



**Mpiuki v Land Adjudication & Settlement Officer Igembe & 4 others (Environment & Land Petition E10 of 2014) [2022] KEELC 15158 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15158 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND PETITION E10 OF 2014  
CK NZILI, J  
NOVEMBER 30, 2022**

**BETWEEN**

**PAUL KIRAITHE MPIUKI ..... PETITIONER**

**AND**

**LAND ADJUDICATION & SETTLEMENT OFFICER IGEMBE .... 1<sup>ST</sup>  
RESPONDENT**

**DEPUTY COUNTY COMMISSIONER ..... 2<sup>ND</sup> RESPONDENT**

**IGEMBE SOUTH SUB-COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**FELIX KIMATHI KIRAITHE ..... 4<sup>TH</sup> RESPONDENT**

**JOHN BOSCO NKIRU NJAGE ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner while alleging a purchase's interest to Parcel No 747 Kiengu/Kanjoo Adjudication section prays for a writ of certiorari to bring to this court and quash the award in Objection No's. 561 of 2009 and 639/2009 and a further verdict in Minister's Appeal No 376 of 2011.
2. The basis of the petition is that the petitioner bought the suit land in 1983 where after the 3<sup>rd</sup> and 4<sup>th</sup> respondents brought up some objections which were allowed to the extent that the two be given some unspecified portions of land.
3. The petitioner averred that he lodged an appeal against the said decision in Minister's Appeal No 376/2011 who purported to rehear the dispute through evidence of witnesses. The petitioner averred that the decision was made on June 19, 2013 without notice to him and only came to know the outcome after six months.



4. The petitioner averred that even though he was willing to give the 3<sup>rd</sup> and 4<sup>th</sup> respondent one acre and four acres respectively out of his land as indicated during the minister's hearing, the respondents were almost taking the whole of his land yet the 1<sup>st</sup> & 2<sup>nd</sup> respondents award was not specific on the portion for the 3<sup>rd</sup> and 4<sup>th</sup> respondents hence risked being deprived of his property contrary to Articles 27 (1) & (2), 40 (3) and 50 (1) of the Constitution, more so when the 3<sup>rd</sup> respondent lacked *locus standi* to represent the deceased estate.
5. Further, the petitioner averred that the decision in the Minister's Appeal ignored the fact that the award was unfair, it was not specific on the portions and at the capacity of the 3<sup>rd</sup> respondent during the hearing of the appeal.
6. The petition was supported by an affidavit of Paul Kiraithe Mpiuki sworn on April 24, 2014 attaching the proceedings, decision and the award as annexure marked PK "1" & PK "2" respectively. Additionally, the petitioner filed a list of documents dated November 28, 2019 attaching proceedings from the Land Adjudication Officer, proceeding of the Minister's Appeal and findings, official receipt, sketch map and copy of the official search.
7. With leave of court, the petitioner filed a further supporting affidavit sworn on July 8, 2022 confirming his parcel of land had been subdivided into LR No's. 747, 363 and 3642. That he had bought the land and developed it prior to adjudication. That he sold four acres to the 4<sup>th</sup> respondent on the western side.
8. That after the adjudication, the 3<sup>rd</sup> and 4<sup>th</sup> respondents were allowed their objections, but which decision omitted to specify the sizes of portions to be given to the 3<sup>rd</sup> and 4<sup>th</sup> respondents hence the Minister's Appeal. That the decision of the minister was not communicated to him but instead the 2<sup>nd</sup> respondent subdivided his land into P/Nos 747, 3632 and 3642 in favour of himself and the 3<sup>rd</sup> and 4<sup>th</sup> respondents without involving him. That the 4<sup>th</sup> respondent was given the south eastern side where the petitioner has extensively developed instead of the vacant and undeveloped western side which he had purchased. That the 3<sup>rd</sup> respondent was given 2.32 ha which was never specified in both the award and the Minister's decision. He attached a copy of the sale agreement and certificate of official search.
9. The petition was opposed through the 1<sup>st</sup> & 2<sup>nd</sup> respondents replying affidavit by J. Mbai sworn on September 12, 2022, 3<sup>rd</sup> respondent's grounds of opposition dated February 7, 2022, the replying affidavit by 3<sup>rd</sup> respondent sworn on December 16, 2021, the 4<sup>th</sup> respondents replying affidavit sworn on December 16, 2021 and affidavit sworn on April 15, 2021.
10. The 1<sup>st</sup> & 2<sup>nd</sup> respondents have pleaded that in line with the law, during the adjudication process in 2009, objection No's 569/09, 914/09, 561/09 and 636/09 were lodged against Parcel No 747. The first two were dismissed while the rest were allowed and the land subdivided in favour of the 3<sup>rd</sup> and 4<sup>th</sup> respondents who were issued with new parcel numbers. That the petitioner appealed to the Minister in Minister's Appeal No 376/11 which upheld the decision of the land adjudication committee leading to registration of the new parcel numbers in favour of the petitioner, 3<sup>rd</sup> & 4<sup>th</sup> respondents.
11. That the hearing and determination of the objections and the appeal was in line with the Constitution and the Land Adjudication Act (Cap 284). That if the petitioner was dissatisfied he should have filed a Judicial Review matter and not a constitutional petition.
12. The 3<sup>rd</sup> respondent pleaded that the objection and appeal proceedings were fair and justified given the petitioner had an opportunity to call witnesses but chose not to do it. That the petitioner had willingly exchanged the suit land with his late aunt hence the reasons he did not object to her interment on the land since she had been in occupation of the land prior to her death. That the petitioner could not purport to give him one acre of land already bequeathed to him by the deceased since he was just



- holding it in trust for him. That it was not true the petitioner was being deprived of his land or being discriminated upon.
13. Regarding the 4<sup>th</sup> respondent, he averred that he purchased four acres of land out of Parcel No 3632 which the petitioner transferred to him by the annexed letter marked “JBNN” and was only interested in the four acres given the petitioner had denied him quiet and peaceful occupation of the same, otherwise the petition was an afterthought and an abuse of the court process.
  14. With leave of court parties filed written submissions dated August 29, 2022, February 22, 2022, September 28, 2022 and September 27, 2022 respectively.
  15. The petitioner submitted that the issue was whether the impugned decisions were ambiguous and unconstitutional for lack of specificity on sizes.
  16. The 1<sup>st</sup> & 2<sup>nd</sup> respondents submitted that the issues for determination were whether the petition met the constitutional threshold and had merits.
  17. On the 1<sup>st</sup> issue, it was submitted a constitutional petition must specify the particulars, manner and extent of violation together with supporting evidence. Reliance was placed on *David Gathu Thuo v AG & another* [2021] eKLR, *Nyatete Nyakundi & 17 others v Pyrethrum processing Co of Kenya Ltd* [2022] eKLR, *Patrick Mbaabu Karanja Kenyatta University* [2012] eKLR on other avenues of redress.
  18. The 1<sup>st</sup> & 2<sup>nd</sup> respondents submitted that an order of certiorari was being sought after four years with no reasonable explanation for the delay and a petition was being filed so as to avoid the strictures on judicial review as to timelines.
  19. Additionally, relying on *Godfrey Paul Okutoyi & another v Habil Olaka & another* [2018], the 1<sup>st</sup> and 2<sup>nd</sup> respondent submitted statutory rights were not fundamental rights and freedoms but must be addressed in an ordinary manner. On the issue of letters of administration, the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted the same was not necessary during the adjudication process as held in *Jacinta Kaliuntu (As Legal Representative of Benasio Mungania Mwirichia) v DLASO Tigania East And West Sub Counties & 3 Others; Ngeera & 12 Others* (unreported) The 3<sup>rd</sup> respondent submitted that a writ of judicial review under Order 53 (2) *Civil Procedure Rules* required leave which must be sought and obtained within 6 months from the date of the decision and that given the impugned decision was made on June 19, 2013, filing the petition on April 25, 2014 was beyond the statutory period of 6 months. The 3<sup>rd</sup> respondent urged the court to dismiss the petition for want of form and procedure.
  20. The 3<sup>rd</sup> respondent further attacked the petition on the basis that a private citizen who was neither employed nor retained by government could not be accused of breach of constitutional rights and freedoms. Reliance was placed on *Chelimo A Marsin & 7 others v OC GSU Camp Kirondon GSU Camp & others* [2011] eKLR.
  21. Regarding the merit of the petition, the 3<sup>rd</sup> respondent submitted that the mandate of a Land Adjudication Officer’s decision and the mode of appeal was provided.
  22. The 3<sup>rd</sup> respondent submitted that the appeal was properly heard, dismissed lawfully and the adjudication section closed. Therefore, the court was asked to find the petition lacking merits.
  23. The 4<sup>th</sup> respondent has submitted that he was a duly registered proprietor of the suitland purchased from the petitioner’s land. He submitted that the court could not sit on appeal to the minister’s decision as held in *Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya* [2019] eKLR, *Patoli v Kabale District and others* (2008) 2 EA 300, *Municipal Council of Mombasa v Republic, Umoja Consultants Ltd* [2002] eKLR.



24. Further, the 4<sup>th</sup> respondent submitted there was no cause of action against him since the DCC Igembe South acted within his powers under Section 29 of the [Land Adjudication Act](#), the petition offended Section 9 (3) [Law Reform Act](#) and Order 53 Rule (2) [Civil Procedure Rules](#) for being filed outside 6 months. Reliance was placed on [Ako v Special District Commissioner Kisumu & another](#) [1989] eKLR. [Republic v Deputy County Commissioner, Ikuthaa Sub county ex parte Ruth Kavengi Mulunga](#) ELC Kitui No 3 of 2021.
25. The issues commending themselves for courts determination are: -
- (i) If the petition meets the constitutional threshold.
  - (ii) If the petition ought to have sought for leave to file a judicial review application instead of a constitutional petition.
  - (iii) If there has been inordinate delay in filing the petition
  - (iv) If the petitioner has proved breach of any constitutional rights and freedoms.
  - (v) Whether the reliefs sought can be granted.
  - (vi) What is the order as to costs?
26. A party seeking for constitutional reliefs is required under Rule 10 of the [Constitutional of Kenya \(Fundamental Rights and Freedoms\) Practice and Procedure Rules 2013](#) (herein Mutunga Rules) to set out his nature, status, capacity, facts, specific particulars of breach or injury, pending or determined suits over the claim and the reliefs sought. These rules were promulgated in line with the court's decision in [Anarita Karimi Njeru v Republic](#) [1979] eKLR, and [Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others](#) [2013] eKLR, where courts held that a petition must plead with precision and specificity the particular constitutional right or freedoms breached, threatened or about to be infringed so that the opposite party can respond to the claim. Courts have also held that it is not enough for a party to cite the specific constitutional articles allegedly breached. A party must provide enough material for the breach and set out the evidence in which he relies upon. See [Manase Guyo & 260 others v KFS](#) [2016] ECLR.
27. In [Timothy Njoya v AG & another](#) [2014] eKLR, the court held that a petitioner cannot come to court to seek facts and information he intends to use to prove the very case he was arguing before the court and must set out with some degree of precision and set out the manner in which the Constitution had been violated by whom.
28. In [Bernard Murage v Fineserve Africa Ltd & 3 others](#) [2015] eKLR the court held that where there existed an alternative remedy through statutory law, then it was desirable that such statutory remedy be pursued first. The same was the reasoning of Lenaola J as he then was in [Veronica Sum v NBK](#) [2016] eKLR where he held that not very ill in the society should attract a constitutional sanction.
29. As to the burden of proof, in [Leonard Otieno v Airtel Kenya Ltd](#) [2018] eKLR, Mativo J as he then was held that; "a litigant bears the onus to prove in respect of the proposition he asserts to prove his claim and that the decision on violation of constitutional rights should not and must not be made in a factual vacuum, otherwise to attempt to do so would trivialize the Constitution. The court said that the presentation of clear evidence in support of the alleged violation of constitutional rights is not a mere technicality but an essential element to a proper consideration of constitutional issues based on supported hypothesis.



30. In *Muema Mativo v DCI & 2 others* [2021] eKLR the court citing with approval *Muiruri v Credit Bank Ltd* [2006] 1 KLR 385, held that a constitutional issue is that which directly arises from the court's interpretation of the Constitution. Further, the court cited with approval *Peter Nyoge v Francis Ole Kaparo & 4 others* [2007] 2 KLR 193 where the court held a constitutional court has no business, giving orders or declarations in academic or in speculative matters and that a mere allegation that a human right or freedom of the applicant has been or is likely to be contravened was not itself sufficient to entitle an applicant to invoke the jurisdiction of the court if it was apparent that the allegations were frivolous, vexatious or an abuse of the court process, solely based on avoiding the normal court process to remedy an administrative action which involved no contravention of any human right or fundamental freedom.
31. As regards time limitation and judicial writs in a constitutional petition in *Kenya Association of Air Operators v Kenya Airports Authority* [2018] eKLR the court held that an order for certiorari must be applied within 6 months from the date of impugned decision. In *Chief Land Registrar and 4 others v Nathaniel Tirop Koech & 4 others* [2018], the Court of Appeal held that fundamental rights and freedoms cannot be waived, acquiesced or be caught up by the doctrine of laches. The court held that there can be no time limit for filing a constitutional petition and that unless expressly stated so in the Constitution the period for limitation of time under the *Limitations of Action Act* did not apply in constitutional petitions. The court held that the limitation of time cannot be used to shield the state or state organs against claims on alleged violation of the bill of rights.
32. In *Florence Nyaboke Machani v Mogere Amosi Ombui & 2 others* [2014] eKLR, a party aggrieved by a verdict of the Borabu LDT failed to challenge the decision as per the procedure set out in the repealed Act by way of judicial review. The Court of Appeal held that a declaratory suit was not a remedy available to a party aggrieved by a decision of the district LDT.
33. In *Penina Nduta Karongo (suing as the legal representative of the estate of Eunice Wanjiru Munga) v Samuel Mwaura Felix Kariuki & 3 others* (2017) eKLR, Eboso J took the view that Section 9 of the *Law Reform Act* should be read together with the rest of part vi of the Act hence did not affect the mandate of ELC under Section 13 (7) of the *Environment and Land Court Act*.
34. In *Republic v Kiambu County Executive & 3 others (Ex parte James Gacheru Kariuki)* (Kiambu JR No 4 of 2016, the court took the view that Article 47 of the *Constitution* constitutionalized administrative justice as a right and removed it from the clutches of common law.
35. Similarly, in *James Kariuki Gacheru & 22 others v County Assembly of Kiambu & others* (2017) eKLR, the court held that it was no longer necessary to rely on the *Law Reform Act* given the presence of Article 47 of the Constitution and a substantive law under Section (9) of the *Fair Administrative Action Act*, hence the straight jacket to Order 53 *Civil Procedure Rules* was no longer mandatory.
36. As to the doctrine of exhaustion, the court in *Speaker of National Assembly v Karume* [1992] KLR 21 the Court of Appeal held that where there was a clear procedure to approach before coming to court it must be strictly followed.
37. In *Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR the Court of Appeal held that where there was a dispute resolution outside court the same must be exhausted before the court's jurisdiction was invoked.
38. On whether private citizens could infringe individual rights the court in *Baobab Beach Resort & SPA Ltd v Duncan Muriuki Kaguurnu & another* [2017] eKLR was considering whether claims concerning violations of rights and fundamental freedoms could be made horizontally by one private citizen against another and whether the suit should have been brought as a constitutional petition.



39. The court held the reading of Article 22 (1) and 27 (4) & 7 together with Article 260 of the Constitution left no doubt that a person discriminated against by another could file a petition for breach of the right.
40. The court cited with approval Samuel Kamau Macharia & another v KCB Ltd & 2 others [2012] eKLR, that a Constitution looks forward and backward, vertically and horizontally as it seeks to re-engineer the social order in quest of its legitimate object of rendering political good.
41. Further, the court cited with approval Rose Wangui Mambo & 2 others v Limuru County Club & 17 others [2014] eKLR where the court held that the intention of the framers of Constitution did not intend to insulate private entities from the constitutional duty to respect and uphold fundamental rights and freedoms. Similarly, in BA & another v Standard Group Ltd & 2 others [2016] eKLR the court held that the current constitution's bill of rights unlike the retired constitution was both horizontal and vertical.
42. Applying the above caselaw and principles to the instant petition, it is brought under Articles 23 (3), 27 (1), (2), (3), 47 (1) 50 (1), & 258 (1) and the Mutunga Rules.
43. It sets out the parties' facts, nature of rights affected, particulars of injury and the reliefs sought. Further, the petition is supported by both a supporting and supplementary affidavit, annexures and a list of documents dated November 23, 2019.
44. As a consequence, the respondents were able to file their responses including a case summary and the issues for determination by the 3<sup>rd</sup> respondents. In my considered view the petition meets the minimum threshold under the Mutunga Rules.
45. As to whether the petition raises a constitutional question and whether the petitioner exhausted internal mechanisms set out under the primary statute governing land adjudication processes, a constitutional question or controversy has been said to be one whose answer flows from a constitution and not a statute. See CNM v WMG (2018) eKLR.
46. The major complaint by the petitioner is that the Minister's decision was not communicated to him on time or at all; that by the time he became aware of it, the six months period to challenge it had expired; that the decision lacked clarity as to the specific sizes, particulars and the area out of his land the 3<sup>rd</sup> and 4<sup>th</sup> respondents were entitled to and that the 1<sup>st</sup> & 2<sup>nd</sup> respondents went to implement the minister's decision without notice to him and in breach of his right under Articles 27 (1) (2) (3) 47 (1) 50(1) and 258 (1) of the Constitution.
47. There is no dispute that the Minister's Appeal was delivered on June 19, 2013 by Mr DV Kipkemei DCC Igembe South.
48. The said decision was subject to Articles 27, 47 and 50 (1) of the Constitution. Therefore, the question as to whether the minister's hearing, determination and its implementation followed the petitioner's constitutional right to fair administrative action in my considered view are questions requiring answers in line with the Constitution.
49. The coming into force the Constitution 2010 superseded Order 53 Civil Procedure Rules and Section 9 of the Law Reform Act. A party had an option of filing a constitutional petition or through the procedure set out under Order 53 and Section 9 of The Law Reform Act. As held in Chief Land Registrar v Nathan Tirop, supra there can be no time limitation in constitutional petition. The delay of less than a year was not inordinate or unreasonable and has been sufficiently explained by the petitioner that the minister's decision was not communicated to him on time or at all.



50. Similarly, the 1<sup>st</sup> & 2<sup>nd</sup> respondents have not refuted by way of evidence whether they notified the petitioner of the date of the decision and supplied him with a copy thereof in line with Article 47 of the Constitution.
51. As to whether the petitioner has pleaded and proved the breach of the right to equal protection of the law, Fair Administrative Action and fair hearing, in paragraph 7 of the replying affidavit sworn by J Mbai for the 1<sup>st</sup> and 2<sup>nd</sup> respondents in September 12, 2022 the respondents state that there was adherence with the Constitution and Land Adjudication Act alongside the rules of natural justice.
52. In Judicial Service Commission v Mbalu Mutava & another [2015] eKLR, the Court of Appeal held that a right to a Fair Administrative Action under Article 47 is a distinct right from the right to fair hearing and broadly refers to administrative justice in public administration and it is mainly concerned with control of the exercise of administrative powers by state organs as they execute constitutional and statutory duties.
53. The burden of proof that the petitioner was notified of the date of the decision lies with the 1<sup>st</sup> and 2<sup>nd</sup> respondents under Section 109 of the Evidence Act since they are the ones who wish the court to believe in the compliance of the law.
54. There is no evidence of service of the decision notice to the petitioner by way of a certificate of posting or any other proof of delivery of the ruling notice. See Kosgei v Metkei Multipurpose Co Ltd (Civil Appeal No 95 of 2017) [2021] KECA (140) (KLR) November 19, 2021) (Judgment).
55. In Gichuru v Package Insurance Brothers Ltd (Petition No 36 of 2019) [2021] KESC 12 (KLR) Civil October 22, 2021) (Judgment), the Supreme Court of Kenya held that the overriding obligation is on a petitioner to lay substantial material before the court in discharge of evidential burden establishing their treatment at the land of the 1<sup>st</sup> respondent as unconstitutional and that only after the threshold is transcended would the burden fall to the 1<sup>st</sup> respondent to prove the contrary. The court held that discrimination means affording different treatment to different persons on account of race, tribe, place of origin, residence, local conviction, colour, creed or sex or denial of normal privileges.
56. In this petition, the petitioner states that he was the only one who was not notified of the date and the decision.
57. Similarly, he states the 1<sup>st</sup> & 2<sup>nd</sup> respondents alongside the 3<sup>rd</sup> & 4<sup>th</sup> respondents went to implement the decision without notifying him or involving him.
58. Once more, the replying affidavit of J. Mbai does not indicate when, how and through which means the petitioner was notified of the date of the decision, the outcome, the date of the implementation in terms of letters calling for attendance list and minutes thereof.
59. Concerning the legality and clarity of the decision, the Minister's verdict was that the A/R ruling be adopted. The said decision was to the effect that Objection No's 561/09 and 636/2009 be allowed; subdivisions to be carried out. 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs to get portion each and new numbers be issued.
60. Section 29 of the Land Adjudication Act provides that the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
61. Once the Minister makes the decision, Section 29 (3) Land Adjudication Act provides that he shall cause copies of the order to be sent to the Director of Land Adjudication and the Chief Land Registrar.
62. In Pastoli v Kabale (supra) the court held that applicant must show that the decision was tainted with irregularities, illegality, irrationality and procedural impropriety, was ultra vires, made without



- jurisdiction and was erroneous. The petitioner in the further supporting affidavit has admitted that the decision was implemented and his land formally subdivided into LR No's. Kiengu/Kanjoo/747/3632 and 3642 measuring approximately 138 acres, 4 acres and 5.73 acres respectively. The basis upon which the sizes for each respective parcels of land and the locality were not included in the A/R decision or in the Minister's decision
63. The 1<sup>st</sup> respondent in his affidavit has not explained the rationale he used to come up with the sizes and the exact locality in implementing a decision which was not clear on the modalities, the locality and the sizes.
  64. Annexure marked JRNN and dated April 6, 2021 & filed with the court on April 14, 2021 written by J. Mbai is contrary to the contents of the further affidavit and the sketch map attached to the petition.
  65. As admitted by the petitioner, the suit land is no longer falling under the [land Adjudication Act](#) but the [Land Registration Act](#).
  66. Similarly, since title deeds have already been issued, the court would be acting in vain since it can only order for cancellation or rectification of the title documents under Section 80 (1) of the [Land Registration Act](#) upon proper claim seeking for such orders.
  67. Further, on the issue of boundaries and precise position of the boundaries to the three parcels of land, the power to ascertain and fix boundaries falls within the land registrar under section 19 of the [Land Registration Act](#).
  68. In [Charles Karathe Kiarie and 2 others v Adminsitrators of estate of John Wallace Mathare \(deceased\) & 5 others](#) [2013] eKLR the court held there is a presumption of indefeasibility and system of title under the Torrens system which can be rebutted only by proof of fraud, misrepresentation or illegality.
  69. The petitioner is challenging the process leading to the adjudication of land in favour of 3<sup>rd</sup> & 4<sup>th</sup> respondents by the 1<sup>st</sup> & 2<sup>nd</sup> respondents.
  70. In [Kuria Greens Ltd v Registrar of Titles and another](#) [2011] eKLR, it was held a registrar has no powers to cancel title. In [Chemel Investments Ltd v the AG & others](#) Nairobi Petition No 94 of 2005 the court emphasized that even if property is unlawfully acquired as per Article 40 (6) of the [Constitution](#), it must go through a legally established process not by whim or revocation by a gazette notice.
  71. The manner in which the 1<sup>st</sup> & 2<sup>nd</sup> respondents determined the sizes and localities of the three parcels of land and placed them on the ground without the petitioner an opportunity to be heard offended Articles 27, 40 (6), 47 (1) & (2) & 50 (1) of the [Constitution](#). In [M'Bechi Nkandau & 19 others v AG & 3 others](#) (2019) eKLR, the court made a finding that the minister's decision was implemented in an illegal manner and through misrepresentation of facts.
  72. The court guided by [Munyua Miana v Hiram Gathiba Maina](#) Court of Appeal Civil Appeal No 239 of 2009, where it was held that if a title to land is under challenge it is not enough to dangle the title a proof of ownership.
  73. The court held that having made a finding that the Minister's decision was illegally implemented the resultant title were illegally obtained and subject to impeachment.
  74. Given the foregoing I reach a finding that the Minister's decision in Ministers Case No 376 of 2011 regarding Parcel No 347 subdivision of the same to Parcel LR No's 747, 3642 & 3632, its implementation thereof on the ground by the 1<sup>st</sup> respondent and the resultant title deeds thereof were invalid null and void. They are so declared



75. In line with Section 11 of the *Fair Administrative Action Act*, I set aside the decision and award by the second respondent dated June 19, 2013 and all the subsequent orders, or directives including the, subdivisions, registration of new parcels of land, issuance of title deeds and the purported implementation on the decision on the ground. . The Ministers appeal is hereby remitted to be heard afresh with the participation of all the parties involved within six months from the date hereof.

Costs to the petitioner.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS**

**THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2022**

**In presence of:**

**C/A: Kananu**

**Kitheka for plaintiffs**

**Kaumbi for 3<sup>rd</sup> respondents**

**HON. C.K. NZILI**

**ELC JUDGE**

