup>st</sup> Respondent.**
- b) Whether the Petition is merited and in particular, whether this court shall quash the decision of the 4th Respondent of registering Felix Linus Onyango as the proprietor of the suit property.**
- c) Whether the Petitioner is entitled to the orders sought.**
- d) Who shall bear the costs of the suit.**

This court shall make sequential pronouncements on the four issues;

- a) Whether the Petitioner had locus standi to institute suit against the Respondents and whether there was misjoinder of the 1<sup>st</sup> Respondent.**

50. The Petitioner averred that he was the Administrator of the Estate of his late father Ojwang Radonde Mutamba. He contended that he had adduced a copy of the Grant to this court. From the record, there is a Grant attached to the last page of the Petition however, the document neither has a stamp demonstrating that it was marked as an exhibit nor is it embossed by the court. In my humble view, this Limited Grant is not properly before this court.

51. Does this then preclude the Petitioner from instituting suit against the Respondents? My answer is in the negative, from the register of the suit property, the Petitioner and his deceased father were previously registered as owners of the suit property as tenants in common and he had a vested interest in the suit property and capable of instituting suit in his own capacity.

52. The 2<sup>nd</sup> issue is the locus of the 1<sup>st</sup> Respondent. It is trite law that he who alleges must prove. In the Petition, the Petitioner described him as a County Adjudication Officer however, from the evidence that has been adduced, he is the son of Felix Linus Onyango and worst still, he is neither the registered proprietor of the suit property nor an administrator of the Estate of Felix Linus Onyango and I agree with the Respondents that the 1<sup>st</sup> Respondent was wrongly joined in these proceedings and on this, I am persuaded by the decision of **Mrima J in Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) (Supra)**.

***“Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists”.***

***b) Whether the petition is merited and in particular, whether this court shall quash the decision of the 4<sup>th</sup> Respondent of registering Felix Linus Onyango as the proprietor of the suit property.***

53. The gravamen of the Petition is that the register of the suit property was cancelled by replacing the Petitioner’s name and that of his father in favour of Felix Linus Onyango who is since deceased. The 2<sup>nd</sup> to 4<sup>th</sup> Respondent have contended that they undertook due process in cancelling the Petitioner’s interests in the suit property and if at all there were mistakes in the cancellation process, then the buck stopped with the Minister who heard and determined the Appeal.

54. In paragraph **11, 12, 13, 14, 15, 16** and **17** of his supplementary affidavit the Petitioner has questioned the manner in which the appeal to the Minister was conducted. In my considered opinion, the Minister was a necessary party to this suit; which she is not. The absence of the registered proprietor of the suit property and the Minister from these proceedings renders the suit fatally defective. In a case where a Minister had not been joined in a judicial review matter, the Court of Appeal in the case of **Mahaja vs Khatwalo & Anor [1983] eKLR** held thus;

***“In my view the District Commissioner was, at the very least, a person directly affected by the proceedings and I would therefore resolve ground 3 of Mr Oraro’s grounds of appeal in the appellant’s favour...”***

55. On the failure to join a registered proprietor in court proceedings, the Court of Appeal in the case of **Mwinyi Hamisi Ali v. Attorney General & Another; Mombasa Court of Appeal Civil Appeal No. 125 of 1997** observed thus:

***“In order that Mr. Hamisi Ali could claim successfully, title by adverse possession, he had to show that the title of the said four persons stood extinguished. That can only be done if the title holders were parties to the suit”.***

56. Though it is my finding that the Petition is fatally defective and ultimately determines the dispute, I will address my mind to the crux of the Petition.

57. When a person seeks redress through a constitutional petition, it becomes the duty of that party to state his claim with precision by referring to the provisions of the Constitution that have been violated and the manner in which the provisions were violated. This principle was established in the case of **Anarita Karimi Njeru v Republic [1979] eKLR** where the High Court held:

***“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”***

58. The principle in the **Anarita Karimi** case was re-affirmed in the case of **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR** and **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR**.

59. Does the instant petition comply with the stated principle? The answer is in the affirmative and the negative. **Articles 1, 3, 27, 28, 32, 35, 41, 179, 183, 195** and **235** that the Petitioner alleges were violated by the Respondents are not related to the alleged infringement; the Respondents failure to summon him before cancelling his title document to the suit property.

60. Similarly, the specific provisions of the Leadership and Integrity Act, Land Act and Land Adjudication Act that were allegedly breached by the Respondents have not have been disclosed. In view, only two claims pleaded in the Petition have met the principles of **Anarita Karimi (Supra)**; **Articles 10** and **47** were infringed by the Respondents by failing to summon him before cancelling his title document to the suit property.

61. Whereas **Article 10** of the **Constitution** provides for national values and principles of governance, including transparency and

accountability, **Article 47** deals with fair administrative action. Some principles of **Article 10** are applicable to **Article 47**.

62. The basis for review of an administrative action is already provided for in **Article 47** which provides that administrative action must be expeditious, efficient, lawful, reasonable and procedurally fair. Within the provisions of **Article 23(1) (f)**, a party can seek judicial review via a constitutional petition and such petitions are not time bound.

63. The Petitioner alleges that the Respondents acted beyond their powers by cancelling his title document which is a reserve of the courts. He averred that the Respondents have not produced evidence to demonstrate that the Minister summoned him for a hearing or notified him of the outcome of the proceedings. Further, that from the documents adduced, the appeal was heard on 17/09/1999 and that it was only one Charles Otieno Kambu who was a stranger to him who attended.

64. He alleged that from the evidence adduced by the then District Commissioner who represented the Minister dismissed the appeal and the suit property was never awarded to Felix Linus Onyango and that after the appeal was dismissed, the suit property was registered in his name and that of his father. He contended that the entries on the "greencard" that were entered in the year 2009, were undertaken long after the appeal had been determined.

65. On the other hand, the 2<sup>nd</sup> to 5<sup>th</sup> Respondents have alleged that due process was undertaken in the cancellation of the Petitioner and his father from the register and that of the registration of Felix Linus Onyango. They alleged that 1<sup>st</sup> registration was deemed to have taken place after determination by the Minister.

66. They contended that upon determination of an appeal by the Minister the 4<sup>th</sup> Respondent was in accordance with the provisions of **Section 29 (3)** of the **Land Adjudication Act** advised to amend the duplicate adjudication record; which he did and that they were bound by the decisions of the Minister.

67. The 2<sup>nd</sup> to 5<sup>th</sup> Respondents contended that the Minister issued summons to the Petitioner's father but he failed to attend hence the outcome of the appeal.

68. The Land Adjudication Act sets out several dispute resolution mechanisms. In addressing a grievance, one starts with lodging a complaint with the Land Adjudication Committee (**Section 20**), If aggrieved, a party appeals to the Arbitration Board (**Section 21**), If a party is dissatisfied he can still pursue a further appeal with the Land Adjudication Officer (**Section 26**). It is common ground between the parties that due process was followed upto the time the Land Adjudication Officer rendered his decision.

69. Upon determination by the Land Adjudication Officer, the adjudication register became final subject to appeal (**Section 27(3) (b)**). The 4<sup>th</sup> Respondent then registered the suit property in accordance with the final adjudication register and because there was an appeal, a restriction was entered on the register of the suit property (**Section 28**).

70. A party aggrieved by the decision of an Adjudication Officer could appeal to the Minister within 60 days from the date of determination of the appeal (**Section 29**). The Minister normally makes final decisions in a manner he deems fit and his decision is final (**Section 29) (b)**.

71. In the circumstances of this case, Felix Linus Onyango appealed against the decision of Adjudication Officer on the suit property and that of land parcel numbers 1938 and 1942 in **Appeal Number 352 of 1996**.

72. On appeal, only a representative of one of the other parcels of land (Charles Otieno Kambu) attended the hearing. The extract of the proceedings is as follows;

***"The case was called for hearing 3 times and the respondents have refused to come. It is apparent they have no case or interest in the matter. The case is dismissed in favour of the appellant"***

73. The Petitioner contends that Felix Linus Onyango's case was dismissed while the Respondents allude that Felix's appeal succeeded. It should be borne in mind that a judicial review deals with the process leading to the making of the decision and not the decision itself.

74. As envisaged by **Section 29(1) (b)** the Minister did not need to follow the usual formal process of judgment writing and in my humble view the only way one can make of this decision is that the then Respondents including the Petitioner's father did not appear before the Minister hence their case was dismissed in favour of the appellant. The Court of Appeal in the case of **Dominic Musei Ikombo v Kyule Makau [2019] eKLR** had this to say on a Minister's proceedings;

***"The District commissioner acting on behalf of the Minister has wide latitude to conduct the proceedings in a manner that meets the substantive ends of justice"***.

75. From the evidence adduced, the decision of the Minister was implemented by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents and the register was altered in accordance with the provisions of **Section 29(3) (b)**.

76. The Petitioner contends that he and his father were 1<sup>st</sup> registered owners of the suit property. In land falling within an adjudication section, rights and interests in the suit property crystallize in the form of registration and issuance of the title deed to a person. None of the parties ever produced a copy of a title deed to demonstrate that a title document was ever issued.

77. The suit property was registered in the name of the Petitioner and his father subject to determination of the appeal by the Minister and it therefore follows that a title deed could not be issued until determination of the appeal and therefore the Petitioner's contention that he and his father were 1<sup>st</sup> registered owners fails. In the case of **Jambo Fondo Gona & another v Minister of Lands & Settlement & 6 others [2021] eKLR**, the court held thus;

***“As it were, the Land Adjudication Act provides an elaborate procedure to be followed from the time an area is declared an adjudication section until such a time that the Adjudication Register is closed. The Petitioners who were represented by the same Advocate as in these proceedings have not explained how they acquired their title when the Appeal to the Minister was still pending before the Panel”*** (Emphasis added)

78. It is only upon issuance of a title document that such rights are protected under the provisions of **Section 25** of the **Land Registration Act**, but can be challenged under **Section 26 (2) (b)** of the aforementioned Act.

79. Owing to the case made out in this analysis, I am of the view that the 2<sup>nd</sup> to 4<sup>th</sup> Respondents carried out due process in the registration of the property in the name of Felix Linus Onyango and I find that the petition is not only defective but lacks merit and the Petitioner is not entitled to the orders sought. It is trite law that costs follow the event and in the absence of special circumstances, I award costs of this Petition to the Respondents.

80. Ultimately, I issue the following disposal orders;

***a) The Petition is hereby dismissed with costs to the Respondents.***

81. It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY,**

**DATED, SIGNED AND DELIVERED THIS 10TH DAY OF MARCH 2022.**

**In the Presence of:**

M/s Machuka for the Petitioner

N/A for the Respondent

Court assistant; Sarah Ooro

**HON. A. Y. KOROSS**

**JUDGE**

**10/3/2021**