



**Del Monte Kenya Limited v National Land Commission & another;  
Kandara Residence Association & 3 others (Interested Parties) (Petition  
3 of 2020) [2022] KEELC 2234 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEELC 2234 (KLR)

**REPUBLIC OF KENYA**

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

**PETITION 3 OF 2020**

**LN GACHERU, J**

**APRIL 28, 2022**

**(FORMERLY NAIROBI HIGH COURT PETITION NUMBER 48 OF 2019)**

**IN THE MATTER OF ARTICLE 22(1) OF THE  
CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF ARTICLE 1, 2, 10, 19, 20, 21, 22, 23, 25,  
27, 35, 40, 46, 48, 50, 60, 67, 156, 165, 249, AND 258 OF THE  
CONSTITUTION OF THE REPUBLIC OF KENYA.**

**AND**

**IN THE MATTER OF NATIONAL LAND COMMISSION  
ACT NUMBER 5 OF 2012 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION AND THREATENED.  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**UNDER ARTICLE 1, 2, 10, 19, 20, 21, 22, 23, 25, 27, 28, 35,  
40, 46, 48, 50, 60, AND 67 OF THE CONSTITUTION OF THE  
REPUBLIC OF KENYA.**

**BETWEEN**

**DEL MONTE KENYA LIMITED ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**



AND

KANDARA RESIDENCE ASSOCIATION ..... INTERESTED PARTY  
CANNERIES ENVIRON RESIDENCE ASSOCIATION ..... INTERESTED PARTY  
COUNTY GOVERNMENT OF MURANG'A ..... INTERESTED PARTY  
COUNTY GOVERNMENT OF KIAMBU ..... INTERESTED PARTY

**The Environmental and Land Court Act had the jurisdiction to determine issues about the extension and renewal of leases.**

*Section 15(3)(b)(i) of the National Land Commission Act that provided that the National Land Commission would only admit, register and process a historical land claim if the claim had not or was not capable of being addressed via the court system on the basis that the claim contradicted a law that was in force at the time when the injustice began was not unconstitutional and did not contradict the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the Constitution.*

Reported by John Ribia

**Jurisdiction** – jurisdiction of the Environment and Land Court – jurisdiction to determine issues concerning the extension and renewal of leases - whether the Environmental and Land Court had the jurisdiction to determine issues relating to extension and renewal of leases – , section 13(7); t

**Statutes** – constitutionality of statutes – constitutionality of section 15(3)(b)(i) of the National Land Commission Act – claim that the role of the National Land Commission of processing historical land injustices that were not capable of being addressed by the courts was unconstitutional - whether section 15(3)(b)(i) of the National Land Commission Act that provided that the National Land Commission would only admit, register and process a historical land claim if the claim had not or was not capable of being addressed via the court system on the basis that the claim contradicted a law that was in force at the time when the injustice began was unconstitutional and contradicted the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the Constitution – , articles 24, 25, 27(1), 40, 50(1), and 60; No. 5 of 12, section 15(3)(b)(i).

**Constitutional Law** – fundamental rights and freedoms – right to fair hearing – right to fair administrative action – National Land Commission – role of the National Land Commission in investigating claims of historical land injustices - whether the National Land Commission in investigations, on its own initiatives or on a complaint, into present or historical land injustices, and recommending appropriate redress, had an obligation to grant the land owner a fair hearing - , articles 24, 25, 27(1), 40, 50(1), and 60; , section 15(3)(b)(i).

**Constitutional Law** – fundamental rights and freedoms – right to fair hearing – right to fair administrative action – claim that a land owner's rights to fair administrative action and to a fair hearing were violated in proceedings before the National Land Commission that investigated historical land injustices – whether the proceedings before the National Land Commission violated the petitioner's rights to a fair hearing and to fair administrative action – , articles 47 and 50.

### **Brief facts**

The petitioner, a commercial farming enterprise and the largest exporter of fresh and processed pineapples and fruit juice beverages, averred that its leases to the suit land expired in 2019, and 2022, and it commenced the process of renewing the same in 2012. That due to difficulties encountered with the County Governments of Murang'a and Kiambu (the 3<sup>rd</sup> and 4<sup>th</sup> interested parties), the petitioner was compelled to file Milimani High Court Constitutional Petition No. 398 of 2015, that sought to compel the 3<sup>rd</sup> and 4<sup>th</sup> interested parties to issue it with letters of no objection to the renewal of leases. The dispute between the petitioner and the 4<sup>th</sup> interested party had since been resolved, and the requisite no objection letter issued. That the dispute with the 3<sup>rd</sup> interested party was however still pending and was before the Environment and Land Court (ELC).



The petitioner contended that the mandate of the National Land Commission (1<sup>st</sup> respondent) included initiating investigations, on its own initiative or on a complaint, into present or historical land injustices, and to recommend appropriate redress. That despite having been appointed in February 2013, the previous Commissioners of the 1<sup>st</sup> respondent did not put in place mechanisms for receiving and hearing complaints relating to historical land injustices in good time. That despite the rules made by the 1<sup>st</sup> respondent to deal with historical land Injustices being quashed by the courts, the 1<sup>st</sup> respondent had however purported to receive and hear complaints on historical land injustices in the absence of any rules /regulations.

The petitioner contended that its rights to fair administrative action and fair hearing were violated in the conduct of proceedings before the 1<sup>st</sup> respondents Committee on Historical Injustices in relation to Amended Complaint Number NLC/HLI//004/2017, dated April 20, 2018:, Kandara Residents Association vs. Delmonte Kenya Limited. That the 1<sup>st</sup> respondent invited the petitioner to Commission Session on September 27, 2018, vide a letter dated September 13, 2018, which was served upon the petitioner on September 20, 2018, which was only four working days to the said session. That the petitioner responded to the said letter via a letter date September 25, 2018, and raised a preliminary objection on the grounds that the issues the respondents sought to deliberate on were subject to a suit that was pending hearing at the High Court in Nairobi. The petitioner also requested for an opportunity to be allowed to canvass the preliminary objection before the hearing of the amended complaint would commence. That the petitioner's advocate attended the commission session and he was denied an opportunity to argue its objection. That the 1<sup>st</sup> respondent proceeded to hear the amended complaint in total disregard of the petitioner's objection and application for adjournment to allow them time to prepare for the hearing. That the petitioner applied for copies but they were not availed despite repeated follow up.

The 1<sup>st</sup> respondent attempted to mediate the dispute with the petitioner and the 1<sup>st</sup> interested party. The petitioner contended that the 1<sup>st</sup> respondent was biased and filed the instant suit in which it sought orders that that section 15(3) (b) (i) of the National Land Commission Act, that provided that the National Land Commission would only admit, register and process a historical land claim if the claim had not or was not capable of being addressed via the court system on the basis that the claim contradicted a law that was in force at the time when the injustice began was unconstitutional and contradicted the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the Constitution, that its right to fair hearing and right to administrative action were violated and sought orders of *certiorari* to quash the proceedings of the 1<sup>st</sup> respondent's Committee on Historical Injustices and orders of prohibition to stop the Committee from addressing any historical land complaints arising from the suit land.

### **Issues**

- i. Whether the Environmental and Land Court had the jurisdiction to determine issues concerning the extension and renewal of leases.
- ii. Whether section 15(3)(b)(i) of the National Land Commission Act that provided that the National Land Commission would only admit, register and process a historical land claim if the claim had not or was not capable of being addressed via the court system on the basis that the claim contradicted a law that was in force at the time when the injustice began was unconstitutional and contradicted the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the Constitution.
- iii. Whether the National Land Commission in initiating investigations, on its own initiative or on the basis of a complaint, into present or historical land injustices, and to recommend appropriate redress had an obligation to grant the land owner a fair hearing.
  1. Whether, based on the facts of the instant case, the proceedings before the National Land Commission violated the petitioner's rights to a fair hearing and to fair administrative action.

### **Relevant provisions of the Law**

#### **Section 15(3)(b)(i)**



## 15. *Historical land injustices*

(3) *A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—*

(b) *the claim has not or is not capable of being addressed through the ordinary court system on the basis that—*

(i) *the claim contradicts a law that was in force at the time when the injustice began;*

### **Held**

1. Jurisdiction was the cornerstone of determination of any suit, without which a court could not entertain any matter before it. Issues of jurisdiction should be determined at the first instance. If a suit was filed without jurisdiction, the only remedy was to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction was dead on arrival and could not be remedied. Without jurisdiction, the court could not confer jurisdiction to itself.
2. The Environment and Land Court had the discretion to issue such orders as it considered appropriate including the orders contemplated in section 13(7) of the Land Act. The tone of section 13(2) was indicative of the fact that Environment and Land Court had the power to hear and determine any matter touching on environment and land and it matters not how the suit had been instituted. The petitioner was not seeking renewal of a lease.
3. The National Land Commission had the constitutional function of managing public land and the court could not usurp its function, guided by the principle of separation of powers. The Land (Extension and Renewal of leases) Rules, 2017, made provisions for the procedure and rules for renewal of leases which was a duty performed by National Land Commission. The jurisdiction of the court could only be invoked where a right had been infringed, violated and/or abused. Section 128 of the Land Act provided that any dispute arising out of any matter provided for under the Land Act may be referred to the Environment and Land Court for determination.
4. Rule 7 (5) of the Land (Extension and Renewal of Leases) Rules 2017 (Rules) allowed an aggrieved party to move the ELC for renewal of leases. Article 23 of the Constitution allowed parties to move court for grant of prerogative orders by way of constitutional petitions. Under the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, the ELC was defined thereunder as having the power to hear and determine constitutional petitions. The ELC had the statutory and constitutional mandate to hear and determine constitutional petitions, touching on environment, land use and occupation and title, and it was immaterial how the suit has been instituted. The petition was properly before the court and the court had the requisite jurisdiction to handle the Petition.
5. Sections 107, 108 and 109 of the placed a duty on the petitioner to demonstrate that the trial was unfair. From the evidence, the petitioner participated in the preliminary stages of the proceedings. The 1<sup>st</sup> respondent had the burden of demonstrating that a hearing was conducted by production of minutes and proceedings in evidence. The petitioner's evidentiary burden of proof shifted to the 1<sup>st</sup> respondent.
6. Proceedings before the 1<sup>st</sup> respondent were *ad hoc* in nature, but the same were bound by the principles of natural justice, including observance of the rights and freedoms under the Constitution.
7. While National Land Commission was a constitutional creature, by application of the principle of separation of powers, the ELC could not interfere with its work. The National Land Commission had to discharge its functions in accordance with the Constitution, failure to which the ELC had the powers to sanction it. The petitioner's right to fair hearing as guaranteed under article 50(1) of the Constitution were infringed, denied and/ or violated.
8. The 1<sup>st</sup> respondent was performing an administrative action and was according to section 3 of the , 2015, an administrator.
9. Pursuant to the provisions of article 47, of the Constitution as read with the provisions of the , 2015, judicial review orders could where appropriate be issued against the decisions of the 1<sup>st</sup> respondent.



- The right to fair hearing was very closely intertwined with the right to fair administrative action. The petitioner's right to fair administrative action was infringed. By taking an action which had the possibility of affecting the interests of the petitioner, the 1<sup>st</sup> respondent was duty bound to ensure that in the process of arriving at its decision, the rules of fairness were adhered to. Otherwise such a decision would be tainted with illegality and procedural impropriety.
10. Whereas, the decision may well be justified on merits, once it was found to violate the rules of natural justice, it could not be permitted to stand. The petitioner was not given a chance to be heard and given that the suit land which was registered in its name was subject of the proceedings in issue. The petitioner was an affected entity that was entitled to be heard. Failure to abide by principles of natural justice rendered the decision by the National Land Commission invalid and the court had no option but to quash it. The petitioner was not given an opportunity to be heard and its rights under article 47 of the Constitution were violated.
  11. There was a general presumption that every Act was constitutional and the burden of proof thus lay on any person who alleged otherwise. Save that where there were limitations to fundamental rights, the onus was on the body restricting the right to show that such limitation was justified.
  12. Section 15 of the National Land Commission Act that provided for historical injustices was enacted by Parliament pursuant to article 67 (3) of the Constitution that empowered Parliament to give other functions to the National Land Commission. Given that investigations of historical injustices was one of the mandate of the National Land Commission, then the petitioner's contention that section 15 sought to arbitrarily deprive a *bona fide* proprietor of land of its rights to the suit property was speculative and unfounded as the said section defined what amounted to historical injustices.
  13. While article 40 of the Constitution gave every citizen the right to own property, that right was not absolute. Article 40(3) provided for instances in which the right could be impeached and or limited. Article 25 provided for absolute rights which could not be limited. The right to property was not listed therein and hence it was not absolute. Further, the National Land Commission was mandated to investigate historical injustices and therefore, the ELC would shy away from limiting and /or usurping that mandate.
  14. One of the mandates already given to the 3<sup>rd</sup> respondent by the Constitution was the power to investigate and make recommendations on historical land injustices. The provisions of section 38 of the were aimed at the indigenous people of Kenya as those injustices were committed against Kenyans and not the non-citizens. The amendments brought about to section 15 of the by section 38 of the Land Laws (Amendment) Act were not unconstitutional.
  15. It could not be said that section 15 of the had the effect of limiting the petitioner's rights as guaranteed under article 40 of the Constitution, since it provided for the process and instances in which the Commission could recommend to the State appropriate redress, after having conducted proper investigations and hearings. Section 15(3) (b) (i) of the was not unconstitutional.

*Petition partly allowed.*

### **Orders**

*No order as to costs.*

### **Citations**

#### **Cases**

1. Ahmed Mohammed Noor v Abdi Aziz Osman (Civil Appeal 156 of 2018; [2019] eKLR) — Explained
2. Delmonte Kenya Limited v County Government of Murang'a & another (Petition 398 of 2015; [2019] eKLR) — Explained
3. Gathoni Park Farm Limited v National Land Commission & 7 others (Petition 3 of 2019; [2019] eKLR) — Explained



4. Japheth Pasi Kilonga & 8 others v Mombasa Autocare Limited (Civil Appeal 61 of 2014 (Ur. 3/15); [2015] eKLR) — Explained
5. Joho , Ali & another v Suleiman Said Shahbal & 2 others (Civil Appeal 12 of 2013; [2013] eKLR) — Explained
6. Judicial Service Commission v Mbalu Mutava & another (Civil Appeal No 52 of 2014; [2015] eKLR) — Explained
7. Kidero, Evans Odhiambo & 4 others v Ferdinand Ndungu Waititu & 4 others (Petition 18 & 20 of 2014; [2014] eKLR) — Explained
8. Kipsiwo Community Self Help Group v Attorney General & 6 others (E&L Pet 9 of 2013; [2013] eKLR) — Explained
9. Malindi Law Society & 12 others v Attorney General & 2 others ((Petition 19 & 291 of 2016) [2021] KELC 168 (KLR) (29 October 2021) (Judgment)) — Explained
10. Onyango Oloo vs. Attorney General ([1986-1989] EA 456) — Explained
11. Osman , Egal Mohamed v Inspector General of Police & 2 others (Petition Case 152 of 2015; [2015] eKLR) — Explained
12. Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd ([1989] KLR 1; [1989] eKLR) — Explained
13. Patrick Musimba v National Land Commission & 4 others (Petition 613 of 2014: [2015] eKLR) — Explained
14. Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service (Civil Appeal 244 of 2010 ; [2019] eKLR) — Explained
15. Republic v National Land Commission & 2 others Ex Parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West) (Miscellaneous Civil Application 266 of 2017;[2018] eKLR) — Explained
16. Republic v Registrar of Companies Ex parte Charles Kariuki Githongo [2001] eKLR (Miscellaneous Application 63 of 2001; [2001] eKLR; [2001] KLR 299)
17. Sceneries Limited v National Land Commission (Miscellaneous Constitutional Application 1 of 2016; [2017] eKLR) — Explained
18. The Management of Committee of Makondo Primary School and Another vs. Uganda National Examination Board (HC Civil Misc Application No.18 of 2010) — Explained

#### **Statutes**

1. Civil Procedure Act (cap 21) — Section 27 — Interpreted
2. Constitution of Kenya, 2010 — Article 1, 2(5)(6), 23, 24, 25, 27, 40, 46, 47, 50, 60, 67, 162(2); Chapter 6 — Interpreted
3. Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Constitution of Kenya, 2010 Sub Leg) — Interpreted
4. Environment and Land Court Act, 2011 (No 19 of 2011) — Section 13(2) — Interpreted
5. Evidence Act (cap 80) — Section 107, 109 — Interpreted
6. Fair Administrative Actions Act, 2015 (No 4 of 2015) — Section 2, 3 — Interpreted
7. Land Act, 2012 (No 6 of 2012) — Section 13, 128 — Interpreted
8. Limitation of Actions Act (cap 22) — Section 7 — Interpreted
9. National Land Commission Act (No 5 of 2012) — Section 15(3)(b)(i), 38 — Interpreted

#### **Advocates**

*Mr Thuo* for the Petitioner

*Mr Weche b/b for M/s Mutindi* for the 2nd Respondent

*Okatch & Partners* for the 1st Interested Party

*Kimwere Josphat & Co Advocates* for the 3rd Interested Party



## JUDGMENT

1. By an amended petition dated April 10, 2019, the petitioner herein sought for the following orders;
  - i. A declaration do issue that unless the proceedings conducted by the 1<sup>st</sup> Respondent in relation to the amended complaint Number NLC/HLI/004/2017 dated 20<sup>th</sup> April 2018, and the Determination thereof dated 7<sup>th</sup> February 2019, contravene a number of fundamental and other rights guaranteed to the petitioner by the Constitution of Kenya, including the following:
    - a) Article 1 as regards exercise of sovereign power.
    - b) Article 10 as regards National Values and Principles of governance which bind the Respondents herein.
    - c) Article 24 which forbids any limitation to the right of fair trial.
    - d) Article 40 relating to protection of the right to acquire and own property.
    - e) Article 46 which guarantees consumer rights.
    - f) Article 50 which guarantees the right to fair hearing.
    - g) Article 60 as regards principles of land policy in Kenya.
  - ii. A declaration be issued that section 15(3) (b) (i) of the National Land Commission Act, Number 5 of 2012, is unconstitutional and therefore null and void as the section is inconsistent with and contradicts the express provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the Constitution.
  - iii. An order of certiorari do issue calling to this honourable court and quashing/ setting aside the determination of the National Land Commission's Historical Land Injustices Committee dated February 7, 2019, made in NLC/HLI/004/2017; Kandara Residents Association Vs Del Monte Kenya Limited.
  - iv. An order of certiorari do issue calling to this honourable court and quashing/ setting aside Gazette Notice Number 1995, dated February 18, 2019, and published on March 1, 2019, in so far as it relates to the petitioner's Parcel of land, namely, Land Reference Numbers 12157, 12157/2, 12157/3, 12157/4, 12157/5, 12158, 12203/1, 12203/2, and 13289.
  - v. An order of prohibition do issue forbidding and/or restraining the 1<sup>st</sup> Respondent from entertaining, hearing, and/or determining any complaint on Historical Land Injustices in relation to the petitioner's parcel of land, namely, Land Reference Numbers 12157, 12157/2, 12157/3, 12157/4, 12157/5, 12158, 12203/1, 12203/2, and 13289.
  - vi. That this honourable court do issue such orders and give such directions as it may deem fit, just and appropriate in the circumstances of this matter.
  - vii. The costs of the petition be awarded to the petitioner.
2. The petitioner averred that it engages in the business of growing premium quality foods, fresh and processes pineapples and fruit juice beverages. That it is Kenya's biggest exporter of the said products and for purposes of its business, it has hired Land Reference Numbers 12157, 12157/2, 12157/3,



12157/4, 12157/5, 12158, 12203/1, 12203/2, and 13289 (here in after known as the ‘suit lands’) from the government and as a result, it is the Registered Lessee from the Government of the suit lands. That administratively the suit land are situate in Murang’a and Kiambu Counties.

3. That since 1970, the petitioner has made and continues to make major capital investments in its operations on the aforementioned suit lands and in fact most of the said suit land is used for pineapple farming. That the petitioner’s activities are of immense benefits to Kenya and the petitioner is at the fore front of helping the government achieve it’s ‘big four agenda.’
4. The petitioner averred that its leases to the suit land expired in 2019, and 2022, and it commenced the process of renewing the same in 2012. That due to difficulties encountered with the 3<sup>rd</sup> and 4<sup>th</sup> respondents, the petitioner was compelled to file Milimani High Court Constitutional Petition No. 398 of 2015, seeking to compel the said interested parties to issue it with letters of no objection to the renewal of leases. That the dispute between the petitioner and the 4<sup>th</sup> interested party has since been resolved, and the requisite no objection letter issued. That the dispute with the 3<sup>rd</sup> interested party is however still pending and the matter is before a 3 judge bench of this court.
5. It was the petitioner’s averments that the mandate of the 1<sup>st</sup> respondent includes initiating investigations, on its own initiatives or on a complaint, into present or historical land injustices, and to recommend appropriate redress. That despite having been appointed in February 2013, the previous Commissioners of the 1<sup>st</sup> Respondent did not put in place mechanisms for receiving and hearing complaints relating to historical land injustices in good time. For instance, the Committee of the 1<sup>st</sup> respondent on Historical Land injustices was not formed until about 2016. That in 2016, the 1<sup>st</sup> respondent drafted the National Land Commission (Historical Land Injustices) Rules, 2016 (“the 2016 draft rules”). That the 2016 draft rules were not subjected to public participation, parliamentary approval, or gazettment and they do not have any legal effect. That a review of the 2016 draft rules indicates that the 1<sup>st</sup> respondent did not bear in mind the need to give land owners a fair hearing. Further that in 2017, the 1<sup>st</sup> respondent drafted the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 (“the 2017 regulations”). That the 2017 regulations failed to adhere to basic provisions of the law, including seeking parliamentary approval before being published in the Kenya Gazette, and the National Assembly annulled them. That after the 2017 regulations were annulled, the 1<sup>st</sup> respondent has neglected to make to draft further regulations to rectify the mistakes pointed out by the National Assembly. The 1<sup>st</sup> respondent has however purported to receive and hear complaints on Historical Land Injustices in the absence of any rules /regulations.
6. Further that the instant petition relates to contravention of the petitioner’s Fundamental Rights in the Conduct of proceedings before the 1<sup>st</sup> respondents Committee on Historical Injustices in relation to Amended Complaint Number NLC/HLI//004/2017, dated April 20, 2018:, Kandara Residents Association vs. Delmonte Kenya Limited. That the 1<sup>st</sup> respondent invited the petitioner to Commission Session on 27<sup>th</sup> September 2018, vide a letter dated September 13, 2018, which was served upon the petitioner on September 20, 2018, which was only four working days to the said session. That the petitioner responded to the said letter via a letter date September 25, 2018, and raised a preliminary objection on the grounds that the issues the Respondents sought to deliberate on were subject to a suit that was pending hearing at the High Court in Nairobi. The petitioner also requested for an opportunity to be allowed to canvass the preliminary objection before the hearing of the amended complaint would commence.
7. That on September 27, 2018, the petitioner’s advocate attended the Commission Session and he was denied an opportunity to argue its objection. That the 1<sup>st</sup> respondent proceeded to hear the amended complaint in total disregard of the petitioner’s objection and application for adjournment to allow



- them time to prepare for the hearing. That the petitioner applied for copies of the proceedings that took place on September 27, 2018, but they were not availed despite repeated follow up.
8. That a few days after September 27, 2018, the 1<sup>st</sup> respondent offered to mediate the dispute and consequently proceedings were stayed to give room for mediation. That on the 2<sup>nd</sup> Mediation meeting held on December 20, 2018, it became apparent that the 1<sup>st</sup> respondent was biased and was conflicted to mediate the issue as they had already taken a stand on the matter via a letter dated March 22, 2016. The after consultation, the Commissioners of the 1<sup>st</sup> respondent admitted their bias and conflict in view of their position taken in the letter dated March 22, 2016, and called off the mediation sessions. That in a twist of events, the Commissioners of the 1<sup>st</sup> respondent upon calling off the mediation on grounds of their bias and conflict of interest, gave directions that they would proceed to determine the amended complaint dated April 20, 2018, on its merits. That it then became apparent to the petitioner that the 1<sup>st</sup> respondent would not be impartial in considering the amended complaint. That between December 21, 2018 and February 11, 2019, when this Petition was filed, the petitioner was not invited to any hearing of the amended Complaint dated April 20, 2018.
  9. That based on the apprehension of bias and impending expiry of the 1<sup>st</sup> respondent's Commissioners term of service, the petitioner filed this petition to protect their rights. That after the 1<sup>st</sup> respondent was served with the instant petition, it rushed to conclude the dispute and issued a determination backdated to February 7, 2019.
  10. In issuing the aforementioned determination, the 1<sup>st</sup> respondent failed to give the petitioner an opportunity to be heard and defend itself in gross violation of *the Constitution*. That the said determination was published vide Gazette Notice No. 1995, dated February 18, 2019, and published on 1/3/2019, long after the Petition herein had been filed and served.
  11. In addition, the petitioner maintained that section 15(3)(b) (i) and (ii) of the *National Land Commission Act* No 5 of 2012, was inconsistent with articles 24,27,40,50 and 60 of *the Constitution* of Kenya 2010, and particularized how each of the rights in these articles were breached and/or infringed by the Actions of the 1<sup>st</sup> respondent relying on the authority donated to the by section 15(3) of the *National Land Commission Act*.
  12. The petition was supported by the supporting affidavits sworn by Stergios Gkaliasoutsas on April 18, 2019, February 8, 2019 and April 4, 2019. In the said supporting affidavits, the deponent reaffirmed and repeated the facts and averment stated and included in the petition and averred that the respondents have an obligation to uphold, protect and defend *the Constitution*.
  13. The petition is opposed. The 1<sup>st</sup> respondent filed a replying affidavit sworn by Mr. Edmond Gichuru on March 4, 2019. In the said replying affidavit, the 1<sup>st</sup> respondent averred that it is an Independent Commission established under article 67(1) of *the Constitution* and is operationalized by the *National Land Commission Act* No. 5 of 2012, with its fundamental function being the management of Public Land on behalf of the National and County Government. That it is mandated under article 67(1)(e) of *the Constitution* to initiate investigations into present and/or historical injustices and recommend the appropriate redress. To achieve this function, it operates as a quasi-judicial body.
  14. It is the 1<sup>st</sup> respondents averment that it received a complaint from the 1<sup>st</sup> and 2<sup>nd</sup> interested parties that warranted it to invoke its mandate in line with section 15(1) of the *National Land Commission Act*. That the complaint was admitted for historical injustices over the petitioner's land. That all the parties herein were invited to hearings convened by the 1<sup>st</sup> respondent on March 1, 2018, April 5, 2018 and September 27, 2018 respectively. That at all times during the said hearings, the Petitioner was represented by their legal manager and their advocate on record Mr. Grishon Thuo. That upon



conclusion of the above mentioned hearing, officials of the 1<sup>st</sup> respondent retreated to review the evidence and submissions of parties and thereafter they delivered a well-reasoned determination as prescribed by law. That throughout the entire process, the 1<sup>st</sup> respondent complied with article 50 of *the Constitution*, the *Fair Administrative Action Act*, and section 15 of the *National Land Commission Act*.

15. Further that the right to protection of property conferred under article 40 of *the Constitution* is not an absolute right in itself as the said protection does not extend to property that was acquired unlawfully. That it is through the prism of the principles set out under section 40 of *the Constitution* that the 1<sup>st</sup> respondent is allowed to investigate and provide redress for historical land injustices. That the Petition is devoid of merit, a blatant abuse of the court process and therefore, it should be dismissed.
16. The 1<sup>st</sup> and 2<sup>nd</sup> interested parties filed a replying affidavit sworn by one Kirira Kimara on March 5, 2019. In the said affidavit it was deponed that the petition has enumerated a number of parcels of land which it claims to have leases for to wit Land Reference Numbers 12157, 12157/2, 12157/3, 12157/4, 12157/5, 12158, 12203/1, 12203/2 and 13279. However, it has conveniently left out other parcels of land which it occupies, but doesn't actually own. That members of the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are neighbours with the petitioner. That upon conducting private investigations, they came to learn that the petitioner is occupying large swathes of public land for which it did not have titles. That the said properties are 10733, 10735, 13169, 311/1, 311/2 and 9213/1, 10741, 10862, 11146, 11312 and unsurveyed UNS 337. That there are indeed additional parcels of land adjacent to the land occupied by the petitioner, whose leases were surrendered to the government by the original owners, to form public land which the petitioner illegally annexed and continues to occupy. That the petitioner has left large tracks of land untouched and unused for over 50yrs, contrary to the conditions provided in their lease certificates. Further, that the petitioner has put some of the land under intensive quarrying, in complete disregard of the conditions attached to its leases issued by the Government of Kenya. That the petitioner occupies 22,500 acres of land as opposed to the 20,000 acres granted by the Lease Certificates.
17. The 1<sup>st</sup> and 2<sup>nd</sup> interested parties averred further that the petitioner had approached this court with unclean hands as they had failed to disclose material facts to the court. That the 1<sup>st</sup> and 2<sup>nd</sup> interested parties lodged a historical Injustice Claim NLC/HLI/004/2017, before the 1<sup>st</sup> respondent decrying historical injustices visited among them by successive occupiers of the suit properties. That the 1<sup>st</sup> respondent conducted a very comprehensive hearing of the complaint and the petitioner was indeed given an opportunity to be heard.
18. The 3<sup>rd</sup> interested party filed a response to the amended petition dated July 8, 2019, and averred that while the petitioner boasts of a record of achievements in its amended petition, the petitioner has failed and/or refused to pay cess and taxes payable to the County Government. That most of the profits and produce of the petitioner is invested abroad and the petitioner has neglected to pay the 3<sup>rd</sup> interested party its dues. As a result, the Petitioner has not come to court with clean hands and deserves no mercy or equitable relief from the court. That they are in agreement with the petitioner that 1<sup>st</sup> respondent did not conduct a fair hearing and hurriedly delivered a determination without duly hearing of all the parties and their issues.
19. In response, the petitioner filed a further affidavit sworn on July 23, 2020, by Stergios Gkalimoustas, and restated the contents of the amended petition dated April 10, 2019, and the supporting affidavits attached to it.
20. Parties elected to dispense with the amended petition dated April 10, 2019, by way of Written Submissions. The petitioner filed its written submissions on September 26, 2020 through the Law



Firm of Njoroge Regeu & Co Advocates. The petitioner submitted at length in support of the petition and this court takes note of the litany of authorities cited in the said submissions.

21. Further, the petitioner submitted that it acquired the interests in the impugned land in 1970, or there about yet the alleged complaint is for events that took place in 1895, about 70 years prior to its acquisition. That at the time the petitioner acquired the impugned land, it was protected by section 7 of the Limitations of Actions Act. That on the basis of this law, it set up massive investments on the suit lands, which are protected under article 40 of *the Constitution* of Kenya. That the effect of section 15 (3)(b)(i) and (ii) of the *National Land Commission Act* is to take away the security land rights vested on land by article 60 of *the Constitution* and to take away the equality of the law guaranteed by article 27 of *the Constitution*.
22. In addition, the petitioner submitted that the proceedings before the 1<sup>st</sup> respondent involving the petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> interested parties did not meet the strict requirements of article 50 of *the Constitution*. That the petitioner had failed to enact rules and regulations to guide its proceedings when hearing claims of historical injustices. It is the petitioner's further Submissions that such rules would provide for a procedure that guarantees fair hearing.
23. Further that by the 1<sup>st</sup> respondent proceeding to hear claims in the absence of rules, the 1<sup>st</sup> respondent abused the lacuna to conduct its proceedings in a manner that disadvantaged the petitioner and thereby the petitioner was denied the right to fair hearing guaranteed in *the Constitution*. The petitioner relied on the case of *Sceneries Limited v National Land Commission* [2017] eKLR, where it was held that;

“Apart from the need for independence and impartiality, the right to a fair hearing under article 50(1) of *the Constitution* encompasses several aspects. These include, the individual being informed of the case against her/him; the individual being given an opportunity to present her/his side of the story or challenge the case against her/him; and the individual having the benefit of a public hearing before a court or other independent and impartial body.”

24. In addition among other cases, the Petitioner relied on the Court of Appeal Case of *Japheth Pasi Kilonga & 8 others v Mombasa Autocare Limited* [2015] eKLR, where the court held that;

“Balancing between the need for efficiency and expediency on the one hand and the need to accord all parties before it, a fair hearing, the court erred in failing to balance the scales of justice on the side of the appellants bearing in mind the factors we have enumerated earlier, namely that the dispute involved land and many families who claimed adverse possession, both sides of the dispute had equal shares of adjournment, the appellants had complied with all pre-trial requirements, and the reasons proffered for the failure of the appellants' advocates to attend court were not frivolous.

The right to be heard is no longer only a rule of natural justice, but a constitutional imperative in Kenya under article 50(1) thereof. The due process of the law as a landmark of our legal system requires the courts to ensure parties have their day in court.

We conclude, for all these reasons, that the appellants were denied, without reasonable justification the right to a fair hearing by the learned Judge. On that ground alone, this appeal must succeed and as we have explained earlier, we do not consider it necessary to address the other grounds.”

25. Further that the 1<sup>st</sup> respondent through their actions denied the petitioner right to fair administrative action, guaranteed by article 47 of the Constitution. That the 1<sup>st</sup> respondent infringed on articles 1,



10, 40, 46, 27, and 60 of the Constitution of Kenya. On that basis, they urged this court to allow the prayers sought in the amended petition as prayed.

26. The respondents also filed their written submissions. The 1<sup>st</sup> respondent filed their submissions on February 24, 2022, through their counsel Niuster Bitok Boor (Mrs.) and raised three issues for determination by this court.

27. On the 1<sup>st</sup> issue, the 1<sup>st</sup> respondent submitted that the petitioner is attempting to use the jurisdiction of this court to oust the jurisdiction of the 1<sup>st</sup> respondent donated by articles 62 and 67 of *the Constitution* as read together with section 15 of the *National Land Commission Act*. In support of their submissions, the 1<sup>st</sup> respondent relied on the case of *Delmonte Kenya Limited vs County Government of Murang'a & another* [2019] eKLR, where this court stated that;

“89. In the end we find and hold that the dominant issue in the petition is the right to renewal of leases over the suit land. We further find that the issue is intrinsically connected to the use and title to land. The dispute thus falls squarely within the purview of the ELC under article 162 (2) of *the Constitution* as read with section 13 of the ELC Act. We also find that although the petitioner claims violation of various constitutional rights, those claims are intertwined with the dominant issue and that the ELC has jurisdiction to deal with the alleged violations. 90. The upshot is that the High Court lacks jurisdiction to entertain this petition. We accordingly order that the petition dated September 18, 2015, be and is hereby struck out. Costs ordinarily follow the event and are at the discretion of the court. We order that each party shall bear its own costs.”

28. On the 2<sup>nd</sup> Issue, the 1<sup>st</sup> respondent submitted that it complied with the principles of Natural Justice and also complied with articles 10, 27, 50, and 249 (1)(c) of *the Constitution*. Further, that it conducted a fair hearing of the amended complaint Number NLC/HLI/004/2017, dated April 20, 2018, and reached a determination after hearing all the parties involved.

29. On the 3<sup>rd</sup> issue, the 1<sup>st</sup> respondent submitted that this court lacked jurisdiction to hear this petition as it is prematurely placed before it. Further, that the petitioner should submit itself to the 1<sup>st</sup> respondent for renewal of leases and if unsatisfied with the outcome, pursue this honourable court for redress. They urged the court to dismiss the instant petition with costs.

30. The 2<sup>nd</sup> respondent filed their submissions dated on February 2, 2022, through Senior State Counsel Grace M. Mutindi. The 2<sup>nd</sup> respondent submitted only on the issue of unconstitutionality of section 15 (3)(b)(i) of the *National Land Commission Act*. It was submitted that section 15 of the *National Land Commission Act*, was repealed by section 38 of the Land Laws (Amendment Act), 2016. That Constitutionality of the said section 38 was litigated upon in Malindi ELC. Petition 16 of 2016, consolidated with Malindi ELC. Petition 291 of 2016, (Malindi Petitions) and the court as follows;

“The provisions of section 38 of the Act are clearly aimed at the indigenous people of Kenya as those injustices were committed against Kenyans and not the non-citizens.

90. As was stated in *RM v Attorney General* (2008) 1 KLR 574: -“.....the principle of equality and non-discrimination does not mean that all distinctions between people are illegal. Distinctions are legitimate and hence lawful if they satisfy the following (1) pursue a legitimate aim such as affirmative action to deal with inequalities and (2) are reasonable in light of their legitimate aim...”



91. Consequently, we do not agree with the petitioners that the amendments brought about to section 15 of the National Land Commission Act by section 38 of the Land Laws (Amendment) Act are unconstitutional. “

31. The 2<sup>nd</sup> respondent urged this court to be persuaded by the above decision of a 3 judge bench, and hold that the impugned section 15 (3)(b)(i) of the National Land Commission Act, was constitutional.
32. The 1<sup>st</sup> interested party filed its submissions on February 4, 2022, through the Law Firm of Okatch & Partners. The 1<sup>st</sup> interested party submitted that the court in the Malindi Petitions had already pronounced itself on Constitutionality of section 15 (3)(b)(i) of the National Land Commission Act. That this court should be persuaded by the decision of the 3 judge bench in the above mentioned Malindi petition and be guided by the Provisions of article 259 of the Constitution in finding that section 15 (3)(b)(i) of the National Land Commission Act is constitutional and is not in any way inconsistent with articles 24,25, 27(1), 40 and 50(1) of the Constitution.
33. The 3<sup>rd</sup> interested party also filed their submissions dated September 24, 2021, through the Law Firm of Kimwere Josphat & Co Advocates. In their submissions, the 3<sup>rd</sup> interested party affirms the petitioner’s claim that they were not accorded a fair hearing. However, it also submitted that the petitioner is undeserving of a seat at the table of equity as they are guilty of noncompliance. The 3<sup>rd</sup> interested party submitted that the petitioner had failed and or neglected to remit taxes and levies due to it.
34. Further it was their submission that the 1<sup>st</sup> respondent via their conduct had not lived up to its reputation, functions and integrity and that in fact, their actions caused more mayhem and confusion other than solving the real historical injustices if any occasioned on the interested parties.
35. This court has considered all the issues raised in both the amended petition and the response thereto. The court has also fully considered the detailed written submissions and authorities attached thereto.

The issues for determination are: -

1. Whether this court is clothed with jurisdiction to hear and determine this petition.
2. Whether the Constitution has been violated.
3. Whether section 15(3) (b) (i) of the National Land Commission Act Number 5 of 2012 is unconstitutional and contradicts the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the constitution.
4. Whether the petitioners are entitled to the orders sought.
5. Who should bear the cost of the suit.

**(i) Whether this Court is clothed with Jurisdiction to hear and determine this Petition.**

36. Jurisdiction is the cornerstone of determination of any suit, without which a court cannot entertain any matter before it. It is trite that issues of jurisdiction should be determined at the first instance. The Court of Appeal in Nairobi Civil Appeal No. 244 of 2010: - Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR, extensively determined the issue of jurisdiction and held:
37. Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the court cannot confer jurisdiction to itself.



38. The superior court quoted the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* [1989] eKLR, where the trial court held
- “Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”
39. The 1<sup>st</sup> respondent submits that this court is devoid of jurisdiction because it does not have power to renew leases as contemplated in section 13 of the *Land Act* and rules 10-18 of the Land (Extension and Renewal of Leases) (Amendment) Rules 2020. Further that the Petition seeks to compel the 1<sup>st</sup> respondent and the 3<sup>rd</sup>& 4<sup>th</sup> interested parties to grant the petitioner pre-emptive rights, usurping their administrative role. That the petitioner can only move this Court for Judicial Review to quash its decision or appeal against their decision or seek this court’s supervisory jurisdiction.
40. The petitioner has moved this court seeking to quash the decision of the 1<sup>st</sup> respondent for breach of his constitutional right to fair hearing and also an order declaring section 15 of *National Land Commission Act* unconstitutional. The jurisdiction of this court is donated under article 162 (2) (b) of the Constitution, which shall be exercised in accordance with section 13(2) of the *Environment and Land Court Act*, which provides for the powers of the court to hear and determine disputes
- a. Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b. Relating to compulsory acquisition of land;
  - c. Relating to land administration and management;
  - d. Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - e. Any other dispute relating to environment and land.
41. In the exercise of these powers, this court has the discretion to issue such orders as it may consider including the orders contemplated in section 13(7) of the Act. The tone of section 13(2) is indicative of the fact that Environment and Land Court has the power to hear and determine any matter touching on environment and land it matters not how the suit has been instituted. The court has looked through the petition and does not agree with the 1<sup>st</sup> respondent that the Petitioner is seeking renewal of a lease.
42. The National Land Commission has the constitutional function of managing public land and this court cannot usurp its function, guided by the principle of separation of powers. The Land (Extension and Renewal of leases) (Amendments) Rules, 2017, makes provisions for the procedure and rules for renewal of leases which is a duty performed by National Land Commission. The jurisdiction of this court can only be invoked where a right has been infringed, violated and/ or abused. Additionally, section 128 of the *Land Act* provides that “Any dispute arising out of any matter provided for under this Act may be referred to the Environment and Land Court for determination”
43. On renewal of leases, the rules under rule 7 (5) allows an aggrieved party to move this court. There are a number of cases that the courts have pronounced themselves on the power of the Environment and



Land Court to determine issues of renewal of lease. Relevant to the present suit is the case of Delmonte Kenya Limited v County Government of Murang'a & another [2019] eKLR, where the court held:

In the end we find and hold that the dominant issue in the petition is the right to renewal of leases over the suit land. We further find that the issue is intrinsically connected to the use and title to land. The dispute thus falls squarely within the purview of the ELC under article 162 (2) of *the Constitution* as read with section 13 of the ELC Act. We also find that although the petitioner claims violation of various constitutional rights, those claims are intertwined with the dominant issue and that the ELC has jurisdiction to deal with the alleged violations.

44. This court has belabored so much on the issue of its jurisdiction on renewal of leases. As held above, the petition as drafted seeks prerogative orders, determination of Constitutional infringement and Constitutionality of the *National Land Commission Act*. The 1<sup>st</sup> respondent contends that the applicant ought to have filed Judicial Review Proceedings. Article 23 now allows parties to move court for grant of prerogative orders by way of constitutional petitions.
45. Under *the Constitution* of Kenya (*Protection of Rights and Fundamental Freedoms*) *Practice and Procedure Rules, 2013*, this court is defined thereunder as having the power to hear and determine Constitutional Petitions. This court agrees with the findings of the court in *Kipsiwo Community Self Help Group vs Attorney General and 6 others* [2013] eKLR, that ELC has the statutory and constitutional mandate to hear and determine Constitutional Petitions, touching on environment, land use and occupation and title, and it is immaterial how the suit has been instituted. This sentiments were also echoed in *Patrick Musimba vs National Land Commission & 4 others* [2015] eKLR. To this end, this court finds and holds that the petition is properly before this court and the court has the requisite jurisdiction to handle the petition.

**(ii) Whether *the Constitution* has been violated.**

46. The petitioner contends that in hearing and determining the amended complaint of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties, the 1<sup>st</sup> respondent did not adhere to the tenets of article 50(1) of the Constitution in inter alia the following ways;
  - a. That the 1<sup>st</sup> respondent purported to rely on section 15 of the *National Land Commission Act* which section had been stayed by the court as at the date the 1<sup>st</sup> respondent purported to hear and determine the amended complaint.
  - b. That the 1<sup>st</sup> respondent neglected and/or failed to formulate rules and regulations to guide its procedures when hearing claims of historical injustice. That such rules would be expected to a procedure that guarantees fair hearing.
  - c. That when the amended complaint was listed for hearing, The petitioner wrote to the Commission raising a preliminary objection and seeking an adjournment of the hearing to be allowed more time to prepare for the hearing. That the 1<sup>st</sup> respondent declined to hear the preliminary objection and request for adjournment and directed for the matter to proceed as scheduled. This the petitioner contends tainted the hearing committee as biased and unfair toward the petitioner.
  - d. That the notice given to the petitioner inviting them to a 'commission session' was not clear and failed to indicate the nature of the session. That from the said invite it was not clear that the said 'commission session was a full hearing complete with calling of witnesses. That in the absence of rules it was incumbent upon the 1<sup>st</sup> respondent to explain to the petitioner in unambiguous terms the nature of the 'commission Session' and what would be expected at the said session.



- e. That the 1<sup>st</sup> respondent refused and/or neglected to supply the petitioner with proceedings of April 5, 2018 and 27<sup>th</sup> September 2018.
  - f. That the 1<sup>st</sup> respondents commissioners stopped mediating the a session between the petitioner and the Interested parties on the grounds that it was biased based on communication it had already issued on the same. That the same commissioners went ahead and purported to hear and determine the amended complaint notwithstanding their already admitted bias and conflict of interest.
  - g. That the determination delivered stated that the 1<sup>st</sup> respondent relied on 80 affidavits which were supplied by the complainants therein however no such affidavits were availed to the petitioner for perusal.
  - h. That the petitioner was not given a chance to be heard at the hearing of the amended complaint contrary to the contention of the 1<sup>st</sup> respondent.
  - i. That the 1<sup>st</sup> respondent purported to issue a determination while its powers and mandate under article 67(2)( e ) are limited to giving a recommendation. That there is a difference between the word determination and recommendation.
  - j. That the 1<sup>st</sup> respondent disregarded the petitioners right to fair administrative action.
47. The contention of the petitioner was corroborated by the 3<sup>rd</sup> interested party, who stated in their response to amended petition and in their submissions, that the 1<sup>st</sup> respondent conducted a sham hearing that did not adhere to the principles of Natural Justice and fair hearing. That the 1<sup>st</sup> respondent after declaring that the hearing of the amended petition had been terminated, went ahead to deliver a determination in favor of the complainants therein. That the conduct of the 1<sup>st</sup> respondent at the hearing of the amended complaint failed to live up to its reputation and function and was against the principles of integrity as provided on chapter 6 of *the Constitution*.
48. The court will now proceed to analyse the issues on violation of individual rights as alleged by the petitioner.

#### **(a) Right to Fair Hearing**

49. The right to fair hearing enjoys Constitutional provision under article 50 which provides;-
- “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.”
50. This right was extensively discussed by the Supreme Court in *Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others* [2014] eKLR, where the court held:
- Article 50(1) refers to the right to a fair hearing for all persons, while article 50(2) accords all accused persons the right to a fair trial. Article 25(c) lists the right to a fair trial as a non-derogable fundamental right and freedom that may not be limited. Often the terms ‘fair hearing’ and ‘fair trial’ are used interchangeably, sometimes to define the same concept, and other times to connote a minor difference. Although the right to a fair trial is encompassed in the right to a fair hearing in our Constitution, a literal construction of these two provisions may be misconstrued in some quarters to mean that article 50(1) deals with the right to fair hearing in any disputes including those of a civil, criminal or quasi criminal nature whereas



article 50(2) is limited to accused persons thereby arguing that the protection of such right only relates to criminal matters. This is not an acceptable interpretation or construction within the parameters of articles 19 and 20 of the Bill of Rights, which calls for an expansive and inclusive construction to give a right its full effect.

51. It further held that:

Fair hearing, in principle incorporates the rules of natural justice, which includes the concept of audi alteram partem (hear the other side or no one is to be condemned unheard) and nemo iudex in causa sua (no man shall judge his own case) otherwise referred to as the rule against bias.

52. It is the petitioner's contention that the trial conducted by the 1<sup>st</sup> respondent was not fair, as they were not accorded the opportunity to present their case.

53. Sections 107-109 of the *Evidence Act* places a duty on the petitioner to demonstrate that the trial was unfair. The petitioner has led evidence on how they ended up at the 1<sup>st</sup> respondent and from the evidence on record, it is clear that the petitioner participated in the preliminary stages of the proceedings. A perusal of the Hansard of the 1<sup>st</sup> respondent pertaining to the hearing of the amended complaint NLC/HLI/004/2017 dated April 20, 2018, indicates that the petitioner's counsel was present on March 1, 2018 and April 5, 2018. On 5<sup>th</sup> of April, 2018, the petitioner raised a preliminary objection to the hearing of the complaint and sought an adjournment for twenty one days. Further hearing of the complaint came up on September 27, 2018, and on the said date, the petitioner alleges that their preliminary objection was brought to the attention of the commissioners, before hearing of the complaint, but the Commission disregarded their objection and directed that the hearing of the amended complaint proceeds on that day and the evidence of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties was taken.

54. It is the petitioner's case that the 1<sup>st</sup> respondent as if to cure their mischief above offered to mediate the dispute between the parties. Two mediation sessions were conducted and on December 20, 2018, the 1<sup>st</sup> respondent called off further mediation after admitting that they were conflicted and could not be impartial in their judgment. The petitioner further contends, despite their admission, the 1<sup>st</sup> respondent proceeded to state that the initial hearing would proceed on a date it would communicate. Apprehensive that justice would not be rendered and the term of the commission was coming to an end, the petitioner filed the instant petition. The petitioner avers that upon filing the instant petition on February 11, 2019 and serving the 1<sup>st</sup> respondent with the same, the 1<sup>st</sup> respondent issued a determination on the amended complaint dated February 7, 2019.

55. The 1<sup>st</sup> respondent alleges that they conducted a hearing on September 27, 2018. However, a record of the same has not been availed to this court. The Petitioner's claim is supported by the 3<sup>rd</sup> respondent, who agrees that indeed the petitioner was not heard. The nature of proceedings carried out by the 1<sup>st</sup> respondent are documented and such records are kept in their custody. the 1<sup>st</sup> respondent has the burden of demonstrating to this court that indeed a hearing was conducted by production of minutes and proceedings in evidence. At this point the petitioner's evidentiary burden of proof shifted to the 1<sup>st</sup> respondent. This court agrees with the sentiments of the court in *Abmed Mohammed Noor vs Abdi Aziz Osman* [2019] eKLR, that depending on the nature of the case, evidentiary burden may shift to the respondent. This court has no reason to doubt the petitioner, and thus concludes that it discharged its burden of proof and the same shifted to the 1<sup>st</sup> Respondent who failed to discharge the said burden.

56. Proceedings before the 1<sup>st</sup> respondent are ad hoc in nature, but the same are bound by the principles of natural justice, including observance of the rights and freedoms under *the Constitution*.



57. In the case of Evans Kidero, supra, the court found that the general principles adopted by the African Commission on Human and People’s Rights in legal proceedings are applicable in Kenya by dint of article 2(5) and 2(6) of *the Constitution* and they include:

1. Fair and Public Hearing

In the determination of any criminal charge against a person, or of a person’s rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

2. Fair Hearing

The essential elements of a fair hearing include:

...

(e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;

(f) an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings;

...

(i) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and

(j) an entitlement to an appeal to a higher judicial body.”

58. A reading of the foregoing principles enunciates a fair and just process. While there is evidence the petitioner was adequately represented at the hearing, what sticks out is that the petitioner was not accorded an opportunity to ventilate their case.

59. While National Land Commission is a constitutional creature, and by application of the principle of separation of powers, this court cannot interfere with their work, the said National Land Commission must in the discharge of their function do so in accordance with *the Constitution*, failure to which this court has the powers to sanction it. there would be no hardship in finding that the petitioner was not accorded an opportunity to be heard and it’s right to fair trial was curtailed. To this end, the court finds and holds that the petitioner’s right to fair hearing as guaranteed under article 50(1) of *the Constitution* were infringed, denied and/ or violated.

### **b. Right to Fair Administrative Action**

60. The Article that specifically deals with fair administrative action is article 47 of *the Constitution*. Pursuant to the said article, Parliament enacted the *Fair Administrative Action Act*, 2015. Section 2 thereof defines “administrative action” to include:

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) 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;



61. The same section defines ‘administrator’ as “a person who takes administrative action or who makes an administrative decision.” Section 3 on the other hand provides:
- (1) This Act applies to all state and non-state agencies, including any person
    - (a) exercising administrative authority;
    - (b) performing a judicial or quasi-judicial function under *the Constitution* or any written law; or
    - (c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates
62. Therefore, it is clear that the 1<sup>st</sup> respondent was performing an administrative action and was in terms of the foregoing an administrator.
63. It is this courts view, and it so holds, that pursuant to the provisions of article 47, of *the Constitution* as read with the provisions of the *Fair Administrative Action Act, 2015*, Judicial Review Orders may where appropriate be issued against the decisions of the 1<sup>st</sup> respondent.
- Article 47 of *the Constitution* provides that:
- (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.
64. The said article was the subject of the Court of Appeal pronouncement in *Judicial Service Commission vs. Mbalu Mutava & another* [2015] eKLR, Civil Appeal 52 of 2014, where it held that:
- “Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”
65. Article 47 has now been effectuated by the *Fair Administrative Action Act, 2015*, under which section 4(3) provides 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.

66. In interpreting the said provisions, this court is persuaded by the holding of the court in *Republic vs. Registrar of Companies ex parte Gitbungo* [2001] KLR 299, where it was held that natural justice requires that persons who might be affected by administrative acts, decisions or proceedings be given adequate notice of what is proposed. Further, in *Egal Mohamed Osman vs. Inspector General of Police & 3 others* [2015] eKLR at page 7 the court referred to *The Management of Committee of Makondo Primary School and another vs. Uganda National Examination Board*, HC Civil Misc Application No.18 of 2010, in which the Ugandan Supreme Court stated as follows regarding the rules of natural justice:

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase ‘audi alteram partem’ literally translates into ‘hear the parties in turn’, and has been appropriately paraphrased as ‘do not condemn anyone unheard’. This means a person against whom there is a complaint must be given a just and fair hearing.”

67. This court notes that the right to fair hearing is very closely intertwined with the right to fair administrative action. Having found above that the petitioner was not accorded a fair hearing, it follows that the petitioner’s right to fair administrative action was infringed. By taking an action which clearly had the possibility to affect the interests of the petitioner, the 1<sup>st</sup> respondent was duty bound to ensure that in the process of arriving at its decision, the rules of fairness were adhered to. Otherwise such a decision would be tainted with illegality and procedural impropriety.

68. 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 vs. Attorney General* [1986-1989] EA 456 where the Court of Appeal expressed itself as follows:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...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...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases, it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the



decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio."

69. This court finds and holds that the petitioner was not given a chance to be heard and given that the suit land which is registered in its name was subject of the proceedings in issue, it follows that the petitioner was then affected and therefore was entitled to be heard. Failure to abide by principles of Natural Justice renders the decision by the National Land Commission invalid and the court has no option but to proceed and quash it.

70. In the case of *Republic v National Land Commission & 2 Others, Ex Parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kabawa West)* [2018] eKLR, the court held that;

"In my finding, a process by which an administrative body makes findings and proceeds to make recommendations before affording persons affected thereby cannot by any stretch of imagination be termed as fair in order to meet the provisions of article 50 of *the Constitution*. For a hearing to be said to be fair not only should the case that the respondent is called upon to be met be sufficiently brought home to him and adequate or reasonable notice to enable him deal with it given, but also the authority concerned ought to approach the issue with an unbiased disposition. In other words, the authority ought not to be seen to be seeking representations from the respondent simply for the purposes of meeting the legal criteria. The fair hearing must be meaningful for it to meet the constitutional threshold."

71. From the above analysis of the available evidence, it is evident that the petitioner was not given an opportunity to be heard and therefore its rights under article 47 of *the Constitution* were violated.

**(iii) Whether section 15(3) (b) (i) of the *National Land Commission Act* Number 5 of 2012 is unconstitutional and contradicts the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of *the constitution*.**

72. The petitioner seeks a declaration of invalidity of section 15(3)(b)(i) and (ii) of the *National Land Commission Act*, for being inconsistent with articles 24, 25, 27(1), 40, and 50(1) of *the constitution*.

73. From the very onset, this court is alive to and indeed respects article 1 of *the Constitution* that provides for sovereignty of the People of Kenya. In stating so, this Court is equally alive to the supremacy of *the Constitution* in the hierarchy of our laws. Article 2 of the said Constitution makes that position obvious and asserts as follows: -

"(1) This Constitution is the Supreme Law of the Republic and binds all persons and all State Organs at both levels of government.(2)No person may claim or exercise state authority except as authorized under this Constitution.



- (3) ...
- (4) Any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of *the Constitution* is invalid.”
74. In the instant suit, this Court has been called upon to declare section 15(3) (b) (i) of the *National Land Commission Act* unconstitutional as it contradicts the provisions of articles 24, 25, 27(1), 40, 50(1), and 60 of the Constitution. In *Hassan Ali Joho & another v Suleiman Said Shabbal & 2 others* (2013) eKLR, the Court of Appeal held as follows: -
- “There is a rebuttable presumption of constitutionality of a statute and also a presumption that the legislature while enacting a statute is aware about other existing statutes. Thus a court in construing a statute vs- a- vis *the Constitution* should endeavor to place a constitutional construction on any statute under challenge and should only find the impugned statute to be inconsistent with *the Constitution* only if it is not possible to contrive the legislation in a manner consistent with *the Constitution*.”
75. Further, as was held in *Commission for Implementation of the Constitution v Parliament of Kenya & another*, High Court Petition No 454 of 2012;
- “.....There is a general presumption that every Act is Constitutional and the burden of proof thus lies on any person who alleges otherwise.” save that where there are limitations to fundamental rights, the onus is on the body restricting the right to show that such limitation was justified (see *Ndyanabo v Attorney General* [2001] EA 495).”
76. Guided by the above legal principles, the court will now turn its attention to the provision being challenged as being unconstitutional by the Petitioner with a view to establishing its conformity with *the Constitution*.
77. The petitioner has alleged that the effect of the section 15(3) (b) of National Land Commission Act is to limit and restrict their rights in a discriminatory manner. It is proper to first set out the provisions of article 24 of *the Constitution*, which provides; -
- “24(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including
- a) The nature of the right or fundamental freedoms;
  - b) The importance of the purpose of the limitation;
  - c) The nature and extent of the limitation;
  - d) The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
  - e) The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.”



78. Further, article 25 of *the Constitution* provides for rights and freedoms that may not be limited. The said rights and freedoms are; freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, right to a fair trial and the right to an order of habeas corpus.
79. The petitioner contends that section 15 of the *National Land Commission Act* allows the 1<sup>st</sup> respondent to deprive it of its right to property contrary to article 40(2) of *the Constitution*. That the petitioner acquired the suit lands on or about 1970, and that at the time of acquiring the said suit lands, it enjoyed the Protection of section 7 of the *Limitation of Actions Act*. That on the basis of such protection, it went ahead and set up massive investments on the suit land, which are protected under article 40 of *the Constitution*.
80. Section 15 of the *National Land Commission Act* is headed as historical land injustices and states as follows;
- “(1) Pursuant to article 67 (3) of *the Constitution*, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.
- (2) or the purposes of this section, a historical land injustice means a grievance which—
- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between June 15, 1895 when Kenya became a protectorate under the British East African Protectorate and August 27, 2010 when *the Constitution* of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.
- (3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—
- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
- (i) the claim contradicts a law that was in force at the time when the injustice began; or
- (ii) the claim is debarred under section 7 of the *Limitation of Actions Act*, (cap. 22) or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
- (d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and
- (e) it is brought within five years from the date of commencement of this Act.”



81. Further, article 67(1)(e) of the Constitution establishes the National Land Commission and provides one of its functions as;

“to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress”

82. It follows therefore that section 15 of the *National Land Commission Act* that provides for Historical injustices was enacted by Parliament pursuant to article 67 (3) of the Constitution that empowered Parliament to give other functions to the National Land Commission.

83. It is the petitioner’s contention that the said section seeks to arbitrarily deprive a bonafide proprietor of land of its rights to the suit property. However, given that investigations of historical injustices is one of the mandate of the National Land Commission, then the said contention is speculative and unfounded as the said section defines what amounts to historical injustices.

84. While under article 40 of the Constitution, it gives every citizen the right to own property, it is important to note that this right is not absolute. Article 40(3) provides for instances on which this right can be impeached and or limited and it states to wit as follows;

- “(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.”

85. Further article 25 of *the Constitution* of Kenya (supra) provides for absolute rights which cannot be limited. It is clear that the right to property is not therein listed and hence it is not absolute. Further, the National Land Commission is mandated to investigate historical injustices and therefore, the court will shy away from limiting and /or usurping that mandate.

86. In addition, various courts including this one have pronounced themselves on the constitutionality of section 15 of the *National Land Commission Act* and in the instant suit, this court finds no reason to depart from previous pronouncements. In *Malindi Law Society & 12 others v Attorney General & 2 others* (Petition 19 & 291 of 2016) [2021] KELC 168 (KLR) (29 October 2021) (Judgment) a three Judge bench held as follows;

“In that respect, it was not lost on this court that in 2010, Kenyans passed a new Constitution which saw reforms and an overhaul of the land law system. Article 67 of the new Constitution established the 3<sup>rd</sup> respondent herein and defined its functions. In the year 2011, Parliament passed the *National Land Commission Act* whose provisions inter alia the Land Laws (Amendment) Act now seek to amend.

89. Clearly, one of the mandates already given to the 3<sup>rd</sup> respondent by *the Constitution* is the power to investigate and make recommendations on historical land injustices. The provisions of section 38 of the Act are clearly



aimed at the indigenous people of Kenya as those injustices were committed against Kenyans and not the non-citizens.

90. As was stated in *RM v Attorney General* (2008) 1 KLR 574: -“.....the principle of equality and non-discrimination does not mean that all distinctions between people are illegal. Distinctions are legitimate and hence lawful if they satisfy the following (1) pursue a legitimate aim such as affirmative action to deal with inequalities and (2) are reasonable in light of their legitimate aim...”

91. Consequently, we do not agree with the petitioners that the amendments brought about to section 15 of the *National Land Commission Act* by section 38 of the Land Laws (Amendment) Act are unconstitutional.”

87. Further this court in *Gatboni Park Farm Limited vs National Land Commission & 7 others* [2019] eKLR held that;

“Therefore the court finds that section 15 of the *National Land Commission Act* was enacted in accordance with article 67 of *the Constitution*. Further the said section has provided for guiding principles to the National Land Commission that will enable the Commission efficiently and effectively carry out its mandate and therefore, it cannot be said that it provides for arbitrary deprivation of the right to property. Further, the court finds that the said section is not unconstitutional and the petitioner’s prayer that the said section be declared so is not merited and the same is dismissed entirely”

88. Having found that the right under article 40 of *the Constitution* is not absolute, then the court further finds that it cannot be said that section 15 of the *National Land Commission Act* has the effect of limiting the petitioner’s rights as guaranteed under article 40, since it provides for the process and instances in which the Commission may recommend to the State appropriate redress, after having conducted proper investigations and hearings.

89. Having analysed the evidence before court, and the relevant provisions of law as above, this court finds that the said section 15(3) (b) (i) of the *National Land Commission Act* Number 5 of 2012 is not unconstitutional and the petitioner’s prayer that the said section be declared so is not merited and the same is dismissed entirely.

#### **Whether the Petitioner is entitled to the orders sought; -**

90. Having now carefully considered the available evidence, the exhibits thereto, the written submissions and the relevant provisions of law, the court finds that the petitioner’s claim partially succeeds in terms of prayers No.2(f), 4 &5, of the amended petition dated 10<sup>th</sup> August, 2019.

91. However, the petitioner’s claim that section 15 (3)(b)(i) of the *National Land Commission Act*, is unconstitutional is not merited and the said prayer is disallowed. In respect to prayer 6, this court is cognizant of the powers and functions of the 1<sup>st</sup> respondent as guaranteed by *the Constitution* and the *National Land Commission Act* cap 5 of 2012. Therefore, the court will refrain itself from issuing any orders that may curtail and/or limit the functions and mandate of the 1<sup>st</sup> respondent and will therefore not grant the above prayer as sought by the petitioner.



**(v) Who should bear the Costs of this suit?**

92. Section 27 of the *Civil Procedure Acts* gives the court the discretion to grant costs. However, it is trite that costs usually follow the event, unless special circumstances present themselves. In the instant case, the respondents have succeeded in making their case. However, this being a public interest matter, there shall be no orders as to costs.
93. In a nutshell, having analysed the available evidence, the court finds and holds that the petitioner's claim succeeds only in terms of prayers No. 2 (f), 4 and 5. However, all the other prayers are dismissed with no orders as to costs.
94. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 28<sup>TH</sup> DAY OF APRIL, 2022.**

**L. GACHERU**

**JUDGE**

**Delivered virtually;**

**In the presence of;**

Mr Thuo for the Petitioner

N/A for the 1<sup>st</sup> Respondent

Mr Weche H/B for M/s Mutindi for 2<sup>nd</sup> Respondent

N/A for the 1<sup>st</sup> Interested Party

N/A for the 2<sup>nd</sup> Interested Party

N/A for the 3<sup>rd</sup> Interested Party

N/A for the 4<sup>th</sup> Interested Party

Kuiyaki – Court Assistant

**L. GACHERU**

**JUDGE**

