



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC PETITION NO 13B OF 2020

IN THE MATTER OF ART 21,22,23,40,47,50,60 AND 63

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND IN THE MATTER OF KATEMUGE CLAN LAND

AND

IN THE MATTER OF CONTRAVENTION OF THE RIGHT TO OWN PROPERTY

CONTRARY TO ARTICLE 40 OF THE CONSTITUTION AND CAP 284 LAWS OF KENYA

BETWEEN

KATEMUGE CLAN Being represented

by the representatives hereunder named;

JAMES KIMISOI.....1ST PETITIONER

CHARLES KIPLIMO.....2ND PETITIONER

MATHEW KANDA..... 3RD PETITIONER

VERSUS

DIRECTOR LAND ADJUCATION.....1ST RESPONDENT

LAND ADJUDICATION OFFICER MARAKWET.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

THOMAS KILIMO.....4TH RESPONDENT

NATHAN CHELNAG’A KILIMO.....5TH RESPONDENT

KAPCHEPKOSIR CLAN.....6TH RESPONDENT

RULING

This ruling is in respect of a preliminary objection filed by the 1st 2nd and 3rd respondents dated 6th October 2020 on the following grounds:

- a) That the court lacks jurisdiction as section 30 of Land Adjudication was not complied with,
- b) That the suit parcels fall within land been adjudicated on and therefore court cannot entertain this matter;

c) That the petitioners suit is incompetent as they have failed to exhaust the remedies available to them;

d) That the suit is an abuse of the court process and be dismissed with costs.

Counsel agreed to canvass the preliminary objection by way of written submissions which were duly filed

1ST 2ND AND 3RD RESPONDENTS'SUBMISSIONS

Counsel submitted three issues for determination namely, whether the court lacks jurisdiction pursuant to section 30, whether the petitioners had exhausted the remedies as set out in Land Adjudication Act and whether the court has jurisdiction over ongoing adjudication process.

On the first issue on whether the court lacks jurisdiction pursuant to section 30 of the Land Adjudication Act, counsel submitted that it was incumbent upon the petitioners to get the consent of the Land Adjudication Officer to institute these proceedings.

Mr. Kuria also submitted that it is evident from the pleadings filed by the petitioners that they are seeking to challenge the entire adjudication process that was detrimental to the Katemuge clan as they neither participated nor considered when the demarcation and recording of interest exercise was conducted. They further alleged that their several attempts to seek redress have gone unheeded by the land adjudication officer and thus being aggrieved have moved this court by way of instituting this petition.

Counsel relied on the case of **Nakuru ELC Judicial Review case No. 13 of 2014. Republic vs Musanka Ole Runkes Tarakwa Lempaso Ole Kuyoni & 2 others and Joseph Lesalol Lekitio & Others (exparte applicants), where** Munyao J held that;

"A suit that questions the process of/and adjudication, rather than the determination of interests, would not be a suit concerning an interest in land, and would therefore not require the consent of the land adjudication officer. Thus, where the adjudication officer, does not for example, appoint an adjudication committee. as provided by section 6 of the land adjudication act, a person may be perfectly entitled to institute proceedings in the nature of mandamus, to compel him to appoint the said committee. That would not be a determination of interests in land but would be a proceeding aimed at giving legitimacy to the adjudication process, In such an instance, the consent of the land adjudication officer would not be needed, for the proceeding would not be one concerning an interest in land"

Further in the case of **Reuben Mwangela M'itelekwa (suing as the Legal Representative of the estate of M'itelekwa M'mucheke Naituri alias M'itelekwa Mucheke) v Paul Kigea Nabea & 2 others [2019] eKLR** Justice Lucy Mbugua held that:

"Thus as long as a claimant desires that there be a determination regarding a right and interest in land, YES a consent would certainly be required even in the Wing of petitions, but in other disputes, the consent is not required in the present dispute, such a consent would certainly be required. I have however not seen the consent though the petitioner has made reference to the same in paragraph 18 of his petition."

Mr. Kuria further relied on the case of **Musana Ole Pere & another v District Land Adjudication Section and Settlement Officer Narok South & 23 others:Paramalai Pere & another (Interested Party) f 20191 eKLR** where Justice Mohammed Noor Kullow held that:

"The Petitioners have asked the court to disregard the provisions of section 30 as what is before court is a constitutional petition and not a civil suit as envisaged under section 30 of the Land Adjudication Act. I have read the petition and the Affidavits filed by the petitioners and one thread that runs through them is that the Petitioners are aggrieved by the process by which the entire Adjudication process is undertaken. Under the provisions of the Land Adjudication Act the Objective of the court was to dearly provide for the ascertainment and recording of rights and interest and a reading of this Act shows the legislature wanted ascertainment of rights under the Act and the address of all complaints under the process to be free from other process and hence the enactment of section 29 and 30 of the Act which provided for resolution and as such I find that the petition before the court is one which the petitioners want to seek their rights and hence the same cannot escape the provisions of the Land Adjudication Act."

It was counsel's submission that even though the petitioners have alleged that they were denied consent by the Land Adjudication Officer, it is difficult to ascertain whether the letter was ever presented to the land adjudication for action or whether they attempted to follow up as the letter was allegedly drawn in 2019 while the petitioners filed their petition nearly 12 months later. That the petitioners are yet to be granted the consent as provided for in section 30 of the Land Adjudication Act.

Counsel therefore urged the court to find that section 30 of the Land Adjudication Act has not been complied with and the same should be dismissed.

On the second issue as to whether the petitioners have exhausted the remedies as set out in the Land Adjudication Act, counsel submitted that there are robust and exhaustive dispute resolution mechanisms for solving any dispute arising from the adjudication process as captured in section 26 and 29 of the Act. That an aggrieved party must first demonstrate that they availed those mechanisms before attempting to invoke the jurisdiction of the courts to determine such land disputes. That the petitioners herein have instituted proceedings agitating for land ownership over parcels of land that are clearly within an adjudication section that are undergoing adjudication and there is no evidence of having exhausted the remedies provided for.

Counsel relied on the case of **Reuben Mwangela M'itelekwa (suing as the Legal Representative of the estate of M'itelekwa M'rnucheke Naituri alias M'itelekwa Mucheke) v Paul Kigea Nabea & 2 others [2019] eKLR** where Justice Lucy Mbugua held that:

“Further, parties must follow the laid down Dispute Resolution Mechanism provided for under the relevant laws, in this case, the Land Adjudication Act or the Land Consolidation Act. The Preliminary Objection succeeds on this 1st limb.”

Further in the case of **Speaker of National Assembly Versus Karume [1992] KLR 425** the Court held that;

where there was a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed". This position was adopted with approval by Hon. Justice. M.J. Anyara Emukule, J, in Mombasa High Court Petition NO. 18 of 2013: Anne Wamuda & 3 Others Versus Kenya Railways Corporation & Another [2015] eKLR.

On the third issue as to whether the court has jurisdiction over ongoing adjudication process, counsel submitted that the court cannot interfere with an ongoing adjudication process and that courts have been reluctant to impose their supervisory role over adjudicated land in which the process is still ongoing as that process usually entails activities that are outside their area of knowledge and expertise.

Counsel also cited the case of **William Mutuura Kairiba v Samuel Nkari & 2 others [2018] eKLR** where Justice P. M. Njoroge stated that:

The plaintiff in paragraph 4 of his supporting affidavit avers that his exhibit WMK2 is a copy of a certificate from the "Land Adjudication Officer and demarcation (sic) confirming completion of adjudication and my land to have become on or about 12th February, 2001". LVKM 2 is a copy of a handwritten document mentioning the plaintiff; the adjudication section and P/No 50. If this document can be called a certificate, then it can on/y confirm that the land in question is land within an adjudication section. And no more. it is not a certification that the apposite adjudication register for the apposite section has become final in al/ respects under section 29(3) of the Land Adjudication Act. Consent is required even under the provisions of section 8 of the Land Consolidation Act.

Counsel therefore urged the court to uphold the preliminary objection and dismiss the petition.

4th, 5th & 6th RESPONDENTS SUBMISSIONS

Counsel for the 4th 5th and 6th Respondent were in support of the preliminary objection and associated himself with the submissions of the 1st 2nd and 3rd respondents. Counsel cited the Supreme Court case of **Samuel Kamau Macharia & Another –v- Kenya Commercial Bank Ltd & 2 Others (2012) eKLR on the issue of jurisdiction where the court held as follows**

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law... the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the mater, for without jurisdiction, the court cannot entertain any proceedings.”

Mr Kurgat thus submitted that the provisions of the law under the Land Adjudication Act Cap 284, (particularly S30) are to the effect that no suit shall be instituted in an adjudication section without the consent of the Land Adjudication officer and equally, no court of law shall entertain such a suit. That the Petitioners have not demonstrated that they sought and obtained consent from the adjudication officer concerned before instituting the Petition herein.

Counsel relied on the case of Joshua **Werunga –v- Joyce Namunyok & 2 Others (2015) eKLR where the court held that:**

“In the case of Raila Odinga –v-IEB C & Others (2013)eKLR, the Supreme Court said that Article 159 (2)(d) of the Constitution simply means that a Court of law should not pay undue attention to procedural requirements at the expense of substantive justice. It was never meant to oust the obligation of litigant to comply with procedural imperatives as they seek justice from the court. ”

Counsel therefore submitted that article 159 cannot come to the aid of the petitioners. He also cited the case **of Benjamin Okwaro Estika – v- Christopher Anthony Ouko & Another (2013) eKLR**, where the Court of Appeal commenting on the application of Sections 29 and 30 of the Land Adjudication Act stated:

“That being so, the mandatory requirements of Section 30(a) had to be complied with i.e. consent of the Land Adjudication Officer has to be obtained before filing a case in respect of a dispute on land in that adjudication section or before the court could be clothed with jurisdiction to hear it. From what we have discussed above, it will be clear that we are in full agreement with the learned Judge that the court had no jurisdiction to entertain the matter that was before him as no consent had been obtained.”

Counsel therefore urged the court to uphold the preliminary objection and dismiss the petition with costs.

PETITIONERS’ SUBMISSIONS

Counsel for the petitioners submitted that it is true that law under Sections 26 and 29 of the Land Adjudication Act provides that any person affected by the adjudication register or so considers himself aggrieved by the determination and of the adjudication officer may file an objection or even appeal against the decision to the minister., however, the provisions of these sections are only applicable when the adjudication register is complete and the notice of completion had been published.

Counsel submitted that the petitioners have shown that they have raised several issues in respect of the adjudication process as the demarcation and the recording officers did not visit the suit land hence details of the land owners were not captured

Mr Cheruyiot submitted that the provisions of Section 29 of the Land Adjudication Act refer to only when the adjudication register has been completed, that is when an appeal can be preferred.

Counsel gave brief facts of the case and stated that the suit land is under ongoing adjudication process and that the two clans katemuge and kapchepkosir have had perennial land disputes and litigation that has gone to the High Court of Kenya vide NAKURU CIVIL APPEAL NO. 78 OF 1997 whereby a ruling was delivered that the two clans share the disputed land in equal shares. Due to animosity, fights and tension the Court order was not implemented.

Mr. Cheruyiot further submitted that it was the petitioner's averment that when the government declared the suit land under adjudication, the adjudication officer decided to record and demarcate the entire land to one clan i.e. Kapchepkosir clan (the 6th Respondent herein). That there was no public sensitization of the commencement of the adjudication process hence making it flawed and illegal.

Counsel submitted that he wrote a letter to the Land Adjudication officer seeking for consent and/or leave of the Land Adjudication officer to have the Petitioners' complaint filed in court but the same letter has neither been replied to nor any communication on the same made. The Petitioners were therefore only left with the option of seeking the intervention of this Honourable Court.

Counsel listed the following issues for determination namely:

- a) Whether the doctrine of exhaustion of remedies is applicable in the instant petition
- b) Whether the jurisdiction of this court is ousted by Section 30 of Land Adjudication Act.

On the first issue on the requirement of exhaustion of remedies laid down in statute before seeking the intervention of this court, counsel submitted that it is settled law that to require an allegation of violation or threat of violation of fundamental rights to be strictly submitted to this doctrine is akin to unnecessarily limiting access to rights of individuals which is given under Article 22(1) of the Constitution, which provides thus:=-

Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied/ violated or infringed, or is threatened

Counsel cited the case of **County Government of Nyeri vs Cabinet Secretary, Ministry of Education, science and Technology & Another (2014) eKLR** stated in **Mohamed Ali Baadi and Others v Attorney General & 11 Others (2018) eKLR** follows:

In any event to require a suit alleging violations of fundamental rights by citizens to be submitted for resolution under Part IV of Inter-Governmental Relations Act would, in our view, unnecessarily limit access to rights given to individuals under Article 22 of the Constitution to challenge any alleged violations of the Bill of Rights,

That the same court also held in paragraph 94 of its judgment that the doctrine of exhaustion of local remedies is only applicable if it is available and can be effectively pursued. It quoted the case of Dawda K. Jawara vs Gambia and stated:

"While our jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute (See The Speaker of National Assembly vs James Njenga Karume), the exhaustion doctrine is only applicable where the alternative forum is accessible affordable timely and effective. Thus, in the case of Dawda K. Jawara vs Gambia it was held that:

"A remedy is considered available if the Petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality] the Governments assertion of no exhaustion of local remedies will therefore be looked at in this light remedy is considered available on/r if the applicant can make use of it in the circumstances of this case.

Mr Cheruyiot submitted that the petitioners have demonstrated in their petition how the Respondents have made it impossible for them to access or even make use of the remedies outlined in the Land Adjudication Act. These remedies are only available once the adjudication process is over and notice is published to that effect.

Counsel also submitted that the 1st, 2nd and 3rd Respondents, as state officials, failed to properly act administratively on the issues raised by the Petitioners hence the quest for the intervention of the court and relied on the case of **Mohamed Ali Baadi and Others Supra** where the court held as follows:

112. *It is also correct to state that Environmental Law has been described as Administrative Law in action, for the reason that environmental conflicts often depend on the exercise of administrative decision-making powers. Such powers, if not properly exercised can be challenged by way of a Constitutional petition which is also within the jurisdiction of this Court.*

113. *Where such failures occur the citizens have a right to move to Court to seek appropriate reliefs such as prohibition, mandamus, certiorari, declaration of unconstitutionality, Judicial Review, or otherwise of the challenged decisions, damages or any other relief that the Court may deem just and appropriate.*

114. *In our view, Article 165(3)(d) of the Constitution donates to this Court the jurisdiction to entertain any challenges concerning the failure to comply with any constitutional and statutory obligations and the present dispute raises like questions. Indeed, given the facts identified in the paragraphs above, it would amount to an abdication by this court of one of its core mandates were it not to seize its jurisdiction in the present case.*

It is counsel's humble submissions that adjudication over the suit land is not yet complete hence the remedies outlined under Section 26 and 29 are not yet ripe, applicable or available. Counsel urged the court to find that the court has jurisdiction to hear and determine matters in which rights under the bill of rights has been violated or threatened.

On the second issues as to whether the jurisdiction of the court is ousted by section 30 of the Land Adjudication Act, counsel submitted that the constitution protects the right to property and abhors arbitrary deprivation of individual rights. Counsel further submitted that the petitioners sought consent of the 2nd Respondent, the Land Adjudication officer, for leave to file this instant petition vide a letter dated 17th October 2019 and that the Adjudication officer has never communicated in response to the letter hence the filing of the Petition on 12th August 2020.

Mr. Cheruyiot submitted that the failure by the 2nd Respondent to respond to the Petitioners' letter was a breach of Article 47 of the Constitution as was held in the case of **Rachel Auma v Municipal Council of Kisumu (2012)**. The court also noted in the same case, that the purpose and duty of any statutory body is to serve its constituents with utmost care, speed and diligence.

It was counsel's submission that Section 30 of the Land Adjudication Act (Cap 284) does not oust the jurisdiction of this court, but only seeks to prevent parties from rushing to court with land matters which are already under the process of adjudication. Counsel relied on the case of **Republic v District Land Adjudication and Settlement Officer Igembe North District & another; Moses Ituru (Interested Party) Ex parte Joshua Munoru M'limbiine [2018] eKLR** where the court held that it has jurisdiction to entertain matters where public officers abstain from specifically responding to letters seeking consent under Section 30 of the Land Adjudication officer, there would be no point of reference should an appeal be preferred to the minister. It was held thus:

"In this case however though served the respondents never filed a sworn affidavit indicating whether they received, and if so, what response they gave in respect of the letter addressed to the 1st respondent by the applicant's advocates dated 27/2/2015 seeking the said consent

The tragedy of cases in which served public officers abstain from specifically responding by sworn evidence to accusations leveled against them in sworn evidence is that the court will never know their side of the story before making its decision. There is therefore in this case also no reference point from which the applicant may appeal to the minister under S. 30(3) of Cap 284

If the 1st respondent had filed a sworn affidavit indicating what his response to the application for consent was, and when it was made this court may have had an entirely different view of this matter. However, in view of the silence of the 1st respondent and despite the need for litigants to follow the legally provided for mechanisms to obtain consent, there would be no need whatsoever in my opinion to send the applicant away from this court empty handed. Granting the application needs be the case herein not necessarily as a punitive measure but as a means of correcting a wrong and opening up the corridors of justice to enable the applicant ventilate his grievance in accordance with article 50(1) of the constitution.

It was counsel's further submission that the Petitioners sought consent but no response was made by the 1st Respondent and therefore there was no way of citing with precision that consent was denied. There was no denial to be appealed against by the Petitioners to the minister, as the court rightly observed in the case of **Meru ELC Misc. Civil Application No. 32 Of 2016, Republic Versus The District Land Adjudication & Settlement Officer Igembe North District The Hon. Attorney General And Ja het Kamon on Ex-Parte Applicant Reuben Liria** which was also relied on by the court in **Republic v District Land Adjudication and Settlement Officer Igembe North District & another; Moses Ituru (Interested Party) Ex parte Joshua Munoru M'limbiine** above, as follows:

"Annexure RL2 in the Ex arte Applicant's documents is the letter written to 1st Respondent on behalf of Ex parte Applicant in order to trail the process captured under Section 30 of Cap 284. From the contents of paragraph 16 and 18 of the Ex parte Applicant's Affidavit of 17.10.16, the 1st Respondent has simply declined to issue the consent.

Under S. 30(3) of Cap 284, an aggrieved person is supposed to appeal to the Minister within 28 days from the time the consent was denied.

If the Ex parte Applicant was to appeal to the Minister 'what would be his reference point? What date would he quote as the date of refusal of the consent?

This is a case where the Respondent doesn't indicate his stand to the applicant's request for consent.

The case can therefore be distinguished from the authorities cited by Respondent and Interested Party, Section 30 (3) of Cap 284 contemplates situation where the 1st Respondent makes a formal communication to deny or give consent or to make relevant directions. It is only then that Ex parte Applicant would be able to move to the next step. As at now, I am in agreement with Ex parte Applicant's contention that it is not possible to determine when the 28 days period will run from unless a formal communication is made.

Mr. Cheruyiot therefore urged the court to find that the court has the requisite jurisdiction to hear and determine the instant petition, since consent was sought but never expressly given or denied, or directions given. The intervention of this court is therefore ripe in order to afford the Petitioners a fair hearing on merits and for the court to promote the protection of rights guaranteed under the bill of rights. That the

jurisdiction of the court is not in any way ousted by the provisions of Section 30 of 'the Land Adjudication Act. Counsel prayed that the preliminary objection be dismissed with costs.

ANALYSIS AND DETERMINATION

The issues for determination in this objection are as to whether the petitioners complied with the provisions of section 30 of the Land Adjudication Act and whether they have exhausted the remedies provided under the Act.

On the issue of consent of the Land Adjudication Officer being sought by a party before filing suit has been adjudicated upon by courts in many cases. It is trite that when a Statute provides for mechanisms for dealing with disputes then the court would rarely interfere with such processes. There is need for consistency and not parallel processes and wastage of tax payer's money and resources.

Section 30 provides in mandatory terms that no person shall institute and no court shall entertain any civil proceedings concerning an interest in land in adjudication section until the adjudication register for that adjudication section has become final in all aspects under section 29(3) of the Act except with the with the consent in writing of the adjudication officer.

The catch phrases in that section are written consent from the adjudication officer, interest in land, final register, shall not institute, and no court to entertain such suits. The first hurdle for a party or claimant is to establish that the consent was applied for and granted by the Land Adjudication officer. The second one is that is the claimant seeking for the determination of an interest in land, if so then he or she must obtain a consent as provided for under section 30 of the Act before instituting a suit in court. If such consent is not sought for and obtained, then the court has no jurisdiction to handle the matter as there are elaborate laid down mechanisms to deal with such disputes. The other issue is whether the adjudication register has been finalized as per section 29(3) of the Land Adjudication which triggers the mechanisms of dispute resolution.

From the reading of the petition and the orders sought for, it is evident that the petitioners 'claim is for an interest in land more specifically that they are entitled to the suit land in equal portions with Kapchepkosir clan. Further the petitioners are seeking for judicial review of an order of mandamus compelling the 2nd respondent to set out fresh adjudication process and prepare a demarcation map for the adjudication section showing every parcel of land as occupied by the two clans Ketemuge and Kapchepkosir.

The orders sought for indicate that the adjudication process is ongoing and that is why the petitioners are asking for a fresh adjudication. The petitioners should have followed the laid down mechanisms of dispute resolution in the Land Adjudication Act.

In the case of **Republic v Musanka Ole Runkes Tarakwa & 5 others Ex-parte Joseph Lesalol Lekitio & others [2015] eKLR**, where Justice Munyao held as follows:

In a situation regarding land under adjudication, there is an elaborate process that is laid down by the Land Adjudication Act, on how to determine which persons are, and the extent to which, they are entitled to interests in the land under adjudication. There would be no bar to institution Judicial review proceedings, to question the process being undertaken, and in my view, such proceeding which go to question the process undertaken in the adjudication process would not require the consent of the Land Adjudication Officer. This is because such a dispute would not be a dispute "concerning an interest in land" which is what Section 30 (1) specifically bars. The term "interest", in relation to land under adjudication, as defined by Section 2 of the Land Adjudication Act, "includes absolute ownership of the land and any right or interest in or over the land which is capable of being registered under the Registered Land Act (Cap. 300)".

When a dispute challenges the legitimacy of the process rather than an interest in land then there would be no need of obtaining a consent from the Land Adjudication Officer. The current suit faults both the process and seeks for a declaration of who is entitled to what portion of the land between the two clans. The pleadings also show that there was a High Court Civil Appeal No 78 of 1997 which ruled that the two clans share the disputed land in equal shares. This further confirms that this petition is about interest in land.

It follows that it was mandatory for the petitioners to seek and obtain a consent from the Land Adjudication officer. The petitioners averred that they had written a letter dated 17th October 2019 to the Land Adjudication Officer but to date they have not received any response. The question is what is the legal position where a party requests for a consent and the same is either denied or the letter is not responded to? Where the consent is unreasonably denied it is my view that filing the petition would not have been a wise decision as the petitioners had recourse to compel the Land Adjudication Officer to avail the consent to them. This makes it clear that the petitioners did not obtain the requisite consent before filing this petition.

By virtue of the provisions of section 30 of the Land Adjudication Act the Petitioners were under a mandatory obligation to seek for the consent of the Land Adjudication Officer since they were seeking for determination of an interest in land. It therefore follows that the court lacks jurisdiction to hear and determine this petition pursuant to section 30 of the Land Adjudication Act.

This petition has another twist as the petitioners indicate that this is a matter that had been adjudicated upon vide High Court Civil Case No. 78 of 1997 whereby the court ordered that the clans share the land equally. The question is why did they not implement the judgment of the court. That said the petitioners have stated that the government declared the area as an adjudication section and this makes the matter to fall under the dispute resolution mechanisms of the Land Adjudication Act.

In the case of Speaker **of National Assembly Versus Karume [1992] KLR 425** the Court held that;

"... where there was a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed".

I have considered the preliminary objection raised by the respondents, the pleadings, the submissions by counsel and the relevant judicial authorities and I find that the preliminary objection raised has merit and is therefore upheld. The petitioners have other avenues of redress which they can pursue. I therefore strike out the petition with an order that each party to bear their own costs.

DATED and DELIVERED at ELDORET this 19th DAY OF JANUARY, 2021

M. A. ODENY

JUDGE