



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sopia v Cabinet Secretary for the Ministry of Lands,Public Works,  
Housing & Urban Development & 5 others (Environment & Land Petition  
E001 of 2024) [2025] KEELC 571 (KLR) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 571 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT & LAND PETITION E001 OF 2024**

**EM WASHE, J**

**FEBRUARY 5, 2025**

**IN THE MATTER OF: NKARARO LAND ADJUDICATION SECTION**

**-AND-**

**IN THE MATTER OF: ALL THAT PIECE OF LAND  
KNOWN AS TRANSMARA/NKARARO/564**

**-AND-**

**IN THE MATTER OF: FUNDAMENTAL RIGHTS & FREEDOMS UNDER  
ARTICLES 10,40,43,47 & 48 OF THE CONSTITUTION OF KENYA,2010**

**-AND-**

**IN THE MATTER OF: LAND ADJUDICATION ACT, CHAPTER 284 LAWS OF KENYA,  
THE LAND REGISTRATION ACT, NO.3 OF 2012 & THE LAND ACT, NO.6 OF 2012**

**-AND-**

**IN THE MATTER OF: OBJECTION NO. 308 OF 1990: LEPARAKUO  
NAINI SOPIA AGAINST JOHN MAMURA OLE KAKA**

**-AND-**

**IN THE MATTER OF: AN APPEAL TO THE MINISTER OF LANDS IN  
APPEAL CASE NO.75 OF 2021 UNDER SECTION 29 OF THE LAND  
ADJUDICATION ACT & ARTICLE 159 OF THE CONSTITUTION**

**-AND-**

**IN THE MATTER OF: ENFORCEMENT OF THE FINDINGS OF THE TRANSMARA WEST  
DISTRICT COMMISSIONER IN EXERCISE OF DELEGATED POWERS UNDER ARTICLE  
29 OF THE LAND ADJUDICATION ACT & ARTICLE 159 OF THE CONSTITUTION**

**-AND-**

**IN THE MATTER OF: SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**



**BETWEEN**

**LEPARAKUO NAINI SOPIA ..... PETITIONER**

**AND**

**CABINET SECRETARY FOR THE MINISTRY OF LANDS,PUBLIC WORKS,  
HOUSING & URBAN DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT COMMISSIONER, TRANSMARA WEST ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, TRANSMARA ..... 3<sup>RD</sup> RESPONDENT**

**LAND ADJUDICATION & SETTLEMENT OFFICER TRANSMARA WEST,  
EAST & SOUTH SUB-COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JOHN MAMURA OLE KAKA ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner herein filed an Amended Petition dated 29.04.2024 (hereinafter referred to as “the present Petition”) against the 1<sup>st</sup> to 6<sup>th</sup> Respondents seeking for the following Orders; -
  - a. A declaration that 2<sup>nd</sup> Respondent’s decision of 3<sup>rd</sup> June 2021 in Minister’s Appeal No. 139 of 1998 is oppressive, unlawful, null and void.
  - b. An Order of Certiorari be issued to remove to this Court and quashing the decision of the 2<sup>nd</sup> Respondent dated 3<sup>rd</sup> June 2021 in Minister’s Appeal No. 75 of 2021.
  - c. A declaration that the Petitioner is entitled to be registered exclusively as the legitimate and beneficial owner of his ancestral land of Parcel No. 1011 within Nkararo Adjudication Section.
  - d. A declaration that the Petitioner is entitled to be registered exclusively as the legitimate and beneficial owner of his ancestral land of parcel No. 564 within Nkararo Adjudication Section.
  - e. An Order for Judicial Review by way of an Order of Mandamus to compel the 2<sup>nd</sup> Respondent to recall title No. Transmara/Nkararo/564 and hereby revoke or cancel the same and issue the Petitioner with a title deed for Transmara/Nkararo/564 the suit property.
  - f. An Order compelling the Respondents herein and specifically the 3<sup>rd</sup> Respondent to register the Petitioner as the beneficial and legitimate owner of the subject ancestral land parcel No. 564 within Nkararo Adjudication Section.
  - g. Costs of the Petition.
  - h. Any other reliefs that the Honourable Court may deem fit and expedient to grant.
2. The prayers sought above have been premised on facts outlined in the body of the present Petition as well as the Supporting Affidavit sworn by the Petitioner on 04.03.2024 and are summarised as follows; -



- a. The 1<sup>st</sup> Respondent through the 4<sup>th</sup> Respondent's office published a Declaration Notice under the *Land Adjudication Act*, Cap 284 creating Nkararo Adjudication Section within Transmara West, Sub-County.
  - b. After the creation of Nkararo Adjudication Section, the Petitioner's portion of land was demarcated as Plot.no.564 by the Land Adjudication Committee thereof.
  - c. At the end of the demarcation and allocation of the entire Nkararo Adjudication Section, the 4<sup>th</sup> Respondent declared the adjudication complete and published the Adjudication Register for inspection by the general public.
  - d. Upon the Petitioner inspecting the Adjudication Register of PLOT.NO.564 within Nkararo Adjudication Section, he was aggrieved by the Adjudication Record of the said property and filed an Objection which was recorded as Objection NO. 308 OF 1990.
  - e. The Petitioner's Objection NO. 308 OF 1990 was duly heard by the 4<sup>th</sup> Respondent who in turn delivered a Ruling on the 30.06.2020 dismissing the said Objection .
  - f. The Petitioner again being dissatisfied with the Ruling pronounced by the 4<sup>th</sup> Respondent on the 30.06.2020 dismissing the Objection NO. 308 OF 1990 filed an Appeal before the 1<sup>st</sup> Respondent which was recorded as Minsiter's Appeal No. 75 Of 2021.
  - g. The 2<sup>nd</sup> Respondent on delegated powers from the 1<sup>st</sup> Respondent proceeded to hear the Petitioner's Minister's Appeal No.75 Of 2021 and on the 03.06.2021 rendered its decision to the effect that the Petitioner's Minister's Appeal No. 75 Of 2021 was not merited and hence was dismissed.
  - h. The Petitioner's view is that the 2<sup>nd</sup> Respondent's decision to dismiss the Minister's Appeal No. 75 Of 2021 was erroneous as the 2<sup>nd</sup> Respondent did not visit the ground and ascertain the person in occupation and use of the property known as Plot.no.564 within Nkararo Adjudication Section.
  - i. As a result of the above omission and/or commission by the 2<sup>nd</sup> Respondent, the decision by the 2<sup>nd</sup> Respondent dismissing the Petitioner's MINISTER'S APPEAL NO. 75 OF 2021 was illegal, irrational and procedurally incorrect.
  - j. The Petitioner pleaded that the decision of the 2<sup>nd</sup> Respondent enabled the 4<sup>th</sup> Respondent to register the property known as PLOT.NO.564 within Nkararo Adjudication Section now titled as LR.NO.Transmara/Nkararo/564 was not authentic as the same was not signed thereby making it unenforceable or not legally binding in law.
  - k. The Petitioner stated that the 2<sup>nd</sup> Respondent seriously abdicated his jurisdiction and powers by shying away from issuing appropriate orders as sought in the Minister's Appeal No. 75 Of 2021 hence violated the provisions of *Constitution of Kenya, 2010*.
  - l. The Petitioner's prayer is that this Court grants the prayers sought in the present Petition to uphold his rights under *the Constitution* of Kenya, 2010.
3. The present Petition was duly served on the 1<sup>st</sup> to 6<sup>th</sup> Respondents.
  4. The 1<sup>st</sup> to 5<sup>th</sup> Respondents opposed the present Petition by filing Grounds of Opposition dated 13.11.2024 to which they raised the following issues; -



- a. The present Petition did not outline with precision and specificity how the 1<sup>st</sup> to 4<sup>th</sup> Respondents violated the Petitioner's Constitutional Rights as pronounced in the case of Anarita Karimi Njeru-versus- Republic (1979) eKLR.
  - b. The Petitioner did not disclose any acts of omission and/or commission by the 1<sup>st</sup> to 4<sup>th</sup> Respondents contrary to the provisions of the *Land Adjudication Act*, Cap 284.
  - c. The present Amended Petition is time-barred and offends the provisions of Section 29 (1) of the *Land Adjudication Act*, Cap 284.
  - d. This Court lacks jurisdiction to hear and determine the present Petition as it relates to disputes emanating from an Adjudication Process and issuance of title deeds thereof.
  - e. Lastly, the 1<sup>st</sup> to 5<sup>th</sup> Respondents sought this Court to dismiss the present Petition as the same was misconceived, untenable and not supported by factual evidence and/or law.
5. The 6<sup>th</sup> Respondent also opposed the present Petition by filing a Replying Affidavit dated 11.06.2024 on the following grounds; -
- a. The 6<sup>th</sup> Respondent began his response to the present Petition by indicating that he is the registered owner of the property known as LR.NO.Transmara/Nkararo/564 which was previously identified as PLOT.NO.564 within Nkararo Adjudication Section.
  - b. The 6<sup>th</sup> Defendant was a resident of Nkararo Adjudication Section and was recorded as the beneficial owner of PLOT.NO.564 within Nkararo Adjudication Section by the 4<sup>th</sup> Respondent during the Adjudication process which was concluded by the publishing of the Adjudication Register.
  - c. The Petitioner being aggrieved by the information on the Adjudication Register of PLOT.NO.564 within Nkararo Adjudication Section proceeded to file an Objection known as Objection NO. 306 OF 1990 before the 4<sup>th</sup> Respondent.
  - d. The Petitioner's Objection NO. 306 OF 1990 was heard on its merit by the 4<sup>th</sup> Respondent who pronounced his Ruling on the 30.06.2020 dismissing the said Objection NO. 306 OF 1990.
  - e. The Petitioner being dissatisfied by the Ruling of the 4<sup>th</sup> Respondent pronounced on the 30.06.2020 dismissing his Objection NO. 306 OF 1990, an Appeal was filed before the 1<sup>st</sup> Respondent which was recorded as Minister's Appeal No. 75 Of 2021.
  - f. The 2<sup>nd</sup> Respondent through delegated powers from the 1<sup>st</sup> Respondent proceeded to hear the Petitioner's Minister's Appeal No. 75 Of 2021 and pronounced its decision on the 03.06.2021 dismissing the entire Minister's Appeal No. 75 Of 2021.
  - g. The 6<sup>th</sup> Respondent pleaded that the Petitioner was accorded a fair hearing by the 2<sup>nd</sup> Respondent in line with the Constitutional provisions.
  - h. The 6<sup>th</sup> Respondent further pleaded that there is no provision in law that specifically demands that the 2<sup>nd</sup> Respondent must visit the ground before deciding of an Appeal as pleaded by the Petitioner herein.
  - i. The 6<sup>th</sup> Respondent stated that the Petitioner failed to fully disclose material facts.



- j. According to the 6<sup>th</sup> Respondent, the Petitioner failed to disclose that there was a previous proceeding known as Kilgoris Judicial Review Application No. E003 Of 2022 wherein similar orders were sought for before this Court.
  - k. The 6<sup>th</sup> Respondent then a party to the said Kilgoris Judicial Review Application No. E003 Of 2022 filed an appropriate Replying Affidavit dated 31.03.2023 and submissions dated 02.06.2023.
  - l. On the 6<sup>th</sup> Respondent serving the Petitioner with the Replying Affidavit dated 31.03.2023 and submissions dated 02.06.2023, the Petitioner withdrew the said proceedings known as Kilgoris Judicial Review Application No. E003 Of 2022 on the 08.06.2023.
  - m. On the 08.09.2023, the Petitioner herein again filed a second proceeding known as Kilgoris Judicial Review Application No. E007 Of 2023.
  - n. In this second proceeding, the 6<sup>th</sup> Respondent herein who was also a party in the proceedings known as Kilgoris Judicial Review Application No. E.007 Of 2023 filed a Replying Affidavit dated 23.10.2023 and submissions in opposition of the same on 13.12.2023.
  - o. This Court upon evaluating the pleadings and submissions of the proceedings known as KILGORIS JUDICIAL REVIEW APPLICATION NO. E007 OF 2023 delivered its Ruling dated 18.01.2024 dismissing the said Application.
  - p. Consequently therefore, the 6<sup>th</sup> Respondent stated that the present Petition is Res Judicata to the proceedings known as Kilgoris Judicial Review Application No. E007 Of 2023 and should not be entertained by this Court.
  - q. The 6<sup>th</sup> Respondent averred that the present Petition has been filed to circumvent the proceedings and/or orders that could be issued in another suit filed by the 6<sup>th</sup> Respondent known as Kilgoris Senior Principal Magistrates Court Elc Case No. E018 Of 2024 seeking for eviction orders against the Petitioner which is still on going.
  - r. In conclusion, the 6<sup>th</sup> Respondent sought this Court to dismiss the present Petition with costs as the same was not merited and in fact is an abuse of the Court process.
6. The Petitioner in response to the 6<sup>th</sup> Respondent's Replying Affidavit dated 11.06.2024 filed a Further Affidavit sworn on the 24.09.2024 to which he stated as follows; -
- a. First and foremost, the Petitioner stated that both the Objection filed before the 4<sup>th</sup> Respondent and the Minister's Appeal filed before the 1<sup>st</sup> Respondent were done within the prescribed time provided by the [Land Adjudication Act](#), Cap 284.
  - b. The Petitioner further stated that this Court has the jurisdiction to hear and determine the present Petition based on the provisions of the Kenyan Constitution and Section 12 and 13 of the Environment and [Land Act](#).
  - c. The Petitioner pleaded that during the Adjudication process, he clearly pointed out the boundaries of his portion of land but the 4<sup>th</sup> Respondent disregarded his occupation and instead recorded the name of the 6<sup>th</sup> Respondent who was not even a member of the Adjudication Section.
  - d. The Petitioner admitted that indeed, there were previous proceedings which had been instituted through Judicial Review applications, but the same dealt with the issue of leave to enlarge time within which to file the substantive Judicial Review proceedings.



- e. Unfortunately, this Court declined to grant leave for the enlargement of time within which to file the substantive Judicial Review proceedings and there was no judicial determination on the issues about the procedure and/or manner in which both the Objection and the Appeal to the Minister were handled.
  - f. The Petitioner pleaded that the issuance of a Title Deed to the 6<sup>th</sup> Respondent in compliance with the decision of the 2<sup>nd</sup> Respondent was in violation of the Petitioner's right to own property which is enshrined in *the Constitution* of Kenya, 2010.
  - g. The Petitioner further pointed out that the 2<sup>nd</sup> Respondent's decision pronounced on the 03.06.2021 was not signed hence there was no decision dismissing the Appeal before the 2<sup>nd</sup> Respondent.
7. After the filing of the Further Affidavit dated 24.09.2024 by the Petitioner, the Court directed that the present Petition would be canvassed by way of written submissions.
  8. The Petitioner in compliance with these directions filed his submissions on dated 24.09.2024, the 1<sup>st</sup> to 5<sup>th</sup> Respondents filed their submissions dated 15.11.2024 and the 6<sup>th</sup> Respondents 14.10.2024.
  9. The Court has indeed perused the present Petition, the Supporting affidavit and well as the Further Affidavit filed by the Petitioners, the Ground of Opposition and the Replying Affidavit by the Respondents and the issues for determination are as follows; -
    - Issue No. 1- Whether Or Not The Present Petition Is Res-judicata The Proceedings Known As Kilgoris Elc Judicial Review Application No. E007 Of 2023?
    - Issue No. 2- Whether The Petitioner Has Demonstrated Any Violation Of His Constitutional Rights During The Adjudication Process And/or Registration Of The Property Known As Transmara/nkararo/564 In The Name Of The 6<sup>th</sup> Respondent?
    - Issue No. 3- Is The Petitioner Entitled To The Orders Sought In The Present Petition?
    - Issue No. 4- Who Bears The Costs Of The Present Petition?
  10. The Court having identified the above-mentioned issues for determination, the same will now be discussed as provided below.

**Issue No. 1- Whether or not the present petition is res-judicata the proceedings known as Kilgoris Elc Judicial Review Application No. E007 Of 2023?**

11. The first issue for determination is one that deals with the issue of jurisdiction of this Court to hear and determine the present Petition.
12. According to the 6<sup>th</sup> Respondent herein, the present Application is Res-Judicata and offends the provisions of Section 7 of the *Civil Procedure Act*, Cap 21.
13. The 6<sup>th</sup> Respondent pleaded and submitted that the Petitioner herein has previously filed two other proceedings namely KILGORIS ELC JUDICIAL REVIEW NO. E.003 OF 2022 which he subsequently withdrew and then filed KILGORIS ELC JUDICIAL REVIEW NO. E.007 OF 2023.
14. The 6<sup>th</sup> Respondent's submission is that the prayers sought in the proceeding known as KILGORIS ELC JUDICIAL REVIEW NO. E007 OF 2023 which was dismissed are similar in nature to the present Petitioner and involve the same parties.



15. The Petitioner on the other hand responded by stating that the proceedings known as KILGORIS ELC JUDICIAL REVIEW E.007 OF 2023 related to the issue of extension of time within which a Judicial Review proceeding can be instituted.
16. The Petitioner in the Further Affidavit pleaded that the Application that was determined in the proceedings known as KILGORIS ELC JUDICIAL REVIEW E.007 OF 2023 did not deal with the merit and/or issues that have been raised in the present Petition.
17. On this score, the Petitioner submitted that the present Petition does not offend Section 7 of the Civil Procedure Act, Cap 21 and the Court has the jurisdiction to entertain and determine the same.
18. The provisions of Section 7 of the Civil Procedure Act, Cap 21 states as follows; -

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”
19. The 6<sup>th</sup> Respondent to assist the Court provided copies of the proceeding known as Kilgoris Elc Judicial Review No. E007 Of 2023.
20. Upon perusal of the proceeding known as Kilgoris Elc Judicial Review No. E007 Of 2023, the Court noted that indeed the parties in the said Application and the present Petition were similar.
21. Secondly, the title that was being litigated upon in the proceeding known as Kilgoris Elc Judicial Review No. E007 Of 2023 and the present Petition is the same known as LR.NO.Transmara/Nkararo/564.
22. The issues raised in the Ex-parte Chamber Summons dated 07.09.2023 included Leave to extend time within which to file a Judicial Review Application as well as other Orders of Certiorari to quash the decision of the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> Respondent pronounced on 03.06.2021, a Prohibition Order against the 3<sup>rd</sup> and 4<sup>th</sup> Respondents barring them from implementing the decision of the 2<sup>nd</sup> Respondent pronounced on 03.06.2021 and finally an Order of Mandamus to compel the 2<sup>nd</sup> Respondent to cancel the 6<sup>th</sup> Respondent’s title known as LR.NO.Transmara/Nkararo/564 and issue the same in the name of the Ex-parte Applicant therein who is the Petitioner in the present Petition.
23. According to the Ruling of this Court pronounced on the 18.01.2024, the Ex-parte Chamber Summons dated 07.09.2023 was dismissed on the ground that it was not legally possible to extend the 6 months period within which one is required to file Judicial Review proceedings.
24. Based on this Ruling pronounced on 18.01.2024, the Court did not interrogate and/or evaluate the merits of the other prayers which included the reliefs of Certiorari, Prohibition and Mandamus which were to be determined after a substantive Notice of Motion is filed.
25. For this reason, this Court makes a finding that the issue which was canvassed in the Ex-parte Application dated 07.09.2023 of which was determined in the Ruling dated 18.01.2024 referred to the enlargement of time within which to file Judicial Review proceedings and the substantive reliefs were never addressed in the said Application.
26. Consequently, this Court makes a finding that the present Petition is not Res-Judicata the proceedings known as Kilgoris Elc Judicial Review No. E007 Of 2023 and therefore the court has the jurisdiction to hear and determine the same.



**Issue No. 2- Whether The Petitioner Has Demonstrated Any Violation Of His Constitutional Rights During The Adjudication Process And/or Registration Of The Property Known As Transmara/Nkararo/564 In The Name Of The 6<sup>th</sup> Respondent?**

27. The second issue is whether or not the Petitioner's Constitutional rights have been infringed by the 1<sup>st</sup> to 6<sup>th</sup> Respondents herein.
28. According to the pleadings in the present Petition, the Petitioner has cited the provisions of Article 10,20,21 (1), 40 (1) (3)(4), 47, 50, 60, 64 and 232 (1) & (2).
29. According to the Petitioner, the decision of the 2<sup>nd</sup> Respondent in exercise of powers delegated by the 1<sup>st</sup> Respondent pronounced on the 03.06.2021 infringed his right to own the property known as Lr.no.Transmara/Nkararo/564.
30. The first reason as to why the decision of the 2<sup>nd</sup> Respondent infringed on his right to own property was that he did not visit the ground and verify who actually occupies the same before making its decision pronounced on the 03.06.2021.
31. Secondly, the Petitioner submitted that in fact, the decision of the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021 was never signed and does not constitute a lawful and proper determination capable of being implemented by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein to register the 6<sup>th</sup> Respondent as the lawful owner of the property known as LR.no.Transmara/Nkararo/564.
32. In essence, the actions by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to implement the decision of the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021 and issue a Title Deed of the property known as Lr.no.Transmara/Nkararo/564 to the 6<sup>th</sup> Respondent was devoid of proper procedure, failure to comply with the provisions of the [Land Adjudication Act](#), Cap 284 and the Fair Administrative Actions Act.
33. The 1<sup>st</sup> to 5<sup>th</sup> Respondents on the other hand pleaded and submitted that the present Petition is in fact frivolous as it does not give the precise and concise Constitutional Rights that have been infringed against the Petitioner.
34. Secondly, the 1<sup>st</sup> to 5<sup>th</sup> Respondents stated that there were no particulars pleaded by the Petitioner that precisely and concisely point out the omissions and/or commissions which resulted to the infringement of the Petitioner's Constitutional rights capable of being remedied by the orders sought in the present Petition.
35. Thirdly, the 1<sup>st</sup> to 5<sup>th</sup> Respondent pleaded and submitted that this Court did not have the jurisdiction to entertain disputes that emanate during an adjudication process and the [Land Adjudication Act](#), Cap 284 has its own internal dispute resolution mechanisms on how such proceedings should be handled.
36. In essence, the 1<sup>st</sup> to 5<sup>th</sup> Respondents submitted that the present Petition is an abuse of the Court process and lacks merit.
37. The 6<sup>th</sup> Respondent also vehemently opposed the present Petition.
38. The 6<sup>th</sup> Respondent pleaded and submitted that he was the person issued with an Adjudication Record of PLOT.NO. 564 within Nkararo Adjudication Section Which Is Now Titled As Lr.no.Transmara/Nkararo/564.
39. The 6<sup>th</sup> Respondent further pleaded that the Petitioner herein was well aware of the issuance of the Adjudication Record relating to PLOT.NO.564 within Nkararo Adjudication Section Now Titled



- As Lr.no.Transmara/Nkararo/564 in his name and proceeded to file an Objection before the 4<sup>th</sup> Respondent and an Appeal before the 1<sup>st</sup> Respondent.
40. The 2<sup>nd</sup> Respondent on delegated powers by the 1<sup>st</sup> Respondent heard the Appeal on its merits and pronounced its decision on the 03.06.2021 to the effect that the Appeal was not merited and therefore dismissed.
  41. The 6<sup>th</sup> Respondent submitted that the provisions of *Land Adjudication Act*, Cap 284 state that the decision by the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021 on behalf of the 1<sup>st</sup> Respondent was final.
  42. Consequently, according to the 6<sup>th</sup> Respondent, the Petitioner herein is seeking to Appeal against the decision of the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021 through the back door and reverse a lawful determination by the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021.
  43. As such, this Court should not allow the present Petition as the same is an abuse of the Court process and bad in law.
  44. Having outlined the various scenarios hereinabove, it is important for this Court to remind itself that it is determining a Constitutional Petition and not a Judicial Review Application although the prayers sought therein are in the nature of Judicial Review reliefs.
  45. This being the case, the Court has to first and foremost identify the Constitutional rights that the Petitioner alleges ought to enjoy but have been violated by the 1<sup>st</sup> to 6<sup>th</sup> Respondents.
  46. In the case of Anarita Karimi Njeru-versus- Republic (1979) eKLR, the Court placed a legal duty upon a Petitioner claiming that certain constitutional rights have been infringed by another party to specifically, precisely and concisely plead the particulars of such infringements.
  47. In the present Petition, the Petitioner did not plead any particulars of the Constitutional Rights which had been infringed by the 1<sup>st</sup> to 6<sup>th</sup> Respondents therein.
  48. The Petitioner instead pleaded that the 2<sup>nd</sup> Respondent's decision pronounced on the 03.06.2021 was flawed for the reason that the said officer did not visit the ground to ascertain the true position of who was in occupation of the property known as LR.NO.Transmara/Nkararo/564.
  49. The other reason that was advanced by the Petitioner in support of the present Petition was that the decision of the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021 was not legally binding and/or legitimate for the reason that it was not signed hence could not give lawful directions to the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents for implementation.
  50. As regards the reason that the 2<sup>nd</sup> Respondent's decision pronounced on the 03.06.2021 is flawed because there was no ground visit, this Court is of the considered option that such an argument does not demonstrate any infringement of a constitutional right.
  51. The decision of whether or not the 2<sup>nd</sup> Respondent should have visited the property known as LR.NO.Transmara/Nkararo/564 should have been canvassed at the hearing of the Minister's Appeal before the decision is pronounced.
  52. If the Petitioner wished for the 2<sup>nd</sup> Respondent to visit the ground, then it was his legal duty to make such an application before the 2<sup>nd</sup> Respondent and obtain a ruling of which if aggrieved with the same could seek legal remedies through Judicial Review Proceedings including that of Certiorari and Mandamus.



53. In essence, this Court is of the considered finding that the Petitioner herein was accorded a fair hearing as enshrined under Article 50 of the Kenyan Constitution, 2010 and there is no demonstration of any infringement of the Petitioner's right by the 1<sup>st</sup> to 4<sup>th</sup> Respondents during the determination of the internal dispute resolution mechanisms provided by the *Land Adjudication Act*, Cap 284.
54. As regards the allegation that the 2<sup>nd</sup> Respondent's decision dated 03.06.2021 was not signed and therefore can not constitute a legal decision capable of being implemented by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, this Court finds the Petitioner rather mischievous.
55. To begin with, the Petitioner himself in the proceedings known as Kilgoris Elc Judicial Review Application No. E003 Of 2022 And Kilgoris Elc Judicial Review Application No. E007 Of 2023 sought for leave to institute Judicial Review proceedings against the decision of the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021.
56. In these two previous proceedings, the Petitioner admitted and/or recognised the validity of the 2<sup>nd</sup> Respondent's decision pronounced on the 03.06.2021 and this is the reason why he was seeking to quash the same through the Judicial Review process.
57. The Petitioner in both the previous proceedings and the present petition has not disputed that the proceedings undertaken by the 2<sup>nd</sup> Respondent that resulted into the decision pronounced.
58. The Court has actually taken time to peruse the decision of the 2<sup>nd</sup> Respondent pronounced on the 03.06.2021 and confirms that the same was certified as a true copy of the original by the Director of Land Adjudication.
59. The copy of the decision by the 2<sup>nd</sup> Respondent bears the stamp and/or seal of the 2<sup>nd</sup> Respondent in his official capacity as the Deputy County Commissioner determining the matter on behalf of the 1<sup>st</sup> Respondent.
60. If the Petitioner was in doubt as to the manner in which the 2<sup>nd</sup> Respondent executed the decision dated 03.06.2021, he was at liberty to file a Judicial Review Application and seek for an Order of Certiorari to quash the illegal and/or unlawful determination for the reason that it was not properly signed.
61. In any event, the Petitioner has not demonstrated how the 2<sup>nd</sup> Respondent decision to affix the official seal and/or stamp of his office instead of signing the said decision infringed on any of his constitutional right of the Petitioner.
62. In essence, this Court makes a finding that the present Petition an attempt to appeal against the 2<sup>nd</sup> Respondent's decision dated 03.06.2021 in terms of the merit and does not disclose any constitutional infringements by the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

**Issue No. 3- Is the petitioner entitled to the orders sought in the present petition?**

63. The third issue is whether or not the Petitioner is entitled to the Orders sought in the present Application.
64. To begin with, Section 29 of the *Land Adjudication Act*, Cap 284 (now Repealed) provides that the decision of the 1<sup>st</sup> Respondent and/or the 2<sup>nd</sup> Respondent through delegated powers from the 1<sup>st</sup> Respondent pronounced on the 03.06.2021 is final.



65. The legal interpretation of Section 29 of the *Land Adjudication Act*, Cap 284 (now Repealed) was discussed in the case of LEPORE OLE MAITO-VERSUS- LETWAT KORTOM & 2 OTHERS (2016) eKLR where the Court stated as follows; -

“The Act provides an appropriate mechanism for resolution of disputes. The Minister is the apex in that dispute resolution mechanism and once an appeal is made to the minister and determined under the provisions of Section 29 of the Act, such determination is deemed to be final and is not subject of any appeal. A party therefore aggrieved by the Minister’s decision can only challenge such determination by way of judicial review and not otherwise if he considers the Minister acted wrongly or exceeded his jurisdiction.”

66. In addition to the above, the Court has noted that the Petitioner decided to file the present Petition after his attempts to have this Court extend time within which to institute Judicial Review Proceedings in the proceedings known as Kilgoris Elc Judicial Review Application No. E007 Of 2023 was dismissed.

67. From the Petitioner’s conduct, it is clear that he is aware of the proper procedure of challenging the 2<sup>nd</sup> Respondent’s decision pronounced on 03.06.2021 to be through Judicial Review proceedings but having been catch up with time, decided that he would try his luck through a Constitutional Petition.

68. The Petitioner’s conduct of filing a constitutional Petition to circumvent the procedure of challenging lawful decisions from Government organs having failed to do so within the prescribed time was discussed in the case of John Masiantet Saeni-versus- Daniel Aramat Lolungiro & 3 Others (2017) eKLR, where the Court made the following observations; -

“In the matter before the Court, the Petitioner did not move the Court by way of judicial review but rather opted to file a Petition after 13 years from the time the decision of the Minister was given. In my view, the Petition is tantamount to seeking to appeal the decision of the Minister through the back door. It is an attempt on the part of the Petitioner to have a second bite of the cherry.

The Director of Land Adjudication and Settlement conveyed the decision of the Minister to the Chief Land Registrar as required under Section 29 (3)(B) of the Act for implementation.

The instant Petition is an attempt at reversing what had properly and validly been done pursuant to the provisions of the *Land Adjudication Act*, Cap 284.

The Petition is misconceived having been brought in total disregard of the law and in my view the same constitutes abuse of the court process.

The Kenyan Constitution, 2010 can not be invoked to resurrect matters that had been resolved through due process such as the matter that the Petitioner wishes to revive through the instant Petition.

I accordingly uphold the preliminary Objection taken by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents and I order the Petition struck out in its entirety against the Respondents.”

69. Based on the provisions of Section 29 of the *Land Adjudication Act*, Cap 284 (now repealed) and the judicial pronouncements in the two above cited cases, this Court makes a finding that the present Petition is misconceived, an abuse of the Court process and the Orders therein cannot be granted.



**Issue No. 4- who bears the costs of the present petition?**

70. Costs usually follow the event and, in this Petition, the Petitioner has not been successful to prosecute the same.
71. As such the Petitioner is condemned to pay the costs of the Petition to the Respondents.

**Conclusion**

72. In conclusion, this Court hereby makes the following Orders in final determination of the Amended Petition dated 29.04.2024; -
- A. The amended petition dated 29.04.2024 is not merited and henceforth dismissed.
  - B. The petitioner is condemned to pay the costs of this petition to the 1<sup>st</sup> to 6<sup>th</sup> respondents.
  - C. The Interim Orders issued by this court on the 10.07.2024 be and are hereby set-aside and/or vacated forthwith.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON DAY THIS 5<sup>TH</sup> OF FEBRUARY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In the presence of:

Court Assistant: Brian

Advocates For The Petitioner: Mr. Shira For 6<sup>th</sup> Respondent

Advocates For The Respondents: No Appearance For 1<sup>st</sup> -5<sup>th</sup> Respondent

