



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

PETITION NO 4 OF 2017

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS IN ARTICLES 2,10,19,20,21,22,23,27,35,40(1),
47 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA.**

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 67(E)

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT

AND

IN THE MATTER OF MATHENGETA FARMERS COMPANY LIMITED

AND

DISHON MUTHAMA NZINA.....1ST PETITIONER

JOSEPH NJOROGE WAWERU.....2ND PETITIONER

SAMUEL M. MUNGUTI.....3RD PETITIONER

PHILIP MAKAU MULWA.....4TH PETITIONER

SAMUEL KIMANI NDUBU.....5TH PETITIONER

MUTUKU KIKONDE.....6TH PETITIONER

NGANGA MUTAHL.....7TH PETITIONER

JOHN MUCHINA NGUGI.....8TH PETITIONER

BETH WANJIRU WAKABA.....9TH PETITIONER

SAMUEL KAMAU CHOMBA.....10TH PETITIONER

LITHA MWELU KAHILIRO.....11TH PETITIONER

MUKII MUTUKU.....12TH PETITIONER

HANNAH WAITHERA.....13TH PETITIONER

SIMON MWANGI GATERE.....14TH PETITIONER
JOSEPH MUSKA MATHIA.....15TH PETITIONER
SIMON NDUNGU.....16TH PETITIONER
WILSON KATHINI KABUTI.....17TH PETITIONER
TELESIA NJERI NDUNGU.....18TH PETITIONER
MILICAH MUTHONI NDUNGU.....19TH PETITIONER
JOSEPH NJUGUNA.....20TH PETITIONER

VS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT
REGISTRAR OF TITLES.....2ND RESPONDENT
THE CHIEF LAND REGISTRAR.....3RD RESPONDENT
NATIONAL LAND COMMISSION.....4TH RESPONDENT
THE CHIEF REGISTRAR OF COMPANIES.....5TH RESPONDENT

AND

MURINGU MUKARU.....1ST INTERESTED PARTY
BENARD THUO NDIRAL.....2ND INTERESTED PARTY
JAMES GACHERU MACHARIA.....3RD INTERESTED PARTY
& 120 OTHERS.....INTERESTED PARTIES

JUDGMENT

The Petitioners' case

1. The Petitioner moved the court by way of a petition filed on the 23/10/17 and amended on the 3/7/2018.
2. The Petitioners aver that they were part of 420 members of the Mathengeta Farmers Company Limited (the Company) as at 1993. The Company was incorporated on the 12/1/1970.
3. They aver that in 1975 the company purchased a total of 1761.97 acres from a white settler and out of it, 1,443.97 acres was subdivided into 432 smaller plots for its members as well as communal facilities. Each member was to get 2.9 acres as farm land and 0.1 acre for housing. That in 1983 members were issued with share certificates for 11 shares each in the company. That some members were issued with titles for 2.9 acres in 1988 through the Presidential commission on large scale farms.
4. According to the Petitioners, the Company Directors illegally dissolved the company in 1991 without any resolution from its members. That at the time of the dissolution several assets of the company remained undistributed including farm machinery, 50 acres of land set aside for members housing and 160 acres in Block 2. That they later learnt that Makuyu/Kambiti/Block-11/5595/1 was sold to the East Africa Power & Lighting Company without the consent of the members.
5. On members' protest, the Company was reinstated briefly on the 19/2/1993 but again dissolved on the 11/4/1994 a few days before a scheduled general meeting of the members. That their attempts to reinstate the company vide winding up cause No 19 of 1994 was dismissed.
6. The Petitioners aver that the District Commissioner Muranga inter alia pushed for the dissolution of the company on the grounds that being a land buying company it had finalized its work upon distribution of the land to its members.
7. That vide Land dispute case No 29 of 1997 the members got relief when the tribunal awarded them 0.1 acres each for housing from the

consolidated unallocated 50 acres. This was however short-lived as the award was nullified by the court on the 29/4/1997. A second attempt to wrestle the land vide Land Dispute tribunal No 3 of 1997 saw the suit dismissed for being resjudicata.

8. According to the Petitioners other cases filed in court to recover the land and the company were dismissed on the grounds that the company was non-existent. An appeal vide **Ngugi Kinyanjui & Others Vs John Mburu Mwangi & others HCCA No 807 of 2001** suffered the same fate.

9. It is the Petitioners case that the named Interested Parties illegally and fraudulently acquired land belonging to the Company without approval and consent of the members. That neither of them were members of the Company and therefore not entitled to be allocated land. Also that the Company did not sell the land to the Interested Parties.

10. In addition, the Petitioners cited the various violations visited upon them by the Respondents as; by winding up the company without any legal cause, the 5th Respondent violated their right to association as set out in Art 36 of the Constitution; their undistributed company property was illegally sold by the Directors of the company thus violating their right to property as set out in Art 40 of the Constitution; failure by the 4th Respondent to investigate their complaints based on historical land injustices depicts their derelict of duty under Art 67(e) of the Constitution; In failing to redress their claims, the Respondents have discriminated the Petitioners contrary to Art 27 of the Constitution; their rights under Art 47 have been violated by the Respondents in the manner in which they have been denied a fair hearing and treatment in their quest to recover their land sold illegally to non-members by previous Directors of the Company.

11. Consequently, the Petitioners are seeking the following orders;

a. A declaration that the cancellation of the registration of the Mathengeta Farmers Company Limited via Gazette Notice no. 42 Vol. XCLL on the 19th day of October 1991 was irregular and thus a nullity and a violation of the constitutional rights of the Petitioners under Article 36 of the constitution.

b. A declaration that the transfer of land comprised in block 11 MAKUYU/KAMBITI was done fraudulently and an infringement of the proprietary rights of the members of the defunct Mathengeta Company.

c. A declaration order holding that the proprietary interest in all land known as MAKUYU/KAMBITI/BLOCK-115595/1 as at 1991 comprising of one hundred and sixty acres absolutely vests in the members of the defunct Mathengeta Company as at the time of its dissolution.

d. A declaratory order holding that the fraudulent transfer of land comprised in MAKUYU/KAMBITI/BLOCK-11/5595/1 and the parcels listed under paragraph 48 of the amended petition was an infringement of the proprietary interests of the members of the defunct Mathengeta Company under Article 40 of the Constitution of the Republic of Kenya 2010.

e. A declaration that all the parcels of land that were sold off to non-members of the defunct Mathengeta Company Limited were illegal.

f. An order of Mandamus compelling the 5th Respondent herein to reinstate the Mathengeta Farmers Company Limited for the purpose of subdividing all the property that has been reverted back to the members, the 50 acre plot.

g. An order of mandamus for the 1st to the 5th Respondent to compensate the shareholders of the company and or the estate of the deceased shareholders for the 160 acre plot 2/MAKUYU/BLOCK-11/5595/1 that has been sold off the market value.

h. In the alternative that the 4th Respondent be ordered to investigate the fraudulent allocations of the said parcels of land and table a report before this Honorable. (sic)

i. An order of mandamus to compel the 2nd and 3rd Respondent to nullify fraudulent titles that had been issued to non-members of the Mathengeta Company in regards to all the property comprised of MAKUYU KAMBITI BLOCK1/5994; MAKUYU KAMBITI BLOCK 111/5995/2; MAKUYU KAMBITI/BLOCK IV/5996; MAKUYU KAMBITI BLOCK V/689 and MAKUYU KAMBITI/BLOCKVI/6912.

j. An order of mandamus to compel the 1st to the 5th Respondents to severally or jointly pay the Petitioners mesne profits for loss of user for over 25 years.

k. Any other relief that this court may deem fit to award.

l. Costs of this petition to be awarded to the petition.

12. The petition is supported by the affidavit of Dishon Muthama Nzina who reiterated the gist of the Petition and added that his own parcel of land was subdivided and sold illegally to a Joseph Mungai Karanja, a non-member of the company and without his consent and knowledge.

13. The petition was further supported by the affidavit of Samuel Kamau Chomba and Samson Kimani Ndabu who averred that their parcels were fraudulently subdivided and sold to third parties without their consent.

14. It is his further affidavit dated the 12/10/2020 that the 1st Petitioner filed in court the annual returns of the company as at 13/5/1986.

The 1st -3rd Respondents case

15. Through the replying affidavit filed on the 30/11/2020 and deponed to by Pauline N Wanjau, the Land Registrar, Muranga, the 1st -3rd Respondents opposed the petition and termed it premature, an abuse of the court process and a candidate for striking out.

16. She faulted the Petitioners for not enjoining the third parties allegedly allocated titles out of Makuyu/Kambiti/Block 11/5995/1. That an order nullifying such titles is unfounded. That in any event the records for plot No Makuyu/Kambiti/Block 11/5995/1 are non existent.

17. That other parties owning parcel Nos No Makuyu/Kambiti/11/481 registered in the name of Joseph Mungai Karanja and Makuyu/Kambiti/11/481 registered in the names of Nyinyi Mutongoi and Wilson Kithome were not enjoined to the petition to afford him the opportunity to be heard.

18. In the end the 1st-3rd Petitioners urged the court to dismiss the petition.

The 4th Respondents case

19. The 4th Respondents response to the Petition is contained in the grounds of opposition filed on the 16/2/2021.

20. Relying on the case of **Annarita Karimi Njeri Vs Ag (1979) KLR 54** It contends that the petition does not raise any clear and credible cause of action against it. Further it argued that the Petitioner has failed to demonstrate violations of any of the articles of the constitution cited.

21. The 4th Respondent stated that it is willing to admit the Petitioners claim under section 15 of the NLC Act if it meets the criteria of a claim under historical land injustice.

22. It urged the court to dismiss the petition for being frivolous, vexatious and an abuse of the process of the court

The 5th Respondents case

23. Despite service the 5th Respondent failed to respond to the Petition.

The Interested Parties Case

24. The Interested Parties did not defend the Petition despite service vide substituted services on the 12/10/2020.

The submissions

25. As to whether the cancellation of the registration of the company was a nullity and a violation of their rights of association guaranteed under art 36 of the constitution, the Petitioners submitted that the deregistration of the company was a Government directive devoid of shareholder consent and approval. They cited the letter dated the 13/2/1991 by the District Officer that the Government wished to wind up all the land buying Companies in Makuyu which had subdivided the lands amongst their members and issued individual titles. They argue that to the contrary their Company was not a land buying company *per se* as it had other objectives set out in its memorandum of association.

26. That though there is correspondence from the previous directors to the Registrar of Companies to wind up the company, the same is not devoid of shareholders resolution approving the same as provided by law. That the Directors did not have power to have the company dissolved without the approval of the shareholders.

27. The Petitioners submitted that it is critical that the company is reinstated so that it can recover its properties for distribution to its legitimate members.

28. As to whether the fraudulent transfer of land comprised in Block 11 Makuyu/Kambiti infringed on their constitutional right to property, the Petitioners argued that at the time of dissolution of the company the company held undistributed assets which were illegally alienated after its dissolution and termination of its legal persona. That the transactions on the land after the dissolution of the company cannot be legitimate.

29. Impugning the Respondents for acts of commission and omission in the dissolution of their company and fraudulent and illegal alienation of their lands, the Petitioners submitted that they are entitled to compensation for the loss of 160 acres together and Makuyu/Kambiti / Block 11 /5995/1 that was sold off at the current market value.

30. In the alternative, the Petitioners submitted that their claim fits within the historical land injustices which the 4th Respondent is constitutionally mandated to determine. That should the court find that the claim should be before the NLC, it should order the 4th Respondent to investigate and file a report before the court.

31. Relying on sections 26 of the Land Registration Act, it was the submissions of the Petitioner that the Interested Parties having been served with the petition failed to defend it and as such their case is undefended. It urged the court to order the nullification of the titles held by the Interested Parties as they belonged to the defunct company. That the Interested Parties not members of the company and were not entitled to the land.

32. With respect to the orders for mesne profits, the Petitioners submitted and argued that they lost property on account of the illegal dissolution of their company by the Government without the approval of the members and hence the Respondents are liable to pay mesne profits to them.

33. The Hon Attorney General (AG) filed submissions on behalf of 1st -3rd and 5th Respondents on the 19/8/2021.

34. As to whether there was fraudulent transfer of parcel Makuyu/Kambiti/Block 11 5595/1 from the defunct company the Hon AG submitted and faulted the Petitioners for failing to plead particularize and proof fraud against the 1st -3rd and 5th Respondents. Further that the Petitioners case is further weakened by the non-joinder of the third parties who are registered owners of the parcels alleged to have been disposed from the company. That their omission is incurable on account of their right to be heard. The AG concluded that fraud is unfounded.

35. The AG relied on the case of **Margaret Njeri Wachira V Eliud Waweru Njenga (2018) eKLR**, where the court held that in a dispute involving ownership of land the claimant should prove their claim by rendering conclusive evidence of proprietorship to the land. As to whether the Petitioners demonstrated their proprietary interest in the property at the time of the dissolution of the company, the AG submitted that the Petitioners have failed to show any proof of ownership of parcel Makuyu/Kambiti/Block11/5995/1 and their claim is unmaintainable in law. Further that parcel No Makuyu/Kambiti/Block11/5995/1 does not exist in the Land Records and as such is incapable of any protection under sections 25, 26 and 28 of the Land Registration Act.

36. With respect to mesne profits the AG submitted that the Respondents being public entities have never been in possession of the land and therefore a claim for mesne profits cannot succeed. Either the Petitioners have not demonstrated that they were in lawful occupation or possession of the property in the first place. It relied on the case of **Rajan Shah & Partners Vs Bipin P Shah (2016)** where the court defined mesne profits as compensation recoverable from a person who has been in wrongful possession of immovable property.

37. As to whether the 4th Respondent should be ordered to investigate the fraudulent allocations of the subject property and table a report before the court, the AG submitted that the Petitioners have failed to exhaust a mechanism provided by law under section 15 of the NLC Act, which mechanism is effective and convenient. In that regard the Hon AG argued that the Petitioners have not lodged a claim before the NLC.

38. Further the Hon AG submitted that the claim for reinstatement of the company 25 years later is time barred. That the provisions of section 339(6) of the repealed Companies Act provided for reinstatement within a period of 10 years while section 912 of the Companies Act 2015 has provided for restoration within 6 years from the date on which the company was dissolved.

Analysis and determination

39. Having considered the petition, the affidavit evidence and the written submissions the issues that commend themselves for determination are;

- a. Whether the order of reinstatement of the company can be given
- b. Whether the Petitioners have proved fraud against the Respondents and the Interested Parties.
- c. Whether the Petitioners have proved any violations of their constitutional rights
- d. Who meets the cost of the petition?

Whether the order of reinstatement of the company can be given

40. The Petitioners have filed this suit claiming that they are members of the defunct company. That their company was dissolved without any legal cause while it still held some undistributed assets being farm machinery and two parcels of land measuring 50 and 160 acres each, all belonging to the members of the company. That the dissolution was carried out by the directors of the company in collusion with the local administration without the approval and resolutions of the members. That it is critical that the company is restored so that it can recover its lands that were fraudulently sold by the directors to non-members.

41. The AG contended that the company being a land buying company was deregistered after it had completed subdividing its lands and allocating to its members and therefore there was nothing else for it to do.

42. Registration, dissolution and reinstatement of a company in Kenya is provided for under the Companies Act. The question in this case is whether this court has jurisdiction to hear and determine a matter with respect to the restoration of a company that was wound up in 1991. I note that the parties did not address the court on this issue. However being an issue touching on the jurisdiction of the court, the court can move itself suo moto nonetheless.

43. Where the issue of a court's jurisdiction arises, the court ought ordinarily to determine such issue at the earliest opportunity. This is because jurisdiction is everything and without jurisdiction, a court must down its tools at once.

44. In the case of **the Owners of the Motor Vessel “Lillian SS” -vs- Caltex Oil Kenya Limited [1989] KLR**, Nyarangi, J.A (as he then was) stated:

“...I think 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 obligated 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 business for a continuation of proceedings pending other evidence. It lays down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

45. In the Supreme court decision in the case of **Samuel Kamau Macharia Vs Kenya Commercial Bank & 2 others CA No 2 of 2011** the court held inter alia that;

“a court’s jurisdiction flows from either the constitution or legislature or both.”

46. The Environment and Land Court established under Article 162 (2) (b) of the Constitution derives its jurisdiction from the Constitution which provides that: -

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

(a)

(b) The environment and the use and occupation of, and title to, land.

47. In exercise of that mandate Parliament enacted the Environment and Land Court Act No. 19 of 2011. Section 13 of the Environment and Land Court Act sets out the jurisdiction of the court and provides as follows:-

“(1) Section 13(1) of the ELC Act, the court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) 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 in land; and

(e) Any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights of fundamental freedom relating to land under Articles 42 and 70 of the Constitution.

(4)

48. The Companies Act at section 2 defines the “Court” to mean (unless some other court is specified) the High Court. Part XXX111 is dedicated to the dissolution and restoration of a Company to the Register. My reading of the section and the law is that the jurisdiction lies with the High Court. This claim is therefore struck out.

Whether the Petitioners have proved fraud against the Respondents and the Interested Parties.

49. Black’s Law Dictionary defines fraud as follows;

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.

50. In the cases of **Ratilal Gordhanbhai Patel V. Lalji Makanji [1957] EA 314** and **Umlila Mahindra Shah v. Barclays Bank International and Anor [1979] KLR** the courts have stated that Fraud has everything to do with one's state of mind and intentions, and not the outcome of actions and that the standard of proof for fraud is very high beyond the usual standard of balance of probabilities in civil cases approaching but below proof beyond reasonable doubt.

51. The Petitioners claim for the recovery of their lands is based on a number of grounds; first that they are members of the defunct company; the company owned the lands before illegal dissolution; that the company was dissolved without their approval and resolution; that thereafter the lands were fraudulently disposed to third parties, non members without the approval of shareholders.

52. The Respondents have denied fraud on their part and argued that the Petitioners have not demonstrated any proprietary interest in the suit lands; the land being referred to is non existent in their records; have not proved fraud.

53. Have the Petitioners pleaded particularized and proved fraud? Order 2 rule 10 (1) of the Civil Procedure Act provides that Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing — (a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies. It is the finding of the court that the Petitioner failed to particularize fraud to afford the Respondents and the Interested Party the opportunity to know the case they would confront.

54. I have perused the title placed before the court DMN -2 by the Petitioners for land reference No 5995 measuring 319 acres and registered on the 24/12/1929. The land changed hands a couple of times resting with the transfer (with other lands) to Bernard Victor Harley on the 6/5/1955. In 1958 the East African Power and Lighting Company lodged a caveat. It would appear that this land was subdivided into land reference No 5995/1 measuring 160 acres and transferred to Triandafilos Bholacoglu subject to the caveat above in 1968. In 1975 the land Reference Number 5995/2 (measuring about 159 acres approx.) was transferred to Mathengeta Farmers Company Limited and in 1989 the said company surrendered the land to the Government of Kenya in consideration of approval of a subdivision scheme and the issuance of individual titles under the Land Registration Act. This parcel was renamed Block 3 (5995/2).

55. According to SMM3 – the company owned 6 blocks of land as follows;

a. Block 1 - LR NO 5994 - 364 acres

b. Block 2 - LR No 5995/1 - 160 acres

c. Block 3 - LR NO. 5995/2 - 319 Acres

d. Block 4 - LR NO 5996 - 7.97 acres

e. Block 5 - LR NO 6889 - 296 acres

f. Block 6 - LR No 6912 - 633 acres

Total - 1779.97 acres

56. The draft subdivision scheme indicates that the total land measured 1443.95 acres. Nothing has been said about the balance and whether it was held by the defunct company.

57. That said, with the exception of block 2 and 3 the Petitioners did not find it necessary to present any documentary evidence (titles) on the subdivision and the subtitles that yielded and how they were allocated. This would have answered whether all the plots were allocated and to who and whether those allottees were members of the defunct company. The question of defunct company's proprietorship of the lands is therefore left in doubt.

58. DNM-3, the letter dated the 9/5/1985 by the company's surveyors is addressed to the Secretary Central Authority seeking approval for the proposed subdivision. Alongside this letter is the proposed subdivision scheme DNM6. There is no evidence to show that the subdivision scheme was approved and the details of the resultant plots.

59. Going by the affidavit evidence as captured in para 54 it is not clear if Makuyu/Kambiti /Block 2/5995/1 belongs to the company. In the absence of any title registered in the name of the Company it is not feasible for the court to make a finding that the company owned Makuyu/Kambiti /Block 2/5995/1 or land reference No 5995/1. The latter parcel had been transferred to a third party in 1968. It is also admitted in evidence by the Petitioners that the said parcel was fraudulently transferred to the East Africa Power and Lighting Company Limited. No evidence was adduced in support of this averment.

60. It is the Petitioners evidence that their lands were subdivided and titles issued to them in 1988 by the Presidential Land Commission into Large Scale farms. It is their position that the Interested Parties acquired titles through fraudulent means and after the dissolution of the Company in 1991. I have perused some of the titles adduced by the Petitioners said to belong to some of the Interested Parties and it is clear that the titles were issued in 1988 before the dissolution of the Company. This is contrary to their averments that the land was transferred fraudulently by the Directors after the dissolution of the Company in 1991. Their allegation that the map that produced the titles had been backdated and or fraudulently obtained remained a mere allegation devoid of evidence. The Land Registrar did not assist the court either when it stated that original number which the subdivisions NOS 422- 787 emanated from could not be found. The Land Registrar was not called to testify on the matter which perhaps would have thrown more light.

61. It is on record that the directors of the Company vide their letter dated the 2/10/1990 DNM -13 wrote to the Chief Registrar of Companies stating that the company being a land buying company has completed subdivisions of the land and issued titles to the members and has ceased carrying out any business. In this letter the Directors are confirming that all the lands were allocated. However, my reading of DNM-5 dated the 2/4/03 by the surveyor alluded to the possibility that some lands were not surveyed. That said, it is the Petitioner that had the burden of proof which in my view was not discharged.

62. It is the finding of the court that fraud has not been proved.

63. As to whether the Petitioners are entitled to mesne profits, the court is guided by the provisions of orders 21 rule 13 of the Civil Procedure Act which mandates the court to determine mesne profits or rent that has accrued on a property. In the case of **Rajan Shah (supra)** the court stated as follows;

“mesne profits are the rents and profits which a trespasser has or might have received or made during his occupation of the premises and which therefore he must pay over to the true owner as compensation for the tort which he has committed. A claim for rent is therefore liquidated while a claim for mesne profits is always unliquidated.”

64. There was no evidence laid before the court to show that the Respondents are in wrongful possession or occupation of the land. This is not founded.

Whether the Petitioners have proved any violations of their constitutional rights

65. The Petitioners case is anchored on alleged violations of Art 2, 10, 20, 22, 23, 27 and 36, 47 and 67 of the Constitution.

66. In **Martin Nyaga Wambora & 4 others v Speaker of the Senate & 6 Others [2014] eKLR**, on whether the amended petition as drafted was incompetent: -

“The rule that a constitutional petition ought to state clearly the alleged violation and relief sought was stated in the case of **Anarita Karimi NJeru v Republic (1976-1980) KLR 154** where the court stated at Page 156 of the Judgment that:

“We would however again stress that if a person is seeking redress from the High Court or an order which invokes a reference to the Constitution, it is important (if only to ensure that Justice is done in his case) that he should set out with 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.”

67. Going by the principle in the **Anarita Njeru** case, it is not enough for the Petitioner to state the articles of the Constitution alleged to have been violated but precisely show how they were violated and by whom. My understanding of the nature of the case before me is that of an ownership dispute and not a violation of constitutional rights. The controversy perhaps was best adverted through a civil suit so that the evidence is tabled and its veracity tested.

68. In the end I find that the Petitioners have not proved any violation of rights as alleged in the petition.

69. In the upshot the Petition is without merit. It is dismissed with costs.

70. **It is so ordered.**

DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 12TH DAY OF OCTOBER 2021.

J. G. KEMEI

JUDGE

Delivered online in the presence of:

Petitioners – absent

Mwambonu holding brief for Ms. Mwalozi for 2nd Respondent

Mwambonu holding brief for Ms. Mwalozi for 5th Respondent

Ms. Phyllis Mwangi – Court Assistant