**Republic v Attorney General & another; Mathuku (Interested Party); Kitambu & another (Exparte) (Judicial Review Application E001 of 2021) [2022] KEELC 13362 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 13362 (KLR)

**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION E001 OF 2021**

**LG KIMANI, J**

**SEPTEMBER 29, 2022**

**IN THE MATTER OF: ARTICLES 35, 47 AND 159 OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF: LAW REFORM ACT, CAP 26 LAWS OF KENYA, SECTIONS 8 AND 9**

**AND**

**IN THE MATTER OF: LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA SECTIONS 12 AND 19**

**AND**

**IN THE MATTER OF: ENVIRONMENT AND LAND COURT ACT, NO. 19 OF 2011, SECTION 13**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... 1ST RESPONDENT**

**DEPUTY COUNTY COMMISSIONER MUMONI SUB-COUNTY .... 2ND RESPONDENT**

**AND**

**MULONZYA MATHUKU ..... INTERESTED PARTY**

**AND**

**DOROTHY MAWIA KITAMBU ..... EXPARTE**

**MWENDWA KIMWELE ..... EXPARTE**

## JUDGMENT

1. The Ex Parte/Applicants' Notice of Motion dated 13th October 2021 and Amended on 2nd November 2021 is brought under Section 7, 9 and 10 of the Fair Administrative Actions Act 2015 Section 8 and 9 of the *Law Reform Act*, Section 13 Environment and *Land Act*, order 53 rule 3 of the *Civil Procedure Rules* seeking the following orders: -

    1. An order of Certiorari be and is hereby issued to remove into this court for purposes of quashing and to quash the proceedings and decision of the 2nd Respondent in Katse Adjudication Section Appeal to the Minster No.37 of 2020 between the Interested Party and the Applicants over Katse Adjudication Section Parcel Nos. 919, 918,917, 916, 915, 914, 913, 912, 920, 921, 922, 923, 924, 925, 926, 895, 896, 897, 898, 911, 899, 900, 901, 902 and 910

    2. The costs of this application be paid by the Respondents.

2. The Grounds upon which the reliefs are sought are that demarcation of parcels of land was done and parcels registered as set out in the Application as follows:-

    i) 911, 923, 924, 925, 926, 895, 910, 899, 896, 898, 902 and 897- Mulonzya Mathuku and Dorothy Mawia Kitangu

    ii) 912 and 914 - Mulonzya Mathuku

    iii) 913 and 915- Dorothy Mawia Kitangu

    iv) 916- Marcy Vaati and Mulonzya Mathuku

    v) 917 and 918- Carol Mumbe and Mulonzya Mathuku

    vi) 919- Frida Ndanu Mulonzya and Mulonzya Mathuku

    vii) 920-Grace Musenya Mulonzya and Mulonzya Mathuku

    viii) 921, 922, 900 and 901- Samuel Mumo Mulonzya and Mulonzya Mathuku.

3. . The Ex parte Applicants stated that the Interested Party did not make any claim to the recording officer under Section 19 of the *Land Adjudication Act* over the parcels of land in dispute and therefore no dispute was referred to the committee under Section 20 of the Act. The Ex parte Applicant stated that the Interested Party was well aware of the demarcation and recording of the parcels in dispute and indeed made a claim over a separate parcel of land No.634 against one Mutave Musyoka and the dispute was heard by the Committee under Katse Adjudication Section Case No. 11 of 2014 and dismissed on 17/10/2014.

4. That the Interested Party raised objections to the register for the parcels of land listed at paragraph 2 above being objection numbers 72 -95 of 2017 where the Ex parte Applicants and 5 others were named as defendants. The objections were heard by the Land Adjudication Officer and dismissed on 14/11/2017.

5. Being dissatisfied by the decision, the Interested Party lodged an Appeal to the Minister registered under Katse Adjudication Section Appeal Case No. 37 of 2020. The Ex parte Applicants state that only the first Ex parte Applicant was summoned for the hearing of the Appeal and the 2nd Ex parte Applicant and five others were condemned unheard in breach of the rules of natural justice and their

legitimate expectations. The 2nd Respondent heard and determined the Appeal vide a decision made on 13/4/2021.

6. Further, that when the 2nd Ex parte Applicant attended the hearing on 11/1/2021 despite having not been served with summons and sought to know why she was not being involved in the Appeal, the 2nd Respondent denied her audience in a very hostile, condescending and demeaning manner.

7. The Ex Parte Applicants allege bias in the proceedings of the Minister's Appeal and stated that the 2nd Respondent reserved her determination for 8/4/2021 but on that date, she read the ruling halfway then directed that the appeal should be heard afresh on 12/4/21 but the Interested Party did not attend on that date and was instructed to come back the following day on 13/4/21. That on 13/4/21, the 1st Ex parte Applicant and the Interested Party were present. The 2nd Respondent heard the 1st Ex Parte Applicant halfway then instructed him and his witnesses to leave the hall where the proceedings were being held. The 2nd Respondent was left in the room with the Interested Party and his witnesses.

8. The 1st Ex parte Applicant claims that he was kept outside waiting and when summoned back, the decision allowing the appeal was read without the hearing being concluded. The 2nd Respondent awarded Parcel No. 900 to Nduni Mulonzya who was not a party to the proceedings before the 2nd Respondent. According to the Ex Parte Applicants the determination of the appeal by the 2nd Respondent was in excess of jurisdiction because it purported to sit on appeal of and overturn the decree of the court in Kitui SRMC land Case No.20 of 1989 dated 22nd August 1990.

9. Further, the 2nd Respondent has declined to supply the Ex parte Applicants with a copy of the proceedings and determination of the Minister's Appeal and thus the Ex parte Applicants have filed this application without attaching the said decision.

10. Counsel for the Ex parte Applicants filed written submissions in support of their Application. In response to the Respondent's grounds of opposition on failure to attach a copy of the decision of the Appeal to the Minister, that the rule in Order 53 rule 7(1) gives allowance to account to the court the failure to annex the decision. It is therefore not correct to say that the rule is couched in mandatory terms. Counsel cited the case of *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR where it was held that the purpose of the rule is to confirm that a decision actually exists and secondly, to confirm whether the Applicant is within the statutory timelines prescribed for an application of certiorari. This position was restated in *Republic v. Cabinet Sectretary Ministry of Transport and infrastructure & 4 others Ex Parte Ali Golle & Another* (2018) eKLR.

11. The Ex parte Applicants submitted that it has not been denied that the decision being challenged exists and neither has it been contended that the application is outside the prescribed timelines. They state that this omission is curable under Article 159(2)(d) of *the Constitution*. In addition to this, the Ex parte Applicants stated in their submissions that they have demonstrated that they wrote to the 2nd Respondent a total of four times seeking to be supplied with the impugned decision and the 2nd Respondent failed to furnish them with the same. They relied on Section 6 of the Fair Administrative Actions Act that states that where an administrator fails to furnish the Applicant with the reasons for the administrative decision or action, in the absence of proof to the contrary shall be presumed to have been taken without good reason.

12. The Ex parte Applicants urged the court to find that failure to exhibit the decision can be wholly attributed to the 2nd Respondent's failure to comply with the statutory and constitutional requirements.

13. On the procedure adopted by the 2nd Respondent, the Ex parte Applicants submitted that whereas Section 29 of the *Land Adjudication Act* is silent on the procedure to be adopted in hearing of the Appeal to the Minister, it has been held by the Court of Appeal in Mahaja v. Khatwalo & Ano(1983) eKLR that where evidence has begun to be heard in pursuance to the procedure whether prescribed or not, then the case must be finished in the same manner. They also relied on *Robert Muli Matolo vs Director of Land and Adjudication & 2 others* (2014) eKLR where Mutungi J was of the view that an appeal to the Minister being a quasi-judicial process would be subject to the Civil Procedure Rules.

14. The Ex parte Applicants submitted that the *Land Adjudication Act* must be read together with Article 47 of *the Constitution* and the Fair Administrative Act 2015 which requires that administrative action be procedurally fair. They also stated that Section 4(3)(b) provides that where a person's rights or fundamental freedoms are likely to be adversely affected by an administrative decision, the person must be given an opportunity to be heard and to make representations.

15. Regarding the issue of the capacity of the Ex parte Applicants to institute the proceedings herein, they submitted that Section 7(1) of the *Fair Administrative Action Act* gives any person who is aggrieved by an administrative action or decision has a right to apply to the Court for a review of the decision. They relied on the holding of Gacheru J in Peter Maina t/a Smart Choice Electronic Company vs National Land Commission & Another (2020) eKLR.

16. Finally, the Ex parte Applicants stated that the proceedings in Kitui SRMC Land Case No.20 of 1989 could not have been in violation of Section 30 of the *Land Adjudication Act* as the adjudication process begun on 28th November 2013 while the award in the said case was adopted on 22nd May 1990, more than 23 years later. The 2nd Respondent was therefore not wrong in giving regard to that order as they cited the case of *Timotho Makenge vs Manunga Ngochi* (1979) eKLR. They therefore pray for the Order of Certiorari to apply as prayed.

17. The Ex Parte Applicant filed further submissions in response to the Respondents' contention concerning the provisions of Rule 4(4) of the Land Adjudication Regulations on hearing of witnesses in the Minister's Appeal, they submitted that the 2nd Respondent was wrong as she chose to hear the matter afresh without leave being sought. They submitted that the rule must accommodate Fair Administrative Action.

18. Lastly, they submitted that the Respondents failure to file a replying affidavit is taken to have admitted the facts presented by the Ex parte Applicants and the failure to exhibit the impugned decision has already been explained.

**The Respondent's Case**

19. The Respondents filed Grounds of Opposition dated 24th November 2021 raising grounds that:

    1. That the ex parte applicants cannot purport to vouch for the rights of other parties who are not parties to this suit without their express authority.

    2. That Section 29 of the *Land Adjudication Act* Cap. 284 Laws of Kenya does not make it mandatory for the Minister to hear parties to an appeal.

    3. That the proceedings in Kitui SRMCC Land Case No.20 of 1989 were contrary to Section 30 of the *Land Adjudication Act* cap 284 Laws of Kenya.

4. That the application offends the mandatory provisions of Order 53 rule7(1) of the *Civil Procedure Rules* which requires that any party seeking an order of certiorari must annex to his application a copy of the decision he seeks to challenge.

5. That the application as drawn and taken out is bad in law, incompetent and otherwise an abuse of the process of this Honourable Court.

20. Counsel for the Respondents filed written submissions stating that the applicants have not demonstrated whether they have authority of the joint owners of the listed parcels to file this suit on their behalf. They submitted that in the event that the court allows the application, the parcels mentioned being 900,901,916,917,918,919,920,921 and 922 be omitted.

21. Secondly, State Counsel for the Respondents submitted that the *Land Adjudication Act* does not provide for the process of hearing appeals but Rule 4(4) provides that leave of the Minister must be obtained for a party to an appeal to give evidence or call witnesses. They cited the case of *Republic vs Attorney General & 2 others Ex parte Emmanul Poghisio* (2018) eKLR where the court held that ordinarily, on appeal the appellate court or tribunal should consider the evidence presented to the court or tribunal below and that there is no provision in Section 29 for a re-hearing or calling of witnesses and leave must be sought. They therefore submitted that it was not mandatory for the parties to be heard on the Appeal to the Minister.

22. They also submitted that the proceedings in Kitui SRMC Land Case No.20 of 1989 were contrary to Section 30 of the *Land Adjudication Act* Cap 284.

23. Fourthly, the Respondents submitted that the Ex parte Applicants have not annexed the proceedings and determination of the Appeal to the Minister which they seek to be quashed contrary to order 53 rule 7(1) f the *Civil Procedure Rules* which requires that any party seeking an order of certiorari to annex a copy of the decision he seeks to challenge. They submit that the impugned decision and proceedings ought to have been attached to enable the court to appreciate the nature of the decision it is being called upon to quash.

24. The Interested Party failed to enter appearance and did not file any documents

**Analysis and Determination**

25. Having considered the Notice of Motion dated 13th October 2021 and Amended on 2nd November 2021, the supporting affidavit, statement of facts and all the attached documents, the following issues are for determination:

a) Can the Ex parte Applicants be granted the orders sought in the absence of the other demarcated owners of the suit parcels of land?

b) Can the Ex parte Applicant obtain an order of Certiorari sought without attaching and exhibiting the impugned decision contained in the Minister's Appeal?

c) Was the Minister's Appeal conducted in accordance with the law?

d) Did the proceedings in Kitui SRMC Land Case No.20 of 1989 offend Section 30 of the *Land Adjudication Act*?

**a) Can the Ex parte Applicants be granted the orders sought in the absence of the other demarcated owners of the suit parcels of land ?**

26. The Respondents have opposed the application in issue on grounds that the Applicant cannot purport to vouch for the rights of other parties who are not parties to this suit without their express authority. I do note that the suit Parcels of land Nos 911, 916, 917,v 918, 919, 920, 921, 922, 923, 924, 924, 925, 926, 895, 910, 899, 896, 898, 902, 897, 634, 900 and 901 Katse Adjudication Section were originally registered in the names as shown at paragraph 2 in this judgment. The said parcels of land were registered either singly or jointly in the name of the 1st and 2nd Ex parte Applicants with others not party to this suit. The persons registered as owners of the parcels of land were parties in the Objection proceedings instituted by the Interested Party. I do agree with the Respondents Counsel that having been declared owners of the specific parcels of land they were persons who would be affected by any decision that would be made by this court.

27. It is noted that the objection by the Respondents on failure by the ex parte applicants to include the persons listed as owners of some of the parcels of land subject matter of the objection proceedings and the appeal to the Minister was brought to the attention of Counsel for the Ex parte Applicant when the matter came up for mention on 28th April 2022. The court directed that pursuant to the provisions of Order 53 Rule 3 (2) of the Civil Procedure Rules, the persons likely to be affected by the decision of the court in these proceedings be served with the all pleadings and a hearing notice and an affidavit of service be filed. The said persons were served and an affidavit of service of Simon Mwenga Mulonzya sworn on 14th July 2022 naming all the persons served was filed in court on 15th July 2022. The said persons as listed at paragraph 2 of this judgement as well as the Interested Party did not file any document in reply to the Notice of Motion herein. I am of the opinion that the non-joinder in this suit of the other parties to the Minister's Appeal is not prejudicial to the said parties since they were given an opportunity to be heard when they were served with pleadings but did not file any documents in reply.

28. I further find that the Ex parte Applicants had a right to bring the present proceedings under Section 7(1) of the *Fair Administrative Action Act* (2015) which grants that:

> " Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to—
>
> (a) a court in accordance with section 8; or
>
> (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law"

29. Having been aggrieved by the decision of the 2nd Respondent the Ex parte Applicants went on to file this application on their own behalf in their own capacity as they are entitled to do under the Act and their suit cannot be dismissed only for failure to join the other affected parties.

**b) Can the Ex parte Applicant obtain an order of Certiorari sought without attaching and exhibiting the impugned decision contained in the Minister's Appeal?**

30. The Respondents further state that the Ex parte Applicants have failed to attach the decision of the Minister's Appeal to the Judicial Review Application, contrary to the rule in order 53 rule 7 of the *Civil Procedure Rules* (2010). Order 53 Rule 7 (1) of the *Civil Procedure Rules* provides:

> "In the case of an Application for an order of certiorari, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition, or record unless before

the hearing of the motion he has lodged a copy thereof verified by affidavit or accounts for the satisfaction of the High Court".

31. However, the Respondents have not denied the existence of the decision that the 2nd Respondent is said to have made. Evidence of the existence of the decision is shown in the Grounds of Appeal by the Interested Party and Summons to the 1st Ex Parte Applicant to attend before the Deputy County Commissioner in Mumoni. This shows that an Appeal was imminent. The Ex Parte Applicants have exhibited several letters requesting to be furnished with a copy of the proceedings and decision but the 2nd Respondent failed to do so. They cannot then turn around and object to the Ex parte Applicants' failure to produce the very decision that they have denied them a copy of. A party cannot benefit from their own wrongdoing. For the foregoing reasons, I do find that the requirement to attach the decision can be overlooked in the interests of justice.

32. The requirement in Order 53(7) is to confirm the existence of the impugned decision The Court of Appeal in *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR held as follow in regard to the failure to attach the decision in which the orders were sought:

> " In the present appeal, the record shows that the 1st Respondent neither attached the decision to be quashed nor applied for leave to attach the same. The trial judges observed that it was not in dispute that a decision had been made by the Appellant to adopt direct procurement method. It is our considered view, that the learned judges did not err in observing that a decision had in fact been made by the Appellant and the court did not err in failing to strike out the Application as incompetent for failure to attach the decision to be quashed. The record shows that there was no dispute that a decision had been made and that the decision existed; there was no dispute as to the nature of the decision. In our view, depending on the peculiar circumstances of each case where it is clear, uncontested and definite that a decision has been made and the nature of the decision is not disputed, a court can either take judicial notice of the decision or the parties can by consent record the nature of the decision. In such cases, the need to attach or produce the decision to be quashed can be waived. We are of this view cognizant of the provisions of Article 159 (2) (d) of *the Constitution* which enjoins courts to administer justice without undue regard to technicalities."

33. Further, I do find that the denial of the 2nd Respondent to provide the decision to the Ex parte Applicants gives rise to the presumption that the decision was taken without good reason as provided under Section 6(5) of the *Fair Administrative Action Act* 2015 which states that:

> " ....if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.".

**c) Was the Minister's Appeal conducted in accordance with the law?**

34. The Ex Parte Applicants claim that they were not given a fair hearing during the Minster's Appeal contrary to the rules of Fair Administrative Action and natural justice. The components of natural justice are outlined in the Halsbury Laws of England Volume 1(1) page 218, as follows:

> " Natural justice comprises two basic rules; first that no man is to be a judge in his own cause (nemojudex in causa sua), and second that no man is to be condemned unheard (audi

alteram partem). These rules are concerned with the manner in which the decision is taken rather than with whether or not the decision is correct".

Further in the case of Republic...Vs...The Honourable The Chief Justice of Kenya & Others ...Vs...exparte Moijo Mataiya Ole Keiuwa, Nairobi HCM CA No.1298 of 2004, the Court held that: -

> "The rules of Natural justice are minimum standard of fair decision making imposed by the common law on persons, or bodies that are under a duty to act judicially".

35. It has not been denied that the 2nd Ex parte applicant and other Respondents in the appeal to the Minister were not served with summons to attend the hearing of the appeal. The 2nd Ex parte applicant also stated that when she requested to know why she and other Respondents were not notified about the hearing she was treated in a rude and hostile manner and sent out of the venue where the hearing was being conducted. She was thus not given an opportunity to be heard. In my view failure to notify the Respondents in the appeal to the Minister of the hearing of the appeal and further failing to accord them an opportunity to be heard was a breach of the rules of natural justice and in breach of the provisions of Article 50 of *the constitution* which grants every person a right to fair hearing and Article 47 a right to fair administrative action. I therefore find that the rights of the exparte applicants to fair hearing and the right to be heard were violated.

36. The Court in in *Kimwele Kithoka & 26 others v Deputy County Commissioner Kyuso Sub-County & 7 others* [2022] eKLR quoted the case *Judicial Service Comission vs Mbalu Mutava & another* [2015] eKLR, the Court of Appeal where it was stated that natural justice comprises the duty to act fairly:

> " Article 47(1) does not exclude the application of common law particularly the common law right to fair hearing. As I have endeavoured to show above, natural justice comprises the doctrine of or is synonymous with "acting fairly". The term "procedurally fair" used in article 47(1) by a proper construction, imports and subsumes to a certain degree, the common law including rules of natural justice which means that common law is complementary to the right to fair administrative action....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."

37. Further, the ex parte Applicants claim that the 2nd Respondent undertook a gravely flawed and improper fresh hearing of the entire dispute and ignored the objection proceedings conducted by the Land Adjudication Officer. On this issue, I do agree with Counsel for the Respondent that it is not a requirement under Section 29 of the *Land Adjudication Act* for witnesses to be called during the hearing of an appeal to the minister. However, in the case of *Mahaja v Khatwalo & Anor*[1983] eKLR it was found concerning a hearing of an appeal to the Minister that having began to hear evidence in

pursuance of the procedure whether prescribed or not, then he must surely finish the case in the same manner. The court stated as follows:-

> " The District Commissioner did in fact proceed to hear evidence and he recorded that all three parties were present. If he began to hear evidence in pursuance of the procedure whether prescribed or not, then he must surely finish the case in the same manner. But did he not in fact do so? An examination of the photostat copy of these proceedings shows that "both", meaning the two respondents to this appeal, were sworn and their grounds of appeal read and accepted. Then there is a gap followed by a paragraph of evidence from someone. It is possible that this was from the appellant, but, as against that, the cross-examination is by only one person. In that event the District Commissioner might have thought that the affirmation by the respondents of their grounds of appeal filed under section 29(1)(a) followed by the hearing of the appellant's evidence, would be a sufficient hearing of both sides. But it is impossible to be sure from the record that this was so. I am unable to say that the District Commissioner did hear both sides and if that were not so (and clearly the judge thought it was not so) then having embarked on hearing one side it was his clear duty to hear the other. A failure to do so would amount to an error on the face of the record requiring correction by certiorari"

**d) Did the proceedings in Kitui SRMC Land Case No. 20 of 1989 offend Section 30 of the *Land Adjudication Act*?**

38. Section 30 of the *Land Adjudication Act* CAP 284 provides that:

> " Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act. Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs."

39. Counsel for the Respondents has stated that Kitui SRMC Land Case No. 20 of 1989 offends the provision of Section 30 of the *Land Adjudication Act* on staying of suits. However, I note that the decision in the said suit was made on 22nd of August 1990, long before adjudication commenced on the suit land. The case therefore did not interfere with the adjudication process and the decision of the Land Adjudication Officer in the Objection was not wrong to take into account the Court's decision. This is because Section 30(4) of the *Land Adjudication Act* provides that:

> " The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired."

40. Following the provisions of the above mentioned Section 30 (4) I do find that a previous final court order can be and was rightly considered in the adjudication process.

41. For the foregoing reasons, I find that the Ex Parte Applicants' Notice of Motion dated 13th October 2021 and Amended on 2nd November 2021 has merit and I allow the same in the following terms: -

3. An order of Certiorari be and is hereby issued to remove into this court for purposes of quashing and to quash the proceedings and decision of the 2nd Respondent in Katse Adjudication Section Appeal to the Minster No. 37 of 2020 between the Interested Party and the Applicants over Katse Adjudication Section Parcel Nos. 919, 918,917, 916, 915, 914, 913, 912, 920, 921, 922, 923, 924, 925, 926, 895, 896, 897, 898, 911, 899, 900, 901, 902 and 910.

4. Costs are awarded to the Exparte Applicants.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 29TH DAY OF SEPTEMBER 2022.**

**L. G. KIMANI**

**JUDGE ENVIRONMENT AND LAND COURT**

Judgement read in open court in the presence of-

Musyoki: Court Assistant

Muigai Advocate for the Ex parte Applicants

No attendance for the Respondents

No attendance for the interested party