



Ndichu & another v Presbyterian Foundation & 3 others (Environment & Land Petition E003 of 2024) [2025] KEELC 3794 (KLR) (Environment and Land) (15 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3794 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E003 OF 2024**

MC OUNDO, J

MAY 15, 2025

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 40 RIGHT TO PROPERTY AND ARTICLE 36 RIGHT TO FAIR HEARING, READ TOGETHER WITH THE LAND DISPUTE TRIBUNAL ACT NO. 18 OF 1990 (NOW REPEALED) SECTIONS 3(2) & (3).

AND

IN THE MATTER OF THE RESPONDENT MOVING BY CONCEALMENT THE SENIOR PRINCIPAL MAGISTRATE NAIVASHA CONCERNING A NON-EXISTENT JUDGEMENT OF A NON-EXISTENT CLAIM/SUIT AT GILGIL LAND TRIBUNAL IN WHICH THE SAID NON-EXISTENT JUDGEMENT OF A NON-EXISTENT SUIT/CLAIM WAS ADOPTED BY THE SENIOR PRINCIPAL MAGISTRATE AS A JUDGEMENT/DECREE OF THE SAID COURT RESULTING INTO THE APPELLANT LOSS OF THEIR PROPERTY/LAND PARCEL GILGIL/KARUNGA BLOCK 5/516.

BETWEEN

SOPHIA NYANDIRI NDICHU 1ST PETITIONER

FRANCIS KINYANJUI NDICHU 2ND PETITIONER

AND

PRESBYTERIAN FOUNDATION 1ST RESPONDENT

PCEA GILGIL PARISH 2ND RESPONDENT

LAND REGISTRAR NAIVASHA 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT



JUDGMENT

(UNDER ARTICLE 40-RIGHT TO PROPERTY AND ARTICLE 36-RIGHT TO FAIR HEARING OF [THE CONSTITUTION](#) OF KENYA, 2010).

1. Vide an Amended Petition of the 20th June, 2024, the Petitioners herein sought from court the following orders;
 - i. That the Honourable Court do make a finding that there was no claim ever lodged/filed by the Respondents: PCEA Gilgil Parish, PCEA Foundation, either by themselves or by their agents, or servants pertaining the suit property-Parcel of Land known as: Gilgil/Karunga Block 5/516.
 - ii. That the Honourable Court do make a declaration that the decision of the Senior Principal Magistrate's Court at Naivasha to expunge or cancel or revoke the title to the 1st Petitioner Title Deed for L.R. No. Gilgil/Karunga Block 5/516 on or about 3rd February, 2012 is and was without legal basis unconstitutional, invalid, null, void and of no legal effect whatsoever.
 - iii. That the Honourable Court do make an order that the Naivasha District Land Registrar, Naivasha Land Registry do revoke, cancel, withdraw, remove forthwith all subsequent entries made, entered on the land records of the suit property, that is, Land Parcel No. Gilgil/Karunga Block 5/516 and upon such revocation and cancelation, the court do reinstate the first Title Deed of the suit property issued on 8th July, 1993.
 - iv. That the Honourable Court do find that the Petitioners' right to property was infringed by the court's directions/Orders issued on the 17th February, 2011.
 - v. The Honourable court be pleased to find that the Judicial Officer issuing orders/directions on the 17th February, 2011 for the revocation of the title deed belonging to the 1st Petitioner lacked jurisdiction to do so and such orders are declared null and void.
 - vi. The Honourable Court be pleased to make a finding and declare that there was no Tribunal cause/claim referred to as Gilgil Land Tribunal as the same had not been described by a number and year.
 - vii. That the destruction of the Petitioners' developments and structures on the suit property was unlawful and one bordering criminality.
 - viii. That the Respondents are compelled to compensate for the loss and damages.
 - ix. Cost of the petition be borne by the Respondents.
2. The Amended Petition was supported by an Affidavit dated 23rd February 2025 sworn by Sophia Nyandiri Ndichu and Francis Kinyanjui Ndichu, the Petitioners herein who deponed that they were a husband and wife and that they had bought the parcel of land No. Gilgil/Karunga Block 5/516 registered to the 1st Petitioner on 15th June, 1988 from Mukinya Farmers' Co-operative Society Limited wherein they had been issued with a ballot receipt/card No. 516 and after due process had been completed, they had been issued with a title deed on the 8th July, 1993.
3. That before purchasing the parcel of land, they had conducted due diligence and had established that the land had been on sale and was one of the many parcels of land that had been balloted for by other purchasers.



4. That the 1st and 2nd Respondents herein were strangers since they neither sold to them the suit land nor did they enter into a lease agreement with them hence it was unfathomable for the suit land herein to have been registered in the name of the 1st Respondent.
5. That in the year 2002, they had been served with copies of a Miscellaneous Application No. 23/2002, from Naivasha Principal Magistrate's Court whereby they had been listed as Respondents. That from the Pleadings in the said case, they had established as follows:
 - i. That it was seeking to adopt a judgement from the defunct Gilgil Land Dispute Tribunal. The said purported judgement however had no case number and neither could they establish the veracity of the said purported document.
 - ii. That the proceedings therein were in relation to a parcel of land known as Utility Plot No. 516 also known as Mukinye Society Plot Block 5/516 Gilgil/Karunga, which was different from their parcel of land No. Gilgil/Karunga Block 5/516 and therefore they took it that their land was not in danger.
 - iii. That they had obtained the decree of the Miscellaneous Application No. 23/2002, from Naivasha Principal Magistrate's Court dated 5th February, 2003 and issued on 28th June, 2020 wherein they had established that the 1st Respondent had not been a party nor had it been mentioned in the decree that had been issued therein.
6. That sometime in the year 2012, they had conducted a search regarding their parcel of land, that is, Gilgil/Karunga Block 5/516 wherein they had discovered that the 1st Respondent had been registered as its proprietor. That through the investigations by the DCI-Land Fraud Unit Kiambu, they had obtained the green card of the said parcel of land wherein they had established as follows:
 - i. On 8th March 2012, entry No. 2 had been cancelled by Kenya Gazette Notice No. 1077 dated 3rd February, 2012.
 - ii. There had been mention of Decree in Misc. Application No. 23/2002 dated 25th February 2003 issued by SPM Court Naivasha on 28th June, 2010 which had indicated: Presbyterian Foundation (Reserved for P.C.E.A. Gilgil Parish) and that Title Deed had been issued.
7. That they did not understand how the said changes had been effected hence they had gone further to establish the history of PCEA Gilgil Parish wherein they had found out that:
 - i. That under the leadership of a Rev. E.N. Kaburu, the 2nd Respondent by a letter dated 15th January, 1989 had requested for a church plot from Mukinye Farmers' Co-operative Society wherein vide a letter dated 8th November, 1989, the 2nd Respondent had been offered a portion of Plot No. 245.
 - ii. That through the Kenya Gazette Notice No. 1077 dated 3rd February, 2012 the 1st Petitioner's name had been changed to that of the 1st Respondent. The said Gazette Notice had not mentioned the Naivasha Principal Magistrate's Court decree in Misc. Application No. 23/2002, although it purported to have changed the details of the suit property herein, based on a court order dated 17th February 2011.
 - iii. The details therein were different from the details contained in the Decree in that the land registration numbers were different.
8. That they could confirm to the court that:



- i. There had never been a claim filed at the defunct Gilgil Dispute Tribunal pertaining their subject parcel of land Gilgil/Karunga Block 5/516 otherwise a case number would have been available and the Respondents would have produced the same in the trial.
 - ii. That there had been no decree in Misc. Application No. 23 of 2002 Naivasha SPM Court which had dealt with their subject parcel of land, that is, Gilgil/Karunga Block 5/516.
 - iii. That the changes that had been done regarding the ownership of their property parcel No. Gilgil/Karunga Block 5/516 had been illegal wherein the court had jurisdiction and capability of correcting the injustice that had been done to them.
9. In response to the amended Petition, the 1st and 2nd Respondents filed their Notice of Preliminary Objection dated 22nd April, 2024 seeking for the instant matter be struck out and/or dismissed with costs on the grounds that:
 - i. The Petition is fatally defective and incapable of being remedied.
 - ii. The issues raised in the Petition was Res judicata Gilgil Tribunal Panel court in 2002, Naivasha SPM Misc. Application No. 23 of 2002, Nakuru ELC No. 173 of 2012 and Nakuru ELC Appeal No. 21 of 2020 and thus offended the provisions of Section 7 of the Civil Procedure Act.
10. In response to the 1st and 2nd Respondents' Preliminary Objection, the Petitioners, vide their Replying Affidavit dated 23rd April 2024 deponed that the matters and subject matter raised in the instant Petition was different from the matters previously raised. That there had never been a case filed at the Gilgil Land Tribunal and that the judgement that had been adopted by the Naivasha Magistrates court was based on fraud as established by the DCI officers. That the current Petition was justified as a defence to infringement of their constitutional right wherein the Respondents had concealed facts. That the Court had been properly moved.
11. They placed reliance on the provisions of Section 7 of the Civil Procedure Act to reiterate that there had been no Petition or case pending or concluded and that the Petition herein was based purely on infringement of constitutional rights hence the same was not res judicata.
12. Alongside their Notice of Preliminary Objection, the 1st and 2nd Respondents through their Replying Affidavit dated 6th February, 2025 and sworn by Johnstone Gathura Karanja, a clerk at the PCEA Karunge Parish, deponed that the Petitioners' Petition was an abuse of the court process the dispute concerning the parcel of land herein between them having been settled fully vide the following cases:
 - i. Gilgil Land Dispute Tribunal annexed as "JGI"- the Petitioners fully participated where a Ruling was delivered on 2nd October, 2002. It was held that the title by the Petitioners herein had been obtained fraudulently and ordered that it be cancelled and the Petitioners to vacate failure to which they were to be evicted through the Provincial Administration.
 - ii. Naivasha SPM Misc. Application No. 23/02, annexed as "JGII"-adopted the award of the Gilgil Land Dispute Tribunal as a judgement of the court vide an order dated 5th February, 2003 wherein the Executive Officer of the court was directed to sign all the relevant documents to facilitate transfer of the land to the Respondents in the Petition herein. On the 26th July, 2012, the court had issued an Eviction Order against the Petitioners herein.
13. That the aforementioned action was never challenged by the Petitioners, wherein the 1st and 2nd Respondents took possession of the land which land they had fully developed and settled on as the church. That the Petitioners herein did not file any appeal either to the Provincial Land Dispute Tribunal or to the High Court thus the said judgement had remained and was binding to date.



14. That in the year 2012, the Petitioners filed Nakuru case No. ELC 173/2012 (Formerly HCC 350/2012) wherein the entire suit had been dismissed with costs on 15th April 2013 as could be seen in the copy of the Court's order marked as "JGV".
15. That subsequently, the Petitioners had filed Naivasha CM Misc. Application No. 18 of 2019 between the same parties. The Application had been dismissed on 3rd August 2020 wherein Petitioner sought to challenge the said decision vide an Appeal filed in Nakuru ELC Appeal No. 21/2020 which was also dismissed vide a Judgement dated 24th June, 2021. In the said judgement, the Court had observed that there was need to bring an end to litigation wherein the Petitioners were ordered to pay costs as a way of deterring them from unnecessary litigation over the issues that had already been determined.
16. That it was surprising that despite the foregoing, the Petitioners had had now filed the instant Petition seeking to re-open litigation over the same parcel between the same parties on matters that had been heard and determined over 24 years ago. That the Petition ought to be dismissed with costs for being Res Judicata and an abuse of the process of court.
17. In response, the Petitioners reiterated that the parcel of land in question, being Gilgil/Karunga Block 5/516 had been acquired legally by the 1st Petitioner who had obtained a title deed on the 8th July, 1993. That they had no relationship with the Respondents herein pertaining the parcel of land herein. That whereas they had never filed any suit against the Respondents herein, they had defended themselves against suits that had been filed by other parties who did not own the suit land. That the real culprit had been the 1st Respondent.
18. That Misc. Application case No. 23 of 2002 in Naivasha Magistrates Court that had been filed against them wherein the 1st and 2nd Respondents were not parties therein save for the 1st Respondent who was the beneficiary. That adopted judgement of the defunct Gilgil Land Dispute Tribunal had no case number so as to establish its veracity and despite their objections, the award had been adopted. That they then filed a new and separate application seeking disclosure by the Respondents of the pleadings from the purported Gilgil Land Dispute Tribunal which request had been declined.
19. That having lost the Appeal, they had engaged the Directorate of Criminal Investigation (DCI) to conduct an investigation into the hidden details about the change of ownership of the parcel of land herein wherein it had been unearthed that whereas the Tribunal had not awarded the land to the 1st Respondent, yet the Land Registrar by his/her own motion had registered the same to the 1st Respondent despite the Petitioners never having any court proceedings against the said 1st Respondent.
20. That they had never filed any case against the 2nd Respondent but against an entity known as PCEA Mukinye Parish. That subsequently, the instant Petition was the first legal proceeding against the 1st and 2nd Respondents herein.
21. In their Supplementary Affidavit dated 23rd February 2025 in Support of their Amended Petition dated 20th June, 2024 the Petitioners' stand was that despite the Respondents' claim of having acquired the parcel of land via an award by the defunct Gilgil Land Dispute Tribunal, they did not annex the Decree in Naivasha Misc. Application No. 23/2002 affirming the said award, in their Replying Affidavit.
22. It was their position that a person or an entity like the Respondents could only own a property like land either through Purchase or as a Gift from the owner of the said parcel of land. That in the instant case, the first owner of the parcel of land herein was the 1st Petitioner who had never sold or gifted the same to the Respondents. That affirmation of the ownership of the subject parcel of land did not undergone a legal conclusive proceeding.



23. That the Petitioners were bona fide purchasers having purchased the land from an identified the owner, that is, Mukinye Farmers' Cooperative Society Limited. That subsequently, the Respondents had acquired the Petitioners' property herein through a fraudulent decree.
24. They thus prayed that the Court allows their Amended Petition as pleaded and further make any orders/directions as the Court should see fit.
25. On 17th September, 2024, directions were taken for the disposal of the Petition by way of written submissions, wherein the Petitioners submitted that the parcel of land that had been discussed in the court's order and decree that had been attached by the Respondents was different from their property. That whereas order No. 1 had described a property known as "...public utility plot.No. 516" as at the year 2002 or 2003, their property had a privately registered property as of 8th July, 1993 which was more than 10 years earlier.
26. That order No. 2 of the said decree had mentioned parcel of land No. "Mukinye Society Plot Block 5/516/Gilgil/Karunga" yet their parcel of land was No. Gilgil/Karunga Block 5/516 thus the property in the aforementioned decree and the one in the Petition herein were different. That it was thus evident that the Petitioners' property herein had not been a subject of the Miscellaneous Civil Application as had been attested to by Orders Nos. 1 and 2 of the Decree that had been issued on 25th June, 2010.
27. That further, whereas the Magistrates' Court Decree had adopted the award of the Gilgil Land Disputes Tribunal as a Judgement of the Court on 5th February, 2003, the Court did not have a case number of the claim whose judgement it was adopting, contrary to the provisions of Section 3 (3) of the Land Disputes Tribunal Act. It was thus their submission that when a process was contrary to the existing and governing law, it was illegal, null and void and that such should befall to all the process that had been done by the Respondents and the Magistrates Court at Naivasha.
28. That the Gazette Notice No. 1077 of 3rd February, 2012 had specifically mentioned land parcel No. Gilgil/Karunga Block 5/516, which land that had not been mentioned in the decree issued by the Magistrates' Court at Naivasha. That was thus surprising where the Land Registrar had obtained the details of the parcel of land from thus there had been no legal reason that could have been used by the Respondents and the Land Registrar to interpret the decree of the Magistrates' Court pertaining the Petitioners' property herein.
29. Reliance was placed on the provisions of Sections 7 and 8 of the Land Dispute Tribunal Act (Defunct) to submit that it had been imperative for the Gilgil Land Tribunal to specify the case number that their award referred to before forwarding it to the Magistrates' court for adoption. Similarly, the Magistrates' court was equally bound by the law to quote the case number from the Land Dispute Tribunal. That there having been no reference of the case number as required by the provisions of Section 3 (3) of the Land Dispute Tribunal Act, the Petitioners had been disadvantaged in either lodging an appeal or a review as the said judicial actions had required them to quote the case number of the original tribunal case.
30. That the move by the Land Registrar and the Respondents herein to use the Decree from the Magistrates' Court to change the ownership of their property was and is illegal and unconstitutional, the property that had been described in the said decree being different from the parcel of land herein. That subsequently, the Land Registrar and the Respondents action caused damages to the Petitioners wherein the court had the jurisdiction to make corrections to the unfortunate situation.



31. That the Petitioners right to own property as enshrined under the provisions of Article 40 of *the Constitution* should be upheld and enforced by the Court. They thus prayed that the Court allows their Amended Petition as pleaded and further make any orders/directions as the Court shall deem fit.
32. The 1st and 2nd Respondents vide their Submissions dated 6th February 2025 first clarified that the subject matter of the Petition herein was a parcel of land known as Gilgil/Karunga Block 5/516 which property was registered in the name of the 1st Respondent herein and who was in the possession of the same, a title deed having been issued to her on 8th March, 2012.
33. It was their submission that once the issue had been handled by the Gilgil Land Dispute Tribunal and a ruling therein delivered on 21st October 2002, the matter had rested unless an Appeal was filed as provided by the law. That indeed, the Petitioners had participated in the proceedings before the Tribunal wherein they had testified. That the Petitioners had neither challenged the Jurisdiction of the said Tribunal nor the Ruling thereto.
34. That the said Ruling had been adopted as a Judgement of Court on 5th February 2003 in Naivasha SPM Misc. Application No. 23 of 2003 which Judgement had fully been executed as per the orders of the same court dated 18th February 2011 and 26th July 2012. That subsequently, the Petitioners herein had lawfully been evicted from the suit land and the Respondents had taken possession of the same about 13 years ago. That the Petitioners never challenged the process hence the judgement remained in force and could not be challenged by the instant Petition which was brought over 22 years after the adoption of the judgement.
35. That previously, the Petitioners herein had filed Nakuru High Court case No. 350/2012 which had been transferred to the High Court ELC as Case No. 173/2012 with the same parties and the same subject matter. That the said case had been dismissed with costs on 22nd February, 2013. That however, the Petitioners had attempted to re-open the case again vide Naivasha Misc. Application No. 18 of 2019 which Application had been dismissed on 3rd August 2020 wherein they had appealed against the said dismissal vide Nakuru ELC Appeal No. 21 of 2020 which had also been dismissed vide a judgement dated 24th June, 2021.
36. It was thus their submission that the instant Petition was a blatant abuse of the Court process and should not be entertained since litigation has to come to an end. That since all the aforementioned decisions were in force and binding, the court could not be asked to sit on Appeal against the same. That subsequently, the instant Petition should be dismissed with costs.

Determination.

37. I have carefully considered the contents of the Amended Petitioners' Petition, their Supporting Affidavit as well as the Respondent's Response in opposition of the Petition. I have also considered the Preliminary Objection, the submissions by Counsel, the relevant provisions of the law and authorities herein cited.
38. From the above captioned Amended Petition, the Petitioners have alleged that they were husband and wife. That they bought the parcel of land No. Gilgil/Karunga Block 5/516 from Mukinya Farmers' Co-operative Society Limited wherein they had been issued with ballot receipt/card No. 516. Subsequently the land had been registered to the 1st Petitioner on 15th June, 1988 and he had been issued with a title deed on the 8th July, 1993.
39. That through a Miscellaneous Application No. 23/2002, filed in the Naivasha Principal Magistrate's Court, an award from the defunct Gilgil Land Dispute Tribunal was adopted in respect to parcel of



land known as Utility Plot No. 516 also known as Mukinye Society Plot Block 5/516 Gilgil/Karunga. That in the year 2012, they had conducted a search regarding their parcel of land No. Gilgil/Karunga Block 5/516 only to discover in horror that the same had been registered to the 1st Respondent.

40. Their bone of contention was that although Utility Plot No. 516 also known as Mukinye Society Plot Block 5/516 Gilgil/Karunga, as described in the decree, was different from their parcel of land No. Gilgil/Karunga Block 5/516, vide a Kenya Gazette Notice No. 1077 dated 3rd February, 2012, proprietorship of the land had been changed from the 1st Petitioner's name into the 1st Respondent's by virtue of a court order dated 17th February 2011 in Naivasha Principal Magistrate's Court Misc. Application No. 23/2002. That they had not sold the property to the 1st Respondent, that the said proceedings had no case number, their subject parcel of land Gilgil/Karunga Block 5/516 was not a subject in the defunct Gilgil Dispute Tribunal, that there had never been a case filed at the Gilgil Land Tribunal and therefore the judgement that had been adopted by the Naivasha Magistrates court in Misc. Application No. 23/2002 was based on fraud where neither the 1st or 2nd Respondents had been parties, save that the 1st Respondent who was the beneficiary. That the move by the Land Registrar and the Respondents herein to use the Decree from the Magistrates' Court to change the ownership of their property was illegal and unconstitutional. That their right to own property as enshrined under the provisions of Article 40 of *the Constitution* should be upheld and enforced by the Court.
41. In response to the amended Petition, the Respondents herein argued that the subject matter of the Petition herein was a parcel of land known as Gilgil/Karunga Block 5/516. That Naivasha SPM Misc. Application No. 23/2002, adopted the award of the Gilgil Land Dispute Tribunal as a judgement of the court vide an order dated 5th February, 2003 which Judgement had fully been executed as per the orders of the same court dated 18th February 2011 and 26th July 2012 wherein the Petitioners herein had lawfully been evicted from the suit land and the Respondents had taken possession of the same about 13 years ago. That the Petitioners case in Nakuru High Court case No. 350/2012 which had been transferred to the Nakuru ELC as Case No. 173/2012 had been dismissed with costs on 22nd February, 2013. That their attempt to re-open the case again vide Naivasha Misc. Application No. 18 of 2019 had also been dismissed on 3rd August 2020 as well as their appeal against the said dismissal, which had also been dismissed vide a judgement dated 24th June, 2021 in Nakuru via ELC *Appeal No. 21 of 2020*. That the amended Petition was thus Res judicata, a blatant abuse of the Court process and should be dismissed.
42. I find the issues arising herein for determination being as follows: -
- i. Whether the Amended Petition raises Constitutional issues.
 - ii. Whether the Amended Petition is Res judicata; if not
 - iii. Whether it discloses a legal interest capable of protection under the law.
43. On the first issue for determination, it was incumbent of the Petitioners not only to clearly identify the relevant and specific Articles of *the Constitution* that had been violated, but also to avail evidence, through affidavit or otherwise of such violation particularity and specificity how their rights had been violated, infringed or threatened, as cited under Articles 36 and 40 of *the Constitution*, as per the principles laid down in respect of the Constitutional Petitions as set out in the case of Anarita Karimi Njeru v Republic, (1979) KLR 154: to wit:-
- i. Specifically set out the provisions in *the Constitution* that have been allegedly violated;
 - ii. Provide the particulars of the alleged violations;



- iii. Provide particulars in which the Respondents have purportedly infringed their rights.
44. From the above captioned amended Petition, the Petitioners have cited two provisions of *the Constitution*, but provided neither particulars of the alleged complaints, the manner of alleged infringements or jurisdictional basis of the action before the court. No particulars of the alleged violations have been stated. The Petitioners' complaint is not only against the Respondents, but against an officer of the Court as well as the District Land Registrar-Naivasha parties who were not joined in the proceedings. The fact that these officers caused the Suit lands herein to be registered in the name of the 1st Respondent herein in my humble view, is a question whose resolution requires a full trial hearing and the interpretation of a statute rather than through a constitutional Petition because a constitutional question is an issue whose resolution requires the interpretation of a Constitution rather than that of a statute. I find that this amended Petition does not raise constitutional issues.
45. The Supreme Court in *Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others* [2014] eKLR has held as follows: -
- “The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Ketrtridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”
46. I have perused a copy of the Gilgil Land Dispute Tribunal proceedings wherein the heading is herein produced verbatim as follows;
- “Land Dispute; Before Gilgil Tribunal Panel Court on 3/7/2002, 19/7/2002 AND 29/7/2002
- Ref; Gilgil/karunga Block 5/916 at Mukinye Farmers Co-ltd Society
- (Ref former Civil Case RM/NSA/135 OF 1994)
- 1st Plaintiff-PCEA Churh (gilgil Parish)
- Repr. Mr. J. Kariuki - See, F. Wangombe — Chairman, “Treasurer Mrs. W. Wambui Njau and Parish Minister Pastor Samuel Waweru.
- 2nd Plaintiff - (Directors Mukinye Farmers led by Chairman Alex Chege, Mr K. Kamau Commitice Member, Mr. Mboore and others.)
- Versus Defendants.
- Mrs. Sophia Nyandiri & Mr Francis Ndichu.”
47. Clearly, the proceedings of the Land Disputes Tribunal had indicated the suit property therein as well as the parties in attendance, the Petitioners herein inclusive.
48. Section 8(1) of the Land Disputes Tribunals Act Cap 303 (now repealed), provided an avenue for challenging the decisions by the tribunal to wit by an appeal process to the Appeals Committee constituted for the province and in the alternative by way of commencement of Judicial Review proceedings in the nature of certiorari to quash the award under Order 53 of the Civil Procedure Rules. The Petitioners herein used neither of the avenues herein provided to challenge the decision of the Tribunal.



49. It is not disputed that the Award therein delivered in its Ruling of 2nd October 2002 was adopted via Naivasha SPM Misc. Application No. 23/2002 vide an order dated 5th February, 2003.
50. It is trite that a valid judgment of a court unless overturned by an appellate court remains a judgment of court and is enforceable, the issue of jurisdiction notwithstanding. This court has jurisdiction to nullify an award of a Tribunal, if such an award was made outside the tribunal's jurisdiction, however this jurisdiction is only exercisable where such decision of the tribunal has not transmuted into a judicial determination, through adoption as a Judgment of the Court as in the present circumstance.
51. The award of the Gilgil Land Disputes Tribunal having been adopted by the Principal Magistrate's Court at Naivasha ceased to exist on its own, and thus, cannot not be the subject of a declaration. The award, having become a Judgment of a Court of competent jurisdiction, the same could only be varied, vacated, set aside or reviewed by the same Court, or by an appellate Court in appropriate proceedings.
52. Indeed, in Court of Appeal decision in Catherine C Kittony v Jonathan Muindi Dome & 2 others [2019] eKLR had held as follows;

“The Land Dispute Tribunal had mechanisms to deal with outcomes such as the one rendered by the 2nd respondent. The award by the 2nd respondent ceased to exist upon adoption by the court as its judgment and a decree. The award cannot be challenged by filing a fresh suit as it is trite law that where a statute establishes a dispute resolution mechanism that mechanism must be followed and exhausted, where a party fails to do so he cannot be heard to say that his rights were denied.”

24. The court further observed that;

“In the instant appeal, it is not in dispute that the appellant was aggrieved by the decision of the 2nd respondent. However, instead of lodging an appeal before the Provincial Appeals Committee constituted for the province in which the land which was the subject matter of the dispute was situated and if still dissatisfied to appeal to the High Court on a point of law (see: Section 8(1) and (9) of the Land disputes Tribunal Act) or institute judicial review proceedings to quash the decision by the 2nd respondent as it was alleged that it acted in excess of its jurisdiction in making the award, the appellant opted to file a fresh suit before the ELC which was not in order. See also Speaker of National Assembly v Njenga Karume [2008] 1 KLR. We reiterate that if indeed the appellant did not agree with the decision of the 2nd respondent and wished to challenge it, it behooved her to follow the route prescribed by the Land Disputes Tribunals Act before proceeding anywhere else.”

53. And in the case of Florence Nyaboke Machani v Mogere Amosi Ombui & 2 others [2014] eKLR the Court of Appeal had held as follows;

“..... It is trite law that a valid judgment of a court unless overturned by an appellate court remains a judgment of court and is enforceable, the issue of jurisdiction notwithstanding. The plaintiff had all avenues to impugn the award as well as the judgment. He did nothing. As sarcastically put by counsel for the defendants in his submissions, the plaintiff chose to sleep on his rights like the Alaskan fox which went into hibernation and forgot that winter was over. In the meantime, the 1st defendant's rights to the suit premises crystallized. Equity assists the vigilant and not the indolent. The plaintiff has come to court too late in the day and accordingly, the declaratory relief must fail. I doubt that even the



remedy of the declaration is available to the plaintiff to impugn a valid court judgment and decree.”

54. I have considered the prayers sought by the Petitioners herein and it is clear that the same although couched as a Petition do not fall within the ambit of a Petition whose resolution requires the interpretation of a Constitution and to protect individuals from governmental injury thereby regulating the discretion of the Government to inflict injury. On the contrary it is not in doubt that the Petitioners herein being dissatisfied by the determination in the proceeding before the Naivasha Principal Magistrate’s Court in Miscellaneous Application No. 23/2002, have filed an Appeal camouflaged as a Petition where they have challenged the adoption of the Award emanating from the Gilgil Tribunal that transmuted into registration of the Respondents to land parcel L.R. No. Gilgil/Karunga Block 5/516.

55. Quite clearly, from the decisions herein rendered by the Court of Appeal, the Petitioners have come to court too late in the day and therefore their amended Petition must fail.

56. The doctrine of Res Judicata is enshrined in Section 7 of the *Civil Procedure Act*, and provides that: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

57. In *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others* [2021] eKLR, the Supreme Court at paragraph 86 rendered itself on the threshold for proving the applicability of the doctrine of Res Judicata by stating as follows; -

“We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata. For res judicata to be invoked in a civil matter the following elements must be demonstrated:

- a) There is a former Judgment or order which was final;
- b) The Judgment or order was on merit;
- c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d) There must be between the first and the second action identical parties, subject matter and cause of action.”

58. A look at the proceedings and subsequent Judgement delivered by the Nakuru ELC Appeal No. 21 of 2020 herein reported as *Sophia Nyandiri Ndichu & another v Presbyterian Church of East Africa (PCEA) Mukinye Parish* [2021] KEELC 2722 (KLR), the Court had held as follows;

‘From the material on record, it is apparent that the appellants concede that proceedings were commenced against them before the Gilgil Land Dispute Tribunal in connection with Gilgil/Karunga Block 5/516 and that the tribunal rendered a decision on 2nd October, 2002. The said decision was adopted on 5th February 2003 and a judgment issued in Naivasha SPM Misc. Application No. 23 of 2002. Subsequently, the same court issued an order on 17th February



2011 empowering the executive officer of the court to execute all necessary documents to facilitate transfer of the property to the Presbyterian Church of East Africa (P.C.E.A). It has not been suggested that tribunal's decision and the judgment of the subordinate court were ever set aside. If anything, all of the appellants' efforts so far to set those decisions aside have failed. Among those attempts is Nakuru ELC No. 173 of 2012 where the appellants' application as well as the entire suit were dismissed on 22nd February 2013.

.....the appellants cannot seek to re-open the proceedings in a new miscellaneous cause under the guise of seeking to access information.”

59. I thus find that the matter in issue is identical with the matter in the previous suit, that further the parties were similar wherein the title was also identical and lastly that there was concurrence of jurisdiction. The orders issued by the court in the previous proceedings having been of a nature of finality, I find that, and in agreement with the Respondents herein, that the Petition before me is res Judicata Gilgil Land Disputes Tribunal of 3/7/2002, 19/7/2002 and 29/7/2002 former Civil Case RM/NSA/135 of 1994, Naivasha SPM Misc. Application No. 23 of 2002, and Nakuru ELC Appeal No. 21 of 2020. Parties should not be allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because they give their case some cosmetic face lift.
60. The Amended Petition of 20th June 2024 is herein dismissed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 15TH DAY OF MAY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

