



**Alliance Hotels Ltd & another v National Land Commission & 9 others
(Petition 18 of 2021) [2023] KEELC 16048 (KLR) (13 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16048 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
PETITION 18 OF 2021
AE DENA, J
MARCH 13, 2023**

BETWEEN

ALLIANCE HOTELS LTD 1ST PETITIONER

ALLIANCE NOMINEES LTD 2ND PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

THE REGISTRAR OF LANDS – KWALE 2ND RESPONDENT

MOHAMED SULEIMAN SHEE 3RD RESPONDENT

BAKARI OMARI CHALA 4TH RESPONDENT

SULEIMAN OMARI CHALA 5TH RESPONDENT

ALI OMARI CHALA 6TH RESPONDENT

HAMISI AYUB MWANJITI 7TH RESPONDENT

ABDALLA MBARUK MWAROPIA 8TH RESPONDENT

REHEMA SULEIMAN HASSAN 9TH RESPONDENT

MWANAISHA ALI KHERI 10TH RESPONDENT

JUDGMENT

The Petition

1. This petition dated 30th August 2018 was precipitated mainly by the proceedings of the 1st Respondent that made an award whose effect was to cancel the Petitioners titles in relation to parcels L.R. Nos.



Kwale/Galu Kinondo/667, 668 and 669 registered in the petitioners names. The various reliefs sought are listed elsewhere in this judgement.

FACTUAL BACKGROUND

- 2 The petition was supported by the affidavit of RAYMOND MATIBA sworn on 29th August 2018 where he averred that in the year 1983, the 1st Petitioner purchased from Robert Stanley Matano property Kwale/Galu Kinondo/669. That in 1994 the 2nd Petitioner purchased land parcels No. Kwale/Galu Kinondo/667 & 668 from Francis Judah Muoka. That the titles were successfully registered in the 1st and 2nd Petitioners names respectively and that since then the Petitioners have had physical and uninterrupted occupation of the parcels of land (herein referred to as the suit properties.)
- 3 It was deponed that in 2005 disputes were filed before the Msambweni Land Disputes Tribunal (herein the tribunal) as against the said Mr. Francis Judah Muoka and Mr. Robert Matano, challenging their ownership to the suit properties and seeking orders that the suit properties be reverted to the persons originally allotted the same. The disputes were; -
 - i. Land Dispute Case No. 10 of 2005: Mohamed Mbaruk & Ali Mohamed Kheri Vs. Francis Judah Muoka.
 - ii. Land dispute case No. 13 of 2005: Hamisi Ayub Mwanjiti, Said Salimu Mwakobe, Juma Salim Mwakombe, Mohamed Salim Mwakobe & Mohamed Suleiman Shee Vs. Francis Judah Muoka & Alliance Nominees Limited.
 - iii. Land Dispute Case No. 7 of 2005: Omari Bakari Mwachala, Juma Salim Mwachidato, Ali Bakari Mwachala & Athman Said Rimo Vs. Robert Matano & Alliance Nominees Limited.
- 4 That the tribunal found that the suit properties were originally allotted to the complainants whereupon the complainants moved to the Resident Magistrates Court in Kwale where the tribunals decision was adopted as a judgment of the Court.
- 5 That noting the implications of the tribunals decision the Petitioners filed High Court Judicial Review No. 2 of 2006, for orders of Certiorari to quash the said decision and to prohibit the Land Registrar Kwale from revoking the Petitioners titles and the complainants participated in the proceedings through their lawyers. That the proceedings were compromised by consent of the parties on 5th of May 2008 and adopted by Justice J.K. Sergon. The consent quashed the decision/award of the tribunal and also prohibited the Land Registrar Kwale from revoking the Titles to the suit properties as held by the Petitioners. According to the deponent the consent judgement determined the disputes surrounding the suit properties in finality and the Petitioners continued with their uninterrupted and quiet possession of the suit properties.
- 6 It was further averred that later a determination by the 1st Respondent dated 23rd November 2016 directing for revocation of Titles to the suit properties was dropped off at one of the 1st Petitioners' hotels. That this was pursuant to a complaint lodged by one Mohamed Mbaruku, Ali Mohamed Kheri, Hamisi Ayub Mwanjiti and Omari Bakari Mwachala who had all testified before the 1st Respondent in a public sitting held on 13th December 2015 where the Petitioners, one Robert Matano and Francis Judah Muoka were allegedly duly represented or appeared in the said public hearing.
- 7 That the 3rd – 10th Respondents thereafter used the above determination to file ELC no. 51 of 2017, Mohamed Suleiman Shee & Bakari Omari Chala vs. Suleiman Omari Chala & Ali Omari Chala; ELC no. 52 of 2017; Mohamed Suleiman Shee vs. Hamisi Ayub Mwanjiti and ELC no. 53 of 2017 and Abdalla Mbaruk Mwaropia vs. Rehema Suleiman Hassan & Mwanaisha Ali Kheri



(sued as representatives of Mohamed Mbaruk & Ali Mohamed Kheri) at Mombasa. According to the Petitioners the said suits pitted the said respondents against each other, with each claiming a share of the suit properties. That the suits were then compromised by way of Consents, with the court essentially recording agreement by parties to share the suit properties and directing the Land Registrar in Kwale to reconstruct/re-open a new file, prepare new green cards for the suit properties and proceed to register the 3rd – 10th Respondents as the new proprietors of the suit properties.

- 8 It is stated that after the consent above, the 1st Respondent caused a gazette notice to be published in the Kenya Gazette on 17th July 2017, revoking all Titles held by the Petitioners in respect of the Suit properties.
- 9 That thereafter the Petitioner upon perusal of the 1st Respondents Hansard found that the only attendee or witness to testify during the public hearing herein was one Abdalla Mbaruk Mwaropia.
- 10 Based on the foregoing and further investigations of the 1st Respondents conduct the Petitioner raised the following verbatim grounds in support of the orders sought in the petition; -
- a. THAT contrary to the provisions of Section 14(3) of the *National Land Commission Act*, the 1st Respondent failed or ignored to serve upon the Petitioners an official Notice of review prior to conducting the public Hearing in Kwale.
 - b. THAT the suit properties did not feature in the Public Notice published by the 1st Respondent, outlining the properties that were subject of public hearings before the 1st Respondent.
 - c. THAT the 1st Respondent's official verbatim records of the public Hearing (the official Hansard) indicates that representation/testimonies were only made by one Abdalla Mbaruk Mwaropia, while on the other hand its determination/ruling indicates that all parties, including the Petitioners herein, made representation. This is a clear incidence of fraudulent documentation prepared by the 1st Respondent.
 - d. THAT the 1st Respondent's decision indicated that one Robert Stanley Matano and Francis Judah Muoki, both being the original owners of the suit properties before transferring them to the Petitioners, attended and testified at the Public NLC Hearing. This is despite the fact that Robert Stanley Matano is deceased, having passed away on 10th March 2008 and Francis Judah Muoka having sworn an affidavit that he was not in attendance.
 - e. THAT whilst the 1st Respondent's Ruling/Determination indicated that submissions had been made by the 2nd Petitioner, only Titles held by the 1st Petitioner were ordered to be revoked. The Gazette Notice published by the 1st Respondent on dated 17th July 2017 further only lists the 1st Petitioner as an interested Party and directs its Titles to be revoked. These distinct differences in the facts of the disputes only go further to portray the illegalities involved in the revocation process by the 1st Respondent.
 - f. THAT the Ruling/Determination by the 1st Respondent lists the Complainants as Mohamed Mbaruku, Ali Mohamed Heri, Hamis Ayub Mwanjiti and Omari Bakari Mwachala. These are further the names captured in the Gazette Notice dated 17th July 2017. The new Titles issued by the 2nd Respondent, however, are in the names of the 3rd to 10th Respondents who, save for the 7th Respondent, were never part of any dispute concerning the suit properties. That they became ultimate beneficiaries is a mystery and the entire process therefore reeks of fraud.



- g. THAT the new Titles issued in favour of the 3rd – 10th Respondents, are all dated 4th May 2017. These registrations are clearly fraudulent noting that the Gazette Notice effecting revocation of the Petitioners' Titles is dated 17th July 2017, more than Two (2) months after new Titles were purportedly issued. By producing new Titles without the previous ones being revoked, the 2nd Respondent was acting without authority, fraudulently and with impunity.
- h. THAT the Consent Orders recorded in the Three (3) Environment & Land Court sitting in Mombasa are dated 6th March 2017, whilst the Gazette Notice being relied upon by the Respondents is dated 17th July 2017. In essence, the 3rd - 10th Respondents litigated & consented on Titles that were yet to be revoked by NLC.
- i. THAT the entire proceedings and public hearing undertaken by the 1st Respondent was illegal, considering the fact that disputes in respect of the suit properties had already been heard and determined by the High Court via Miscellaneous Civil Cause no. 2 of 2006.

The 1st Respondents Case

- 11 The 1st Respondent filed a Replying Affidavit sworn by Brian Okol its Deputy Director, Legal Affairs and Enforcement sworn on 22nd September 2021. Reiterating the provisions of Section 14 of the [National Land Commission Act](#) on the 1st Respondents mandate to review grants, confirmed that a complaint was received from the 8th Respondent on the legality of the titles herein held by the Petitioners. It was averred that no Notice of a Hearing was issued to the Petitioners and the suit properties were not listed in the Daily Nation publication dated 9/12/2015 and which was attributed to error on the part of the Commission which may have led to the Petitioners not being aware of the hearing. That during the hearing there was no other representation except the 8th Respondent. The deponent admitted that the Award published by the 1st Respondent had anomalies with regard to the parties who attended and the submissions as well and which was attributed to error due to bulk typing, which was common at the Commission. It was stated that only the 1st Petitioners title was revoked and the revocation of the 2nd Petitioners' Titles was not sanctioned by the 1st Respondent.
- 12 Additionally it was deponed that upon the determination the matter proceeded to the 2nd Respondent whose functions were distinct from those of the Commission.

The 2nd Respondents Case

- 13 The 2nd Respondent filed a Replying Affidavit sworn on 13th February 2019 by one Dick J. Safari who deponed he was the Kwale County Land Registrar. Safari presented the history of the suit properties as contained in the register or respective parcel files starting with Kwale/Galu Kinondo/667 and 668 with the registration of Francis Judah Muoka, transfer to 2nd Petitioner on 4/04/1994, registration of Abdalla Mbaruk Mwaropia on 4/05/2017 vide court order dated 6/03/17 (ELC Mombasa No.53 of 2017) and Hamisi Ayub Mwamjini & Suleiman Mohamed Shee respectively. Robert Matano was stated to have been the first registered owner of Kwale/Galu Kinondo/669 who then transferred to the 1st petitioner on 5/09/1983 and thereafter to Mwachia Rajab Twenye and then vide court order of 6/03/2017 to Mohamed Suleiman Shee and Bakar Omari Chala. The 2nd respondent exhibited certified copies of the green cards for the three suit properties and the copies of the relevant transfers.

3rd, 4th And 8th Respondents Case

- 14 The 3rd, 4th & 8th filed a reply to the petition on 27/11/2018 and also relied on the Replying Affidavit filed on 17/5/2021 by Mohamed Suleiman Shee the 3rd Respondent, in which they state that they were



the beneficial owners of suit properties. That in the year 1974 the same were fraudulently registered in the names of Robert Stanley Matano then Minister for information & Broadcasting and Francis Judah Muoki then Assistant Police Commissioner using their influence. That the two sold the same to the 1st Petitioner also associated with a powerful politician Mr Keneth Matiba. That it is only in the year 2005 that the respondents lodged the complaints at the tribunal herein. He deponed that the Petitioner and Francis Judah Muoki were heard at the tribunal but failed to lead evidence that they paid full purchase price, acquisition of Land Control Board Consent and presidential consent as was then required for transfer of beach plots. That following the consent to compromise the tribunal's determination and which was instigated by the Petitioners the respondents had no option but to approach the 1st Respondent. The 3rd to 10th Respondents dispute the consent and that the same was made without their knowledge and authority. That the notice of the hearing of 13/12/2015 was published in a national newspaper, the Petitioners chose not to attend and the hearing duly proceeded in their absence.

- 15 The deponent narrated how they moved to the High Court and filed the cases listed in paragraph 7 herein pursuant to which the Respondents were registered as owners of the suit properties. That applications by the Petitioners for setting aside the consents therein as well as stay of execution were dismissed. A Notice of appeal by the Petitioners appears to have been abandoned. They also referred to the replying affidavit of the 2nd Respondent to support their claim that the petitioners had no color of right to lay claim on the suit properties. They reiterated that 1st Respondent gazette leading to their registration as proprietors was published on 17/7/2017 and not 2018 but admitted that some of the titles were registered as late as May 2018.
- 16 The 3rd, 4th and 8th Respondents averred that the Petition did not meet the threshold for a constitutional petition and did not disclose a cause of action. That the Complaint before the 1st Respondent was a representative suit and therefore the obligation to transfer the properties to each household. They prayed the Petition be dismissed and they be declared legal and equitable owners of the suit properties.
- 17 The 3rd, 4th and 8th Respondents attached and produced in support of their case copies of authority to act, Official searches, Adjudication of 1974, Proceedings and judgement Land dispute No. 32 of 2005; Newspaper notice; Hansard of the National Land Commission, Determinations of the National Land Commission, Ruling by justices Komingoi and Yano, Kenya Gazette Notice dated 17th July, 2017, Official search for Kwale/galu Kinondo/667, Kwale/galu Kinondo/668 & Kwale/galu Kinondo/669, District Officer Msambweni Division letter dated 16th September, 2005, Senior Resident Magistrate letter dated 30th December, 2005, Proceedings and Judgments in Land Dispute No. 13 of 2005, Hansard Verbatim Record of National Land Commission dated 14th December, Notice of Appeal dated 24th July, 2018, NLC determination dated 30/10/2017 and 11/11/2017, Court Order in ELC No. 465 & 466 of 2017, Ruling in ELC No. 465 & 466 of 2017 and Replying Affidavit sworn on 13/2/2019.
- 18 In addition to the above the 3rd to 10th Respondents state that they have all along known that the suit properties belong to their family/clan as that is where they had lived and been raised by their father before they migrated to the Mwabugo area. It is alleged that at Mwabugo area they set up another home far from the beach due to the Digo cultural beliefs of being warned against living near a water body.
- 19 The 3rd-10th respondents aver that the suit properties are to date, bushy, full of trees and graves which belong to various family members of the 3rd to 10th Respondents who have been buried there as that is where they actually resided. That the petitioners have never developed nor occupied the suit properties and have their Hotel developments on other titles which the 3rd to 10th Respondents were not contesting.



The 5th, 6th, 7th, 9th And 10th Respondents Case

- 20 The 5th, 6th, 7th, 9th and 10th Respondents filed a Replying Affidavit sworn by the 5th Respondent dated 23rd October 2018, in which they reiterate the position taken by the 3rd, 4th and 8th Respondents as regards the historical disputes concerning the land and further maintain that the revocation of the Titles herein were legally undertaken by the 1st Respondent, with all parties (including the Petitioners) having fair notice of all the relevant proceedings.
- 21 They exhibited as part of the documents in support of their case copies of, Title deeds for Kwale/Galu Kinondo/667,668 and 669; Consent dated 6/03/2017 in Mombasa ELC case Nos. ELC no. 51 of 2017, ELC no. 52 of 2017 and ELC no. 53 of 2017; Application to set aside consent judgements in the said cases, Rulings delivered on 17/04/2018 dismissing the applications in the said cases and attendant Notices of Appeal to the said rulings.

Submissions

- 22 The petition was dispensed by way of written submissions by consent of the parties having shelved their earlier proposal to proceed viva voce. The Petitioners were represented by Mr. Njoroge of the firm of Igeria & Nguge Advocates, the 1st Respondent by Mr. Mbuthia, the 3rd, 4th & 8th Respondents by Mr. Osodo of Alinaitwe, Osodo Advocates Ms. Onyango represented the 5th, 6th, 7th & 10 respondents and the Land Registrar Kwale by Mrs Waswa state counsel.

Petitioners' Submissions

- 23 Counsel for the Petitioners highlighted the factual background which he pointed was not controverted by the respondents and identified the following issues for determination.
- a. Whether the instant Petition is Res Judicata.
 - b. Whether the issues ventilated by the Petitioners are couched in Constitutional terms and whether this court has Jurisdiction to entertain the Petition.
 - c. Whether the revocation of Titles held by the 2nd Petitioner was legally effected and/or executed by the 1st and 2nd Respondents.
 - d. Whether the revocation of Title held by the 1st Petitioner was legally effected and/or executed by the 1st and 2nd Respondents.
 - e. Whether the Petitioners are entitled to the orders sought in the Petition filed before this Honorable court.
 - f. Who is to bear the costs of the instant suit and proceedings.
- 24 On whether the instant petition is res judicata Mombasa ELC no. 51 of 2017, Mombasa ELC no. 52 of 2017 and Mombasa ELC no. 53 of 2017 counsel referred to the provisions of Section 7 of the [Civil Procedure Act](#). It was submitted that a simple perusal of the separate pleadings in these matters clearly show that the issues directly and substantially in dispute were not the same with the ones highlighted in the present Petition which were for reversal of the 1st Respondents Determination/Ruling.
- 25 It was submitted that the Petitioners were not original parties to the proceedings before the court in above cases and only sought to be enjoined for purposes of setting aside the consents sharing out their properties, in an attempt to stop the blatant and fraudulent grabbing of their properties. The National



- Land Commission who is the main respondent herein and the Kwale Land Registrar were further not parties in the said suits.
- 26 It was further submitted that if indeed a Res Judicata objection was to be raised, then the same can only be in relation to Judicial Review proceedings no. 2 of 2006 wherein a consent judgment was recorded declaring the Petitioners the valid registered owners of the suit properties and which has never been challenged or appealed and to-date stands as a judgement of this court. However, the issues raised in this Petition have never been determined in finality by any competent court or tribunal with the requisite jurisdiction.
- 27 On whether the issues ventilated by the petitioners are couched in constitutional terms and jurisdiction to entertain this petition, it was contended the right to property falls under fundamental rights and freedoms as guaranteed under Articles 19 and 22 of *the Constitution*. Citing the provisions of Article 40 (3) of *the Constitution* it was further submitted the Petitioners were challenging the deprivation of their properties herein by a State Agency the 1st Respondent through illegal means other than within the confines of *the constitution*.
- 28 Referring to Articles 50 and 47 (1) of *the Constitution*, and Section 4 of the Fair Administrative Actions Act it was submitted that the crux of the Petitioners' suit was that the 1st Respondent failed, neglected or ignored to notify the Petitioners of the dispute concerning their properties, thereby leading to a procedurally unfair process that resulted in the Petitioners losing their properties.
- 29 On whether the revocation of titles held by the 2nd Petitioner was legally effected and/or executed by the 1st and 2nd respondents it was counsel's submission that the 2nd Petitioner was the original registered proprietor of parcels Kwale/Galu/Kinondo/667 & 668. Further that the 1st Respondent admitted in its Replying Affidavit, that it did not authorize the cancellation of these two Titles.
- 30 According to the petitioners the Titles cancelled were only with respect to the 1st Petitioner. There was no determination to cancel Titles held by the 2nd Petitioner. That the Petitioners were distinct and separate legal entities and as such, cancellation of one entity's Title does not automatically mean the 2nd entity suffers the same fate.
- 31 It was submitted that the revocation of the 1st Petitioner's Title was illegal and fraudulent. The Petitioners were not served with a Notice advising them of a dispute concerning ownership of their properties as per section 14[3] of the NLC Act which was also admitted to be an error on the part of the 1st Respondent. The 1st Respondent therefore failed in their statutory duties and any actions taken thereafter were illegal and void ab initio.
- 32 Counsel urged that there was illegal processing of new Titles of the 3rd – 10th Respondents marred with fraud and illegalities as the petitioners never participated in the Public Hearings as the law mandates under Section 15 (5) to (7) of the *National Land Commission Act*. That the 1st Respondent's Determination dated 23rd November 2016 lists Robert Stanley Matano as one of the attendees/ participants at the Hearings but who was deceased on 10th March 2008. Further that the said new titles were void/illegal having been registered on 4th May 2017 approximately 2 months ahead of the Kenya Gazette notice of 17th July 2017 effecting revocation of the Titles previously held by the Petitioners. This pointed to collusion between the 3rd – 10th Respondents and the 2nd Respondent, to process new Titles before the old Titles had been revoked and which was also contrary to Section 14 (5) of the NLC Act,
- 33 On whether the Petitioners are entitled to the orders sought in the petition counsel contended that the 1st Respondent's failure to prove service of notice upon interested parties amounted to a violation of the



rights to be heard and the right to fair administrative action as was held in *Sidian Bank Ltd v National Land Commission & 2 others*; *Sigtunes Communications Limited and another (Interested Parties)* [2021] eKLR. Further that the orders sought were warranted, in light of the Respondent's illegal and fraudulent conduct including want of notice the new titles being manifestly illegal and incapable of passing true and legal ownership of the suit properties to the 3rd – 10th Respondents who cannot be allowed to benefit from an illegal, illegitimate and fraudulent process, authored by themselves.

34 The Petitioners urge the petition is meritorious and the orders sought should be granted and the respondents, jointly and severally, be ordered to pay the costs of the proceedings, in light of their conduct and illegal actions leading to the filing of these proceedings.

Submissions Of The 2Nd Respondent

35 The 2nd Respondent did not file submissions.

The 3Rd, 4Th & 8Th Respondents Submissions

36 Counsel for the 3rd, 4th and 8th Respondents rehashed the factual background of the petition as seen by the Respondents and identified the following issues for determination.

1. Whether the 3rd, 4th and 8th Respondents are the legal and equitable owners of the suit properties.
2. Whether the Petitioners are entitled to the orders sought.
3. Who should bear the cost of these proceedings.

37 On whether the 3rd, 4th & 8th Respondents are the legal & equitable owners of the suit property, it was submitted that they were currently the holders of title deeds for the suit properties, issued on the 4th day of May 2017 following the consent order in the Mombasa ELC No. 51 of 2017; ELC No. 52 of 2017 and ELC No. 53 of 2017. That the consent was adopted as an order of the Court and has never been altered or set aside. That the 3rd, 4th and 8th Respondents state that the consent was recorded under the instructions of their then Advocates following their concerns that they did not have titles despite the tribunal award of 2005 in their favor.

38 It is the 3rd, 4th and 8th Respondents contention that they followed the legally provided avenues for raising a dispute/complaint over a land parcel at the tribunal where all parties were heard including the petitioner's vendors and the petitioners.

39 It was further submitted that the 3rd to 10th Respondents were claiming the suit properties under ancestral ownership unlike the Petitioners who claim as purchasers and were therefore trying to forcefully take over the suit properties for their own gain. Further that the Petitioners produced transfer forms and titles without the corresponding sale agreements for the alleged purchase contrary to the requirement that agreements for sale of land must be in writing.

40 Counsel on the consent judgement recorded in *Mis. Civil Case No. 2 of 2006* submitted that no such instructions were given by the Respondents to their counsel on record. That it did not make sense that they would go to the lengths of obtaining an award only to vacate it by consent. That it was only after a long wait for their titles that their counsel informed them to move to the 1st Respondent to obtain their titles. Reliance is placed in the case of *Bank Of Africa Kenya Vs. Put Sarajevo General Engineering Co' Ltd & 2 Others* (2018) eKLR, where the Court stated that: "... where counsel has made a mistake, the Court ought to do whatever is necessary to rectify the mistake if the interest of justice so dictates...."



- 41 Counsel also reiterated the Petitioners failure to further challenge justice Yano’s decision dismissing their application for review and setting aside of the consents filed on 6th day of March, 2017 in Mombasa ELC No. 51 of 2017; ELC No. 52 of 2017 and ELC No. 53 of 2017 and subsequent abandonment of the Notice of Appeal led to the issuance title deeds to the 3rd, 4th and 8th Respondent. That the Petitioners being people of status in Kenya, understood all that was happening as they were parties in all the happenings.
- 42 On the Petitioners challenge of the process of hearing the dispute by the 1st Respondent citing failure to serve and issue notices, it was submitted that the 1st Respondent is a government body and if they failed or ignored to perform or execute an action as per its’ regulations and rules, the same cannot be visited or attributed to the 3rd to 10th Respondents as they are merely lay men who are also guided by the said 1st Respondent on how to proceed and what to do at any given time. If the said 1st Respondent failed to satisfy its’ obligations or mandate, the 3rd to 10th Respondents should not be punished or made to suffer for something outside their control. Reliance was placed in the case of *Belinda Murai & 9 Others Vs. Amos Wainaina (1979) eKLR*, where the Court stated that: “..... the doors of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The Court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interest of justice so dictate.....”
- 43 It was urged the law provides for various administrative bodies which are meant to conduct and execute specific functions. That it would not be logical for the tribunals proceedings to be disregarded as the said tribunal was created by the Government to aid it execute its’ functions at the said level and not merely for the sake of it. The respondents emphasized on the spirit of Sections 1B and 3A of the *Civil Procedure Act* and Article 159(2) of *the Constitution* of Kenya, 2010 to encourage the ends of justice to be met and served.
- 44 On whether the petitioners were entitled to the orders sought, it was posited that the gist of the petition was for the Court to nullify the titles issued to the 3rd, 4th and 8th Respondents pursuant to the alleged unprocedural proceedings by the 1st Respondent. That the 3 titles relied upon by the petitioners cannot suffice for proof of legality or otherwise but ought to have been supported with a sale agreement executed in compliance to provisions of Section 3(3) of the Law of Contracts Act. The case of *Daudi Ledama Morintat Vs. Mary Christie Karie & 2 Others (2017) eKLR*. was relied upon.
- 45 The Respondents do state that the Petitioners have never at any point occupied, used or developed any of the suit land parcels. The said parcels are to date full of trees and shrubs and some graves belonging to the 3rd to 10th Respondents family members. The respondents haven’t been able develop the properties due to the litigation. The Respondents only go to do fishing on the suit land parcel as they await the conclusion of the litigation process. The Petitioner’s hotel investments were situate elsewhere separate and far from the land parcels herein.
- 46 On who should bear the cost of these proceedings, it was submitted that these proceedings were instituted and defended at the instance of the Petitioners and should the court find in favor of the 3rd-10th respondents’ the costs incurred by the said Respondents to defend this petition should be borne by the Petitioners.

PARA 47

The Attorney General for the Land Registrar and the firm of Omollo Onyango & Company did not file submissions.



Issues For Determination

48 My understanding of this petition is that it is seeking the nullification of the proceedings and determination of the National Land Commission being the 1st Respondent dated 14/12/2015 and 23/11/2016 respectively and all subsequent actions emanating therefrom. Infact this is supported at the opening statement of paragraph 11 where the Petitioners state that it is the series of events in the months of November 2016 and September 2017 that form the substratum of this petition. The issues for determination in my view therefore are; -

1. Whether the petition meets the legal threshold for a Constitutional Petition.
2. Whether the petition is res judicata.
3. Whether or not the proceedings conducted by the 1st Respondent violated the Petitioner's constitutional rights to ownership and use of property together with the rules of natural justice.
4. Whether the Petitioners are entitled to the orders sought in the Petition.
5. Who is to bear the costs of the instant suit and proceedings.

Discussions And Determination

49 The 3rd, 4th and 8th Respondents filed a Preliminary Objection dated 23rd January 2019 on two grounds, namely that the Petition is an abuse of the court's process as it does not constitute a constitutional issue and further that the Petition is Res Judicata. Justice A. Omollo on 26/2/2019 directed the same be deemed as part of the pleadings opposing the petition including all the objections filed by the parties. I noted from the proceedings of 26/2/2016 Mr. Mwanjeje state counsel who was also holding the brief of counsel for the 1st Respondent informed the court that the 1st Respondent had filed a preliminary objection on 22/2/19 which was confirmed by Mr Shimaka who also pointed that the same was similar to his. I did not see the 1st Respondent preliminary objection but on the strength of Mr. Shimaka's observations that it echoed his then I did not see any prejudice to the 1st Respondent in this regard. Moreover, the 1st Respondent did not file any submissions where they may have ventilated the preliminary issue. I further noted from perusal of the file a mention of a preliminary objection by Ms. Onyango but which I also did not see. It is from the 3rd 4th & 8th Respondents preliminary objection that the 1st two issues for determination emerged.

Whether the petition meets the legal threshold for a Constitutional Petition.

50 Article 22 of *the Constitution* of Kenya 2010 guarantees 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. The resultant litigation is referred to as constitutional litigation. The filing of the same is guided by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 Legal Notice No. 117. Rule 10 (1) requires the content to capture the facts relied upon, the constitutional provision violated, the nature of the injury caused or likely to be caused. Following numerous litigations judicial precedents have also formulated clear guidelines on what a constitutional petition must satisfy. Key among these namely, the need to outline with precision the provisions of *the Constitution* that have been offended in abuse of the rights, the manner in which the infringement has occurred or threatened to occur and the person or institution responsible for the violation. See Anarita Karimi Njeru Versus Republic [1979] eKLR and Ahmed Abdulahi Adan Versus Attorney General & 2 Others [2021] eKLR.



51 Applying the above to the present petition, the Petitioners claim that their right to ownership of property under article 40 of *the Constitution* has been contravened. Article 40 is one of the rights set out in Chapter 4 of *the Constitution* of Kenya 2010- the Bill of Rights. It is one of the fundamental rights and freedoms and deals with protection of right to property. The infringement is stated as the alleged cancelation of the petitioner's titles to the suit properties without being accorded a hearing during the determination of a complaint in respect of the same. At paragraph 14 of the petition the Petitioners highlight the fundamental rights they are entitled to protection in (A) – (I) and explain how the same have been violated or infringed upon. The grounds of breach of the petitioners have been enumerated in paragraph 13. This to me does not qualify as just mere listing. The National Land Commission is sued as the public entity whose actions are said to have led to the said violations. The manner in which the violation is said to have occurred has been well demonstrated both in the petition and the supporting affidavit of Raymond Matiba including his witness statement. It is this court's finding that the petition has met the threshold for a constitutional petition.

Whether this petition is res judicata.

52 The doctrine of res judicata is set out under the provisions of Section 7 of the *Civil Procedure Act*, 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 issue 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.”

53 The doctrine too has been a discussed in numerous cases up to the apex court of this country, the Supreme Court of Kenya. The case in point is Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR where court had this to say; -

“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;

The suit or issue was directly and substantially in issue in the former suit.

- a. That former suit was between the same parties or parties under whom they or any of them claim.
- b. Those parties were litigating under the same title.
- c. The issue was heard and finally determined in the former suit.
- d. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

54 My task is to determine whether all the above elements stated by the Supreme Court have been satisfied in order to sustain the objection raised. It is noteworthy that Mr. Osodo did not dwell much on this issue in his submissions on behalf of the 3rd 4th and 8th Respondents. I note however that it was urged by Mohamed Suleiman Shee in his supporting affidavit dated 23/10/2020 that there was already a judgement from a court of concurrent jurisdiction which had not been reviewed appealed or set aside. Ostensibly these are the consents filed on 6th day of March, 2017 herein adopted as orders of the court by my brother Justice Yano.



- 55 Mr. Njoroge urged that the instant suit seeks to reverse the Determination/award published by the 1st Respondent and declarations that the entire process and proceedings leading to revocation of the Suit properties' titles was unprocedural, illegal and fraudulent, and that all subsequent titles produced from these illegal acts be revoked by this court and the Petitioners be reinstated as the owners accordingly. I respectfully agree and as stated in my earlier observations this courts understanding of what this Petition is about. Clearly the issues directly and substantially in dispute are not the same with the ones highlighted in the present petition.
- 56 As to the parties my appraisal of the same revealed that the National Land Commission who is sued as the 1st Respondent as well as the Kwale Land Registrar were not parties in Mombasa ELC case Nos. ELC no. 51 of 2017, ELC no. 52 of 2017 and ELC no. 53 of 2017. However, the argument by the Petitioners that they were not original parties to the proceedings is not sustainable in my view. It does not matter at what stage they were enjoined to the proceedings as long as they were joined as they ought to have been joined. Bottom line is that they participated under the same title. Based on the former appraisal I make a finding that the parties were different.
- 57 I then inquire were the issues finally heard and determined in the former suits. This element envisages a hearing and determination on merits. Black's Law Dictionary 10th Edition, defines res judicata as hereunder; -
- An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue (2) a final judgement on the merits and (3) the involvement of same parties or parties in privity with the original parties.'
- 58 Guided by the above in my view there was no judgement on merit. Consents were entered before the parties were heard and adopted as a judgement of the court 'summarily' if I may add. Such a judgment does not satisfy the requirements of section 7 of the *Civil Procedure Act*, as the issues raised in the suit have not been addressed and finally determined by the court. I find support in the case of Bett Siror Vs. Jackson Koech (2019) eKLR where the Court of Appeal stated as follows; -
- (29) Both the appellant and the respondent in their affidavit sworn in support and in response to the appellant's motion, were in agreement that two of the previous suits filed by the respondent were dismissed for want of prosecution, while another was abandoned and withdrawn by the respondent. This means that none of the suits was fully argued nor were the issues finally determined.
- [30] We accept that dismissal of a suit for non-attendance or for want of prosecution can amount to a judgment, however, such a judgment does not satisfy the requirements of section 7 of the *Civil Procedure Act*, as the issues raised in the suit has not been addressed and finally determined by the court, but the judgment is the result of what may be described as a technical knockout.'
- 59 In my view the above dictum applies in full force to the present circumstance. The same arguments/fate should apply to the Petitioners submission that res judicata only applies in relation to Judicial Review proceedings no. 2 of 2006. In adopting the consent Sergon J only stated that he was convinced the judicial review proceedings were filed within the statutory period and the orders sought were issuable as public law remedies. This in my view cannot amount to determining a matter on its merit. The only thing I will add is that the said consent still stands as the respondents did nothing to set them aside but decided to approach the 1st Respondent.



60 The court finds this petition is not res judicata. Having dealt with the preliminary issues and being satisfied on jurisdiction I will proceed to the substantive issues.

Whether or not the proceedings conducted by the 1st Respondent violated the Petitioner's constitutional rights to ownership and use of property together with the rules of natural justice.

61 In my analysis of this issue I will also be seeking to address whether the revocation of Titles held by the 2nd and 1st Petitioner was legally effected and/or executed by the 1st and 2nd Respondents. It is not in dispute that a complaint was lodged with the 1st Respondent in the year 2016. The National Land Commission derives its mandate from article 67(1) of *the Constitution* of Kenya 2010. The *National Land Commission Act* No. 5 of 2012 (herein the Act) makes provision for the functions of the Commission. The complaint according to the 1st Respondent was received in exercise of the Commissions power conferred by article 68(c) (v) and section 14((4) – (7) of the Act.

62 Section 14 of the *National Land Commission Act* provides for Review of grants and dispositions as follows; -

1. Subject to Article 68(c)(v) of *the Constitution*, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.
2. Subject to Articles 40, 47 and 60 of *the Constitution*, the Commission shall make rules for the better carrying out of its functions under subsection (1).
3. In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.
4. After hearing the parties in accordance with subsection (3), the Commission shall make a determination.
5. Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
6. Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.
7. No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.
8. In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of *the Constitution*.
9. The Commission may, where it considers it necessary, petition Parliament to extend the period for undertaking the review specified in subsection (1).

63 From the above the 1st step upon receipt of a complaint, the Commission is enjoined to give notice to every person who appears to them to have an interest in the property. In this case it goes without say the person registered as proprietor of the land subject of the complaint was required to be notified. As at 2016 the suit properties were registered as follows, Kwalu/Galu/Kinondo/669 Alliance Hotels Limited title issued on 12/09/83 with a charge registered on 9/6/99 in favor of National



Industrial Credit Bank Limited. Kwalu/Galu/Kinondo/667 Alliance Nominee Limited title issued on 7/04/1994 and Kwalu/Galu/Kinondo/668 Alliance Nominee Limited title issued on 7/04/1994. They were to be notified by virtue of their proprietary interest. And I would add the Bank too under the charge except that this is not specifically in issue. Mr. Brian Okol the 1st Respondent Deputy Director, Legal Affairs and Enforcement in his replying affidavit to this petition sworn on 22nd September 2021 admitted that there was no notice in this regard that was issued to the Petitioners. He attributed this to error on the part of the Commission which may have led to the Petitioners not being aware of the hearing. The requirement for notice is couched in obligatory terms and therefore such error is not excusable for there was no option or discretion given. The error was very fundamental to me. Even under article 159 of *the Constitution* it would not be curable. Since the Petitioners were the registered owners of the suit properties as at the time of the complaint they were entitled to be present during the proceedings leading to the determination. The express admission therefore validates the Petitioners averments that they were not served with notice, were not aware of the hearing and therefore could not humanly possible have attended the proceedings and further that were not given an opportunity to be heard in accordance to article 50 (1) of *the Constitution*.

- 64 I'm aware of further guidelines given under Section 151 of the *Land Act* where an advertisement in the Kenya Gazette is envisaged. This court was referred to the case of Sidian Bank Ltd v National Land Commission & 2 others; Sigtunes Communications Limited and another (Interested Parties) [2021] eKLR and which I have read. I'm persuaded by the following dictum of A. Ombwayo J; -

A look at Section 151 of the *Land Act* clearly shows that advertisement in the local newspaper should be the last resort after the commission has failed to serve the interested parties in person. In this instant case the 1st Respondent has not provided proof that they tried to serve the petitioner and failed warranting their service of Notice through the Newspaper. Further the 1st Respondent only alludes to the presence of a complaint but never served the same on all the parties, in line with Section 6 of the Fair Administrative Actions Act.

.....As such therefore their right to fair administrative action under Article 47 (1), (2) and the right to fair hearing under Article 50 were contravened.”

No evidence was led by the 1st respondent to justify service by way of Gazette notice.

- 65 In my view there was no fair administrative action in tandem with articles 47, no fair trial as well as no natural justice the proceedings in relation to the suit properties having proceeded exparte. The 1st Respondent was obligated to afford the Petitioner a hearing before it made its decision which decision was, undoubtedly bound to adversely affect the rights and interests of the Petitioner over the suit properties for which he was the registered proprietor. The Petitioners as a consequence did not attend the proceedings and were therefore not heard on a matter that would affect their prima facie proprietary interest in the suit property also contrary to article 50 of *the Constitution*. The 1st Respondent also did not follow due process and hence contravened the petitioner's right to fair administrative action and in that regard contravened Article 47 of *the Constitution*.
- 66 The 1st Respondent based on the above proceedings in its determination dated 23/11/2016 (see 'RM 6' page 27 – 31 affidavit in support of the petition) determined that 'the titles held by the Respondents, Alliance Hotels Limited should be revoked and the land be reverted to the Claimants Mohamed Mbaruku and Ali Mohamed Heri (Plot No.667) Hamisi Ayubu Mwanjiti (Plot No.668) and Omari Bakari Mwachala (Plot No.669).' There is no need to belabour the point that the effect of this determination was to deprive the Petitioners of their prima facie proprietary interest in the suit properties which goes together with its use and enjoyment.



- 67 But what then is the import of the foregoing in relation to the entire proceedings giving rise to the determination herein? The Court of Appeal in the case of *Onyango Oloo –v- Attorney General* (19889) EA 456, held that
- The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly, and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard.... There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principles of natural justice.... A decision in breach of the rules of natural justice is not cured by the holding that the decision would otherwise have been right since if the principles of natural justice is violated, it matters not that the same decision would have been arrived at.... ”
- 68 The above holding is also echoed in the case of *Sceneries Limited Vs National Land Commission* (2017) eKLR where the Court held that a decision arrived at in total breach of the rules of natural justice is ultra vires null and void and cannot be allowed to stand.
- 69 I have also looked at the grounds set in paragraph 10 of this judgement and their analysis against the Hansard which was produced by all the parties herein. The properties are not mentioned in the gazette notice of 9th December 2015, Judah Muoki has sworn an affidavit that he did not attend the proceedings which is supported by the proceedings of the Hansard, the death certificate of Robert Matano was exhibited revealing it predates the proceedings which he is said to have attended. There is no evidence of his attendance in the Hansard. This is just but to pick on some of the anomalies raised. Surely what court would forgive such glaring anomalies on the basis that the beneficiaries of the award should not be punished for the mistakes of the Commission. I’m convinced none.
- 70 Considering the foregoing discussions and guided by the case law cited this court therefore makes a finding that the proceedings conducted by the 1st Respondent were null and void for reasons already cited.
- 71 This court has noted the Petitioners ground that the entire proceedings and public hearing undertaken by the 1st Respondent was illegal, considering the fact that disputes in respect of the suit properties had already been heard and determined by the High Court via Miscellaneous Civil Cause No. 2 of 2006. This court has already rendered itself on the fact that there was no determination on merits in JR No. 2 of 2006. For me I would look more into whether the National Land Commission had jurisdiction to entertain the complaint ab initio the suit properties being land registered in the name of individuals thus private land, when the mandate under section 14 was vested in respect of public land see *Mwangi Stephen Murithi Vs National Land Commission & 3 Others* (2018) Eklr . I will leave it at that.
- 72 Having made a finding that the proceedings conducted by the 1st Respondent were a nullity it goes without say that any subsequent proceedings that were based on the determination of the Commission pursuant to the proceedings that is to say the determination dated 23/11/2016 cannot stand. I will proceed to analyse these subsequent proceedings individually as follows.
- 73 The chronology of events following the determination of the 1st Respondent dated 23/11/2016 is well documented in the pleadings and it is not in dispute that the same occurred except for the motives and legality. Three suits were filed by some of the Respondents at the Environment & Land Court in Mombasa namely i) ELC no. 51 of 2017; Mohamed Suleiman Shee & Bakari Omari Chala vs. Suleiman Omari Chala & Ali Omari Chala, ii) ELC no. 52 of 2017 Mohamed Suleiman Shee vs. Hamisi Ayub Mwanjiti and iii) ELC no. 53 of 2017; Abdalla Mbaruk Mwaropia vs. Rehema Suleiman Hassan & Mwanaisha Ali Kheri (sued as representatives of Mohamed Mbaruk & Ali Mohamed



Kheri). Simultaneously with the filing of the said suits were filed Notice of Motion application dated 21/02/2017 and prayer (c) thereof is material sought the following order; -

‘THAT this Honorable Court be pleased to order the Registrar of Lands, Kwale to adopt the decision of the National Land Commission dated 23/11/16 to the extent that Mohamed Mbaruk and Ali Mohamed Kheri be and is hereby declared the legal owner of Plot No. Kwale/Galu Kinondo/667 and to reconstruct/re-open a new file/or green card/ or record and to proceed to cause a registration in the land register as the owner without gazettelement.’ (emphasis is mine)

- 72 The above together with other orders sought in the Notice of Motion application were allowed by consent of the parties and adopted as orders of the court by Justice Komingoi on 6/3/2017. This order was replicated in all the three suits above. Clearly the orders were anchored on the determination of the 1st Respondent which I have found the proceedings were a nullity. Mr. Dick Safari Land Registrar Kwale in his replying affidavit sworn on 13th February 2019 confirms that the Registrar Kwale complied with the court orders dated 6th March 2017 and all the suit properties were then transferred to the respondents. This was also confirmed by the Green cards he exhibited thereto.
- 73 From the pleadings filed in court I’m aware that the said judge in her ruling of 17th April 2018 in respect of the petitioner’s application to set aside the consent judgements stated the court was functus officio after it adopted the consent judgement dated 6/03/2017. The court after noting that the applicant could apply for a judicial review further stated it would not go into the illegality or otherwise of the consent judgement since that was an issue to be dealt under the said judicial review proceedings. This court chooses to nullify the consents for the reason that they were anchored on proceedings that were a nullity and therefore the ensuing registrations of the titles in the names of the respondents cannot stand also see *McJoy vs Africa co. Ltd* (1961) 3 ALL ER 1169 AT 1172
- 74 The other event or process that was anchored on the determination of the 1st Respondent is the gazette notice published in the Kenya Gazette on 17th July 2017, revoking all Titles held by the Petitioners in respect of the suit properties. I need not belabor the point. The foregoing discussions and findings apply in equal measure to this notice and the resultant entries in the register.
- 75 Having made all the above findings, what remains for determination is whether the orders sought by the Petitioners should be granted in the way they are presented. Petitioners crave the following reliefs; -
- a. A declaration that the proceedings and determination of the National Land Commission dated 14th December, 2015 and 23rd November, 2016 respectively, with regards to the suit properties, are null and void.
 - b. A declaration that the Gazette Notice dated 17th July, 2017 published by the National Land Commission and revoking titles to properties L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669 and further directing the land registrar in Kwale to create new titles for the said properties, is null and void.
 - c. A declaration that the petitioners are the legal and equitable owners of properties described as L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669.
 - d. A declaration that all titles issued to the 3rd – 10th Respondents by the Registrar of Lands Kwale, with respect to properties described as L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669 are null and void and stand revoked by the Honourable Court.



- e. An order be directed to the Registrar of Lands Kwale to cancel any and all titles to the suit properties issued to the 3rd – 10th Respondent or any other 3rd parties and for the regularization of records at the Kwale Registry confirming that the petitioners herein as the legal and equitable owners of the suit properties.
- 76 To avoid repeating myself the upshot of this courts foregoing discussions and findings is that prayers a), b, and d) should be granted by this court. As regards prayer c) seeking a declaration that the petitioners are the legal and equitable owners of the suit properties this court declines to make such order. It is my view that this petition is not the forum to litigate the legality or otherwise of the titles held by the Petitioners, given the intrigues that have come out of the pleadings and documentation presented to this court.
- 77 As to prayer e) under Section 80 of the *Land Registration Act*, the court has power to order the cancellation of a registration and order a rectification and having found the entries made pursuant to the award and proceedings of the 1st Respondent were null and void, I find that this prayer should be granted but with amendments that will reflect the position taken by this court with regard to prayer c) as stated above.
- 78 I am satisfied that the Petitioner has made out a case to show that its constitutional rights have been infringed. It is therefore my finding that the petition has merit and hereby allow it in the following terms; -
- a. THAT a declaration shall issue that the proceedings and determination of the National Land Commission, the 1st Respondent dated 14th December, 2015 and 23rd November, 2016 respectively, with regards to L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669, are null and void.
- b. THAT a declaration shall issue that the Gazette Notice dated 17th July, 2017 published by the National Land Commission and revoking titles to properties L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669 and further directing the Registrar of Lands Kwale to create new titles for the said properties, is null and void.
- c. THAT a declaration shall issue that all titles issued to the 3rd – 10th Respondents by the Registrar of Lands Kwale, with respect to properties described as L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669 are null and void and stand revoked by the Court.
- d. THAT an order shall issue directed to the Registrar of Lands Kwale to cancel all titles to L.R. Nos. Kwale/Galu Kinondo/667, 668 and 669 issued to the 3rd – 10th Respondent and reinstate the registration of the Petitioners.
- e. Let parties bear their own costs.

DELIVERED AND DATED AT KWALE THIS 13TH DAY OF MARCH, 2023

A.E. DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Njoroge for the Petitioners

Mr. Mbutia for the 1st Respondent

Mrs Waswa for the 2nd Respondent



Mr. Osodo for the 3rd 4th & 8th Respondent

Mr. Disiii- Court Assistant.

