



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**PETITION NO. 20 OF 2019**

FLAMINGO HORTICULTURE KENYA LIMITED.....1<sup>ST</sup> PETITIONER

KINGSHOLME LIMITED.....2<sup>ND</sup> PETITIONER

KEDONG' RANCH LIMITED..... 3<sup>RD</sup> PETITIONER

**VERSUS**

WHITE EAGLE SELF HELP GROUP.....1<sup>ST</sup> RESPONDENT

COUNTY GOVERNMENT OF NAKURU.....2<sup>ND</sup> RESPONDENT

**CONSOLIDATED WITH**

**ELC PETITION NO. 28 OF 2019**

MAASAI MARA (SOPA) LODGE LIMITED.....PETITIONER

**VERSUS**

PAUL MWORIA.....1<sup>ST</sup> RESPONDENT

BENSON MUHIU.....2<sup>ND</sup> RESPONDENT

KAROBIA KIRATU.....3<sup>RD</sup> RESPONDENT

WHITE EAGLE SELF HELP GROUP.....4<sup>TH</sup> RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF NAKURU.....5<sup>TH</sup> RESPONDENT

**JUDGMENT**

1. This judgment is in respect of two consolidated matters; ELC Petition No. 20 of 2019 and ELC Petition No. 28 of 2019. ELC Petition No. 20 of 2019 is the lead file. Both cases concern opening up of corridors to Lake Naivasha for public access through parcels of land known as LR No. 10854/309, LR No. 10854/307 and LR No. 8266 (hereinafter "the suit properties").

2. By an amended petition filed on 20<sup>th</sup> January 2020, the petitioners in ELC Petition No. 20 of 2019 described themselves as limited liability companies incorporated in the Republic of Kenya. They averred that they are the registered owners of the parcels of land known as land reference number numbers 10854/309 and 10854/307 as lessees of the government of Kenya. They described the 1<sup>st</sup> respondent as a registered Self Help Group under the Ministry of Labour, Social Security and Services.

3. It is averred in the amended petition that the delineations describing the suit properties in the deed plans have no provision for any easement through the said parcels. That on the 11<sup>th</sup> October, 2019 the petitioner's officials were called to a meeting with several parties including the respondents at which it was alleged that there exists a corridor through the suit properties. That the meeting arose from a petition presented by the 1<sup>st</sup> respondent to the County Executive Cabinet Minister, Ministry of Water, Environment and Natural Resources

sometime in March 2019 seeking authorisation to access a 5-acre Beach Site via a corridor between 1<sup>st</sup> petitioner and Maasai Mara Sopa Lodge Limited. That it was stated in the petition that the 2<sup>nd</sup> respondent's county assembly passed a motion sometime in 2018 for all public corridors to be opened and made accessible to the public. That the motion was passed without the participation of the petitioners and without any legal basis.

4. The petitioners further stated that the 2<sup>nd</sup> respondent which was represented in the meeting failed to own up to the said motion and remained non-committal. That the 1<sup>st</sup> respondent marshalled bulldozers and hired members of the public to embark on clearing of a hedge between the suit properties and Maasai Mara Sopa Lodge Limited. The petitioners further averred that the 2<sup>nd</sup> respondent acted in contravention of the constitution, in violation of petitioners' right to own property and subjected the petitioners to unfair administrative action.

5. The petitioners therefore sought judgment as follows:

- i. A declaration that your Petitioners' fundamental rights to the protection of its property and from arbitrary interference thereof as well as their right to a fair administrative action, access to information and to a fair hearing has been infringed;
- ii. A declaration do issue that the proprietary rights pertaining to the property known as Land Reference No. 10854/307 and 309 belong to the Applicants exclusively and are free from any interference except as provided for in law.
- iii. A conservatory order in the form of an injunction restraining the Respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the Petitioner's property being Title Number Land Reference No. 10854/307 and 309.
- iv. A permanent injunction do issues against the Respondents by themselves, their agents, servants and/or any other person from occupying, trespassing, encroaching, utilizing, and interfering with the Petitioners quiet possession or in any other way dealing with the land parcel number 10854/307 and 309.
- v. Costs of the suit and interest thereon.
- vi. Any such other order(s) as this Honourable Court shall deem just.

6. The original petition and the amended petition are supported by affidavits sworn by Dennis Mwirigi, a director of the first petitioner. He repeated the allegations of fact that the petitioners made in the amended petition and annexed copies of certificates of title and deed plans in respect of Land Reference No. 10854/307 and 10854/309 to demonstrate ownership. He further deposed that the respondents filed a petition dated 4<sup>th</sup> March, 2019 addressed to the County Executive Cabinet Minister, Ministry of Water and Environment Energy & Natural Resources Nakuru County alleging that there exists a corridor between the suit properties and a parcel belonging to Maasai Mara Sopa Lodge Limited. That the respondents also alleged historical injustices in blocking of the non-existent access to a public beach. That the respondent stated in the petition at paragraph (i) that the County Assembly of Nakuru passed a motion sometime in 2018 to have all public access corridors opened and made accessible to public for utility. He added that the petition was never served on the petitioners and that on 28<sup>th</sup> October, 2019 the respondents and their agents entered into the petitioner's Land Reference No. 10854/309 and began demolishing an area to create a path way through to the lake.

7. He deposed further that the access being created is unlawful and a breach of the petitioners' right to own property and that if the actions are not stopped the petitioners are likely to suffer immeasurably by not only losing part of their land, but their farm will also be opened to unwarranted access thereby resulting in wanton destruction of machines and farm produce as well as heightening insecurity.

8. The 1<sup>st</sup> respondent filed Notice of Preliminary Objection raising the ground that the 1<sup>st</sup> respondent is not capable of being sued. It also filed a replying affidavit and supplementary affidavit, both sworn by Paul Mworira Mukoma, its chairman. He deposed that the 1<sup>st</sup> respondent is indeed a registered Self Help Group and added that it has about 250 members who engage in the business of fishing within Karagita area in Naivasha Subcounty. He deposed that the petitioners have no claim to a public pathway measuring 20 feet which passes between Sopa Lodge and Flamingo Farm and that the petitioners' attempt to claim it is unlawful and objectionable. That Lake Naivasha has at least 17 public corridors and that the corridors have been unlawfully blocked or grabbed by private developers including the petitioners. He added that the assembly of the 2<sup>nd</sup> respondent indeed passed the motion referred to by the petitioners and confirmed that the 1<sup>st</sup> respondent indeed petitioned the 2<sup>nd</sup> respondent on 4<sup>th</sup> March, 2019.

9. He deposed that the 1<sup>st</sup> respondent wants to create a sustainable public beach conservancy which preserves the natural habitation of the lake and responsibly allows the exploitation of the available opportunities without degrading the character of the lake while preserving the ecosystem of the area. That 1<sup>st</sup> respondent also seeks to create an open, transparent and accountable exploitation of the existing natural resource and that any alienation of public space, public access and public resources through corrupt or fraudulent means is illegal, null and invalid. That the presidential commission on illegal and irregular allocation of public land (the Ndung'u Land Commission) recorded the complaints of the local community about the closure of the lake access corridors and that the respondents want access to the riparian area to protect it from imminent grabbing by the petitioners and conserve it for future generations.

10. On its part, the petitioner in ELC Petition No. 28 of 2019, a limited liability company, commenced proceedings through petition dated 18<sup>th</sup> December 2019 against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in the said petition which it described as chairman, secretary and coordinator of the 4<sup>th</sup> respondent. The petitioner described the 5<sup>th</sup> respondent as the speaker of the County Assembly of Nakuru. It will be noted that the 4<sup>th</sup> respondent is the same Self-Help Group that is joined in Petition No. 20 of 2019 as the 1<sup>st</sup> respondent. The petitioner averred that it is the registered owner of the parcel of land known as Land Reference Number 8266 Naivasha. The petitioner's case also concerns the motion said

to have been passed on 10<sup>th</sup> July 2018 by the County Assembly of Nakuru. The petitioner averred that pursuant to the said motion, members of the 4<sup>th</sup> respondent invaded its said property on 5<sup>th</sup> October 2019, on 28<sup>th</sup> October 2019 and on 29<sup>th</sup> October 2019 with graders and began clearing a bushy area on the edge of the property with a view to creating what they termed a “public access road” to the shores of Lake Naivasha. The petitioner raised similar matters of fact and law as those in Petition No. 20 of 2019 and argued that its rights to property under Article 40 and right to fair administrative action under Article 47 of the constitution have been violated.

11. The petitioner in ELC Petition No. 28 of 2019 therefore sought the following reliefs:

1. A declaration that there is no public access road to the Lake Naivasha water front cutting through the petitioner’s property.
2. A permanent injunction restraining the respondents whether by themselves, employees, followers, servants, and/or agents, or any of them or whomsoever purporting to be a member of the 4<sup>th</sup> respondent or anyone from trespassing or encroaching on the petitioner's property being L. R No. 8266 Naivasha, entering thereon and committing any acts of waste or damage or in any way purporting to alienate the property of the petitioner in any manner whatsoever.
3. A declaration that the resolution/motion of the County Assembly of Nakuru passed on 10<sup>th</sup> July 2018 seeking to compel hotels to open up public access corridors around lake Naivasha is unlawful and unconstitutional as it violates the petitioner's right to property as enshrined under Article 40 of the Constitution and a violation of the petitioner's right to fair administrative action as enshrined under Article 47 of the Constitution.
4. An order of Certiorari to remove into this Court and quash the resolution/motion passed by the County Assembly of Nakuru on 10<sup>th</sup> July 2018.
5. Damages for trespass.
6. Costs of this petition.
7. Such order(s) as this Honourable Court shall deem fit and just to grant.

12. Petition No. 28 of 2019 is supported by an affidavit sworn by Kibwana Ali Kombo, the petitioner’s Group General Manager. He deposed that the petitioner is the registered owner of the parcel of land known as Land Reference Number 8266 Naivasha and annexed a copy of Certificate of Title and the deed plan. He rehashed the allegations of fact in the petition and added that it commissioned a survey to be carried out whose finding was that there is no public access road cutting through the property. The contents of the affidavit generally mirror the matters deposed to in the affidavits filed by the petitioners in ELC Petition No. 20 of 2019.

13. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents in ELC Petition No. 28 of 2019 responded to the petition through Notice of Preliminary Objection and affidavits sworn by the 3<sup>rd</sup> respondent. The Notice of Preliminary Objection sought striking out of the petition on the ground that it is an abuse of court process and that the 4<sup>th</sup> respondent lacks legal capacity to be sued. The contents of the affidavits mirror those of the affidavits of Paul Mworira Mukoma in ELC Petition No. 20 of 2019.

14. On his part, the 5<sup>th</sup> respondent responded to both petitions through a replying affidavit sworn by Joseph Malinda, the Clerk of the County Assembly of Nakuru. He deposed that the County Assembly of Nakuru is the legislative arm of the County Government of Nakuru. He added that the motion dated 10<sup>th</sup> July 2018 was passed within the assembly’s mandate under Article 185 of the constitution and that it is not within its mandate to notify the petitioners or other residents of the county about such a motion since motions are passed in the house where outsiders are not allowed. That once motions are passed, it is the duty of the county executive to engage the public on them. He added that the motion was in line with Article 40 since the suit properties are riparian land which is public land in terms of Article 67.

15. Pursuant to a consent recorded by the parties on 6<sup>th</sup> November 2019, the County Surveyor made a site visit to the suit properties and filed a report in court on 24<sup>th</sup> February 2020. The report was compiled by Mr J M Kariuki, a surveyor attached to the Department of Land, Housing & Physical Planning of the County Government of Nakuru. His findings were that there is no public beach between Land reference Numbers 10854/307 and 10854/309 and the lake and that there is no public access or corridor between Land reference Numbers 10854/307 and 8266.

16. Both petitions were canvassed through written submissions. The petitioners filed submissions dated 18<sup>th</sup> November, 2020, 30<sup>th</sup> November, 2020 and further submissions dated 22<sup>nd</sup> January 2021 and 25<sup>th</sup> January 2021. In the submissions dated 18<sup>th</sup> November, 2020 they argued that the 1<sup>st</sup> to the 3<sup>rd</sup> respondents in ELC Petition 28 of 2019 are the officials of the 1<sup>st</sup> respondent in ELC Petition 20 of 2019 and the 4<sup>th</sup> respondent in ELC Petition 28 of 2019, thus their inclusion in the suit has occasioned no prejudice and the court should therefore deem that the respondent has been properly sued. They relied on Article 159 (2) (d) and the case of **Eleri Company Ltd v Cornerstone Preparatory Association & Another [2016] eKLR**. Regarding the issue of whether there exists any access corridor within the suit properties and consequently whether the members of the White Eagle Self Help group are trespassers, they argued that they are the owners of the suit properties and that the survey report filed by the county surveyor demonstrates that there is no access corridor between the suit properties. They placed reliance on the cases of **Susan Mumbi vs Kefala Grebedhin (Nairobi HCCC No. 332 of 1993)** and **Jackson Kariuki Kahungura & Another v John Karanja Kihagi & 5 others [2018] eKLR**.

17. As to whether the motion passed by the County Assembly of Nakuru on 10<sup>th</sup> July 2018 should be quashed, they submitted that the 1<sup>st</sup> respondent relies on unsubstantiated proceedings which the petitioners were never made aware of and in which they never participated. They contended that the subjecting them to suffer the consequences of a decision that they were not a party to is not justiciable or a fair

administrative action. They relied on the case of **Mohammed Sheria & 2 others v Simon Kipkorir Sang & 5 others [2018] eKLR**. They therefore urged the court to allow the petitions with costs.

18. In the submissions dated 30<sup>th</sup> November 2020, the petitioner in ELC Petition 28 of 2019 reiterated that there exists no public access road cutting through L.R No. 8266 Naivasha onto the shores of Lake Naivasha. It referred the court to the title deed, the deed plan as well as its own survey report. It added that it has a right to enjoy the suit property without interference from the members of the public and placed reliance on the case of **Jackson Kariuki Kahungura & Another v John Karanja Kihagi & 5 others (supra)**.

19. It further argued that the motion passed by the County Assembly of Nakuru on 10<sup>th</sup> July 2018 was passed in disregard of constitutional requirements including public participation and in violation of its right to property as guaranteed under Article 40 of the Constitution and right to a fair administrative action under Article 47(1) of the Constitution. It placed reliance *inter alia* on **Abdul Samji Mohamed and another v Abdul Wadood Haidara [1972] eKLR**, and **Salim Addalla Bakshuwein v Minister of Transport and Infrastructure and 3 others [2004] eKLR**. It therefore urged the court to allow the petition with costs.

20. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents argued that the court should unpack the illegalities or negligence that have been committed by several agencies whose effect is that the petitioners have irregularly annexed riparian land that belongs to the public for their private use. They made reference to Articles 61(1), 66 (1) (2) and 69(1) (2) of the Constitution of Kenya and argued further that the 1<sup>st</sup> respondent was legitimately fighting for the fishing community in the area. That the court has power to declare that the access corridor cutting through LR Number 8266 Naivasha and LR Number 10854/307 and 309 is legitimate for use by the community and the public.

21. The 2<sup>nd</sup> respondent in petition 20 of 2019 in its submissions argued that the petitioners have not demonstrated any connection between it and the actions of the 1<sup>st</sup> respondent and that its inclusion in this matter was unnecessary. That the petitioners did not demonstrate any cause of action against it and that therefore this suit is an abuse of the court process. It relied on the case of **Vivian Muia v Mzoori Limited [2017] eKLR** where the court cited with approval the case of **County Council of Nandi vs. Ezekiel Kibet Rutto & 6 Others [2013] eKLR**.

22. The 5<sup>th</sup> respondent in Petition 28 of 2019 argued that it is not in dispute that on 10<sup>th</sup> July 2018 a motion was moved by Hon. Karanja Mburu for the County Government of Nakuru through the department of planning, trade and tourism to compel the hotels and other private facilities operating around Lake Naivasha to open up corridors to allow public access. He argued that he did not compel the petitioners to open up the lake corridors as alleged. That he and the County Government held a stakeholder meeting on 11<sup>th</sup> of October 2019, and that he exercised his mandate as per Article 1(3) (b) of the Constitution. He added that the motion did not violate the petitioners' rights under article 40 and 47 of the Constitution. Additionally, he argued that the prayer for certiorari is statute barred in view of section 9 (3) of the Law Reform Act, Order 53 rule 2 of the Civil Procedures Rules, 2010 and cannot thus be granted. He urged the court to dismiss the petition with costs.

23. I have carefully considered the petition, the affidavits and the submissions. The issues that arise for determination are whether there exists any public access road to the Lake Naivasha water front cutting through the petitioners' properties, whether the petitioners' rights have been violated as alleged and whether the reliefs sought should issue.

23. There is no dispute that the 2<sup>nd</sup> petitioner in ELC Petition No. 20 of 2019 is the registered owner of the parcel of land known as land reference number 10854/307 pursuant to a certificate of title issued to it on 21<sup>st</sup> May 2019. The said parcel measures about 58.31 hectares and its boundaries and abutments are delineated and described in Deed Plan Number 428968. The 3<sup>rd</sup> petitioner in ELC Petition No. 20 of 2019 is the registered owner of the parcel of land known as land reference number 10854/309 pursuant to a transfer registered in its favour on 21<sup>st</sup> August 2019. The parcel measures about 21.73 hectares and its boundaries and abutments are delineated and described in Deed Plan Number 428970. The 1<sup>st</sup> petitioner in ELC Petition No. 20 of 2019 operates a flower farm on land reference numbers 10854/307 and 10854/309.

25. On the other hand, the petitioner in ELC Petition 28 of 2019 is the registered owner of the parcel of land known as land reference number 8266 pursuant to a transfer registered in its favour on 19<sup>th</sup> December 2001. The parcel measures about 106 acres and its boundaries and abutments are delineated and described in Deed Plan Number 85732.

26. All the petitioners hold leasehold interests from the government of the Republic of Kenya. While the respondents have claimed that the petitioners' titles were obtained irregularly, the said titles have not been nullified and must therefore be accepted as valid. By virtue of their leasehold titles, the suit properties are private land as defined by **Article 64** of the **constitution**. As such, the petitioners are entitled to all the privileges and protection that the law grants to a registered proprietor of land under **Article 40** of the **constitution**.

27. The rights of a registered proprietor of land are further secured by **Section 24** of the **Land Registration Act, 2012** in the following terms:

**Subject to this Act—**

**a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and**

**b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.**

28. Although the respondents claim that there exists public access through the suit properties leading to the shores of Lake Naivasha, a perusal of the titles and the deed plans does not reveal any such access. Indeed, the report filed in court by the county surveyor confirms that

no such public access or corridor exists. I am therefore satisfied that there is no public access road to the Lake Naivasha water front cutting through the petitioners' said properties.

29. There is equally no dispute that on 10<sup>th</sup> July 2018, the County Assembly of Nakuru passed a motion that "the County Government through the department of Planning, Trade and Tourism compel the hotels and other private facilities operating around Lake Naivasha to immediately open up corridors to the lake to allow public access". The 5<sup>th</sup> respondent in ELC Petition 28 of 2019 confirmed as much in the replying affidavit filed on his behalf.

30. The 5<sup>th</sup> respondent further took the position that the motion was passed within the assembly's debating chamber and that it was not within the assembly's mandate to notify the petitioners of the motion since motions are passed in the house where outsiders are not allowed. While it may be correct that only members of the house may participate in debates within the house, it must be remembered that the county assembly is a creature of the constitution under **Article 176 (1)** thereof.

31. Pursuant to **Article 2** of the **Constitution**, the constitution is the supreme law of the land and binds all persons and all state organs including the county assembly. Thus, in all its activities, the County Assembly of Nakuru is bound by the national values and principles of governance which are spelt out under **Article 10**. These include the rule of law, participation of the people, inclusiveness, human rights, transparency and accountability. Additionally, the assembly must be alive to the protection of right to property accorded under **Article 40 (1)** as well as the specific provisions of **Article 40 (3)** which provides:

**(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation -**

**(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or**

**(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that –**

**(i) requires prompt payment in full, of just compensation to the person; and**

**(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.**

32. Further, under **Article 21** it is the duty of the county assembly and indeed the entire county government to observe, respect, protect, promote and fulfil the protection of right to property as well as the right to a fair hearing under **Article 50** and the right to fair administrative action under **Article 47**. Thus, it was incumbent upon the 5<sup>th</sup> respondent to find ways of ensuring that the supreme law of the land is upheld by affording the petitioners who are registered proprietors an opportunity to be heard prior to passage of such a motion with far reaching adverse consequences on their rights. Such a hearing could be achieved by for example inviting them to submit written memoranda for consideration prior to passage of the motion. From the material on record, it is apparent that all attempts to engage the petitioners were made long after passage of the motion. It seems that those attempts were focused on implementation of the motion as opposed to taking into account the petitioners' views as to whether such a motion should have been passed in the first place. I am satisfied that the petitioners' rights were violated.

33. The 2<sup>nd</sup> respondent in Petition No. 20 of 2019 argued that it had no role in passage of the motion and cited separation of powers between it and the 5<sup>th</sup> respondent. Suffice it however to point out that **Article 176 (1)** county governments consist of a county assembly and a county executive. Thus, there is only one county government albeit with two arms. It is also important to note that the motion stated on its face that it was to be implemented by the county government through its department of Planning, Trade and Tourism.

34. It was argued that the prayer for certiorari is statute barred in view of **section 9 (3)** of the **Law Reform Act** and **Order 53 rule 2** of the **Civil Procedures Rules, 2010** and that it cannot therefore be granted. That argument cannot hold. Essentially, the petitioners have moved this court under **Article 22 (1)**. The reliefs which this court can grant in such proceedings include an order of judicial review, as specified under **Article 23 (3)**. The constitution does not impose any limit as to time within which an order of certiorari can be sought in a constitutional petition. In any case, it is not permissible to seek to curtail an express constitutional provision on the basis of a statutory provision.

35. In Petition No. 20 of 2019, the petitioners have sought a declaration under prayer (ii) that Land Reference No. 10854/307 and 309 belong to them. The proceedings herein are not about determining ownership of the said properties *in rem*. If I were to grant such a declaration, the order may affect other persons who are not parties to these proceedings. I will thus limit the declaration to only the parties to these proceedings.

36. In the result, I make the following final orders:

**1. In Petition No. 20 of 2019, I enter judgment in favour of the petitioners as follows:**

**a. It is hereby declared that the petitioners' fundamental rights to the protection of their property and from arbitrary interference thereof as well as their right to a fair administrative action and to a fair hearing were infringed;**

**b. It is hereby declared that as between the petitioners and the respondents, proprietary rights pertaining to the property known as Land Reference No. 10854/307 and 309 belong to the petitioners free from any interference except**

as provided for in law.

c. A permanent injunction is hereby issued restraining the respondents by themselves, their agents, servants and/or any other person acting on their behalf from occupying, trespassing, encroaching, utilizing, and interfering with the petitioners' quiet possession or in any other way dealing with the land parcel number 10854/307 and 309 save as provided by law.

**2. In Petition No. 28 of 2019, I enter judgment in favour of the petitioner as follows:**

a. It is hereby declared that there is no public access road to the Lake Naivasha water front cutting through the petitioner's property.

b. A permanent injunction is hereby issued restraining the respondents whether by themselves, their employees, followers, servants, and/or agents, or whomsoever purporting to be a member of the 4<sup>th</sup> respondent from trespassing or encroaching on the petitioner's property being L. R No. 8266 Naivasha, entering thereon and committing any acts of waste or damage or in any way purporting to alienate the said property in any manner whatsoever.

c. It is hereby declared that the resolution/motion of the County Assembly of Nakuru passed on 10<sup>th</sup> July 2018 seeking to compel hotels to open up public access corridors around Lake Naivasha is unlawful and unconstitutional as it violates the petitioner's right to property as enshrined under Article 40 of the Constitution and a violation of the petitioner's right to fair administrative action as enshrined under Article 47 of the Constitution.

d. An order of certiorari is hereby issued removing into this court and quashing the resolution/motion passed by the County Assembly of Nakuru on 10<sup>th</sup> July 2018.

**3. The petitioners in the respective petitions shall have costs of the respective petitions.**

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 24<sup>TH</sup> DAY OF JUNE 2021.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Opondo for the petitioners in Petition 20 of 2019

Mr Ochieng for the petitioner in Petition 28 of 2019

No appearance for the 1<sup>st</sup> respondent in Petition 20 of 2019

Ms Litunda holding brief for Mr Kinuthia for the 2<sup>nd</sup> respondent in Petition 20 of 2019

No appearance for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in Petition 28 of 2019

No appearance for the 4<sup>th</sup> respondent in Petition 28 of 2019

Mr Lusiola for the 5<sup>th</sup> respondent in Petition 28 of 2019

Court Assistants: B. Jelimo & J. Lotkomoi