



**Republic v Governor, County of Nyandarua & 3 others; Kuria & 6 others
(Exparte) (Environment and Land Judicial Review Miscellaneous Application
E002 of 2022) [2023] KEELC 634 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 634 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E002 OF 2022**

YM ANGIMA, J

FEBRUARY 2, 2023

BETWEEN

REPUBLIC APPLICANT

AND

GOVERNOR, COUNTY OF NYANDARUA 1ST RESPONDENT

COUNTY GOVERNMENT OF NYANDARUA 2ND RESPONDENT

**TASK FORCE ON LAND ISSUES IN NYANDARUA
COUNTY 3RD RESPONDENT**

ATTORNEY GENERAL 4TH RESPONDENT

AND

STEPHEN KARIUKI KURIA EXPARTE

JAMES KARIUKI GITHUI EXPARTE

ROSEMARY KANDONGO MATHENGE EXPARTE

ZABLON GICHUKI GACHAU EXPARTE

SAMUEL MWANGI NJERI EXPARTE

STEPHEN NJENGA KIRAGA EXPARTE

JANE MURUGI KARIUKI EXPARTE



JUDGMENT

A. Introduction

1. Vide a chamber summons dated January 21, 2022 filed under certificate of urgency grounded upon the provisions of Order 53 rule 1(1)(2) & (4) of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3 & 3A of the Civil Procedure Act (Cap 21), the Law Reform Act (Cap 26), the Constitution of Kenya 2010, and all other enabling provisions of the law, the ex parte Applicants (the Applicants) sought leave to apply for various orders of judicial review against the Respondents for alleged violation or threatened violation of their legal and constitutional rights to own property within Nyandarua County.
2. The said application was based upon the statutory statement of facts dated January 21, 2022 and the verifying affidavit sworn by Stephen Kariuki Kuria on January 21, 2022 and the exhibits thereto.
3. By an order dated February 7, 2022 the court granted the Applicants leave to apply for judicial review orders in terms of Order Nos V, VI, VII & VIII of the said chamber summons but declined to grant leave to the Applicants to apply for an order of certiorari to quash the gazette notice for appointment of the task force.

B. The Applicants' Case

4. By a notice of motion dated February 21, 2022 grounded upon Order 53 of the Civil Procedure Rules, Sections 1A, 1B, 3 & 3A of the Civil Procedure Act (Cap 21), Sections 7, 9, 11 of the Fair Administrative Action Act, 2015, the Constitution of Kenya and all other enabling provisions of the law, the applicants sought the following judicial review orders:
 - (a) An order of certiorari to remove and bring to this Honourable Court for purposes of quashing and to quash the report of the taskforce on land issues in Nyandarua county submitted to the 1st Respondent on 14th April, 2021 purporting to establish disputed and undisputed plots and plots within public utilities.
 - (b) An order of prohibition directed against the 1st and 2nd Respondents, prohibiting them and their agents, employees and servants from adopting, implementing or dealing in whatsoever manner the outcome/findings of the report on the taskforce on land issues in Nyandarua County until the Applicant's application herein is heard and determined.
 - (c) An order of mandamus be granted to compel the Respondents, whether by themselves or itself and/or its agents and/or servants to provide county services approvals relating to the alleged disputed plots and public utilities land.
 - (d) An order of prohibition to prohibit the 1st and 2nd Respondents from demolishing property on alleged public utilities land or developing, construction of public utilities on the alleged disputed or alleged public utilities land.
 - (e) Costs of the application.
5. The motion was based upon the grounds set out in the statutory statement dated January 21, 2022 and the verifying affidavit sworn by the 1st Applicant, Stephen Kariuki Kuria on January 21, 2022



- and the exhibits thereto. The Applicants were aggrieved by the findings and recommendations of the 3rd Respondent (the task force) which was established by the 1st Respondent (the Governor) to critically examine land issues facing Nyandarua County (the County) and provide recommendations on resolutions of those issues.
6. The material on record shows that the task force was established by the Governor Vide Gazette Notice No 2412 dated February 14, 2019 which was published on March 15, 2019 and that it submitted its report (the Report) to the Governor on April 14, 2021. The Applicants were aggrieved for various reasons the main one being that the report had categorized some of their plots as disputed while others were said to fall within public utility land. The Applicants considered the task force and its report to be illegal and irregular because:
- (a) There was no adequate public participation in the process.
 - (b) The Applicants and other plot owners were not accorded a fair hearing.
 - (c) There was violation of their property rights under the *Land Registration Act* and the *Constitution* of Kenya.
 - (d) The Governor and the Task Force acted ultra vires since only courts of law had jurisdiction to resolve land disputes.
 - (e) The recommendation of the Task Force for establishment of an alternative dispute tribunal was unconstitutional.
 - (f) The Task Force was illegally and unilaterally appointed by the Governor.
 - (g) The members of the Task Force were unqualified for appointment.
 - (h) The entire process was a witch-hunt scheme which was meant to deprive genuine plot owners of their land for the purpose of giving them to the cronies of the Governor.
7. The Applicants contended that they were lawfully allocated these plots by local and national government agencies in the past and that they had developed and invested in some of them for many years and that some of them had been paying rates to the County. They further contended that some of them held genuine letters of allotment whilst a few had been issued with certificates of lease. It was the Applicants' view that unless the orders sought were granted they stood to suffer irreparable harm and violation of their legal and constitutional rights.
8. There is no indication on record, however, of the Attorney General having filed any response to the application.

C. The Respondents' Response

9. The 1st – 3rd Respondents filed a replying affidavit sworn by Beatrice Nyambura Macharia on April 19, 2022. She described herself as the Director responsible for Land Administration and Management in the County. It was stated that the Governor set up the task force as a result of numerous complaints from members of the public on rampant cases of unprocedural, illegal and irregular allocation of public land. It was contended that the County was also unable to develop coherent integrated development infrastructure and to exercise its mandate on physical planning and development control. It was further contended that the task force was lawfully appointed since the County had a role to play in the management and administration of public land within the County in conjunction with the national government under Articles 60, 61 and 62 of the *Constitution* of Kenya.



10. The Respondents stated that the composition of the task force was representative of the national government, county government, religious organizations, the business community, civil society and the squatter villages. They stated that extensive sensitization and public consultations were undertaken by the task force and copies of several documents, newspaper cuttings and attendance registers were exhibited to demonstrate public participation. It was asserted that the task force visited all the plots within Ol Kalou town and that every plot owner was given an opportunity to submit his ownership documents for scrutiny. The Respondents further asserted that some of the Applicants actually submitted their documents to the task force as shown in the annexed checklist forms.
11. It was further contended that upon the task force submitting its report, the County published notices in the Standard and Daily Nation dailies asking persons whose plots had been listed as disputed or falling within public utility land to submit their objections and ownership documents. It was further contended that several plot owners responded to the said notices and submitted their documents to the county. It was contended that among those who responded were the Applicants.
12. The Respondents defended the recommendation by the task force for establishment of an alternative dispute resolution (ADR) mechanism to resolve the various issues and disputes identified in the report. It was contended that ADR is supported and encouraged by the *Constitution* of Kenya which requires the judiciary to promote it. It was further contended that the Applicants' suit was premature since the issues identified in the report were yet to be resolved in the manner recommended by the task force.

D. Directions on Submissions

13. When the application for judicial review was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Applicants' submissions were filed on September 19, 2022 whereas those of the 1st – 3rd Respondents were filed on October 18, 2022. There is, however, no indication of the AG having filed any submissions in the matter.

E. The Issues for Determination

14. The court has considered the Applicants' application for judicial review, the statutory statement, verifying affidavit, the replying affidavit by 1st – 3rd Respondents and the material on record. The court is of the opinion that the following issues arise for determination herein:
 - (a) Whether the Governor had legal authority to establish the task force.
 - (b) Whether members of the task force were regularly appointed and whether they were qualified for appointment.
 - (c) Whether there was public sensitization and public participation in the work of the task force.
 - (d) Whether the Applicants were denied an opportunity of being heard.
 - (e) Whether the recommendation of the task force for establishment of an alternative dispute resolution tribunal was unconstitutional.
 - (f) Whether the dispute presented before court is suitable for resolution through judicial review proceedings.
 - (g) Whether the Applicants are entitled to the reliefs sought.



- (h) Who shall bear costs of the suit.

F. Analysis and Determination

(a) Whether the Governor had legal authority to establish the task force

15. The Applicants submitted that the County had no role to play in the management of public land falling within its jurisdiction since that was the sole function of the National Land Commission (NLC) under Article 62 of the *Constitution*. It was also submitted that the function of county planning and development under the 4th Schedule to the *Constitution* did not entitle the Governor to establish the task force of the nature which was set up.
16. The Applicants further submitted that the setting up of the task force constituted usurpation of the jurisdiction of the Environment and Land Court (ELC) and the designated magistrates' courts which should hear and resolve all disputes on land matters. They relied upon the case of *Republic v Co-operative Development Katelembo Task Force & Another ex parte Raphael Paul Katumo Nindi, Joseph Mutisya & 3 Others [2020] eKLR* in support of that submission.
17. The 1st – 3rd Respondents, on the other hand, submitted that the Governor was the Chief Executive of the County and that the County had various legal and constitutional responsibilities under, inter alia, Article 8 of the 4th Schedule to the *Constitution*, Article 62 of the *Constitution* and Section 45 of the *Physical and Land Use Planning Act*, 2019. It was submitted that owing to the county functions of planning and development, the Governor was the right person to set up a task force to examine any land issues within the County which may impact proper planning and development of the county. It was contended that it would have been impossible for the county to effectively prepare and execute its development plans without investigating the issues falling within the terms of reference of the task force and identifying public utility land.
18. The court has perused the gazette notice setting up the task force. It declares that the purpose of the task force was to:
- 'critically examine the land issues facing Nyandarua County with an emphasis on Ol Kalou Town... and provide recommendations and a roadmap of solutions to bring to a finality the problem of land issues in Nyandarua County....'
19. The terms of reference of the task force were stated as follows:
- (a) To review all previous Land Taskforce Reports and other related reports prepared by various institutions including the Department of Lands, Housing, Physical Planning and Urban Development.
 - (b) To study the report on Ol Kalou Town Plots Verification prepared by Lands, Housing, Physical Planning and Urban Development and recommend genuine plot allottees.
 - (c) To recommend measures to address non-genuine plot allottees in Ol Kalou Town after genuine plot owners are identified.
 - (d) To recommend measures to be taken on encroached public land in Ol Kalou and other areas within the county.



- (e) To recommend administrative structures and jurisdiction for the proposed Ol Kalou Municipality.
 - (f) To recommend surveys needed to be undertaken to give a long lasting solution to cases of narrow roads and establish correct boundaries for public dams and other public utilities.
 - (g) To recommend procedures for plot and kiosk allocation within Nyandarua county in line with National Land Policy.
 - (h) To recommend procedures for leasing/renewal of property leases by the County Government of public and private entities and leasing/renewal of property leases from public/private entities to County Government.
 - (i) To identify and document underlying issues hindering issuance of title deeds to property owners in major shopping centres of Nyandarua.
 - (j) To establish the status of readiness for issuance of title deeds for each of the 27 squatter villages in Nyandarua County.
 - (k) To identify the bottlenecks in processing of title documents for beneficiaries of the 27 squatter villages and come up with a roadmap for addressing them; and
 - (l) To consult with relevant stakeholders (NLC, Ministry of Lands and physical planning, SFT, etc) to identify and document available and grabbed public land that can form part of County Land Bank.
20. Article 8 of the 4th Schedule to the *Constitution* confers upon counties the function of county planning and developing without providing an exhaustive list of what is entailed in 'planning' and 'development.' Section 45 of the *Physical and Land Use Planning Act*, 2019 allows county governments to prepare local physical and land use development plans in respect of cities, municipalities, towns and other urban areas. The *Urban Areas and Cities Act*, 2011 allows counties to develop planning and development plans as well.
21. The court is of the opinion that for a county government to effectively undertake its planning and development responsibilities within the county it may be necessary for it to investigate any outstanding land issues especially on any irregular or illegal allocation of public land and any public utility land which may be required for public purposes. Apart from the fact the report identified various cases of double and multiple allocations (the disputed plots), it also identified numerous cases of irregular allocation of public utility land meant for play grounds, cemeteries, dispensaries, road reserves, show ground, riparian reserve, road reserve, retail markets, public primary school among others.
22. The court is of the opinion that the Governor's action of establishing the task force was intended to facilitate the effective execution of the legal and constitutional duties of the County. The functions of physical and land use planning should be given their full meaning without undue restriction. Accordingly, the court agrees with the 1st – 3rd Respondents' submissions that setting up of the task force was necessary in order to facilitate the county's effectual and effective execution of its legal and constitutional mandate.
23. The court has considered the Co-operative Development Katelembo Task Force Case which was cited by the Applicants. In the said case, a task force was established by the county co-operative commissioner - Machakos to hear and determine with finality land disputes amongst



members of a co-operative society. The ex parte Applicant was aggrieved by the determination of the taskforce and filed a judicial review application seeking to quash its decision. In a judgment dated and delivered on May 8, 2020 the ELC (Angote J) held that the task force had usurped the jurisdiction of the court in handling and determining the land dispute.

24. The court further found that the county government of Machakos had no jurisdiction to appoint a task force under the *Co-operative Societies Act*. The court held, inter alia, that:

' To the extent that the County Government of Machakos does not have any mandate under the *Co-operative Societies Act* to establish a task force to resolve land disputes involving the 4th interested party and the people who purportedly bought the land from them and in view of the constitutional and statutory provisions giving such jurisdiction to only the Environment and Land Court and the magistrates court, I find that the decision of the 1st Respondent dated May 16, 2018 was ultra vires, null and void.'

25. The court is of the opinion that the facts and circumstances of that case are clearly distinguishable from those of the instant suit. The Governor in the instant case was not seeking an adjudication of land disputes amongst the plot owners per se. The terms of reference of the task force indicate that it was critically examine existing land issues especially within Ol Kalou town and recommend appropriate remedial measures. The purpose of the task force was to assist the county in the execution of its legal and constitutional duties. It is inconceivable that the matters listed in the terms of reference could be referred to the ELC or the designated and gazetted magistrates' courts for investigation and resolution.

(b) Whether members of the task force were regularly appointed and whether they were qualified for appointment as such

26. The Applicants contended in their statutory statement and verifying affidavit that the members of the task force were unqualified for appointment because the Governor had appointed only his 'cronies' with specific instructions to deliver on his 'personal agenda'. It was contended in paragraph 16 of the verifying affidavit that only 'politically preferred' members were appointed to execute a witch hunt on dissenting voices. The Applicants also asserted that the appointment of the members was illegal because their names were not vetted and approved by the County Assembly.
27. The court has noted that apart from bare statements impugning the qualifications of the members of the task force, there was absolutely no evidence on record to demonstrate the allegation that they were unqualified. There was no evidence presented to demonstrate what qualifications were required before appointment and that the members did not meet them. There was no evidence to demonstrate that the members were 'cronies' of the Governor or that they belonged to the so called 'politically preferred' category. On the contrary, the material on record shows that the membership of the task force was drawn from representatives of the County Commissioner, County Assembly, National Land Commission, religious institutions, business community, squatters, real estate actors and employees of the County. The Applicants did not also demonstrate that there was a legal requirement for members of the task force to be vetted and approved by the County Assembly before appointment. Accordingly, the court finds no evidence to demonstrate that the members of the task force were unqualified or that they were illegally appointed by the Governor.



(c) Whether there was public sensitization and public participation

28. The Applicants submitted that there was no public sensitization and public participation in the work of the task force contrary to *the Constitution* of Kenya. It was submitted that the Applicants and other plot owners were not aware of the work of the taskforce and that they only came to know about it after publication of a notice in the newspaper on April 30, 2021 after submission of the report. The 1st – 3rd Respondents on the other hand submitted that extensive public awareness activities were undertaken and that there was adequate public participation in the process leading up to preparation of the report. The 1st – 3rd Respondents exhibited copies of various newspaper notices, attendance lists and checklist forms to demonstrate the extent of public participation. It was further submitted that the task force visited the various plots which were the subject of inquiry and that the plot owners, including some of the Applicants, participated in the process and submitted their supporting documents.
29. The court has fully considered the material and submissions on record on this issue. It is evident that contrary to the Applicants’ allegations that there was no public awareness and public participation, there is substantial evidence on record of public participation. There are various newspaper notices on the work of the task force, there are copies of attendance lists and copies of checklists indicating that the public and the plot owners were involved in the process. There is also evidence on record to demonstrate that after the submission of the report the Respondents still gave a chance to any concerned plot owner to make objections or representations on its findings. It is interesting to note that some of the Applicants and those whom they claimed to represent in the suit actually presented their supporting documents to the taskforce.

(d) Whether the Applicants were denied an opportunity of being heard

30. Although the Applicants contended that they were condemned unheard and that they were not summoned to defend their ownership of the various plots, they did not pursue this issue in their written submissions. The 1st – 3rd Respondents submitted that all concerned parties were adequately notified of the appointment of the task force and of its mandate. They submitted that a large number of the plot owners turned up and submitted their ownership and other supporting documents which were recorded in various check lists which were annexed to the replying affidavit.
31. The 1st – 3rd Respondents further submitted that even after submission of the report, the County published another newspaper notice dated April 30, 2021 informing all concerned persons to view the list of the disputed plots and those said to fall within public utility land and present their objections within 30 days from the date of publication of the notice. The court has noted that at least 666 plot owners submitted their supporting documents after publication of the notice. The court is thus not satisfied that the Applicants were denied an opportunity of being heard as alleged. It is strange that the Applicants are purporting to urge this issue on behalf of hundreds of plot owners who actually submitted their supporting documents to the task force.

(e) Whether the recommendation of the taskforce for establishment of an ADR tribunal was unconstitutional

32. The Applicants contended that the proposal for the establishment of an ADR tribunal to resolve the identified plot disputes was unconstitutional since judicial authority was vested in the judiciary and independent tribunals under Article 159 of the *Constitution* of Kenya, 2010. It was further contended that ADR is a voluntary process and that only willing parties should be subjected thereto.



33. Article 159 of the Constitution of Kenya, 2010 stipulates as follows:

- (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.
- (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles:
 - (a) Justice shall be done to all, irrespective of status.
 - (b) Justice shall not be delayed.
 - (c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3).
 - (d) Justice shall be administered without undue regard to procedural technicalities; and
 - (e) The purpose and principles of this Constitution shall be protected and promoted.

3. Traditional dispute resolution mechanisms shall not be used in a way that:

- (a) Contravenes the Bill of Rights.
- (b) Is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
- (c) Is inconsistent with this Constitution or any written law.

34. It is evident from a reading of Article 159(2)(c) that the judiciary is obligated to promote alternative forms of dispute resolution. The only qualification to such promotion is that traditional dispute resolution mechanisms shall not be employed in a way that contravenes the bill of rights, or in a manner which results in an outcome repugnant to justice or morality, or which is inconsistent with the constitution or any written law.

35. There is nothing on record to demonstrate that the alternative dispute resolution mechanism recommended by the taskforce would be in violation of the bill of rights, or Constitution as a whole, or that it would be repugnant to justice or morality. There is nothing on record to suggest that the proposed mechanism shall compel all aggrieved persons to submit themselves thereto since by its very nature ADR is a consensual process. Accordingly, the court finds and holds that the Applicants have failed to demonstrate that the proposed ADR mechanism shall be unconstitutional as alleged or at all.

There is nothing on record to demonstrate that the alternative dispute resolution mechanism recommended by the taskforce would be in violation of the bill of rights, or Constitution as a whole, or that it would be repugnant to justice or morality. There is nothing on record to suggest that the proposed mechanism shall compel all aggrieved persons to submit themselves thereto since by its very nature ADR is a consensual process. Accordingly, the court finds and holds that the Applicants have failed to demonstrate that the proposed ADR mechanism shall be unconstitutional as alleged or at all.

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nature ADR is a consensual process. Accordingly, the court finds and holds that the Applicants have failed to demonstrate that the proposed ADR mechanism shall be unconstitutional as alleged or at all.

There is nothing on record to demonstrate that the alternative dispute resolution mechanism recommended by the taskforce would be in violation of the bill of rights, or *Constitution* as a whole, or that it would be repugnant to justice or morality. There is nothing on record to suggest that the proposed mechanism shall compel all aggrieved persons to submit themselves thereto since by its very nature ADR is a consensual process. Accordingly, the court finds and holds that the Applicants have failed to demonstrate that the proposed ADR mechanism shall be unconstitutional as alleged or at all.

(d) Whether the dispute presented before the court is suitable for resolution through judicial review proceedings

36. The court has considered the material on record in this matter. It is evident from the application for judicial review that the Applicants are not merely concerned about the decision making process and the manner in which the taskforce executed its mandate. They are primarily concerned about the risk of losing the plots which were categorized either as disputed (i.e. having more than one claimant) or falling within public utility land. It is clear that they want the entire report of the taskforce quashed and for the concerned authorities to be compelled to provide approvals for them to develop their plots. They do not want any other or further investigation or resolution of the issues identified by the taskforce hence the reason they oppose the establishment of an ADR tribunal. Although the Applicants dispute that any of their plots fall within land planned for public utilities, they do not want the matter to be investigated to its logical conclusion as recommended by the taskforce report.
37. The court has noted from the documents on record that although the 7 Applicants claimed to be legitimate owners of plots within Ol Kalou, none of them exhibited any copies of certificates of title for those plots. Strangely, the exhibited copies of 6 certificates of title belonged to persons who were not amongst the Applicants in the suit. There is even no evidence on record to demonstrate that those 6 individuals authorized the Applicants to file the instant application on their behalf.
38. Be that as it may, the court has noted that a majority of the allotment letters annexed to the verifying affidavit are actually temporary letters of allotment dated between 2011 and 2013. They were all signed by the Town Clerk of the Town Council of Ol Kalou long after the *Constitution* of Kenya, 2010 came into force. The letters purported to rely on minutes of a committee of the Town Council held on December 13, 2006. There is no indication on record to demonstrate that the NLC was involved in the alienation process post 2010.
39. The court has further noted that the Applicants exhibited about 12 letters of allotment dated between 1995 and 1998 purportedly issued by the Commissioner of Lands. Some of the letters had no PDPs attached thereto whereas those having copies had no approved PDP number endorsed thereon. It was not clear whether the terms and conditions in those letters were complied with by the addressees within the stipulated time or at all.
40. The court is of the opinion that the issues raised by the Applicants would require an adjudication through civil suits whereby the concerned parties shall call for evidence which shall then be subjected to verification through cross-examination and other means. It would be unsafe to sanitize the Applicants' acquisition or purported acquisition of the various plots without the benefit of a full hearing. Some of the plots were said to fall within areas reserved for public utilities, such as public schools, cemeteries, showground, road reserves, riparian reserves, retail markets etc. For instance, Title No. Nyandarua/Ol Kalou Township Block 3/287 in the name of Centerfina Limited was claimed by the Respondents to fall within a plot planned for a dispensary.



41. In the Nyahururu ELC Judicial Review No E001/2020 – Republic v Land Registrar Nyandarua & Samburu Counties & the Attorney General Ex Parte. Ann Wanjiru Irungu & 7 Others, the Applicants sought an order of mandamus to compel the Respondents to complete registration of their leases and issue them with certificates of lease among other reliefs. It was contended that the Land Registrar had failed to execute his statutory duty in that regard without any lawful justification or excuse. The Respondents’ answer was that the subject properties were illegally and irregularly hived off public land before being allocated to the Applicants.
42. In dismissing the said application for judicial review, the court held, inter alia, that:

‘ The court is of the opinion that the nature of the dispute herein goes beyond resolution of mere inaction on the part of the 1st Respondent to register the leases for the suit properties or to issue certificates of official search for some of them. It raises the deep issue of the legality of the allocation of the suit properties to the Applicants and whether due process was followed by the concerned parties. It would appear that multiple green cards were opened for most of the suit properties with some having up to 6 sets for a given parcel. The court is thus of the opinion that such disputes can only be effectively and completely resolved through a normal civil suit where the concerned parties can adduce evidence and have it tested through cross-examination rather than on affidavit evidence alone.’

The court is of the same opinion in the instant application for judicial review too.

(g) Whether the Applicants are entitled to the reliefs sought

43. The court has found that the Governor had legal authority to establish the task force in his capacity as the chief executive of the County. The court has found that there is no evidence to demonstrate that the members of the task force were illegally appointed or that they were unqualified for appointment. The court has also found that there was evidence of public sensitization and public participation in the work of the taskforce. The court has further found that the Applicants were not denied an opportunity of being heard during the impugned process. The court has further found that the recommendation of the taskforce for the establishment of the ADR tribunal was not unconstitutional but in line with the *Constitution*. Finally, the court has found that the issues raised by the Applicants are not suitable for determination through judicial review proceedings. In the premises, the court is of the opinion that the Applicants are not entitled to the reliefs sought, or any of them.

(d) Who shall bear costs of the suit

44. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd [1967] EA 287*. The court finds no good reason why the successful litigants should not be awarded costs of the suit. Accordingly, costs of the suit shall be awarded to the 1st – 3rd Respondents who participated in the proceedings. The 4th Respondent shall not be awarded any costs since the A.G. did not file any response or submissions in the matter.

G. Conclusion and Disposal Order

45. The upshot of the foregoing is that the court finds no merit in the application for judicial review. Accordingly, the Applicants’ notice of motion dated February 21, 2021 is hereby dismissed in its entirety with costs to the 1st – 3rd Respondents only.



It is so decided.

Judgment dated and signed at Nyahururu this 2nd day of February, 2023 and delivered via Microsoft Teams platform.

In the presence of:

N/A for the Ex Parte Applicants

Ms. Kyalo holding brief for Mr. Wanyama for the 1st – 3rd Respondents

N/A by the AG for the 4th Respondent

C/A - Carol

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Y. M. ANGIMA

JUDGE

