



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

CONSTITUTIONAL PETITION NO. 12 OF 2019

IN THE MATTER OF THE INTENDED ILLEGAL DEMOLITION OF 250 MODERN ENTREPRENEURIAL MARKET STALLS (KIOSKS) WITHIN ISIOLO TOWN CBD BY THE ISIOLO MUNICIPALITY

BETWEEN

HELLEN MUTHONI KABENGI.....1ST PETITIONER
LEAH W. WARUINGE.....2ND PETITIONER
JOHN KAMAU.....3RD PETITIONER
REGINA KAJUJU KIMENCU.....4TH PETITIONER
SULTAN YUSUF.....5TH PETITIONER
SADIA HALAKE GALGALO.....6TH PETITIONER
JOHN MBOGO GITHINJI.....7TH PETITIONER
ISAYA NTONGAI.....8TH PETITIONER
HASSAN ROBA.....9TH PETITIONER
DAVID MURAGE KABAIBU.....10TH PETITIONER
JOHN KATHERU KIMENCU.....11TH PETITIONER
STEPHEN NTOGAI.....12TH PETITIONER
DAVID MWIRIGI.....13TH PETITIONER
JOHN GITAHL.....14TH PETITIONER
CHARITY GATEI MURIIRA.....15TH PETITIONER
SAMSON MUTUMA.....16TH PETITIONER
SARAH BENSON.....17TH PETITIONER
BERNARD MAINGI.....18TH PETITIONER
NATHIFO MOHAMED.....19TH PETITIONER
FATUMA BONAYA SAMA.....20TH PETITIONER

JAMILA GUYO.....21ST PETITIONER

VERSUS

MUNICIPAL MANAGER, ISIOLO MUNICIPALITY.....1ST RESPONDENT

ISIOLO MUNICIPAL BOARD.....2ND RESPONDENT

COUNTY GOVERNMENT OF ISIOLO.....3RD RESPONDENT

AND

CENTRE FOR YOUTH LINKAGES AND

EMPOWERMENT PROGRAMMES.....1ST INTERESTED PARTY

SPRING CHASE SERVICES LIMITED.....2ND INTERESTED PARTY

JUDGMENT

Summary of Facts

Vide a Petition dated 22nd May 2019, the 21 Petitioners filed the present petition against the Respondents in relation to the threatened demolition of 250 modern market stalls within Isiolo town. The Petitioners were apprehensive that the scheduled demolitions were decided upon without due public participation therefore jeopardizing their right to property and to fair administrative action. The Petitioners base their claim on a memorandum of understanding concluded between the Isiolo County

Government, the 3rd Respondent and the 1st Interested Party, Centre for Youthful Linkages and Empowerment Programmes, dated 16th May 2016. Under the memorandum, the 1st Interested Party agreed to set up 250 modern market stalls within Isiolo town on a Built Operate Transfer model (BOT) while the Isiolo County Government on the other hand undertook to provide the 1st Interested Party with a non-irrevocable seven (7) year lease, with a renewable clause, of the portion of land upon which the market stalls would be erected. The memorandum further provided that the 3rd Respondent would be entitled to 20% of the monthly collections for the 7 years' duration of the project. The market stalls were put up and the Petitioners herein moved into the stalls as tenants of the 1st Interested Party. It is the Petitioners' account that they were each allocated a market stall for Ksh. 5,000 and that since 2016, they had been paying rent to the 1st Interested Party. They recount that in August of 2018, they were directed by officials of the 3rd Respondent to make their payments to the 2nd Interested Party and that since then, they have been making a monthly payment of Two Thousand Shillings (Ksh.2,000).

That on 17th May 2019, the Petitioners were served with two conflicting notices. The first advising a relocation of the market stalls (kiosks) to the available spaces in the fisheries market space and the Barraza Park to allow for the construction and upgrading of urban access roads following a funding of the project from the World Bank. The notice gave 21 days for the relocation. The second notice provided a 24-hour period for the removal of illegally constructed kiosks within Isiolo CBD. It was on this basis that the Petitioners mounted the petition for fear of losing their livelihoods through the threatened demolition of the market stalls. The Petitioners thus prayed for the following orders:

- a. That a declaration be issued to the effect that the two notices issued by the 1st Respondent ordering demolition and eviction of the Petitioners from the 250 modern stalls within Isiolo CBD is illegal, contravenes the provisions of the Constitution, the County Government Act, and the Urban Areas & Cities Act and is therefore unconstitutional and void ab initio;
- b. That an order be issued prohibiting the Respondents from demolishing and or evicting the Petitioners from the Modern Entrepreneurial Market Stalls (kiosks) within Isiolo CBD that were legally put up in 2016 through a Memorandum of Understanding executed between the 1st Interested Party and the 2nd Respondent on a Build Operate Transfer (BOT) model;
- c. That an order be issued compelling the Respondents to strictly adhere to the provisions of the Constitution, the County Government Act, and the Urban Areas & Cities Act in the Isiolo town planning;
- d. That the costs of the petition be borne by the Respondents;
- e. Any other relief or order that this court may deem fit in the special circumstances of this matter.

The Petitioners by a notice of motion made an application for conservatory orders, which orders were granted by the court on 22nd May 2019. The orders restrained the Respondents whether by themselves, their servants, agents and/or any other person(s) acting through the Respondents from demolishing and or evicting the Petitioners from the 250 Modern Entrepreneurial Market Stalls (kiosks) within Isiolo town CBD that were legally put up in 2016 through a Memorandum of Understanding between the 1st Interested Party and the 2nd Respondent on a Build Operate Transfer (BOT) model pending *inter-partes* hearing.

The 1st Respondent filed his replying affidavit on the 3rd of June 2019. He avers that contrary to the Petitioners' assertions, there was public

participation prior to the issuance of the notices for relocation and demolition. The public participation documents including the minutes of the stakeholder's workshop held on 5th April 2019, list of attendees to the meeting and accompanying photographs, marked OH1 were availed. In addition, the 1st Respondent avers that there were two radio advertisements of the proposed upgrading of the urban roads within Isiolo town, carried on Radio Shahidi and Ange. Copies of the invoices for the two radio advertisements, dated 21st May 2019 and 6th March 2019 were also availed. In relation to the Memorandum of Understanding underpinning the Petitioners' argument, the 1st Respondent averred that the same was neither executed by the 1st Interested Party nor the 3rd Respondent and that it was therefore null and void. The 1st Respondent further pointed out that the World Bank had undertaken to fund the town upgrade project to the tune of Ninety-Three Million Shillings (Ksh. 93,000,000) under strict condition that the project would be completed within six (6) months, commencing the 16th of June 2019. In relation to the conflicting notices, the 1st Respondent avers that the notices were addressed to two different groups; those whose structures were legally erected (who were required to relocate to the Fisheries Market and the Barraza Park) and those whose structures were illegal (warning them of the impending demolition in the event that the same were not removed by the 17th of June 2019).

On 16th July 2019, the 1st Petitioner filed a supplementary affidavit reinforcing the fact that no public participation was carried out in relation to the demolition of the market stalls.

On the 17th of June 2019, the 1st Respondent made an application to set aside the conservatory orders handed down by the court on 22nd May 2019. On 25th September 2019, a ruling was delivered on the application. The ruling found that the Petitioner's application of 22nd May 2019 lacked merit and therefore discharged the temporary conservatory orders issued on even date.

Submissions

It would appear that only the 1st Respondent filed submissions in the matter. In the submissions, three issues were raised for determination: First, whether the court had jurisdiction to entertain the dispute; secondly whether the Petitioners' rights were infringed and thirdly whether the petition had already been overtaken by events.

On the first question, it is the 1st Respondent's submission that the court lacks jurisdiction to entertain the dispute. It is the 1st Respondent's position that given the nature of the Petitioners as tenants of the 1st Interested Party and the fact that the monthly rent payable is Ksh. 2,000, the matter ought to be referred to the Business Rent Tribunal on account of its relating to a controlled tenancy. The decision in *Ashburton Grove Ltd Vs Bruce Mutre Mutuku (2019) eKLR* and in *Narok County Council Vs Transmara County Council CA No 25/2000* are cited in support.

On the second question, the 1st Respondent submits that the Petitioners were mere licencees and tenants in the Market Stalls and thus have no right to an indefeasible title conferred by *Section 26 of the Land Registration Act*. The case of *John Ntoiti & Others Vs Isiolo County Government (Meru High Court Petition No.14/2017 (2019)eKLR)* is cited. Further, on the question of public participation, the 1st Respondent insists that the same was conducted through video and barazas attended by stakeholders. The case of *Shree Visa Oshwal Community Trustees Vs AG & Others 2014 eKLR* is cited in support of the fact that public participation does not of necessity require the giving of opinion by every individual prior to the decision. The antecedence of public interest over private rights was also pointed out in support of the 1st Respondent's position. The case of *John Kamau (suing on behalf of Mutindwa self-help group) Vs City Council of Nairobi & Others* was cited. In addition, the 1st Respondent takes issue with the fact that while the Petitioners seek orders on behalf of 250 kiosk owners, no representative authority has been demonstrated by the 21 Petitioners on behalf of the remaining 229 kiosk owners.

On the last question, the 1st Respondent asserts that since the Petitioners vacated the stalls, demolished them and carted them away, and that the Respondents proceeded with the cabro laying as planned, the petition has since been overtaken by events.

Issues for determination

- a. Whether the Court has jurisdiction to entertain the dispute;
- b. Whether the Petitioners' rights were infringed;
- c. Whether the petition had already been overtaken by events.

Legal analysis and opinion

The court has evaluated the petition, rival affidavits and submissions of the 1st Respondent.

The first question for determination and upon which the court is mandated to urgently apply its mind is whether or not the court is clothed with jurisdiction to determine the present petition. It is trite law that the question of jurisdiction goes to the root of a case and as soon as the court is seized with the realization of its non-possession ought to down its tools. The celebrated case of *Owners of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd (1989) 1 KLR* which dealt with a court's jurisdiction on a matter before it stated as follows:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

Similarly, the case of *Adero & Another Vs Ulinzi Sacco Society Limited [2002] 1 KLR 577*, quite sufficiently summarized the law on jurisdiction as follows;

“1.....

2. *The jurisdiction either exists or does not ab initio and the non-constitution of the forum created by statute to adjudicate on specified disputes could not of itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction.*

3. *Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.*

4. *Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”*

The 1st Respondent contends that the court lacks jurisdiction on the grounds that the substratum of the present suit involves market stalls whose terms of occupation qualify as controlled tenancies, given the monthly rent of Ksh. 2000 and the fact that their term does not exceed 5 years. He opines therefore that the proper forum would have been the Business Premises Rent Tribunal established under **Section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301.**

The court finds that the 1st Respondent’s summation of the dispute is misguided. The gravamen of the Petitioners case was the threatened demolition of the market stalls upon which they held licences. There is no disputation that the Petitioners are tenants of the 1st Interested Party, and that the monthly rent payable for the stalls was Ksh. 2,000. However, the gist of their case is not centered around the matters reserved for the realm of the Business Premises Rent Tribunal. For emphasis, the matters upon which the Business Premises Rent Tribunal exercises its jurisdiction are set out verbatim under **Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301:**

“A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power —

a. *To determine whether or not any tenancy is a controlled tenancy;*

b. *to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;*

c. *to apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;*

d. *where the rent chargeable in respect of any controlled tenancy includes a payment by way of service charge, to fix the amount of such service charge;*

e. *to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;*

f. *for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession;*

g. *where the landlord fails to carry out any repairs for which he is liable—*

i. *To have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;*

ii. *to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;*

h. *to permit the levy of distress for rent;*

i. *to vary or rescind any order made by the Tribunal under the provisions of this Act;*

j. *to administer oaths and order discovery and production of documents in like manner as in civil proceedings before the High Court, to require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies, and to issue summons for the attendance of witnesses to give evidence or produce documents, or both, before the Tribunal;*

k. *to award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;*

l. to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;

m. to require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend, the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;

n. to enter and inspect premises comprised in a controlled tenancy in respect of which a reference has been made to the Tribunal.

From the foregoing, it is apparent that the substance of the petition, being the threatened demolition of the market stalls does not fall within the orbit of the Business Premises Rent Tribunal. In any case, and more patently, the petition is not mounted against the 1st Interested Party as the Landlord but against county authorities who had issued notices for relocation and demolition.

Section 13 of the Environment and Land Court Act clothes the present court with jurisdiction to hear cases of the nature to which the petition belongs. The Section provides as follows:-

“In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes —

a. Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

b. relating to compulsory acquisition of land;

c. relating to land administration and management;

d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests inland; and

e. any other dispute relating to environment and land. (Emphasis, mine).

It is self-evident from the Section above that the court indeed has power to deal with the present petition. It has also become axiomatic that questions relating to a violation or threatened infringement of the bill of rights touching on environment and land matters falls within the purview of the Environment and Land Court. See - **Patrick Musimba Vs The National Land Commission and Others (Nairobi High Court Petition No. 613 of 2014)** –

“..... it would be ridiculous and fundamentally wrong, in our view, for any court to adopt a separation alistic view or approach and insist on splitting issues between the Courts where a court is properly seized with a matter but a constitutional issue not within its obvious exclusive jurisdiction is raised..both the High Court and the ELC Court have a concurrent and or coordinate jurisdiction and can determine constitutional matters when raised and do touch on the environment and land. Neither the Constitution nor the ELC Act limit the High Court's jurisdiction in this respects while a closer reading of the ELC Act reveals that the ELC Court's jurisdiction was in 2012 limited by Parliament in so far as constitutional issues touching on land and environment are concerned but the Court of Appeal in Mugendi expressed the view that the ELC when dealing with disputes concerning the environment and land may also deal with claims of breaches of fundamental rights touching on the subject at hand. We hold that in matters constitution the ELC has jurisdiction not just when it involves clean and healthy environment but also land.”

The Court of Appeal in **Daniel N. Mugendi Vs Kenyatta University & 3 Others CACA No. 6/2012[2013] e KLR**, expressed itself as hereunder:-

“..... The industrial court can determine industrial and labour relations matters alongside claims of fundamental rights ancillary and incident to those matters, the same should go for the environment and land court, when dealing with disputes involving environment and land with any claims of breaches of fundamental rights associated with the two subjects..In the same token we venture to put forth the position that as we have concluded that the Industrial Court can determine industrial and labour relations matters alongside claims of fundamental rights ancillary and incident to those matters, the same should go for the Environment & Land Court, when dealing with disputes involving environment and land with any claims of breaches of fundamentals rights associated with two subjects.”

The foregoing analysis concludes that the court has jurisdiction to hear the matter.

Onto the second question as to whether or not the Petitioner's rights were infringed, the 1st Respondent hinted in his pleadings and submission at the fact that the Petitioners erred in filing the Petition, being mere licencees and tenants of the 1st Interested Party. His argument took the view that the Petition ought to have been lodged by the owner of the market stalls, to wit, the 1st Interested Party. With the promulgation of the 2010 Constitution, it is indubitable that the scope of *locus standi* was enlarged significantly. Succor is found in the Supreme Court's seminal decision in **Mumo Matemu Vs Trusted Society of Human Rights Alliance & 5 others [2014] e KLR** which pronounced itself as follows:

“It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill

of Rights, or the Constitution in general.”

See also the decision in **Michael OsundwanSakwa Vs Chief Justice and President of the Supreme Court of Kenya & another [2016] eKLR** where the court found as follows:

“...In Kenya the Court has emphatically stated that what gives locus standi is a minimal personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population.”

It is quite obvious then that the Petitioners, being tenants in the market stalls about to be relocated or demolished had an interest in the matter in so far as their right to livelihood, to fair administrative justice and in a sense to the land upon which the market stalls were erected was concerned.

The Petitioners base their case on a Memorandum of Understanding ostensibly made between the 3rd Respondent and the 1st Interested Party under which the 3rd Respondent was to provide a seven-year lease to the 1st Interested Party who would proceed to erect 250 modern stalls. As noted by the 1st Respondent, the Memorandum of Understanding dated 16th May 2016 has not been executed by either the 1st Interested Party nor the 3rd Respondent.

Section 3(3) of the Law of Contracts Act, Cap 23 provides in mandatory terms, the necessary ingredients of the formal validity of a contract touching on the disposition of interest in land, such as the lease referred to in the Memorandum of Understanding:

“No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) The contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.’

In the absence of the required execution and witnessing, the memorandum cannot be held as being capable of conferring any interest on land. While the Petitioners note that the Interested Party did indeed put up 250 market stalls, nothing in the colour of a certificate of lease in the name of the 1st Interested party has been presented. The inevitable conclusion therefore is that neither the 1st Interested Party nor the Petitioners held a certificate of lease from the 3rd Respondent.

That notwithstanding, the Supreme court of Kenya in the case of **Mitu-Bell Welfare Society Vs Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) [2021] eKLR** observed as follows in relation to the right of evictees:

“Faced with an eviction on grounds of public interest, such potential evictees have a right to petition the Court for protection. The protection, need not necessarily be in the form of an order restraining the State agency from evicting the occupants, given the fact that, the eviction may be entirely justifiable in the public interest. But, under Article 23 (3) of the Constitution, the Court may craft orders aimed at protecting that right, such as compensation, the requirement of adequate notice before eviction, the observance of humane conditions during eviction (U.N Guidelines), the provision of alternative land for settlement, etc.”

Although the case above directly related to the demolition of houses in which the evictees had illegally set up and the concomitant right to housing, it does appear that even though evictees have no recognizable interest in land, they at the very least are entitled, to the protection of the court on the basis of the long period of occupation on the public land as well as the right to protection of the Petitioner’s property (tools of trade) housed in the stalls.

The Petitioners rightly pointed out **Sections 21 and 22 of the 2nd Schedule of the Urban Areas and Cities Act (No. 13 of 2011) as well as Sections 37 and 87 of the County Government Act (No.17 of 2012)** on citizen participation in relation to the threatened evictions and demolitions. As noted by the judge in the ruling made on 25th September 2019, the minutes of the stakeholder meeting on the scheduled upgrade of the urban roads within Isiolo town indicates the presence of the chair, secretary and treasurer of Isiolo Market. The two radio advertisement invoices in relation to the announcement of the World Bank Project also signify public awareness of the scheduled project. The Court agrees with the 1st Respondent that public participation does not mandate the taking of every individual opinion. See **Mui Coal Basin Local Community & 15 others VsPermanent Secretary Ministry of Energy & 17 others Constitutional Petition No. 305 of 2012:**

“..... public participation does not dictate that everyone must give their views on an issue of environmental governance. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, especially in environmental governance matters must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.”

The Court also takes note of the alternative location availed at the fisheries market and Barazza Park for market stalls legally erected. It is

also instructive to note that the notice on relocation provided 21 days for the relocation and specified that in default, the 3rd Respondent would take action on the 17th of June 2019. In relation to the notice on the removal of illegal constructions, the notice period given was 24 hours, although the notice also specified the date of 17th June 2019 as the date by which all kiosks and other structures ought to have been removed. The Petitioners have not clarified whether the modern stalls belonged to the first or second category. However, given the receipts filed by the Petitioners in relation to their payments to the 3rd Respondent, it would appear that the stalls belonged to the 1st category.

It also remains uncontroverted that the 3rd Respondent caused public awareness through the radio advertisements and also held a stakeholder meeting attended by three representatives/ officials of the Isiolo Market.

It must also be appreciated that the purpose of the relocations and demolitions was to allow for the upgrading of the urban roads within Isiolo CBD. The project as has been demonstrated by the 1st Respondent would greatly benefit the town and the county at large. The project thus juxtaposes the private rights of the Petitioners versus the greater public interest. The Court of Appeal decision in ***Dellian Langata Limited Vs Simon Thuo Muia & 4 Others [2018] e K.L.R*** is instructive:

“What is more, this appears to have been a case of an individual attempting to trump and negate the rights of the public in view of the fact that the other sub-divided plots such as sub-plot E were meant for development of schools and other public amenities. We must hold that the interest of the public overrides that of an individual. We echo the sentiments of this Court in East African Cables Limited Vs. The Public Procurement Complaints, Review & Appeals Board And Another [2007] e K.L.R expressing the philosophy behind the view that public interest should take precedence in the following words:-

“We think that in the particular circumstances of this case, if we allowed the application the consequences of our orders would harm the greatest number of people. In this instance we would recall that advocates of Utilitarianism, like the famous philosopher John Stuart Mill, contend that in evaluating the rightness or wrongness of an action, we should be primarily concerned with the consequences of our action and if we are comparing the ethical quality of two ways of acting, then we should choose the alternative which tends to produce the greatest happiness for the greatest number of people and produces the most goods. Though we are not dealing with ethical issues, this doctrine in our view is aptly applicable.”

On the last question, the Court through the 3rd Respondents submissions has learnt that the market stalls were already carted away by the owners/licensees and that the 3rd Respondent had proceeded to lay the scheduled cabro works. In the circumstances, it is evident that the substratum of the Petition has been overtaken by events.

The upshot of my analysis is that this petition lack merit and the same is hereby dismissed with each party bearings its costs.

DATED, DELIVERED VIRTUALLY AND SIGNED AT GARISSA THIS 28TH DAY OF JULY, 2021.

.....

E.C. CHERONO

ELC JUDGE

In the presence of:

1. Mr. Muriuki for the Respondent
2. Petitioners/Advocate- Absent
3. Fardowsa – Court Assistant