

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC PETITION NO. 7 OF 2024

(FORMERLY NAKURU CONSTITUTIONAL PETITION ELC 4 OF 2023)

**ESTHER WAMBUI MUNGAI (Suing in her capacity as the
Administrator of the Estate of MUNGAI ITHARA (DECEASED))**

.....1ST PETITIONER

**ANDREW KARANJA MUIGAI.....2ND
PETITIONER**

**BOSCO A. MWANGI NJUGUNA.....3RD
PETITIONER**

JOSEPH NJOROGE MWANGI.....4TH PETITIONER

**GEORGE MWANGI GICHIMU.....5TH
PTITIONER**

JOHN MWANGI MAINA (Suing on his own behalf

and in his capacity as the Administrator of the Estate of

**NDANI NJUI (DECEASED).....6TH
PETITIONER**

LILIAN NJERI.....7TH PETITIONER

**LILIAN WAMBUI.....8TH
PETITIONER**

**GABRIEL WAIGANJO KIAMA (Suing in his capacity as the
Administrator of the Estate of KIAMA NGUGI (DECEASED)).....**

.....9TH PETITIONER

**CATHOLIC DIOCESE OF NAKURU.....10TH
PETITIONER**

**THE PRESBYTERIAN FOUNDATION.....11TH
PETITIONER**

**MWEGA FARMERS CO-OPEATIVE SOCIETY LTD.....12TH
PETITIONER**

MWEGA FARMERS WATER PROJECT REPRESENTED BY:

FRANCIS K. NGANGA (Chairman), SONNY M. KINYANJUI (SECRETARY)

**and JACINTA K. NGUTHUKO (Treasurer).....13TH
PETITIONER**

MWEGA POLYTECHNIC REPRESENTED BY:

FRANCIS K. NGANGA (V. Chairman), ANDREW K. MUIGAI

**(SECRETARY) and LILIAN WAMBUI THUO (Treasurer).....14TH
PETITIONER**

VERSUS

**DAVIS KAMONJO KABIRU.....1ST
RESPONDENT**

**NATIONAL LAND COMMISSION.....2ND
RESPONDENT**

**THE ATTORNEY GENERAL.....3RD
RESPONDENT**

IN THE MATTER OF ARTICLE 22 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF VIOLATIONS OR INFRINGEMENT OF
CONSTITUTIONAL RIGHTS OF THE PERSON TO WIT; ARTICLE 40 AND
ARTICLE 50 (1) OF THE CONSTITUTION OF KENYA.**

JUDGMENT

1. Vide a Petition dated the 22nd November, 2023, the Petitioners herein sought from court the following orders;

- i. It be declared that the revocation of the Petitioners' registration as the owners of and entitled to suit properties being all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533 by the 2nd Respondent violates the Petitioners' constitutional rights to protection of private property under Article 40 of the Constitution of Kenya.
- ii. It be declared that the revocation of the Petitioners' registration as the owners of and entitled to the suit properties being all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533 by the 2nd Respondent violates the Petitioners' right to fair hearing under Article 50(1) of the Constitution of Kenya.
- iii. It be declared that the revocation of the Petitioners' registration as the owners of and entitled to the suit properties being all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533, was and is without a legal basis.
- iv. A permanent injunction be granted to restrain the 1st and 2nd Respondents by themselves, their servants and/or agents from violating the Petitioners constitutional rights guaranteed under the Constitution of Kenya by depriving the Petitioners of their property being their rights to all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533, and or entering in to remain upon, committing acts of waste,

equitable or otherwise, laying claim over or trespassing thereon without the Petitioners' consent.

- v. A permanent injunction be granted to restrain the 1st and 2nd Respondents by themselves, their servants and/or agents from violating the Petitioners constitutional rights guaranteed under the Constitution of Kenya by making any claim of ownership of the Petitioners' property being all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533, or seeking to limit or restrict the Petitioners' enjoyment of the said properties.
 - vi. A mandatory injunction compelling the 2nd Respondent to cancel the purported revocation of the Petitioners' registration as the owners of all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533, and to compel the 2nd Respondent to revoke the directive.
 - vii. The Respondents do pay the costs of the Petition.
2. The Petition was supported by an Affidavit of equal date sworn by Andrew Karanja Muigai and Gabriel Waiganjo Kiama, the 2nd and 9th Petitioners respectively wherein it had been deponed that Gabriel Waiganjo Kiama was the administrator of the Estate of the late Kiama Njugi who had died intestate on the 30th October 1999 wherein a grant of letters of Administration had been made to him by the Chief Magistrate Court at Naivasha on the 12th August, 2021 in Naivasha Chief Magistrate's Court Succession Cause No. 206 of 2019.
 3. That at all times material to the instant Petition, the Petitioners were the legal and registered owners of but all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533 (suit properties).

That they were entitled whether in their own capacity as described or in the capacity stated as the Administrators, Legal Representatives and Successors, in title of the deceased persons or as representatives of the various organizations named.

4. That the present Petition had originated from the illegal decision by the 2nd Respondent to revoke their titles of ownership to the suit Properties situated in Mwega area of Naivasha East Location, Naivasha Sub County within Nakuru County and which decision had been transmitted to them vide a letter dated 9th April, 2019 from M/S Omwoyo Masese & Company Advocates herein annexed as GK/AKM 4a and 4b.
5. They deponed that the suit properties were utilized for various purposes including; worship centers, schools, community water point, commercial, residential as well as agricultural purposes.
6. That without the locus standi, power or authority to do so, the 1st Respondent had purported to lay claim to their properties on behalf of an amorphous, unidentified and unknown community, wherein he had falsely and deceptively lodged a complaint with the 2nd Respondent over the said properties that their titles be cancelled as the Petitioners were not entitled to the same.
7. That subsequently, without any power or authority, the 2nd Respondent had revoked the Petitioners' right, interest and entitlement to and over the suit properties contrary to the provisions of Article 40 of the Constitution thus depriving the Petitioners their right to own and enjoy the suit properties.
8. That without notice to the Petitioners, the Respondents had held a meeting to hear and determine cases thus depriving the Petitioners an opportunity to be heard, which was contrary to the provisions of Article 50 (1) of the Constitution. The Respondents then directed the Registrar of Lands Naivasha, to implement their illegal and improper directives.
9. That from the titles herein attached and information given herein, it was clear that the suit properties had been put to the correct planned land use.

10. That despite having received a letter from their Advocate dated 6th September, 2019 inquiring more information about their decision, the said letter has gone answered to date.
11. Their conviction was that their rights to the suit properties were protected by the provisions of Article 40 of the Constitution for which they could not be deprived of the same unless the Respondents had established that they had acquired the same unlawfully.
12. There was no response to the Petition despite service having been effected upon the Respondents.
13. In the pendency of the petition, the court was informed that the 1st Respondent is deceased wherein pursuant to the Notice of Withdrawal dated 10th June, 2024, the Petition against the 1st Respondent (Deceased) had been withdrawn.
14. On 23rd September, 2024, directions were taken for the disposal of the Petition by way of written submissions, wherein only the Petitioners complied and after summarizing the factual background of the matter, framed their issues for determination as follows:
 - i. Whether the Petitioners' titles to parcels of land No. Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533 were valid.
 - ii. Whether the Petitioners are entitled to the orders sought in the Petition.
 - iii. Who bears the costs of the Petition?
15. On the first issue for determination, the Petitioners placed reliance in the decided case of **Anarita Karimi Njeru vs The Republic [1979] eKLR 154** to submit that the Certificate of Official Searches on the suit properties was evidence enough to prove the status of the suit properties, ownership, any encumbrances and whether there were any pending disputes on the suit properties. That the said Certificates of Official Search had affirmed that they had absolute title in the suit properties as at the

time of the search which had been conducted on the 22nd November, 2022.

16. That despite being aware of the instant matter, wherein they had been served severally, the 2nd Respondent had not offered any information with regard to the revocation of the titles to the suit properties and had deliberately chosen not to take part in the prosecution of the instant suit despite having issued notice pertaining the revocation of the suit properties wherein they had not given the Petitioners an opportunity to defend the legitimacy of their title.
17. They hinged their reliance on the provisions of Section 26(1) of the Land Registration Act to submit that whereas the same had outlined the grounds that ought to be fulfilled before titles could be revoked, the 2nd Respondent had failed to fulfil any of the said requirements prior to revoking the titles to the suit properties. That further, the 2nd Respondent's lack of timely prosecution of the instant case had been a clear indication that raised significant concerns about the validity of their actions. That subsequently, the court must uphold the rule of law with regard to the Petitioners' rights as registered proprietors, pursuant to the provisions of Section 25 of the Land Registration Act, 2012.
18. In further reference to the provisions of Article 40 (6) of the Constitution and Section 26 (1) (a) of the Land Registration Act, they submitted that before any order could be issued under the said provisions declaring that a title to the land had been acquired through fraud, misrepresentation, or illegality, and was thus not protected by the Constitution, it was essential to demonstrate the said fraud, misrepresentation or illegality in the acquisition of the property to the necessary legal standard.
19. That it was thus clear that the 2nd Respondent had not met the said critical requirement since the allegations of fraud and illegality surrounding the acquisition of the suit properties ought to have been substantiated through proceedings initiated by the Government, following the appropriate civil procedure for filing actions before the court. That

without the said legal framework, the claimed had remained unproven and lacked the foundation needed for judicial consideration.

20. Reliance was also placed on the decided case of **Munyu Maina v Hiram Gathiha Maina Civil Appeal No. 239 of 2009** to submit that the issue herein being the ownership of the suit properties, whether the 2nd Respondent had the authority to revoke the Petitioners' titles. That by providing original titles to prove ownership, the Petitioners had fulfilled all other requirements to establish their ownership. That the official search had confirmed that they were the rightful owners of the suit properties, thus reinforcing their claim and providing clear evidence of their legal standing.
21. Further reliance was placed on the provisions of Section 107 of the Evidence Act to submit that they had demonstrated clearly that they had maintained actual, physical and absolute possession of the suit properties thus affirming their rightful ownership of the same. That in any case, they had also met the criteria for establishing adverse possession over the suit parcels of land as provided for by the provisions of Section 38 of the Limitation of Actions Act.
22. They reiterated that they had become aware of the 2nd Respondent's intention to revoke ownership of their titles on 9th April, 2019 through a Notice for Revocation of Titles that had alleged that they had illegally acquired their titles. That whereas under Article 67 of the Constitution the 2nd Respondent was vested with the power to revoke a title, yet the provisions of Article 40 of the Constitution prohibited deprivation of property by the state through arbitrary means.
23. The Petitioners further submitted that the 2nd Respondent had not followed the established procedure for revocation of title as they had failed to notify the Petitioners of the intended revocation and the grounds for it thus denying the Petitioners an opportunity to respond or rectify any issue. That further, the 2nd Respondent did not properly file an application detailing the reasons for revocation, or conduct the necessary investigation. That subsequently, no formal decision had been issued

regarding the revocation neither were the Petitioners given the chance to appeal the said decision to the Environment and Land Court.

24. That the failure to adhere to the due process had called into question the legitimacy of the revocation attempt. That the said decision to revoke the titles to the suit properties was contrary to the rules of natural justice just as had been evidenced by the 2nd Respondent's failure to file a response in court to show that a lawful procedure had been followed.
25. The Petitioners thus urged the court to find that they held regularly obtained titles, they had proved that they were the absolute proprietors of title to parcels of land Nos. Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533 and that the 2nd Respondent acted outside its jurisdiction when it revoked the said titles which was a breach of the rules of natural justice.
26. That the court also finds that that had been denied their constitutional right to fair administrative action contrary to the provisions of Article 47 (1) of the Constitution which then rendered the said revocation unconstitutional.
27. On the second issue for determination as to whether they were entitled to the orders sought in the Plaint, it was the Petitioners' submission that pleadings must be specifically pleaded and that a party must endeavor to seek clear and specific orders because court orders were not issued in vain. Reliance was placed in the decided case of **Kiprotich Arap Chepkwony v Simion Langat & 3 others Civil Suit No. 13 of 2011** to submit that they had convincingly established their case, and therefore they deserved to be granted the prayers sought in the Plaint dated 22nd November, 2022.
28. That the arguments presented rested upon the failure of the 2nd Respondent to adhere to the established revocation procedure and the Petitioners' solid claim of adverse possession coupled with their registered title.
29. That in any case, the Petitioners were in possession of registered titles which served as prima facie evidence of their ownership hence the said

titles should be respected and protected under the law and any attempt to revoke them without following due process would be both unlawful and unjust. That the official search that confirmed the ownership had further corroborated their claims and reinforced the legal standing of their title. They thus urged the court to grant the orders sought in the Petition herein.

30. On the issue of costs of the suit, they placed reliance on the provisions of Section 27 of the Civil Procedure Act submit that costs followed event and having proved their case on a balance of probabilities, costs be awarded to them.

Determination

31. I have considered both the contents of the Petitioner's Petition and their submissions and although the Petition was undefended, yet it is trite that even where a claim is undefended the burden was still upon the Petitioners to prove their case as was stated by the Court of Appeal in **Karugi & another v Kabiya and 3 others 1983 (eKLR)**. It was therefore upon the Petitioners to demonstrate to this court that they were entitled to the orders sought.

32. In **Anarita Karimi Njeru vs The Republic [1979] eKLR** the court held that:

"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 a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."

33. Having reviewed the Petition and supporting affidavit, I find that the Petitioners have set out with a reasonable degree of precision that their Constitutional rights envisaged under Article 40 and 50 (1) of the

Constitution had been violated by the Respondents to wit that after having been registered as the proprietors of all those parcels of land known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533, they came to learn through a letter dated 9th April, 2019 from M/S Omwoyo Masese & Company Advocates that the 2nd Respondent had illegally made a decision to revoke their titles of ownership to the suit Properties situated in Mwega area of Naivasha East Location, Naivasha Sub County within Nakuru County without giving them an opportunity to be heard.

34. The Petitioners' complaint was that the revocation of their titles had been done contrary to the provisions of Article 40 of the Constitution thus depriving them their right to own and enjoy the suit properties.

35. That secondly, the said revocation had been done pursuant to a meeting wherein the Petitioners were not notified thus depriving them an opportunity to be heard, which was contrary to the provisions of Article 50(1) of the Constitution.

36. Their conviction was that their rights to the suit properties were protected by the provisions of Article 40 of the Constitution for which they could not be deprived of the same unless the Respondents had established that they had acquired the same unlawfully, which evidence had not been brought forth.

37. I therefore find the issues for determination as follows;

- i. Whether the National Land Commission had jurisdiction to direct revocation of the Petitioners' certificate of title.
- ii. Whether the Petitioners were granted a fair hearing during the process of review.

38. The provisions of Article 40 of the Constitution provide as follows;

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

(a) of any description; and

(b) in any part of Kenya.

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

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

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

(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.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

39. In the case of **R vs Chief Immigration Officer (1976) 3 AER 843** Lord Denning stated this regarding the Universal Declaration of Human Rights;

"... Among the important rights which individuals traditionally have enjoyed is the right to own property. This right is recognized in the Universal Declaration of Human Rights (1948). Article 17(1) which states that everyone has the right to own property and Article 17(2) guarantees that "no one shall be deprived of his property"

40. Article 40(1) of the Constitution sets out the general right of every Kenyan to acquire and own property. The thrust of Article 40 of the Constitution is to protect proprietary rights under the law which rights are governed by statutes, for example, in this case, the Land Registration Act and Land Act which statutes are clear that once a title is issued under the Act, the holder thereof acquires an indefeasible title which cannot be taken away except in accordance with the Constitution and the law as was held in the case of **Wreck Motors Enterprises v The Commissioner of Lands and Others [1997] eKLR**.

41. The Petitioners had justified their claim of ownership to their respective plots by annexing certificates of search dated the 22nd November 2022 which showed that although the titles had been registered prior to themselves and/or their representatives, the said titles now had inhibitions/cautions and or restrictions pursuant to the National Land Commission's report that had advised for the review of the parcels of land which were meant for public utility.

42. Article 67(2) of the Constitution stipulates the functions of the National Land Commission as follows:

- a. *to manage public land on behalf of the national and county governments;*
- b. *to recommend a national land policy to the national government;*
- c. *to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;*
- d. *to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;*
- e. *to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;*
- f. *to encourage the application of traditional dispute resolution mechanisms in land conflicts;*
- g. *to assess tax on land and premiums on immovable property in any area designated by law; and*
- h. *to monitor and have oversight responsibilities over land use planning throughout the country.”*

43. Article 67(3) also stipulates as follows:

“The National Land Commission may perform any other functions prescribed by national legislation.”

44. The National Land Commission Act 2012, was enacted to give effect to the provisions of Articles 67 and 68 of the Constitution wherein additional functions were conferred upon the National Land Commission.

45. In **Republic -vs- National Land Commission Ex-parte Holborn Properties Ltd (2016) eKLR**, Justice Angote delivered himself as follows:-

“Although the Constitution has defined private land to consist land registered under any freehold or leasehold

tenure, and whereas Section 14(1) of the National Land Commission Act gives the Respondent the power to review all grants or disposition of public land, it follows that such review can only entail land that has been converted from public land to private land.

I say so because the Respondent cannot review what is still, according to the records, public land. One must have acquired land that was initially public land and (was) issued with a title document, either as a freehold or leasehold, for a review to be done.

It is therefore not true that once land falls under the purview of the definition of "private land", the same cannot be reviewed. Indeed, it is only such parcels of land that can be reviewed by the Respondent with a view of recommending to the Registrar to revoke the title."

46. Section 14 (1) of the National Land Commission Act thus provides as follows;

"Subject to Article 68(c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality."

47. The date of commencement of the National Land Commission Act is indicated as 2nd May 2012 meaning that all reviews under Section 14(1) of Grants and Dispositions of Public Land including the publications and determinations thereof, were to be completed within five years which would be the 2nd May 2017.

48. The Land Commission (Review of Grants and Dispositions of Public Land) Regulations, 2017 published in Legal Notice No.71 of April 21, 2017 provided for the following procedure in Regulation 28(2) and (3):

“2. Where the Commission finds that a grant or disposition was unlawfully acquired, the Commission may—

a. direct the Registrar to revoke the title within thirty days in Form NLC04 set out in the First Schedule; and

b. make any other orders as the Commission deems necessary.

3. The Commission shall publish a notice of the revocation—

a. in the Gazette; or

b. in two newspapers with nationwide circulation; or

c. on the parcel of land.”

49. In the instant case and pursuant to the Petitioners’ annexure marked as GK/AKM 4b, the Commission had received a complaint from the deceased Davies Kamonjo Kabiru on behalf of Mwega community in Naivasha that parcels of land that had been set aside for public utilities had been illegally allocated to unknown individuals contrary to the reserved user wherein he had requested the Commission to review the grants under the law and revert the parcels back for public use.

50. Consequently, the Commission summoned both parties who made their presentation and it made the following findings;

-That Naivasha/Maraigushu Bloc 8(Mwega) known as LR No. 137/2 measured approximately 367 hectares as a leasehold property.

-M/s Kamwere & Company associates of P.O. Box 46066 applied for a subdivision of LR No. 8137/2 in 1984 into 495 agricultural Holdings and change of User to 2 Nursery Schools, 1 Technical School, A cattle Dip, 2 Dams, One Corner Shop, A trading Centre, 2 Churches, Water point and health Centre.

-The proposal was considered at the 63rd Central Authority meeting held on 2nd August 1985 and was approved subject to the following conditions;

-The Plots for the Nursery School, Cattle Dip, the Dams, the Water Point and a health Centre were being surrendered to the Government free of Cost.

-The Change of user to a technical school being implemented 'by a way of a surrender of subplots to the Government in exchange for 99 years lease at an annual rent to be assessed by the Commissioner of Lands and also subject to the special conditions.

- The shopping Centre plot be surrendered to the Government in exchange of 99 years lease at annual rent to be assessed by the Commissioner of Lands and also subject to the special conditions.

-The head title being surrendered to the Government in exchange for free hold titles in respect of the Agricultural subplots and the church plots

-The Corner shop plot being surrendered to the Government in exchange for a new lease for a term of 99 years at annual rent to be assessed by the Commissioner of Lands and also subject to the special conditions.

51. The Commission then made the following determination

'In view of the above findings and perusal of documents held at the Ministry of Lands & Physical Planning and

submissions by the Parties, the Commission determines as follows;

-Naivasha/Maraigushu Block 8 (Mwega) originally LR No. 8137/2 was indeed surrendered to the Government of Kenya after an application for sub division into 495 Agricultural Holdings and Change of User.

-The Chief Land Registrar is hereby directed that the Listed Plots reserved as public utilities be revoked and reinstated to their originally reserved use to serve the Community.

a. Naivasha/Maraigushu Block 8/217-Corner Shop

b. Naivasha/Maraigushu Block 8/225-A public Nursery School

Naivasha/Maraigushu Block 8/416-trading center

Naivasha/Maraigushu Block 8/449-technical school

Naivasha/Maraigushu Block 8/450-Public Nursery school

Naivasha/Maraigushu Block 8/453-a water point''

52. There has been no evidence brought forth showing that there had been any publication in the Gazette Notice, newspaper of wide circulation or on the parcels of land of the revocation of the Petitioners' titles. Secondly the said determination by the 2nd Respondent had been made on the 21st January 2019, meaning that by this time its mandate had expired as it had been made outside the time limits set by Section 14(1) of the National Land Commission Act wherein the evidential burden then shifted to the 2nd Respondent to demonstrate that it indeed completed the process of review with respect to the suit properties and made its determination before 2nd May 2017. No such explanation was adduced as the 2nd Respondent chose not to participate in the prosecution of the Petition despite service.

53. The Court of Appeal in **Likizo Limited v Nasib Kashuru Limited & 5 others (Civil Appeal E005 of 2020) [2023] KECA 1314 (KLR) (10 November 2023) (Judgment)** held as follows;

''The substantive implications of non-compliance with the time limits in section 14(1) of the Land Commission Act

consequently, are that not only did the 2nd respondent act unlawfully, but also outside the scope of its powers and therefore without jurisdiction. It is notable in this respect That section 14 (1) made it mandatory that the review be undertaken within five years of the commencement of the Act, and this interpretation is supported by the fact this section 14(9) required the 2nd respondent to petition Parliament to extend the period for undertaking the review specified where it was necessary. Therefore, any action made outside the five-year period and without extension of time is unlawful and ultra vires. It is therefore our finding that the 2nd respondent's determination on propriety of the appellant's and 1st respondent's title with respect to the suit property contained in Gazette Notice No. 6866 was published after the expiry of the 2nd respondent's mandate to review grants and dispositions of public land and without jurisdiction, was therefore unlawful and null and void.

.....having found that the 2nd respondent had no jurisdiction to make the determination on the suit property, the substantive findings of the learned trial Judge as to the propriety of the 2nd respondent's determination also fall by the wayside. Arising from our findings on the 2nd respondent's lack of jurisdiction, we do not find it necessary to address the second issue as to whether the appellant was granted a fair hearing during the process of review, as the effect would be to cloth the process with legitimacy."

54. As the Court of Appeal found that once it had been established that the 2nd Respondent's recommendation was time barred and therefore it lacked jurisdiction, its recommendations were null and void ab initio, in this regard it is not necessary to address the second issue as to whether the Petitioners were granted a fair hearing during the process of review.
55. In the end, I find in favour of the Petitioners' Petition herein as follows;

- i. The Petitioners are herein reverted back to the position they were before the determination by the 2nd Respondent.
- ii. An order of injunction is hereby issued prohibiting the 2nd Respondents by themselves, servants, agents or whatsoever authorized on their behalf from giving effect or implementing in any manner whatsoever the determination in relation to the property known as Naivasha/Maraigushu Block 8/217, 225, 226, 449, 450, 451, 453, 522, 523, 524, 525, 526, 527, 528, 530, 531, 532 and 533, contained in the determination dated 21st January 2019 by the Vice Chairperson and Head of Review of Grants and dispositions of the National Land Commission.
- iii. Costs to the Petitioners

Dated and delivered via Microsoft Teams at Naivasha this 23rd day of January 2025.



M.C. OUNDO

ENVIRONMENT & LAND - JUDGE