



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC PETITION NO. 32 OF 2018**

**MAUREEN OCHIENG .....1<sup>ST</sup> PETITIONER**

**ANDREW MBAU.....2<sup>ND</sup> PETITIONER**

**WAGOMBA WAMBUI.....3<sup>RD</sup> PETITIONER**

**DOROTHY KITANZI.....4<sup>TH</sup> PETITIONER**

**JEFF NGEREZA.....5<sup>TH</sup> PETITIONER**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**BISHOP ARTHUR KITONGA .....2<sup>ND</sup> RESPONDENT**

**BISHOP PAUL MBOKO MUTIA.....3<sup>RD</sup> RESPONDENT**

**REV.JOHN BANKOSKY KITONGA.....4<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....5<sup>TH</sup> RESPONDENT**

**AND**

**HON. ANTHONY TOM OLUOCH.....1<sup>ST</sup> INTERESTED PARTY**

**HON.PATRICIA MUTHEU.....2<sup>ND</sup> INTERESTED PARTY**

**AND**

**1000 OTHER INTERESTED PARTIES**

**JUDGMENT**

**Introduction:**

The Petitioners filed the petition herein on 7<sup>th</sup> May, 2018. The petition was amended with leave of the court that was granted on 30<sup>th</sup> June, 2020. The Petitioners filed amended petition dated 17<sup>th</sup> July, 2020.

The Petitioners' petition appears to have been prompted by a consent order that was made on 18<sup>th</sup> December, 2017 in ELC Suit No.288 of 2016 between the 2<sup>nd</sup> to 4<sup>th</sup> Respondents herein as the plaintiffs and one, James Kyalo as the defendant (hereinafter referred to as "the civil suit"). The said order permanently restrained the said James Kyalo, his servants or agents from interfering with the 2<sup>nd</sup> to 4<sup>th</sup> Respondent's peaceful enjoyment of all that parcel of land known as L.R.No.209/11373/209, Nairobi (hereinafter referred to as "the suit property"). The

Petitioners have not come out clearly on how they were connected to the civil suit and how the said consent order affected them.

Although the petition has been brought by 5 Petitioners, the same has been signed by the 1<sup>st</sup> Petitioner only. The 1<sup>st</sup> Petitioner claims to have received consent of the 2<sup>nd</sup> to 4<sup>th</sup> Petitioners to sign the petition on their behalf. The Petitioners claim to have brought the petition on behalf of the residents of Mlango Kubwa Estate, Mathare Constituency, Nairobi and in the public interest in pursuit of the rule of law and in defence and protection of the Constitution of Kenya and various statutes.

The 1<sup>st</sup> Respondent is the County Government of Nairobi, established under Article 6(1) of the Constitution of Kenya and County Governments Act, No. 17 of 2012, Laws of Kenya.

The 2<sup>nd</sup> to 4<sup>th</sup> Respondents are sued in their capacities as the registered trustees of Redeemed Gospel Church Inc. situated at Mlango Kubwa Ward, Mathare Constituency, Nairobi.

The 5<sup>th</sup> Respondent is a body established under Articles 67 and 248(2) (b) of the Constitution and operationalized by the National Land Commission Act, 2012

The 1<sup>st</sup> Interested Party is said to be the current Member of the National Assembly for Mathare Constituency Nairobi.

The 2<sup>nd</sup> Interested Party is said to be the current member of County Assembly, Mlango Kubwa Ward, Mathare Constituency Nairobi.

The 3<sup>rd</sup> to 1002<sup>nd</sup> Interested Parties are said to be members of the public and residents of Mlango Kubwa Estate, Mathare Constituency, Nairobi County.

The petition was heard by way of affidavit evidence and written submissions.

The 5<sup>th</sup> Respondent did not respond to the petition.

#### The Petitioner's Case:

In their amended petition dated the 17<sup>th</sup> July, 2020, the Petitioners sought the following reliefs;

A declaration that the Petitioners are at liberty to continue with their quiet enjoyment of and activities on L.R No.209/11373/209 Nairobi (the suit property).

A declaration that the Respondents have breached and violated Articles 3,10, 22, 27, 28, 40, 43 and 47 of the Constitution of Kenya by interfering with the Petitioners' right to property.

A declaration that the suit property was community land or property earmarked for construction of a market and that the procedure for change of user or transfer thereof from public land to private land or user was not followed.

A declaration that the purported allocation of the suit property to the 2<sup>nd</sup> to 4<sup>th</sup> Respondents was relinquished or expired after the 2<sup>nd</sup> to 4<sup>th</sup> Respondents failed to pay the requisite fees and the property reverted to the public.

A declaration that the title for the suit property that was issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> to 4<sup>th</sup> Respondents is fraudulent and a nullity.

A declaration that any change of use of the suit property from community use to private use must follow the procedure set out under the Land Act, 2012 and County Government Act and/or relevant statute as well as the requirements of public participation.

An order nullifying the title for the suit property held by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents and directing the registration of the suit property and the issuance of a title in the name of the Petitioners to hold in trust for the Interested Parties and other members of the community.

In the alternative to prayer (g) above, an order setting aside with costs the consent order made in ELC Suit No.288 of 2016, Bishop Arthur Gitonga & 2 others v James Kyalo (the civil suit) on 18<sup>th</sup> December, 2017 and all consequential orders.

A permanent injunction restraining the Respondents either by themselves or their agents /servants from interfering with the petitioners' enjoyment of the suit property.

Costs of the petition

Any further relief or orders that this Honourable Court may deem just and fit to grant.

The amended petition was brought on the grounds set out on the face thereof and on the affidavit of the 1<sup>st</sup> Petitioner sworn on 17<sup>th</sup> July, 2020 in support thereof. The Petitioners averred that on 14<sup>th</sup> June, 2007, the 1<sup>st</sup> Respondent's predecessor, City Council of Nairobi acting on

an application by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents (hereinafter referred to only as “the Church”) allocated to the Church the suit property to put up a church building and Vocational Training Centre.

The Petitioners averred that the Church was supposed to accept the allotment and to make the necessary payment within 30 days of the letter of allotment. The Petitioners averred that the Church defaulted in complying with the terms of the allotment as a result of which the suit property reverted to the 1<sup>st</sup> Respondent for use as a public commercial market. The Petitioners averred that despite the foregoing, the 1<sup>st</sup> respondent went ahead and gave the Church all the necessary approvals to commence development on the suit property thereby interfering with the petitioners’ rights to the suit property.

The Petitioners averred that the 1<sup>st</sup> Respondent acted ultra vires by approving the application for change of use of the suit property from public land to private land without taking into account the interests of the residents of Mlango Kubwa Estate, Mathare, Nairobi and the procedures laid down for effecting such change. The Petitioners averred that the said change of use was also effected without public participation.

In their submissions, the Petitioners contended that the alienation or disposal of public land has to be carried out in accordance with the Constitution, National Land Commission Act, Land Act 2012 and the Community Land Act, 2016. The Petitioners contended that lack of involvement of the residents of Mlango Kubwa Estate, Mathare, Nairobi in the conversion of the suit property from public use to private use was an indication that the due process was not followed in the exercise. The Petitioners contended further that the title for the suit property was issued to the Church fraudulently and as such the court has power to revoke the same. In support of this submission, the Petitioners relied on Arthi Highway Developers Limited v West End Butchery Limited and Others [2015]eKLR, Omega Enterprises(Kenya) Limited v Kenya Tourist Development Corporation Limited & Others [1998]eKLR and Republic v The Registrar of Titles Mombasa & 2 others Ex parte Emfill Ltd [2012]eKLR.

The Petitioners submitted that they had satisfied the conditions for grant of a permanent injunction. In support of this submission, the Petitioners relied on Kenleb Cons. Limited v New Gatitu Service Station Ltd. & Another [1990] eKLR and Giella v Cassman Brown Company Limited [1973] E.A 358.

#### The 1<sup>st</sup> Respondent’s case:

The 1<sup>st</sup> Respondent opposed the petition through grounds of opposition dated 8<sup>th</sup> February, 2021. The 1<sup>st</sup> Respondent contended that the petition was an abuse of court process and was devoid of any merit.

The 1<sup>st</sup> Respondent contended that the Petitioners had not demonstrated any proprietary interest in the suit property or occupation thereof. The 1<sup>st</sup> Respondent contended further that the Petitioners did not demonstrate any illegality on the part of the 1<sup>st</sup> Respondent or that it acted outside its mandate.

The 1<sup>st</sup> Respondent submitted that it had power to allocate public land and therefore acted within its mandate in allocating the suit property to the Church. In support of this submission, the 1<sup>st</sup> Respondent cited Del Monte Kenya Limited v County Government of Murang’a & 2 others [2016] eKLR.

The 1<sup>st</sup> Respondent submitted further that its actions were pursuant to a court order issued in the civil suit which order had not been set aside, vacated or varied. In support of this submission, the 1<sup>st</sup> Respondent relied on Republic v Principal Secretary Ministry of Defence Ex-Parte George Kariuki Waitthaka [2018]eKLR and Kenya Union of Savings and Credit Cooperatives (KUSCCO)Limited v Nairobi City Council (now Nairobi City County) & 2 Others[2015] eKLR.

The 1<sup>st</sup> Respondent submitted that the Church was the lawful owner of the suit property since the Petitioners had failed to prove fraud in the allocation of the property to the Church. In support of this submission, the 1<sup>st</sup> Respondent cited Sanagale Ole Langas v Stephen Mishish & Another [2018]eKLR and Christopher Kitur Kipwambok v Vipul Ratilal Dodhia & 3 Others [2013]eKLR.

#### The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents’(Church) case:

The Church opposed the petition through a replying affidavit sworn by John Bankosky Kitonga on 5<sup>th</sup> February, 2021.

The Church contended that the Petitioners lacked authority to institute the petition since they had not filed in court authority signed by the persons on whose behalf they purported to bring the petition. The Church contended further that there was no evidence placed before the court showing that the persons listed as interested parties were residents of Mlango Kubwa Estate, Mathare constituency.

The Church averred that in 2007, it applied to the City Council of Nairobi for a plot, its application was approved and it was allocated the suit property through a letter of allotment dated 14<sup>th</sup> June, 2007.

The Church averred that it fulfilled the terms and conditions that were contained in the said letter of allotment after which the City Council of Nairobi issued it with a lease in respect of the suit property which was registered on 16<sup>th</sup> December, 2014.

The Church stated that the Petitioners and the interested parties were aware of the civil suit but chose not to join the same.

The Church averred that the suit property was reserved for construction of a nursery school and that the same was allocated to it for the

development of among others a nursery school.

The Church averred that the suit property was not a public utility land and as such the issue of the same having been converted to private land could not arise. The Church averred further that there were public open spaces adjacent to the suit property where the petitioners could develop social amenities if they wanted to do so.

The Church averred that its members were also residents of Mlango Kubwa Estate Mathare Constituency and as such it had a right to own land in the area. The Church averred that it had processed development plans and would have commenced development on the suit property if it were not for the interference by the Petitioners.

The Church averred that it was willing to develop a vocational training center on the suit property that would assist the entire community unlike the Petitioners who intended to subdivide the property and allocate the same to themselves.

The Church averred that the Petitioners had incited another group to file a suit claiming ownership of the suit property in ELC No. 144 of 2018, Joyce Wambui Mbau & Another v Redeemed Gospel Church of Kenya that was pending.

The Church submitted that it had established that it was the lawful owner of the suit property.

The Church submitted further that there were no constitutional issues raised by the petitioners neither were any rights of the Petitioners infringed to warrant the court's intervention.

The Church contended that no basis had been laid by the Petitioners that would justify the setting aside of the consent order that was made in the civil suit. In support of the submission, the Church relied on Board of Trustees of NSSF v Michael Mwalo, Civil Appeal No.293 of 2014.

#### The Interested Parties' Case:

The Interested Parties did not file a replying affidavit in response to the petition. They however filed submissions dated 17<sup>th</sup> August, 2020 in support of the Petition.

The Interested Parties submitted that they had a right to be heard in their individual capacities and as representatives of the other residents of Mlango Kubwa Estate. In support of this submission, the Interested Parties relied on Rangal Lemiguran & Others v Attorney General & Others [2006] eKLR and Judicial Service Commission v Speaker of the National Assembly & Another [2013] eKLR.

The Interested Parties reiterated that the suit property was public utility land that was reserved for the construction of a market, a hospital, National Youth Service Center, Nursery School, Public toilets and Community Social Hall hence the Interested Parties had recognizable rights over the suit property.

The Interested Parties submitted that since they had vested interest on the suit property, their use of the same constituted an overriding interest in accordance with sections 25 and 28 of the Land Registration Act, 2012. In support of this submission, the Interested Parties cited Lawrence Maoni Okeyo v Barongo Okeyo & 6 others [2015] eKLR.

The Interested Parties submitted that the Respondents had abused and infringed on their constitutional right to the suit property by failing to protect the suit property and as a result the Interested Parties risked being disinherited of the same.

The Interested Parties submitted further that the allocation of the suit property to the Church was fraudulent and as such illegal. The Interested Parties submitted that pursuant of section 14 of the National Land Commission Act, 2012, it was necessary for the 5<sup>th</sup> Respondent to open an inquiry on the ownership of the suit property.

#### Issues for determination:

I have considered the petition together with the affidavit filed in support thereof. I have also considered the replying affidavits and grounds of opposition filed by the Respondents in opposition to the application. Finally, I have considered the submissions by the advocates for the parties and the authorities cited in support thereof. From the petition and the responses filed by the Respondents, the following in my view are the issues arising for determination in this petition;

Whether the suit property was allocated to the Church lawfully.

Whether the Church acquired the suit property fraudulently.

Whether the Church has a valid title to the suit property.

Whether the consent order that was made in ELC No. 288 of 2016 was obtained by the Church through concealment of material facts.

Whether the Petitioners' constitutional rights were violated or threatened.

Whether the Petitioners are entitled to the reliefs sought.

Who is liable for the costs of the petition?

The petition herein was brought under Articles 1, 3, 10, 19(1), (2) and (3), 20 (1), (2) & (3), 22, 23, 27, 28, 40, 43, 47, 61, 62, 174(1) (c) & (d), 184(1) (c) and 258(1) of the Constitution of Kenya, 2010. It is common ground that the suit property was allocated to the Church on 14<sup>th</sup> June, 2007 before the promulgation of the Constitution of Kenya, 2010. Save for the Articles that were intended to operate retroactively, the Constitution of Kenya, 2010 is not retroactive. In Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR the Supreme Court stated that:

**“ (61) As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are *prima facie* prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. (*Halsbury’s Laws of England*, 4<sup>th</sup> Edition Vol. 44 at p.570). A retroactive law is not unconstitutional unless it:**

- (i) is in the nature of a bill of attainder;**
- (ii) impairs the obligation under contracts;**
- (iii) divests vested rights; or**
- (iv) is constitutionally forbidden.**

**(62) Applying these legal principles to the matter before us, it is clear that what is in question is not the seeming retroactive elements (if any) of section 15(1) of the Supreme Court Act, but whether Article 163 (4) (b) of the Constitution was intended to confer appellate jurisdiction upon the Supreme Court the exercise of which would have retrospective effect upon the vested rights of individuals. At the outset, it is important to note that a Constitution is not necessarily subject to the same principles against retroactivity as ordinary legislation. A Constitution looks forward and backward, vertically and horizontally, as it seeks to re-engineer the social order, in quest of its legitimate object of rendering political goods. In this way, a Constitution may and does embody retrospective provisions, or provisions with retrospective ingredients. However, in interpreting the Constitution to determine whether it permits retrospective application of any of its provisions, a Court of law must pay due regard to the language of the Constitution. If the words used in a particular provision are forward-looking, and do not contain even a whiff of retrospectivity, the Court ought not to import it into the language of the Constitution. Such caution is still more necessary if the importation of retrospectivity would have the effect of divesting an individual of their rights legitimately occurred before the commencement of the Constitution.”**

The Petitioners have not persuaded me that all the Articles cited by them which they claim to have been violated by the Respondents are retroactive. The Petitioners have also relied on the National Land Commission Act, 2012, the Land Act, 2012, the Fair Administrative Action Act, 2015 and the Community Land Act, 2016. All these statutes were not in force when the suit property was allocated to the Church. From the issues that I have flagged above and the view that I have expressed on the applicability of the Constitution of Kenya, 2010 and the various statutes relied on by the Petitioners in challenging the title held by the Church, I am of the opinion that the issues raised in this petition should have been brought to court by way of a civil suit.

It is now settled that constitutional right violations or threatened violations must be pleaded with reasonable degree of precision. This principle was established in Anarita Karimi Njeru v Attorney General [1979] KLR 154 where the court stated as follows:

**“We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”**

In Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR the court stated as follows:

**We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not conterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point...Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice as they give fair notice to the other party. The Principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.”**

In Ledidi Ole Tauta & Others v Attorney General & 2 others [2015] eKLR the court stated as follows:

**“Applying the test established in the case of *Anarita Karimi Njeru –vs- Attorney General* (supra) as amplified in the case of *Mumo Matemu –vs- Trusted Society of Human Rights Alliance & Others* (Supra) to the facts of this case it is our view that the petition lacks any specificity such that it is merely of a general nature in that it fails to identify with precision the particular property to which the Petitioners lay claim.... We are satisfied that the petition suffers serious lack of precision and that it is**

**practically not possible for the Respondents to know what the specific claim by the petitioners is such that even if the petitioners claim was to be upheld it would invite a further exercise of determining what the claim relates to.”**

The Petitioners cited several Articles of the Constitution of Kenya, 2010. The Petitioners did not however explain either in the petition or the submissions how the said articles relate to the dispute at hand and their applicability having regard to the fact that the acts complained of occurred prior to the promulgation of the said Constitution. The Petitioners also appear to have mixed up private rights claims with public rights and confused public land with community land. I also found it difficult to follow the Petitioners' change of user argument particularly whether allocation of public land reserved for public use to a private entity for private use amounts to change of user under the Physical Planning Act, 1996. The Petitioners sought among other reliefs a declaration that they are entitled to quiet enjoyment of the suit property and that their right to property has been interfered with and an order that the suit property be registered in their names since the title held by the church is fraudulent and a nullity. These claims are of a private nature.

In my view, the dispute before the court concerns the validity of the title held by the Church over the suit property. That is an issue that should be determined on the basis of the law that was in force when the suit property was allocated to the Church in 2007 in a civil suit rather than in a constitutional petition. I have not had sight of the Certificate of Lease held by the Church in respect of the suit property. Although, the Church has indicated that it is one of the annexures to the affidavit in reply to the petition, the same was not annexed. From the lease that was granted to the Church by the City Council of Nairobi (hereinafter referred to as “the Council”), the suit property is registered under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) and the lease is subject to the provisions of the said Act and the Government Land Act, Chapter 280 Laws of Kenya (now repealed).

The council was established and administered in accordance with the Local Government Act, Chapter 265 Laws of Kenya (now repealed). The disposal of the suit property had to comply with the provisions of the old Constitution, the Registration of Titles Act, the Government Lands Act and the Local Government Act. The validity or otherwise of the allocation of the suit property by the council to the Church must therefore be considered in light of the provisions of the said Constitution and statutes. Neither the old Constitution nor the aforementioned statutes have been cited in the petition before the court.

To determine; whether the suit property was reserved for public use, whether it was available for allocation to the Church, whether the Council complied with the statutory requirements on allocation of public land, whether the allotment expired, whether the title that was issued to the Church was procured through fraud and whether the title is valid requires evidence. These are issues that cannot be determined with finality on the basis of affidavit evidence and submissions before the court.

I am of the view that the Petitioners should have brought the complaints the subject of the present petition by way of a civil suit in which the parties should have adduced oral evidence. I am of the view that constitutional petitions should be left for those cases raising purely constitutional questions and where facts are to a large extent not contested and where they are contested, the court should have no difficulty determining them on affidavit evidence. In the case before me, I have been called upon to determine among others whether the Church acquired the suit property fraudulently. Fraud is a matter of fact that has to be established by evidence. Affidavit evidence in my view will not suffice for that purpose. I have also been called upon to determine whether a consent order that was obtained in a separate suit was procured through non-disclosure of material facts. All these issues are contested and as such require oral evidence to establish. Due to the foregoing, I am of the view that although the dispute before the court raises valid questions for determination, the same was not properly brought to court.

With regard to the consent order, I am of the view that the Petitioners should have filed an application in the civil suit in which the order was given for the setting aside of the order after which they should have sought to be joined in that suit as defendants if they wished to participate in the suit. As defendants, they would have had a right to file a counter-claim against the Church challenging its title. Even if they failed to set aside the consent order, nothing would have stopped them in my view from filing a fresh a suit against the Church in respect of the issues raised herein.

On the merit of the petition, I am of the opinion based on what I have stated above that the alleged violations of the Constitution of Kenya 2010 have not been established. In 2007 when the suit property was allocated to the Church, the council had power to allocate land that it held subject to certain conditions being met and procedures followed. The burden was upon the Petitioners to establish that the council did not comply with the law. The Petitioners made several allegations in their petition which remained just allegations as they were not proved. The main contention by the Petitioners was that the suit property was reserved for public use and that the council allocated the same to the Church for private use fraudulently without public participation. The Petitioners placed no evidence before the court showing that the suit property was reserved for development of a hospital, a public market, National Youth Service Centre, Nursery School, Public Toilets and a Social Hall as claimed in the petition and submissions. What the Petitioners placed before the court were some correspondence exchanged with the 1<sup>st</sup> Respondent and internal memos of the 1<sup>st</sup> Respondent on the issue that did not have much probative value. The Petitioners did not also place any evidence before the court showing that the Church acquired the suit property fraudulently. With regard to the consent order that was made in the Civil Suit, the Petitioners did not give convincing reasons why they did not move the court in the same suit to set aside the order. One does not need to file a constitutional petition to set aside an order made by a court of competent jurisdiction. The Petitioners who also seem to be claiming private rights over the suit property did not establish any proprietary interest in the suit property. For the foregoing reasons, I find no basis for granting the declaratory reliefs sought by the Petitioners. I also find no basis for nullifying the Church's title over the suit property or setting aside the consent order made in the civil suit. The injunctive relief sought also has no basis since the petitioners have no proprietary interest in the suit property and have not established violation or threatened violation of any of their constitutional rights in relation thereto.

Conclusion:

In conclusion, I hereby make the following orders;

The Petitioners have not established violation or threatened violation of their constitutional rights.

The issue of the validity of the title held by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents in respect of the suit property and whether it should be nullified cannot be determined in these proceedings.

In view of the finding by the court that no violation of constitutional right has been established by the Petitioners, the court declines to grant the reliefs sought in the petition.

Since this was a public interest litigation to a large extent, each party shall bare its own cost.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2021**

**S. OKONG'O**

**JUDGE**

**Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:**

Mr. Owino h/b for Mr. Aduda for the Petitioners

Mr. Swaka h/b for Mr. Njenga for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> to 4<sup>th</sup> Respondents

N/A for the 5<sup>th</sup> Respondent

Mr. Owino for Mr. Oluoch for the Interested Parties

Ms. C. Nyokabi - Court Assistant