



**Mwembelegeza Community Residents v National Land Commission & 5 others; Ethics and Anti-Corruption Commission & another (Interested Parties) (Environment & Land Petition 35 of 2020) [2023] KEELC 17091 (KLR) (3 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17091 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND PETITION 35 OF 2020**

**SM KIBUNJA, J**

**MAY 3, 2023**

**BETWEEN**

**MWEMBELEGEZA COMMUNITY RESIDENTS ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 3<sup>RD</sup> RESPONDENT**

**NATIONAL CONSTRUCTION AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**FRANCIS KOMBE NZAI, ABDALLA HIRIBAE, JOHN SIMBA, HAROUN KARIMA , JENNIFER MOKI , BAKARI KIBERIA, ADAM WARIO, SAFARI FOLENI, ABDALLA KOMBO, AMINA ABDI, COLLINS OTIENO , HASSAN MURE & CALEB OCHIENG (KWA BULLO MOSQUE COMMITTEE) ..... 5<sup>TH</sup> RESPONDENT**

**AL NUBAL CHARITY ORGANIZATION ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**THE REPUBLIC OF KENYA ..... INTERESTED PARTY**

**JUDGMENT**

1. The petitioners moved the court vide the petition dated the 19<sup>th</sup> October 2020 as amended on the 25<sup>th</sup> January 2021. The names, identity card numbers, mobile phone numbers and signatures of the 55



members of the petitioners' community are as it appears on the schedule attached to the petition. The petitioners have complained that during the establishment of Mwembelegeza Scheme, plot number 1476, the suit property, was reserved for a nursery school as confirmed by the certified copy of the Registry Index Map from the Regional Surveyor, Coast Region dated the 7<sup>th</sup> October 2020. That the petitioners noticed building materials being placed on the suit property and digging of trenches commencing in early September 2020. On making enquiries from those digging the trenches, they were told a mosque was being built there. That there are three existing mosques within 600 meters to the North East, South West, and South of the suit property, and if the people wanted another one, an alternative plot should have been acquired instead of taking the suit property that is meant for a nursery school. That in addition to the mosque, shops have been built on the plot and people are being asked to book for space which goes to show the public utility plot has been turned into a private business center with the aim of enriching some powerful individuals. Upon the petitioners establishing that none of the residents in the community had been consulted before the project on the suit land commenced, they signed and handed over a petition to the Mombasa County Commissioner on 4<sup>th</sup> September 2020 with copies to the DCI Mombasa, OCS Kadzandani Police Station and EACC. That on 10<sup>th</sup> September 2020 the MP, Nyalı Constituency and other leaders came to the suit property. In an event that was covered widely by the media, the leaders expressed their outrage, condemned the illegal development and ordered the demolition of the structure. The police were brought to protect the plot but were however later removed and after some days the construction resumed without addressing the concerns of the petitioners. The petitioners' representative handed a petition to the Regional Commissioner on the 18<sup>th</sup> September 2020 and on the 25<sup>th</sup> September 2020 reported to Kadzandani Police Station where the report was recorded under OB No. 16/25/2020. That subsequent efforts to reach the Regional Commissioner on the telephone number he had given in public was not successful. On the 30<sup>th</sup> September 2020 the petitioners wrote to the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents seeking for copies of the approvals for the construction being undertaken on the suit land. An officer called Patrick from the 4<sup>th</sup> respondent came to the site on 1<sup>st</sup> October 2020 and suspended the construction by marking it with red X. However, the suspension order was defied and the construction continued. On the 6<sup>th</sup> October 2020 the petitioners wrote to the Mombasa County Coordinator to the 1<sup>st</sup> respondent, seeking for certified copy of the suit property, who responded denying knowledge of the development on the said plot. That all the Kwa Bullo Mosque Committee members, 5<sup>th</sup> respondent, except John Simba, are not plot owners or residents of Mwembelegeza scheme. That the said John Simba has denied any association with the Kwa Bullo Mosque Committee. The agreement submitted by the 2<sup>nd</sup> respondent indicates the suit property was sold by the Kwa Bullo Mosque Committee to Al Nubal Charity Organization, the 6<sup>th</sup> respondent, who sponsored the development but has no known offices in the country. That the agreement was therefore fraudulent. The petitioners then filed this petition seeking for;

- a. Declaration that plot number 1476 Mwembelegeza scheme, the suit property, was reserved for a nursery school and there has never been a change of user.
- b. Permanent injunction restraining the respondents or their agents from trespassing, constructing, subdividing, transferring, developing, selling or occupying the suit property.
- c. Declaration that the petitioners' rights to a clean and healthy environment guaranteed by Article 42 of *the Constitution* has been and will continue to be contravened if the project being carried out on the suit land is actualized.



- d. Declaration that the petitioners' rights to information held by the government and any other person and required for the exercise or protection of any right or fundamental freedoms guaranteed under Article 35 of *the Constitution* has been contravened.
- e. Declaration that the respondents have contravened Article 10 of *the Constitution* by failing to observe the national values and principles of good governance as there was no public participation on the project ongoing on the suit property.
- f. Declaration that the 2<sup>nd</sup> respondent breached Article 62 of *the Constitution* 2010 by failing to seek the petitioners' views on the project on the suit property, and failing to discharge its statutory duties under sections 5(f), 6(2)(c), and 6(6) of the County Government Act.
- g. Order compelling the 1<sup>st</sup> to 6<sup>th</sup> respondents to demolish the structure already built on the suit property within 14 days of the judgement, for failing to comply *National Construction Authority Act* and the regulations on construction, Environment Management and Co-ordination Act and violating Articles 42 and 70(1), (2)(a) to (c) of *the Constitution*.
- h. Order compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to restore the suit property to its original state within 90 days of the judgement, so that the public will be assured of their rights under Article 43(1)(f) of *the Constitution*.
- i. An order directing the 1<sup>st</sup> to 6<sup>th</sup> respondents to file an affidavit detailing out their compliance on the above two orders (prayers) within 90 days of the court's judgement.
- j. That this petition being in the public interest, each party bears their own costs.
- k. Any further orders/directions that the court may deem fit to meet the ends of justice and protection of the constitutional rights of the petitioners.

The petition is supported by the affidavit of Ainea Ragen, a resident of Mwembelegeza, Mombasa County, on behalf of the petitioners, sworn on the 19<sup>th</sup> October 2020 and his statement dated 25<sup>th</sup> January 2021.

2. The 1<sup>st</sup> respondent do not appear to have filed any reply to the petition or to have participated in the proceedings in any other way.
3. The 2<sup>nd</sup> respondent appear not to have filed any specific reply to the petition. They had however filed a replying affidavit sworn by Dr. June Mwajuma, Chief Officer Lands and Housing Department, Mombasa County, sworn on the 20<sup>th</sup> November 2020 in answer to the notice of motion dated the 19<sup>th</sup> October 2020. In the said affidavit, the said deponent inter alia deposed that the suit land was indeed set aside as a public utility for construction of Kwa Bulu/Mwatamba nursery school; that nursery school project took long to be actualized, and the youth in the community converted the plot into a car wash; that on the 20<sup>th</sup> February 2020 members of the community met with their MCA, Mr. Francis Nzai, and agreed to construct a mosque on the suit land; that the Kwa Bullo Mosque Committee entered into an agreement with AL Nubal Charity Organization, to sponsor the construction of the mosque; the committee sought and obtained building plans permission from the 2<sup>nd</sup> respondent under Form PPA 2, Serial number 0101251; that the 2<sup>nd</sup> respondent has no private interest over the suit property,



- which is being utilized as a public utility and the construction thereon was undertaken with consensus of the community residents, and it is misleading to allege that there was no public participation.
4. The 3<sup>rd</sup> respondent responded to the petition through the replying affidavit of Samwel Lopokoiyit, the County Director National Environment Management Authority, Mombasa County, sworn on the 18<sup>th</sup> January 2022, in which he deposed inter alia that he received complaints over the development on the suit property on the 30<sup>th</sup> September 2020; that he visited the site on the 29<sup>th</sup> October 2020 and found the construction was non-compliant with section 58 of EMCA, and no sign board with details of the approvals had been put up; that he issued an Environment Restoration Order to cease construction under section 108 of EMCA and directed the project proponent to conduct and submit an EIA report by 13<sup>th</sup> November 2020; that it is not true that the 3<sup>rd</sup> respondent is in breach of section 9(2) of EMCA as it is the lodging of this petition that resulted to the suspension of any further enforcement action including prosecution of the proponent of the project; that his office is ready and willing to execute the orders to be issued by the court in addition to taking further actions that would lead to compliance with EMCA No. 8 of 1999.
  5. The 4<sup>th</sup> respondent also appear not to have filed a reply to the petition, but had filed a replying affidavit sworn by Stephen Mwilu, Compliance Manager, sworn on the 16<sup>th</sup> November 2020 in answer to the application dated the 16<sup>th</sup> October 2020, in which he among others deposed that the 4<sup>th</sup> respondent had received a complaint on 30<sup>th</sup> September 2020 over the development on the suit land; that its officers visited the site on the 1<sup>st</sup> October 2020 and found the construction being undertaken had not complied with their requirement and issued a suspension notice number C088692 under section 23(3)(c) of the National Construction Act No. 41 of 2011; that the suspension notice required the development be suspended until the issues detailed thereon were addressed.
  6. The 6<sup>th</sup> respondent opposed the petition through the replying affidavit sworn by Abdul Rahim Ochieng, secretary to the 6<sup>th</sup> respondent, in which he inter alia deposed that the respondent is a registered charitable organization with the objective of bettering communities in construction of communal facilities like religious premises, access to water among others; that the suit property was indeed set aside as a public utility plot for construction of a nursery school; that following a request from the MCA of the area to the 6<sup>th</sup> respondent to construct a mosque in his ward and the subsequent approval by the 5<sup>th</sup> respondent in their meeting of 20<sup>th</sup> February 2020, the 5<sup>th</sup> and 6<sup>th</sup> respondents entered into an agreement for the construction of the mosque and accompanying facilities on the suit land; that the mosque, shops and the accompanying facilities were meant for the use and benefit of the community; that upon learning that the plot was initially set aside for a nursery school, the 6<sup>th</sup> respondent constructed six classrooms for use both as madrasa and any other educational purpose the community would deem fit; that at the start of the construction, there were chaos resulting to the destruction of the initial small structure and the 6<sup>th</sup> respondent stopped the works to allow the 5<sup>th</sup> respondent sort out the matter; that the 5<sup>th</sup> respondent collected signatures from over 600 people approving the construction.
  7. The 2<sup>nd</sup> interested party responded to the petition through the replying affidavit of Sammy A. Mchombo, the County Land Adjudication and Settlement Officer Mombasa County, sworn on the 14<sup>th</sup> September 2022, among others deposing that the suit property is within Mwembelegeza Settlement Scheme in Mombasa County; that by letter dated 28<sup>th</sup> February 2007, his office wrote to the District Land Officer forwarding a list of the public utility plots in Mwembelegeza scheme that indicates plot number 1476, the suit property, was reserved for a nursery school.
  8. The petitioners responded to the 2<sup>nd</sup> to 4<sup>th</sup> replying affidavits through the supplementary affidavit sworn by Ainea Ragen on the 16<sup>th</sup> June 2022.



9. The court gave directions on filing and exchanging submissions on the 10<sup>th</sup> November 2022, 6<sup>th</sup> February 2023 and 2<sup>nd</sup> March 2023. The counsel for the 1<sup>st</sup> interested party [EACC] notified the court that their client had opted not to participate in the proceedings but would instead conduct its own investigations, while the counsel for the 2<sup>nd</sup> respondent reported that his client would not be filing submissions but will rely on their replying affidavit. The petitioners, counsel for the 2<sup>nd</sup> interested party, 5<sup>th</sup> and 6<sup>th</sup> respondents filed their submissions on the 22<sup>nd</sup> November 2022, 3<sup>rd</sup> February 2023 and 1<sup>st</sup> March 2023 which the court have given due considerations.
10. The issues for the court’s determinations are as follows;
- a. Whether the suit property is reserved as a public utility plot for a nursery school for the community.
  - b. Whether the developments done on the suit property by the 5<sup>th</sup> and 6<sup>th</sup> respondents deviated from the initial intended use of the said property.
  - c. Whether there was sufficient public participation prior to the developments on the suit property being carried out.
  - d. Whether the all the prerequisites approvals/permits had been obtained before the constructions/developments on the suit property were commenced/done, and if not what order(s) to issue.
  - e. Whether the petitioners are entitled to any of the reliefs sought in their petition.
11. The court has carefully considered the grounds on the petition, affidavit evidence presented by the various parties for and against the petition, submissions by the counsel for the parties, superior courts decisions cited, the relevant provisions of the law and come to the following determinations;
- a. From the parties’ pleadings, affidavit evidence and the submissions filed by both sides, there is no dispute that Plot No. 1476/Mwembelegeza Settlement Scheme, the suit property, was set aside as a public utility for a nursery school. In accordance with the letter dated the 28<sup>th</sup> February 2007 by the District Land Adjudication & Settlement to the District Land Officer that is annexed as “SAM1” to the 2<sup>nd</sup> interested party’s replying affidavit sworn by Sammy A. Mchombo, a caveat was to be placed on the said plot and other listed public utility plots that were “meant for public purpose only”. The legal status of the suit property set aside for a nursery school has not changed to date as no party has raised any claim or produced documentary evidence to the contrary.
  - b. The undated agreement between the 5<sup>th</sup> and 6<sup>th</sup> respondents, that is annexed to the replying affidavit filed by the 2<sup>nd</sup> respondent sworn by Dr. June Mwajuma, at clauses 2 and 6 wrongly presented the 5<sup>th</sup> respondent as the owners of the suit property with capacity to give it out for development to the 6<sup>th</sup> respondent. That was to say the least a misrepresentation of the facts as the 5<sup>th</sup> respondent was, and is, not the state agency responsible for the suit property which was a public utility plot reserved for a nursery school. The 6<sup>th</sup> respondent should have done due diligence to establish the ownership of the suit property before signing the agreement and committing its funds in the development thereof.
  - c. The 5<sup>th</sup> respondent is described at paragraph 6 the amended petition as a committee members of Kwa Bulu Mosque. There is no evidence that they have been duly registered or recognized



as a registered public entity. At paragraph 7 of the said petition, the 6<sup>th</sup> respondent is described as charity organization. In their replying affidavit sworn by Abdul Rahim Ochieng on the 18<sup>th</sup> February 2021 he deposed at paragraph 5 that the 6<sup>th</sup> respondent is a duly registered charitable organization. The 6<sup>th</sup> respondent is therefore not a public body but a private entity.

- d. The only minutes of the 5<sup>th</sup> respondent availed to the court is that of 20<sup>th</sup> February 2020 with only thirteen (13) people shown to have attended. At number 3 is one John Simba who I take to be the deponent of the affidavit sworn by John Simba Mwaigo on the 23<sup>rd</sup> November 2020. The undated agreement between the 5<sup>th</sup> and 6<sup>th</sup> respondents had listed John Shimba Mwaigo as one of the four “The Community Leaders or Owners”, of the suit property. The said John Simba Mwaigo has denied through his affidavit having attended any meeting or agreeing to the selling, renting or leasing out the suit property to 6<sup>th</sup> respondent. He has further denounced the signature on the alleged documents and deposed that he had reported the matter to Kadzandani Police Station. The contents of the affidavit have not been rebutted by the 5<sup>th</sup> respondent or any other party, and leaves the court with lots of doubts on the whether the 5<sup>th</sup> respondent represented any other person(s) other than themselves in the transactions they had with the 6<sup>th</sup> respondent.
- e. It is also not disputed that on the suit property has now been developed among others a mosque and shopping facilities by the 5<sup>th</sup> and 6<sup>th</sup> respondents. The constructions of the said facilities on the suit land commenced in the year 2020 and that the petitioners registered their objections through petitions to various public offices, including 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, respondents and the 1<sup>st</sup> interested party before filing this petition before the court. At least two of the public bodies, that is the 3<sup>rd</sup> and 4<sup>th</sup> respondents admitted receiving the petitioners’ complaints and set out the steps their offices took in their replying affidavits sworn by Samwel Lopokoiyit and Stephen Mwilu on the 18<sup>th</sup> January 2022 and the 16<sup>th</sup> November 2020 respectively. There appear not to have been any formal responses by the time this petition was filed from the 2<sup>nd</sup> respondent, County Commissioner, Regional County Commissioner, 1<sup>st</sup> interested party, and the OCS Kadzandani Police Station.
- f. The 3<sup>rd</sup> and 4<sup>th</sup> respondents have in their respective responses agreed with the petitioners that when they visited the suit property upon receipt of the petitioners’ complaints, they found the development/construction being carried was not in compliance with the requirements of the various provisions of the law that they have set out. I have carefully considered the response by the 5<sup>th</sup> and 6<sup>th</sup> respondents who have not denied being the ones carrying the said development/construction and they have not in any way rebutted or attempted to challenge the findings by the 3<sup>rd</sup> and 4<sup>th</sup> respondents. The court therefore find it is a fact that the said development/construction by the 5<sup>th</sup> and 6<sup>th</sup> respondents on the suit property was carried out in contravention of the section 23(3) of the National Construction Act No. 41 of 2011 due to lack of the following;
  - i. registered contractor on site;
  - ii. sign board showing the professional engaged;
  - iii. safety signs;
  - iv. personal protective gears;
  - v. accredited skilled workers and supervisors;



- vi. NCA compliance certificate; and
- vii. hoarding and fencing.

And that it was in order for the 4<sup>th</sup> respondent to issue the works suspension notice No. C088692 of 1<sup>st</sup> October 2020. The suspension notice appears not to have been obeyed as the 5<sup>th</sup> and the 6<sup>th</sup> respondents continued with the construction works without any further action being taken by the 4<sup>th</sup> respondent.

- g. That further to (f) above, the court also finds that the 3<sup>rd</sup> respondent had found the construction works being undertaken by the 5<sup>th</sup> and 6<sup>th</sup> respondents on the suit property to be non-compliant with section 58 of EMCA 1999 in that;
  - i. The proponent of the project had not submitted to the 3<sup>rd</sup> respondent an EIA Report and obtained an EIA license before commencement of the works; and
  - ii. The proponent had not erected a sign board showing the statutory approvals by the various government offices.

That the 3<sup>rd</sup> respondent issued the proponents of the works with an Environment Restoration Order under section 108 of EMCA 1999, and directed that they conduct and submit an EIA report by the 13<sup>th</sup> November 2020. Though the said order required the 5<sup>th</sup> and the 6<sup>th</sup> respondents to stop the works until they comply with the requirements of section 58 of EMCA 1999, the works continued without any further action being taken by the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent has at paragraphs 11 and 12 of the replying affidavit of Samwel Lopokoiyit, deposed that they stopped taking further action after this petition was filed, and are ready and willing to implement any orders that may be issued by the court and even take further actions to ensure compliance and fidelity to the provisions of EMCA.

- h. The 2<sup>nd</sup> respondent defended the construction through the replying affidavit sworn by Dr. June Mwajuma on the 20<sup>th</sup> November 2020 inter alia deposing that;
  - i. During the meeting of 20<sup>th</sup> February 2020 attended by thirteen (13) people who are members of the community, it was agreed that a mosque be constructed on the suit land;
  - ii. That the 5<sup>th</sup> respondent, as project committee, entered into an agreement with the 6<sup>th</sup> respondent to sponsor the construction of a mosque for the community residents;
  - iii. That the 5<sup>th</sup> respondent sought and obtained approval for its building plans and Form PPA2 serial No. 0101251 was issued;
  - iv. That the suit property was indeed set aside for a nursery school the community residents had a meeting with their MCA on the 20<sup>th</sup> February 2020 and resolved that an alternative public amenity, a mosque, be constructed there;
  - v. There was no illegal acquisition of the suit property as it is still being utilized as a public utility;
  - vi. That the 2<sup>nd</sup> respondent has no private interests over the said property;
  - vii. That it is misleading to allege there was no public participation when the development was undertaken with consensus of the community residents; and



viii. That the 2<sup>nd</sup> respondent has not breached any law relating to the said project.

Section 2 of the Land Act No.6 of 2012 on interpretation ascribes the “public land” to the meaning assigned by Article 62 of the Constitution and adds that it “includes the coast foreshore, river, dams, lakes and other reserves under the Survey Act or under any other law”. Article 62 (2) to (4) of the Constitution provides as follows;

“ 62.

- (2) Public land shall vest in and be held by county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under-
  - a. Clause (1) (a), (c), (d) or (e); and
  - b. Clause (1) (b), other than land held, used or occupied by a national state organ.
- (3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
- (4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.”

That as all the parties in this petition are in agreement that the suit property was set aside as a public utility plot for a nursery school, it is important to determine whether it was lawful and or in order to construct a mosque and shopping facilities on the property instead. Going back to the only document availed to the court on the public utility plots at Mwembelegeza Settlement Scheme, that is the letter dated 28<sup>th</sup> February 2007 attached to the replying affidavit of Sammy A. Mchombo, it is clear 23 plots had been set aside for various public utilities. The number of the plots and the purpose for reservation are as set below;

Nursery ..... 3 plots. Primary ..... 1 plot. Secondary ..... 1 plot. Health centre ..... 1 plot. Survey camp ..... 1 plot. Post office ..... 1 plot. Swamp ..... 1 plot. Public cemetery ..... 1 plot. Bore hole ..... 3 plots. Open space ..... 5 plots. Administration ..... 2 plots. Social hall ..... 1 plot. Petrol stallion ..... 1 plot. Bus park ..... 1 plot.

It is abundantly clear from the foregoing that none of the 23 plots set aside in the planning of the Mwembelegeza Settlement Scheme as public utility plots had been reserved for a mosque, church, temple or any other religious purpose. That it follows that for the promoters or proponents of the construction of the mosque and shopping facilities on the suit property needed to not only have sufficient public participation on their project, but also to have complied with the Physical Planning and Land Use Act No. 3 of 2019 on change of user of the said plot. The 2<sup>nd</sup> respondent was obligated to confirm that the building plans for the project on the suit property presented for approval were in accordance with the reserved/authorized use for the plot before appending its approval, but it did not do so. The 2<sup>nd</sup> respondent also failed to ensure that the 5<sup>th</sup> respondent had obtained and presented a written consent of the registered owner of the suit property before approving the building plans for the project, as required by



section 58 (4) of the Physical Planning and Land Use Act. Indeed, there is no documentary evidence presented by the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents to show that the proponents of the mosque and shopping facilities on the suit property held or were entitled to any registrable interests over the said plot at the time the building plans were presented for approval, or time of approval or thereafter. The approval of the building plans of the Mosque project on the suit land by the 2<sup>nd</sup> respondent was therefore unprocedural.

- i. That had all the statutory approvals/permits have been obtained on the construction done on the suit land, and the only question remaining was whether the development ought to have been done on a plot reserved for a nursery school, the court would have considered directing the proponents of the project to purchase an alternative plot in the same area, acceptable to the petitioners and other residents in the scheme for a nursery school in exchange to the suit land. That unfortunately, a development/construction that has been carried out without the prerequisite approvals/permits cannot receive the blessings of the court of law to continue in existence on a public utility plot reserved for a nursery school.
- j. On the issue of access to information, the claim by the petitioners was not specific on the nature of the information they were seeking and from which public office.
- k. Though the petitioners are substantially successful in the petition, each party will bear its own costs, as this petition falls in the category of public interest litigation.
  1. Flowing from the above determinations, the court finds the petitioners have established their case and orders as follows;
    - a. Prayers 1, 2, and 6 of the amended petition are hereby granted.
    - b. The 5<sup>th</sup> and 6<sup>th</sup> respondents directed to remove all their developments/structures on the suit land and restore the said land to the condition it was before the construction thereon was undertaken within ninety (90) days.
    - c. In case the 5<sup>th</sup> and 6<sup>th</sup> respondents fail to comply with the order in (b) above, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are directed to ensure the developments/structures constructed on the suit land are demolished and the land restored to the condition it was before the said construction, and the costs incurred in the exercise to be met by the 5<sup>th</sup> and 6<sup>th</sup> respondents.
    - d. That each party to bear their own costs in the petition.

Orders accordingly.

**DATED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF MAY 2023.**

**S. M. Kibunja, J.**

**ELC MOMBASA.**

**In The Presence of;**

**Petitioners: Absent**

**Respondents: Absent**

**Interested Parties : Absent**

**Counsel : Mr. Ainea Ragen for the Petitioners.**



**Mr. Adhoch for 2<sup>nd</sup> Respondent and holding brief for Were for 5<sup>th</sup> and 6<sup>th</sup> Respondents and Mr. Abrulrahim for the 1<sup>st</sup> Interested Party.**

**WILSON – COURT ASSISTANT.**

**S. M. Kibunja, J.**

**ELC MOMBASA.**

