



Khaoma & another (Suing as Personal Representatives of the Estate of the Late Nicasio Tengeye Makokha) v County Government of Bungoma & 4 others (Environment & Land Petition E002 of 2022) [2023] KEELC 15904 (KLR) (2 March 2023) (Judgment)

Neutral citation: [2023] KEELC 15904 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND PETITION E002 OF 2022**

**BN OLAO, J
MARCH 2, 2023**

BETWEEN

**FRIDAH KHAOMA 1ST PETITIONER
WILLIAM MAKOKHA TENGEYE 2ND PETITIONER
SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE
NICASIO TENGEYE MAKOKHA**

AND

**THE COUNTY GOVERNMENT OF BUNGOMA 1ST RESPONDENT
AGRICULTURAL FINANCE CORPORATION 2ND RESPONDENT
NG-CDF OFFICE KMILILI CONSTITUENCY 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT
THE NATIONAL LAND COMMISSION 5TH RESPONDENT**

JUDGMENT

1. Fridah Khaoma Nyongesa and William Makokha Tengeye(the petitioners herein) are the personal representatives of Nicasio Tengeye Makokha(the deceased).
2. They approached this court vide their Constitutional Petition dated February 21, 2022 seeking against the respondents judgement in the following terms:
 - 1) A declaration that the petitioners, on behalf of the estate of the deceased, are the owners and are proprietors of all that parcel of land measuring 15 acres but comprised in the parcel known as Kimilili/Kimilili/771 which portion was compulsorily acquired by the Government between 1942 and 1949.



- 2) A declaration that no compensation was made by the Government to the proprietor Nicasio Tengeye Makokhaor his Estate despite various demands spanning over a period of 75 years to-date.
- 3) A declaration that the Petitioners' rights, human dignity, freedom and proprietary rights under articles 21(1), 22, 23, 28, 29, 47 and 48 of the [Constitution of Kenya 2010](#) have been violated, disregarded and or breached by the Government of Kenya.
- 4) A declaration that the petitioners' rights under articles 12, 17 and 31 of the [Universal Declaration of Human Rights 1948](#) relating to protection of private property under the law have been infringed and violated by the Government of Kenya.

The petitioners therefore sought damages as follows:

- 1) Special damages under article 23(3) (e) of the [Constitution of Kenya 2010](#) of Kshs.80,000,000 (eighty million) being compensation at the current market value of 15 acres compulsorily acquired by the Government that is comprised in parcel L.R. Kimilili/kimilili/771.
 - 2) Special damages under article 23(3) (e) of the [Constitution of Kenya 2010](#) being Kshs.1,200,000 (One million two hundred thousand) per annum being compensation for the loss of use of the property being 15 acres comprised in L.R. Kimilili/kimilili/771 together with interest thereon at an average rate from 1949 till payment in full and currently standing at Kshs.84,000,000 (eighty four million).
 - 3) General damages of at least Kshs.50,000,000 (Fifty million) under article 23(3) (e) of the [Constitution](#) for the Government's violation of the petitioners' rights under articles 28, 29, 40, 47, 48 and 64 of the [Constitution of Kenya 2010](#) and articles 3, 12 and 17 of the [Universal Declaration of Human Rights 1948](#).
 - 4) Costs and interest.
 - 5) Any other relief this honourable court deems fit to grant.
3. The basis of the petition which is grounded on the provision of articles 2(6), 21(1), 23, 28, 29, 40, 64, 159(2) (c) and 165 (b) of the [Constitution of Kenya 2010](#), sections 70(a) and (b), 72(1), 78(1), 79(1) and 81(1) of the repealed [Constitution](#) and the [Universal Declaration of Human Rights](#) is also supported by the affidavit of Fridah Khaoma Nyongesa.
 4. It is the petitioners' case that the deceased was the ancestral owner of the parcel of land that boarded the road between Kimilili Kamukuywa – Chwele road stretching to Kamusinga and measuring approximately 30 acres but which had not been surveyed or adjudicated from the pre-colonial era. The region was later partitioned into administrative units and the deceased's estate fell under North Kavirondo in Nyanza. That the Government between 1942 and 1949 compulsorily acquired large portions of land from the deceased's ancestral land at Kimilili for administrative, residential, health and security structures through official Gazette Notices at a time when the deceased was alive and enrolled in the Military training as a medical orderly. Part of the deceased's ancestral land was hived off for the establishment of the following facilities:
 - a) 1945 - A health centre now Kimilili Sub County Hospital.
 - b) 1944 - Divisional Agricultural Office.
 - c) 194 - Police lines now Kimilili Police Station.
 - d) 1949-1950 - African Court now Kimilili Law Courts.



- e) 1944 - Kimilili Location Chief's Office now Kimilili Deputy County Commissioner's Offices.
 - f) 1955 - 1956 - DO's office now County Commissioner's Office.
 - g) 1959 - Local County offices now Kimilili Sub-county Headquarters.
 - h) 1957 - Co-operative Offices now Ministry of Co-operative Offices.
 - i) 1965 - Co-operative Creameries Offices.
 - j) 1964-1965 - Agricultural Finance Corporation Office(AFC).
5. The acquisition was effected through various official Gazette Notices between 1942 and 1949 including:
- a) Gazette Notice Vol. XLV – No 2 dated 12th January 1943 Gazette Notice No 27.
 - b) Gazette Notice VolLIII No 14 dated 6th March 1951.
 - c) Gazette Notice VolXVI No16 dated 13th April 1954 Gazette Notice No 560.

That the Government compulsorily acquired aggregate portions of land from the deceased totalling to 15 acres which were then registered under a larger block known as L.R.No Kimilili/Kimilili/771 in the name of County Council Of Bungoma.However, the deceased was never compensated despite making visits to the Provincial and District Commissioners Offices in both Kakamegaand Nyanza although he kept being told that payment was being processed. He passed away on 11th June 2016 aged 98 years having received no compensation. Even the offer of 50 acres in KITALE in exchange for the 15 acres that was compulsorily acquired never materialized. The deceased was unable to provide for and educate his family and he died a traumatized man.

6. The Petitioners allege that the Government violated the deceased's right to protection of private property enshrined under Articles 28, 29, 40 and 64 of the Constitution as well as the right to access to justice. They also cite a violation to the deceased's right to dignity and equal protection before the law. The Petition is also founded on Articles 3, 12 and 17 of the Universal Declaration of Human Rights 1948 and a violation of Article 48 of the Constitution 2010 on the right to Fair Administrative Action.
7. In her supporting affidavit, Fridah Makokha Nyongesa, the 1st Petitioner depones, inter alia, that the deceased was the original owner and proprietor of the land parcel measuring 15 acres which was compulsorily acquired by the Government between 1942 and 1949 and was subsequently registered during the adjudication section to become L.R No Kimilili/Kimilili/771 (hereinafter the suit land). That the deceased was told to collect his compensation from the District Commissioner Kakamega (mr Heslop) and the Provisional Commissioner Nyanza (Mr K.I. Hunter). That he even wrote letters and engaged the services of his then advocate Okile & Company Advocates who wrote letter demanding compensation but nothing was forthcoming. And even after the Petitioners took out Letters of Administration in respect of the deceased's Estate and issued notices to the Government, all their pleas were ignored.
8. The following documents are annexed to the Petition:
- 1) Copy of Kenya Gazette VolXLV – Nodated 12th January, 1943.
 - 2) Copy of Kenya Gazette Vol. LIII – No 14 dated 6th March 1951.
 - 3) Copy of Kenya Gazette VolXVI – No 16 dated 13th April 1954.
 - 4) Document [Questionnaire] showing how the suit land was utilized and also the deceased's military service record.



- 5) Map.
 - 6) Register for the land parcel No Kimilili/Kimilili/771 showing the first registered proprietor as the County Council Of Bungoma on 10th August 1965.
 - 7) Letter dated 18th January 2001 addressed to the District Commissioner Bungoma by the deceased claiming for compensation for 15 acres of land.
 - 8) Letter dated 2nd August 2003 addressed to the Chief Land Registrar Nairobi claiming for compensation for 15 acres in Kimilili Municipal Council.
 - 9) Letter dated 4th December 2001 addressed to the Chief Land Registrar Nairobi claiming for compensation for 15 acres.
 - 10) Letter dated 13th October 2004 addressed to the Chief Land Registrar Nairobi claiming for compensation for 15 acres occupied by the Government in Kimilili Municipal Council.
 - 11) Letter dated 23rd April 2001 addressed to the deceased by the Chief Land Registrar in response to his letter dated 18th January 2001.
 - 12) Letter dated 21st February 2017 addressed to the Petitioners by the Town Administrator Kimilili Sub-county with respect to Plot No 18B Kimilili.
 - 13) Letter dated 13th July 2007 addressed to the Minister Of Lands & Settlement by Okile & Company Advocates in reference to compensation for land No Kimilili/Kimilili/771 compulsorily acquired between 1942 and 1949.
 - 14) Letter dated 14th February 2008 addressed to the Town Clerk Kimilili Municipal Council By Okile & Company Advocates in reference to compensation for land No Kimilili/Kimilili/771 compulsorily acquired between 1942 – 1949.
 - 15) Letter dated 23rd January 2008 addressed to Okile & Company Advocates by the Director Kenya National Archives on acquisition of Gazette Notice.
 - 16) Certificate of death for the deceased.
 - 17) Limited Grant of Letters of Administration issue to the Petitioners in respect to the Estate of the deceased.
 - 18) Notice issued to the ATTORNEY GENERAL by counsel for the Petitioners under Section 13(a) of the [GOVERNMENT PROCEEDINGS ACT](#).
 - 19) Joint statement of the Petitioners dated 21st February 2022.
 - 20) Valuation report dated 29th August 2021 prepared by CHRISCA REAL ESTATES in respect to the developments on the land parcel No Kimilili/Kimilili/771.
9. In response to the Petition, only the Agricultural Finance Corporation (2nd Respondent) filed a response following my directions that it be canvassed by way of written submissions. The other Respondents, though served, did not enter appearance nor file any responses.
 10. In its answer to the Petition, the 2nd Respondent denied all the averments in paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of the Petition. It added that the Petitioners have not demonstrated any or at all proprietorship or equitable and overriding interest in the suit land and so the Petition has no legal basis. That there is no real or remote connection between the Petitioners and the alleged compulsory acquisition to warrant any protection. Further, that the Petitioners' fanciful stories have not been



supported by any evidence of compulsory acquisition nor demonstrated that the Survey Department identified and authenticated them as owners. The 2nd Respondent pleaded that the Petitioners have not availed any notice in the Kenya Gazette of any intention to acquire the suit land nor any evidence that they made enquiries and/or application for compensation. That the application of Article 2(5) of the Constitution of Kenya 2010 is misguided as the Petitioners have failed to show that there is no domestic law on the issue or that there is a lacuna in the law. Further, that the Petitioners have not adduced evidence to demonstrate how their inherent dignity under Article 28 of the Constitution of Kenya 2010 has been violated nor any evidence of loss damage or injury. It is also the 2nd Respondent's case that the Petitioners have not provided proof of ownership of the suit land which is capable of protection under Article 40 of the Constitution nor any infringement of any fundamental right.

11. The 2nd Respondent therefore prays that the Petition be dismissed with costs.
12. Submissions were thereafter filed only by Mr Sichangi instructed by the firm of J. W. Sichangi & Company Advocates for the Petitioners. Mr Mabonga counsel for the 2nd Respondent did not file any submissions and as I have already stated elsewhere in this judgment, the 1st, 3rd, 4th and 5th Respondents did not file any response to the Petition.
13. I have considered the Petition, the supporting affidavit and annexures, the reply by the 2nd Respondent and the submissions.
14. I consider the following to be the issues that I need to determine:
 - 1) Whether the Petition meets the threshold of a Constitutional Petition.
 - 2) If the answer to (1) above is in the affirmative, whether the Petitioners are entitled to the remedies sought.
 - 3) Who shall meet the costs.

1. Whether The Petition Meets The Threshold of A Constitutional Petition.

15. The dispute herein touches primarily on the alleged violation of right to ownership of land. This Court is empowered both under Article 162(2)(b) of the Constitution and Section 13(2) of the *Environment and Land Court Act* to consider this Petition.
16. The Petitioners have pleaded in paragraph 15 of the Petition, the various Constitutional provisions alleged to have been violated by the Respondents herein in relation to what they consider to have been an unlawful acquisition of the suit land. These include Articles 3, 12, 17, 28, 29, 40 of the Constitution of Kenya 2010 as well as other provisions of the African Charter on Human Rights. It is now well settled that in a Constitutional Petition, the party alleging a violation of any rights must plead with some reasonable precision, the manner in which such rights have been violated – *Anarita Karimi Njeru v R 1976 – 1980 KLR 1272*. And although the Petitioners in this case have also pleaded some constitutional provisions which are really not applicable, such as Article 48 which deals with access to justice, I am satisfied that the Petition meets the threshold as set out in the case of *Anarita Karimi Njeru (supra)* and other cases.

2. Whether The Petitioners Have Proved That They are Entitled to The Remedies Sought:

17. The substratum of the Petitioners case is that the suit land, being the deceased's ancestral land, was compulsorily acquired by the Respondents between 1942 and 1949 but no compensation was paid to the deceased.



18. There is no dispute that both the retired and the new 2010 Constitution protect the right to private property. Article 40 of the 2010 Constitution and which is among those cited in this Petition makes it clear that:

40(1) “Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person-

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).”

Article 40(3) of the Constitution makes it clear that a person shall not be deprived of his property by the state without prompt and full payment of just compensation. That is the fulcrum upon which this Petition turns. In paragraph 2 of the supporting affidavit of Fridah Khaoma Nyongesa, it is deposed as follows:

“2: “That the deceased Nicasio Tengeye Makokhawas our biological father and the original owner and proprietor of the parcel of land measuring 15 acres within Kimilili town that was compulsorily acquired by the government between 1942 and 1949 respectively. Annexed are the official Gazette Notices marked FKN (a), (b) and (c).”

This land was later registered as the suit land as is clear from paragraph 4 of the same affidavit where it is deposed as follows:

“4: “That the deceased inherited the suit land from his father Akita Makokhaw which was situate within the now Kimilili Township along the Chwele – Kimilili – Kamukuywaroad which at the time of acquisition was in the Administrative area of Nyanza Region North Kavirondoland unit of North Kitosh Location and was subsequently registered during adjudication as L.R Kimilili/Kimilili/771 reserved for Kimilili Boma. Find a copy of sketch map and copy of the green card marked FKN 3(a) and (b).”

This being a Petition alleging violation of the right to property, the first duty of the Petitioners was to prove that the deceased had an interest, legal or equitable, in the suit land. The burden of that proof therefore lay on them. Sections 107, 108 and 109 of the *Evidence Act* provide so in no un-certain terms. They read:

107(1) “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

(2) “When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108: “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”



109: “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

19. It is clear from the copy of the Green Card produced herein that the suit land measuring about 49 acres was first registered in the name of the County Council of Bungoma on 10th August 1965 now represented by the County Government of Bungoma the 1st Respondent herein. There is nothing on the said Green Card to suggest that the then County Council Of Bungoma acquired registration of the suit land through the process of compulsory acquisition and if so, that the same was acquired from the deceased. It is also instructive to note that the suit land was registered in the name of the then County Council Of Bungoma in 1965 some 3 years before the enactment of the now repealed Land Acquisition Act which commenced on 23rd August 1968 and 2 years after the promulgation of the 1963 Constitution which also provided for the compulsory acquisition of land for public use under Section 75. The Petitioners were therefore duty bound to demonstrate what interest the deceased had in this suit land. To prove ownership of land, one would be expected to avail such documents as title deed, lease, sale agreements, receipts, allotment letters or any other relevant documentation. If the ownership is on the basis of an equitable interest in the land, the Court would expect cogent and sufficient evidence to be adduced by the Petitioners. That is because, any compensation sought on the basis of a violation to rights of property must be hinged on evidence which can show, without doubt, that indeed the claimant owned the property alleged to have been acquired through a process that violated any right known in law. In this Petition, all that has been placed before this Court is the bare averment in the supporting affidavit by Fridah Khaoma Nyongesa that the deceased was “the original owner and proprietor” of the suit land (paragraph 2) and that he (deceased) was told to check and collect his compensation “upon the acquisition process” (paragraph 5). However, no tangible evidence of such ownership of the suit land by the deceased or, before him, his father Akita Makokha, nor evidence of any compulsory acquisition has been placed before this Court in support of this Petition.
20. The Petitioners have annexed to their Petition copies of various Gazette Notices and letters written by the deceased either in person or through his counsel as proof of his ownership of the suit land. However, none of those documents identify the deceased or his father as the owner of the suit land. Indeed it was due to this paucity of evidence to prove his ownership or other interest in the suit land that prompted the Chief Land Registrar to write to the deceased. In his letter to the deceased dated 23rd April 2001, the Chief Land Registrar addressed him as follows:

“Dear Sir

Re: Claim Compensation 15 Acres Occupied By Kenya Government

Thank you for your letter dated 18th January 2001 addressed to the Commissioner of Lands.

Please, your letter is not detailed enough to indicate the title numbers and past correspondences in regard to the compulsory action.

May you please provide us with a full account of how the Government acquired your land. It is also not clear why it has taken you too long to bring up the issue which took place in the year 1944.

J.a. Mudimbia

For Chief Land Registrar.”

In yet another letter dated 21st February 2017, the 1st Respondent addressed the Petitioners as follows:



“Dear Sir

Re: Plot No 18 B Kimilili

Reference to the above subject matter, you are hereby invited to attend a consultative meeting on 2nd day of March 2017 at 10am in the undersigned office.

Please you are advised to come along with any relevant document concerning the said plot.

Thanks.

Yours faithfully

Tom D. Obunga

Town Administrator – Kimilili.”

There is nothing to suggest that the deceased or the Petitioners submitted any documentary proof of ownership of the suit land or how it was compulsorily acquired. In his letter addressed to the Minister of Lands and Settlement on 13th July 2007, the deceased’s counsel Okile & Company Advocates state in paragraph 2 that:

“The Government compulsory acquired on client’s land between 1942 as 1049. All along, our client was promised that he was going to be compensated. The said land is within Kimilili Municipality. By 1970 Land Registration record the land is indicated as Kimilili/Kimilili/771.”

However, other than the deceased’s own letters addressed to the District Commissioner Bungoma and the Chief Land Registrar seeking compensation, there is no letter showing that any of those offices or the Respondents herein made any promise of compensation to him with regard to the suit land. And from the evidence herein, the relationship between the deceased and the suit land, if any, appears rather remote and tenuous to warrant the grant of the orders sought. On that ground alone, this petition in for dismissal.

Most significantly, the violations complained of took place between 1942 and 1949 that is over 80 years ago. While there is no limitation period provided for in the law within which a claim to enforce a fundamental right should be filed, the predominant jurisprudence available shows that there should be no in-ordinate delay in approaching the court. Any delay must however be satisfactorily explained. Each case will nonetheless be considered on the basis of its own peculiar circumstances.

21. On the issue of in-ordinate delay, the Court of Appeal stated the following in the case of Wellington Nzioka Kioko v A-G 2018 eKLR.

“On the issue of delay, the learned judge found that the Petitioner was filing his claim 33 years after the cause of action relied on. She considered several persuasive decisions of the High Court

The common thread running through those decisions is that whereas there is no time limitation in respect of Constitutional Petitions, the delay must not be inordinate and there must be plausible explanation for the delay. The learned Judge found that no justification for the delay of over 3 decades had been given in this matter. Can the Judge be faulted for that? We need to look at the logic behind limitation of actions generally in order to place this issue in proper perspective, when a person suffers a wrong at the hands of another and feels the need to redress the wrong, it is reasonable to expect that redress will be sought before the claim gets stale. This enable a person to preserve and adduce the evidence that is necessary



to support the claim. It accords the purported wrong doer an opportunity to address the grievance and if possible remedy it. That way both parties are spared the agony of losing important evidence or even eye witnesses.”

The court went on to add that:

“If a wrong is committed and then the person wronged waits for time on end before even notifying the other party, then a travesty of justice occurs because the claim might be made at a time when the offending party has forgotten about the incident and is no longer in a position to defend himself. There is of course a rebuttable presumption that if you do not seek redress within a reasonable time, there is a possibility that you have not suffered any loss from the act complained of. That would explain the maxim that equity does not aid the indolent.”

In the case of *James Kanyita Nderitu v A – G & Another* Petition No.180 of 2011, MAJANJA J held as follows with respect to delays in filing a Constitution Petition:

“Although there is no limitation period for filing proceedings to enforce fundamental rights and freedoms the Court in considering whether or not to grant relief under Section 84 of the Constitution is entitled to consider whether there has been in-ordinate delay in lodging the claim. The court is obliged to consider whether justice will be served by permitting a respondent, whether an individual or the State in any of its manifestations, should be vexed by an otherwise stale claim. Just as a Petitioner is entitled to enforce its fundamental rights and freedoms, a respondent must have a reasonable expectation that such claim are prosecuted within a reasonable time.”

That decision was up-held on appeal in *James Kanyitta Nderitu v Ag & Another* C.a Civil Appeal No96 of 2013 [2019 eKLR].

22. In this case, and as I have already stated above, the violations complained of, by the Petitioners’ own evidence, occurred between 1942 and 1949 over 80 years ago. And even if time is computed from 10th August 1965 when the suit land was registered in the name of the County Council Of Bungoma the precursor of the 1st Respondent, that is still an inordinate delay of 57 years and which has not been explained at all. It is of course true that both the deceased and, following his demise, the Petitioners engaged the Chief Land Registrar and the District Commissioner Bungoma among others, seeking compensation for the compulsory acquisition of the suit land. However, in none of those communications did any of those State agencies admit that the suit land had been compulsorily acquired and that the deceased or the Petitioners were entitled to any compensation. If anything, those State agencies sought from him any evidence of such compulsory acquisition. That is why in the Chief Land Registrar’s letter dated 23rd April 2001, the deceased was required to “provide us with a full account of how the Government acquired you land.” That was not done yet the process of compulsory acquisition of land, and which is the violation complained of, is clearly set out in the relevant laws.
23. Other than the 2nd Respondent which filed a reply to this Petition, the other Respondents did not do so. However, as I have already pointed out elsewhere in this judgment, the burden of proof of all the allegations pleaded herein lay with the Petitioners as provided in the law and that burden was not made less by the fact that the other Respondents filed no responses. In the case of *Karugi & Another -v- Kabiya & Others* 1987 KLR 347, the Court of Appeal stated that:

“The burden on a plaintiff to prove his case remains the same throughout the case even though the burden may become easier to discharge where the matter is not validly defended



and that the burden of proof is in no way lessened because the case is heard by way of formal proof. We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendants' failure to call evidence, the Court must be satisfied that the plaintiff has adduced some credible and believable evidence which can stand in the absence of rebuttal evidence by the defendant The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the Court that on a balance of probabilities, it proves the claim.”

Similarly, in *Gichinga Kibutha v Caroline Nduku* 2018 eKLR, the Court said:

“It is not automatic that instances where the evidence is not controverted, the claimant shall have his way in court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”

Therefore, unless a fact is one which the Court is allowed to presume or which it can take judicial notice of, the burden was on the Petitioners to prove, on a balance of probability, that the suit land was the property of the deceased and was compulsorily acquired in violation of the law. And neither is there any explanation, satisfactory or otherwise, as to why it took the Petitioners so long to file this Petition. And although the other Respondents did not file any replies to the Petition, I find that the reply by the 2nd Respondent is a sufficient rebuttal of the Petitioners' claim. Indeed the Petition is premised on facts which, as is now clear from the foregoing, do not exist. That explains why the 2nd Respondent has referred to the claims as “fanciful theories” – see paragraph 4(c) of the reply.

24. In the circumstances, the only conclusion is that the Petitioners have failed to prove their case against any of the Respondents and this Petition must be dismissed.
25. With regard to costs, they follow the event. There are no reasons why the 2nd Respondent should not be awarded costs.
26. Ultimately therefore, and having considered all the evidence herein, this court makes the following disposal orders:
 1. This Petition is devoid of merit. It is accordingly dismissed.
 2. Costs to the 2nd Respondent.

BOAZ N. OLAO

JUDGE

2ND MARCH 2023

JUDGMENT DATED, SIGNED AND DELIVERED AT BUSIA ELC ON THIS 2ND DAY OF MARCH 2023 BY WAY OF ELECTRONIC MAIL WITH NOTICE TO THE PARTIES. RIGHT OF APPEAL.

BOAZ N. OLAO

JUDGE

2ND MARCH 2023

