



**Yegon (Suing as the Administrator of the Estate of Kipyegon Arap Kirui - Deceased)
v Ekatera Tea Company Limited (Formerly Unilvever Tea Kenya Limited) & 2 others
(Constitutional Petition E002 of 2022) [2023] KEELC 18690 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18690 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
CONSTITUTIONAL PETITION E002 OF 2022**

**MC OUNDO, J
JULY 13, 2023**

BETWEEN

**WILSON MALAKWEN YEGON PETITIONER
SUING AS THE ADMINISTRATOR OF THE ESTATE OF KIPYEGON ARAP
KIRUI - DECEASED**

AND

**EKATERA TEA COMPANY LIMITED (FORMERLY UNILVEVER TEA KENYA
LIMITED) 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. The Plaintiffs herein filed a Petition against the Respondents dated 27th July 2022 wherein they had sought for the following reliefs;
 - i. A declaration that the disputed portion of land belongs to the estate of Kipyegon Arap Kirui (deceased).
 - ii. A declaration for restitution of the ten (10) acres of land inclusive of all the developments thereon to the estate of Kipyegon Arap Kirui (deceased).
 - iii. An order of permanent injunction restraining the 1st Respondent by itself, its agents and/or servants, employees, officials, and or anyone from any further trespass, occupation, use and/or interference with the disputed portion of land.



- iv. A declaration for compensation in terms of the current and developed value of the ten acres and mesne profits accruing for use of the said parcel by Kenya Tea Company Limited (Unilever Tea Kenya Limited) calculated yearly for fifty five years.
 - v. An order directing the 2nd Respondent to cause the survey and issuance of title deed to the estate of Kipyegon Arap Kirui (deceased).
 - vi. Any further relief that this Honorable court may deem just and fit to grant.
 - vii. Costs of this Petition be borne by the Respondents
2. Upon service of the Petition, the 1st Respondent filed a Preliminary Objection, seeking the dismissal of the entire Petition with costs on the grounds that the Petition was time barred pursuant to the provisions of Section 7 of the *Limitation of Actions Act* which barred any action to recover land from being brought before court by any person after the end of twelve years from the date on which the right of action accrued.
 3. That secondly the court had no requisite jurisdiction to hear and determine the Petition as it addressed historical land injustices, wherein the National Land Commission was the sole body tasked with the same under Article 67(e) of *the Constitution* of Kenya, 2010 and Section 15 of the *National Land Commission Act* Number 5 of 2012.
 4. The 2nd and 3rd Respondents also filed their Grounds of Opposition to the Petitioner's claim stating that the Petitioner did not identify with precision any known and/alienated Land and it lacked the subject matter for which this court had no jurisdiction to entertain the same as it lacked a cause of action. That there was no enforceable interest that could arise from a nonexistent parcel of land. That the same was based on conjecture and therefore incapable of supporting any claim for the orders sought.
 5. In response to the 1st Respondent's Preliminary Objection, the Petitioner had filed their Grounds in Opposition thereto averring that the Petition did not offend the statutory period set out in Section 7 of the *Limitation of Actions Act* and was therefore good law and competent before the court.
 6. That the matter was historical in nature, the owner having passed on in 1966 wherein the fraudulent excision of the deceased's parcel of land by the 1st Respondent was only discovered, when the Petitioner commenced the processing of their father's death certificate in 2016/17 and subsequently filing of the Succession Cause Kericho CMCC No. 135 of 2028, that the extent of their father's land and its boundaries extended to where the 1st Respondent's Head Office and Accounts stood. That other portions had been converted into commercial plots by the County Government of Kericho without the family's consent or knowledge.
 7. That the said land parcel No. Kericho/Kipchimchim/1068 extended across the Kericho-Nakuru Highway wherein it had included the triangular parcel that bordered the former land purchased by Kenya Tea Company Limited from the late Kipyegon Arap Kirui on 18th August 1963.
 8. That vide a letter dated the 26th September 2017, the National Lands Commission, had notified the Petitioner that "the acquisition had involved the Petitioner and Brook Bond (currently Ekatera Tea Company Limited), a privately owned company and that the Petitioner could therefore follow up Brooke Bond Kenya Limited for compensation purposes. That by this letter, the matter had been removed from being one that could be decided by the National Lands Commission, based on historical injustice.



9. THAT the Petitioner had since filed a suit in the Environment and Lands Court against the County Government of Kericho being Kericho ELC Case No 45 of 2020.
10. That the matter was barely five years since it was discovered by the Petitioner and the estate of Kipyegon Arap Kirui hence the Preliminary Objection as filed by the 1st Respondent fell short of the provisions of Section 7 of the Limitations of Actions Act as the right of action accrued in 2017 when the fraud was discovered.
11. That the Petition was rightly filed before the Honourable Court for recovery of land and compensation for lost opportunity by the estate of the deceased since the said parcel was fraudulently alienated by the 1st Respondent in 1963.
12. Since the Preliminary Objection sought to oust the jurisdiction of the court, parties received directions that the same be disposed of in the first instance through written submissions.
13. The 1st Respondent's submissions and further submissions were to the effect that, the Law Relating Preliminary Objections was discussed in the decision in the case of Mukisa Biscuits Manufacturing Co. Ltd vs. WestEnd Distributors Ltd (1969) EA 696 and in the case of Oraro vs. Mbaja [2005] eKLR, which they raised their issues for determination as follows;
 - i. Whether the Suit is time-barred.
 - ii. Whether this honorable Court has jurisdiction to hear and determine the claim herein which is based on alleged historical injustices dating back to 1966.
14. On the first issue for determination as to whether the suit was time barred, the 1st Respondent submitted that the Petitioner had alleged that they had acquired the subject land sometime in 1956, wherein the current Petition had been commenced close to 70 years from the date when the alleged acquisition took place. The Respondent relied on the provision of Section 7 of the Limitation of Actions Act to submit that the recovery of land could not be brought after the expiry of twelve years. Reliance was placed on the decision in the cases of Gathoni vs. Kenya Co-operative Creameries Ltd (1982) KLR, Rawal vs. Rawal (1990) KLR 275, Edward Moonge Lengusuranga vs. James Lanaiyara & another [2019] eKLR amongst others, in support of their submissions that the present Petition having been instituted close to 70 years from when the alleged cause of action took place, simply meant that it was time barred and therefore striped the court of jurisdiction to entertain it.
15. The 1st Respondent further relied on the decision in the case of Morris Kyengo Makovu vs. Kenya Power & Lighting Company Ltd & 3 others [2021] eKLR to submit that an attempt to frame the suit before the court as a Constitutional Petition was an attempt to circumvent the Limitation of Actions Act.
16. On the second issue as to whether the court had jurisdiction to hear and determine this matter, the 1st Respondent's submission in reliance to the locus classicus case in Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] eKLR, Article 67 (e) of the Constitution of Kenya, as read with Section 15 of the National Land Commission Act Number 5 of 2012 and the Supreme Court decision in the case of Samuel Kamau Macharta & Another vs. Kenya Commercial Bank Limited & 2 others [2012] eKLR, was to the effect that the historical land injustices raised in the Petition herein ought to be the subject of an inquiry process to be conducted by the National Land Commission. That the Petitioner herein had failed to follow the dispute resolution mechanism best suited to address the issues raised in the Petition and had instead approached this Court which had no jurisdiction to hear and determine the matter since the Jurisdiction of the National Land Commission, as established, was conferred by both the Constitution and National Land Commission Act as the competent body



- to substantively deal with the issues raised in the Petition. That the Petitioner had not exhausted all avenues provided to resolve whatever dispute it has over the disputed area. That the jurisdiction of this court could only be invoked once all avenues have been exhausted as a matter of law.
17. The 1st Respondent further submitted on the issue touching on costs that they were entitled to costs against the Petitioner as it was trite law that costs follow the event. They sought that since the Preliminary Objection was merited, the Petition should be struck out and/or dismissed with costs to the 1st Respondent.
 18. The 2nd and 3rd Respondents in opposition to the Petition and in support of the Preliminary Objection raised by the 1st Respondent submitted that they were in agreement with the 1st Respondents submissions in relation to the Petition being time barred pursuant to the provisions of Section 7 of the [Limitation of Actions Act](#). That there had been no explanation that warranted the inordinate delay in filing suit to enforce the Petitioner's right which was prejudicial to the Respondents. That the Petition therefore lacked merit. Reliance was placed on the decision in the case of Maurice Oketch Owiti vs. The Honorable Attorney General [2016] eKLR.
 19. The 2nd and 3rd Respondents also joined hands with the 1st Respondent to submit that this was a case that was fit to be determined by the National Land Commission pursuant to the provisions of Article 67(e) of [the Constitution](#) of Kenya, as read with Section 15 of the [National Land Commission Act](#). Further submissions was to the effect that whenever there was clear procedure for redress of a particular grievance prescribed by [the Constitution](#) or an act of parliament, the procedure must strictly be followed, failure to which renders ones claim exposed to be struck out on a preliminary.
 20. That Pursuant to Rule 3(8) of [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (The Mutunga Rules), the Court had the inherent power to prevent abuse of its processes by among other actions striking out a Constitutional Petition that amounted to an abuse of the Court process.
 21. That in reliance to the decision in Benjoh Amalgamated & Another vs. Kenya Commercial Bank Limited [2007] eKLR, a Constitutional reference may be struck out in limine on the same grounds as a court would do in civil suits, that is to say if the matters are either res judicata, barred by the law of limitation, or the Petition is scandalous, frivolous, vexatious, or so otherwise an abuse of the court process. That the current Petition herein fitted that bill and should be dismissed with costs.
 22. The Petitioner, in opposition to the Respondents' preliminary and grounds of objection and in support of their Petition framed his issues for determination as follows;
 - i. Whether or not the Court possesses the requisite jurisdiction to hear and determine the Petition in light of Article 67 of [the Constitution](#) and Section 15 of the [National Land Commission Act](#).
 - ii. Whether or not the Petition seeking reparation for gross human rights violation in regard to a portion of land has been ousted by the operation of Section 7 of the [Limitation of Actions Act](#)
 - iii. Cost of this application.
 23. On the first issue for determination as to whether or not the Court possesses the requisite jurisdiction to hear and determine the Petition in light of Article 67 of [the Constitution](#) and Section 15 of the [National Land Commission Act](#), the Petitioner submitted that the Petition was a historical land and human rights violation case that arose in 1960 when one Kipyegon Arap Kirui (deceased) was dispossessed of his ten (10) acres of land that formed part of Kericho/Kipchimchim/1068 and which land currently housed the 1st Respondent's weighbridge, mature tea bushes, the Accounts Department and the Head Offices.



24. That although it was true that such historical land cases were under the purview of the National Land Commission as provided by the law and Constitution of Kenya, yet this instant case was delved into, investigated and advisory rendered to the Petitioner by the National Land Commission in its letter dated 26th September 2017 to which the National Land Commission had informed the Petitioner that upon perusal of the documents, it had noted that the acquisition was between the Petitioner and Brooke Bond, a privately owned company and therefore advised that the Petitioner do follow up Broke Bond Kenya Limited for compensation purposes.
25. That it was in view of the said response by the National Land Commission, the court has the jurisdiction to handle this matter after the National Land Commission addressed itself on its incapacity and/or lack of jurisdiction to handle this matter owing to the fact that Brooke Bond Kenya Limited (now Ekatera Tea Company Limited) was a private company. That the National Land Commission's response dated 26th September 2017 thus presupposed land classification under Article 62 of *the Constitution* where registered land held by a person under a freehold title, land held under leasehold tenure or any land declared to be private land under the law constituted private land under Article 64 of *the Constitution*.
26. The Petitioner relied on the provisions of Article 162 of *the Constitution* and Section 101 of the *Land Registration Act* to submit that the court had jurisdiction to hear and determine disputes arising therein. That that the law clearly stipulates that if there was a dispute as to how land was acquired, then it is the Environment and Land Court and subordinate courts to determine such a dispute except where the contention was that the land in question was public land and that it was improperly or illegally acquired.
27. That the jurisdiction of the National Land Commission was to review grants of public land and did not extend to dealing with interests over private land, which role fell within the domain of the court and the subordinate courts. Reliance was placed on the decision in the case of Karaini Investment Limited vs. National Land Commission & 2 Others [2021] eKLR where the court had found that the National Land Commission did not have the mandate in law to determine the suit land as it was a private property.
28. That by the National Land Commission admitting this matter and rendering it as a historical injustice, it had offered the Petitioner the envisaged protection under Article 27(1) of *the Constitution* on equal protection and equal benefit of the law in regard to human rights violations that would be protected in law under Article 40 of *the Constitution*. All victims of historical injustices ought to be treated equally and afforded an equal opportunity for redress. Reliance was placed on the decision in Hermanus Phillipus Steven vs. Giovanni Gnechi-Ruscione, SC Appli. No 4 of 2012, [2013] eKLR.
29. That the Court should exercise its donated and permissive discretion as provided for under Order 2 Rule 15 (1) of Civil Procedure Rules, and dismiss the Preliminary Objection as it was frivolous and intended to delay justice.
30. The Petitioner also sought for enlargement of time, while placing reliance on Sections 26 and 27 of the Limitations of Actions Act and the inherent discretionary powers of the Honorable Court in the *Civil Procedure Act* this being a Petition where the Petitioner was pleading a historical injustice and violation of his human rights.
31. On the issue as to whether the court had the mandate to deal with historical land injustice claims, the Petitioner relied on the decision in the case of Safepak Limited vs Henry Wambega & 11 others [2019] eKLR where Court of Appeal while considering the question whether it was within the mandate or jurisdiction of the ELC to deal with historical land injustice claims quoted the case of Chief Land



Registrar & 4 Others vs. Nathan Tirop Koech & 4 others (sic) and in light of Article 67(2) of the Constitution to reject the contention that the National Land Commission had the full mandate or jurisdiction to deal with the historical injustices. That indeed the Court of Appeal had held that nothing in the 2010 Constitution or in the National Land Commission Act ousted the jurisdiction of the High Court or barred a person from presenting a Petition before a court in relation to a claim founded on historical injustice.

32. On the second issue as to whether or not the Petition seeking reparation for gross human rights violation in regard to a portion of land, had been ousted by the operation of Section 7 of the Limitation of Actions Act, the Petitioner's submission was that imitation of time could not be imposed in matters where violation of rights has been alleged. That there was no limitation of time for filing claims of violation of rights in the Constitution. That the Constitution had envisaged this state of affairs when it introduced a period of transitional justice wherein past human rights violations which took place under the repealed Constitution could be redressed. That the Petitioner had sought the help of the National Land Commission which is mandated in law to handle the historical injustices wherein the National Land Commission had rendered its opinion, which then made the Petitioner file this matter in court. Reliance was placed on the decision in Zipporah Serony & 5 Others vs. Attorney General HC Petition No. 500 of 2013 [2020] eKLR and Jane Nduta Koigi vs. Attorney General HC Petition No. 115 of 2018 [2019] as some of the matters that had been fully handled and concluded by the courts and whose facts of human right violation were similar to those of the Petitioner.
33. That the court should not dismiss the Petitioner's pursuit for justice against the 1st Respondent's continued occupation of the family land on unreasonable procedural technicalities. That the court do find that this was one of the matters that fell within the scope of transitional justice in Kenya where historical injustices and human right violations are addressed.
34. On the issue as to whether there was inordinate delay in the filing the Petition, Petitioner's submission was in the negative. That a lot of time had been spent in finding out if the historical injustice and its human rights violations could be handled in the transitional justice system under the National Land Commission. Reliance was placed on the Court of Appeal decision in Safepak Limited case (supra) where it had been held that claims of violation of human rights must be filed in court within reasonable time. That where there was delay, a Petitioner ought to explain the reasons for the delay to the satisfaction of the court. That in 2017 when the Petitioner discovered that the 1st Respondent had illegally taken over, use and possession of a portion of the estate of Kipyegon Arap Kirui (deceased) he had immediately commenced the proceedings herein. That the Petition was within the prescribed time limits under the Limitations of Actions Act and Section 7 and therefor was not offended in any way by the Petition herein. Reliance was placed on the decision in the case of Alba Petroleum Ltd vs. Total Marketing Kenya Ltd [2019] eKLR, where the Court while citing Phillips Higgins vs. Harper [195] LOB, 411. CA and Deutsche Morgan Grenfell Group Plc. v IRC 2006 UHL, 59, [2007] had held that a limitation period in a claim for mistake or fraud starts to run when the mistake or fraud is discovered.
35. The Petitioner further relied on the provisions of Section 27 (1) of the Limitations of Actions Act to seek for extension of time were the court to find that the Petition had been caught up by the provisions of Section 7 of the Limitation of Actions Act (which is vehemently denied)
36. On the issue of costs of the objection, the Petitioner submitted that the Preliminary Objection should be dismissed with costs to them since the time for limitation of actions started running from 2017 when the Petitioner had discovered the fraud that the 1st Respondent had perpetrated in 1963.



Determination

37. A Preliminary Objection according to the decided case by the Court of Appeal in the case of Mukisa Biscuits Manufacturing Co. Ltd-v- West End Distributors Limited (1969) EA. 696 was stated to be thus:-

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

38. It is evident that a Preliminary Objection consists of pure points of law and it is also capable of bringing the matter to an end preliminarily. See the case of Quick Enterprises Ltd. vs. Kenya Railways Corporation, Kisumu HCCC No.22 of 1999, where the Court held that:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

39. In the case of Avtar Singh Bhamra & Another vs Oriental Commercial Bank, Kisumu HCCC No.53 of 2004, the Court held that:-

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

40. In the present scenario, it is not in dispute that the Petitioner herein is seeking to recover 10 acres of land comprised in No. Kericho/Kipchimchim/1068 which land comprised the estate of the late Kipyegon Arap Kirui and which land had allegedly been fraudulently alienated by the 1st Respondent in 1963 in what he termed as a historical injustice and violation of his human rights.

41. Pursuant to the filing of the Petition, the Respondents herein had filed their the Preliminary Objection and grounds of opposition to the effect that the suit herein was time barred as it offended the provisions of Section 7 of the [Limitation of Actions Act](#).

42. That secondly, that matters in relation to historical injustices in the Petitioner’s Petition offended the provisions of Article 67 of [the Constitution](#) and Section 15 of the [National Land Commission Act](#) as the Constitutional mandate to determine historical injustices concerning land was vested exclusively on the National Land Commission to investigate, hear and determine issues on historical land injustices. That the Environment and Land Court had no jurisdiction to determine a claim for historical land injustices. The Respondents’ position was that the Petition was frivolous and/or vexatious and the same ought to be dismissed with costs

43. I find the matters arising for my determination as follows;

- i. Whether this court has jurisdiction to hear and determine the Petition.
- ii. Whether the law on limitation applies to matters relating to historical injustices.
- iii. Whether the said Preliminary Objection has merit and should be upheld.



44. A Court’s jurisdiction flows from either *the Constitution* or legislation or both to wit a Court can then only exercise jurisdiction as conferred to it by *the Constitution* or other written law. Thus it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
45. On the first issue for determination as to whether this court has jurisdiction to hear and determine the Petition, it had been submitted by the Respondents that the mandate of the National Land Commission was to investigate, hear and determine issues on historical land injustices. That Environment and Land Court had therefore no jurisdiction to determine a claim for historical land injustices. I am guided by the Court of Appeal’s holding in the case in Chief Land Registrar & 4 others vs. Nathan Tirop Koech & 4 others [2018] eKLR where it had been held that

“On the question whether a court should await investigation and recommendation by the NLC before it can entertain a claim founded on historical injustice, it is our considered view that a court has jurisdiction to hear and determine any claim relating to historical injustice whether or not the NLC is seized of the matter. Our conviction stems from our reading of Article 67(2) (e) of *the Constitution*.

The Article provides that the NLC can investigate “present or historical” land injustices. We lay emphasis on the word “present.” If the NLC had initial and exclusive mandate, it would mean that all present cases on land injustices can only be handled by the NLC and not courts of law. This would prima facie render the Environment and Land Courts redundant. We do not think this was intended to be so. Our view is fortified by Section 15 (3) (b) of the *National Land Commission Act* which permit the Environment and Land Court to deal with historical injustice claims capable of being addressed through the ordinary court system.

Further, there is nothing in the 2010 Constitution or in the *National Land Commission Act* ousting the jurisdiction of the High Court or barring a person from presenting a Petition before a court in relation to a claim founded on historical injustice.”

46. Indeed there is no dispute that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be followed provided that the remedy thereunder is effectual. The Petitioner has submitted that vide a letter dated the 26th September 2017, the National Land Commission had notified him that the acquisition had involved the Petitioner and Brook Bond (currently Ekatera Tea Company Limited), a privately owned company and that the Petitioner should follow up Brooke Bond Kenya Limited for compensation purposes. Whether, and to what extent the National Land Commission dealt with the Petitioner’s grievances was therefore a matter of evidence which would have to be dealt with at the hearing of the Petition and which then removed this limb of argument from the ambit of a Preliminary Objection. Indeed the Court of Appeal had addressed the issues raised herein in the case in Safepak Limited vs Henry Wambega & 11 others [2019] eKLR wherein it had held that:

“The upshot of the foregoing is that, in our judgment, the ELC was right in holding that it has jurisdiction over the matter.”

47. The second issue for determination as to whether the law on limitation applied to matters relating to historical injustices, the Respondents in their Preliminary Objection and Grounds of Opposition had submitted that since the Petitioners sought to recover land more than 70 years after the cause of action had accrued, by virtue of the provisions of Section 7 of the *Limitation of Actions Act* thereof, such



action to recover land after the end of twelve years from the date on which the right of action accrued was time barred.

48. It is trite that the right to bring a claim for historical injustice was introduced in Article 67 of *the Constitution* of Kenya and which provision does not put a time limit when such claim ought to be brought to Court. However the delay must not be inordinate and there must be plausible explanation for the delay as was held in the persuasive case of *James Kanyita Nderitu vs. Attorney General & Another* [2013] eKLR where the court had held that;

“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 inordinate 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 claims are prosecuted within a reasonable time.”

49. The court’s holding was endorsed by the court of Appeal in the *Safepak Limited* case (supra) I find that there was no inordinate delay for reasons given by the Petitioner that no sooner had he discovered the fraud in 2017, than he had instituted proceedings thereof.

50. Indeed the court of Appeal in the case of the Chief Land Registrar (supra) had held as follows:

“Guided and convinced of the sound jurisprudence that there is no time limit for filing a Constitutional Petition, we find the ground that the trial judge erred in failing to dismiss the Petition on account of delay, acquiescence and laches has no merit. Unless expressly stated in *the Constitution*, the period of limitation in the *Limitation of Actions Act* do not apply to violation of rights and freedoms guaranteed in *the Constitution*. The law concerning limitation of actions cannot be used to shield the State or any person from claims of enforcement of fundamental rights and freedoms protected under the Bill of Rights. (See *Dominic Arony Amolo vs. Attorney General Nairobi HC Misc. Civil Case No. 1184 of 2003 (O.S) (2010) eKLR*; *Otieno Mak’Onyango vs. Attorney General & another Nairobi HCCC No. 845 of 2003*).

In our view, subject to the limitations of Article 24 of the 2010 Constitution, fundamental rights and freedoms cannot be tied to the shackles of *Limitation of Actions Act*. However, each case is to be decided on its own merits....”

51. There has been no submission that the witnesses will not be availed and having considered that the court has not only to deliver justice but that justice has to be seen as done, and further having satisfied myself that the claim raised by the Petitioner was not defeated under the doctrine of laches, I find in agreement to the above decisions that Section 7 of the *Limitation of Actions Act* does not apply to this matter.

52. In the end, I find that the Preliminary Objection and the Grounds of Objection herein raised by the Respondents lacked merit and the same are herein dismissed costs.

53. The Petition shall be henceforth be mentioned with a view to giving directions for an expedited hearing and determination.



**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 13TH DAY OF JULY
2023**

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

