



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

PETITION NO. 9B OF 2019

OKIYA OMTATAH OKOITL.....1ST PETITIONER

RUFUS MUTAHI KANYUA

(FOR NDEIYA LAND OWNERS).....2ND PETITIONER

ROSE NJERI MWANGI

(FOR NDEIYA LAND OWNERS).....3RD PETITIONER

ISAACK KANYI NJOKA

(FOR NDEIYA LAND OWNERS).....4TH PETITIONER

VERSUS

MINISTRY OF LANDS AND PHYSICAL PLANNING.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

NATIONAL LAND COMMISSION.....3RD RESPONDENT

KENYA RAILWAY CORPORATION.....4TH RESPONDENT

COUNTY GOVERNMENT OF KIAMBU.....5TH RESPONDENT

AND

HARUNANI & ASSOCIATES.....6TH RESPONDENT

JUDGMENT

By a Petition dated 10th July 2019, the Petitioners sought for orders against the Respondents that;

a) An order quashing the reference in the undated Kenya Gazette Notice No. 12526 published on 22nd December 2017, in the Kenya Gazette Vol.CXIX-No-19 to the 146,8878 hectares parcel of land as Kiambu Western grazing area.

b) An order compelling the NLC to issue a new Gazette Notice of the acquisition of the land indicating, the individual owners of the parcels of land erroneously referred to collectively as Kiambu Western Grazing area

c) An order compelling Kiambu County Government to within 7 days of the Judgment release Ndeiya Subdivision maps and scheme plans (Maps) for Nachu/ Mikuyuini, Nachu / Ndacha, Nguirubi/Thigio and Nguruibi/ Ndiuni to survey of Kenya for the updating of the National land maps

d) An order compelling the NLC to make prompt full fair and immediate compensation of all persons affected by the SGR Phase 2A

e) *The Honourable Court be pleased to issue any other or further remedy that the Honourable Court shall deem fit to grant.*

The Petitioners averred that under **Article 3(1)** of the **Constitution**, the Petitioners have an obligation to respect, uphold and defend the Constitution. That the Respondents published an undated **Gazette Notice** in the Kenya Gazette on **22nd December 2017**, giving Notice of the government's intention to acquire the parcels of land listed therein on behalf of Kenya Railways Corporation in **Kiambu, Kajiado and Nakuru** Counties, for purposes of the construction of the Standard Gauge Railway. That the undated **Gazette Notice** refers to a parcel of land measuring some **146.8878 ha** known as "**Kiambu Western Grazing area**" effectively meaning it is land without private owner. That the said land is in Ndeiya area.

That Ndeiya is made up of four settlement schemes namely **Nachu/ Ndacha, Nachu/Mikuyuini, Nguirubi/ Thigio and Nguruibi/ Ndiuni**. Further, that in the **1990s**, the land was subdivided into various parcels and allocated to individuals through a balloting system after which upon payment of **Ksh.2500/=** for each allotment the persons were issued with ownership documents in form of allotment letters and title deeds. That **Kshs.2,500/=** was to pay for allotment letters and title deeds. That unfortunately upon carrying out the survey, the surveyor the interested Party withheld the subdivision maps and never presented them to survey of Kenya for updating of the National land maps and registration because it was not paid surveys fees by the then Kiambu County Council.

That when the land was acquired for the **Nairobi – Naivasha Section** of the **Standard Gauge Railway Phase 2A**, the project affected land owners were not compensated by the **3rd & 4th** Respondents because the land was collectively gazetted by the **3rd** Respondent as **Kiambu Western Grazing area**, and not as subdivided parcels of land legally owned by private individuals. That in **May 2018**, the County Government of Kiambu paid **Harunai Associates** their outstanding Survey fees in **full** and the said Firm presented the Ndeiya subdivision maps to the **Governor of Kiambu County**, at a public Ceremony. That However, the said maps have not been remitted to the Survey of Kenya and attempts to get the County Government of Kiambu to submit the maps have been fruitless.

Further that the untenable state of affairs means that the land owners cannot be compensated from the SGR project and they also cannot do subdivisions, change of use, develop or apply for loans with their parcels of land because the said parcels are not documented at the Survey of Kenya.

That the Government began Constructing the **Ngong to Suswa Road** in Ndeiya and already **KERRA** is illegally trespassing through the said private parcels of land and ignoring land owners, claiming that the land is not documented. That the takeover of private land for a public purpose without prompt full and immediate compensation offends **Articles 10, 40,47, 64 and 259** of the **Constitution 2010**. Further, that **Article 242(2)(d)**, which provides for the enjoyment of rights and fundamental freedoms was violated to the extent that private property was taken over without compensation by private interests. Further that **Article 47** was violated to the extent that the failure /refusal by the **County Government of Kiambu** to remit maps to Survey of Kenya is not administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. That **Article 47** was violated to the extent that the **3rd & 4th Respondents**, have failed to carry out **due diligence** to establish the real owners of the land in issue.

In his Supporting Affidavit, **Okiya Omtata Okoiti** reaffirmed and repeated the facts and averment stated and included in the Petition and averred that the Respondents have an obligation to uphold, protect and defend the Constitution. That there will be disastrous implications to the rule of law.

The Petition is opposed and the **4th** Respondents filed a Replying Affidavit sworn by its Senior Legal Officer **Stanley Gitari** on **25th November 2019**, who averred that the case relates to the acquisition of **146.8878 ha**, parcels of land by the **3rd** Respondent through **Gazette Notice 12526**, on behalf of the **4th** Respondent for the construction of the **Nairobi- Naivasha Section** of the **Standard Gauge Railway**. That the Petition is misconceived and discloses no cause of action against the **4th** Respondent and the Petitioners are intending to reap where they have not sown. That the Petitioner have no **locus standi** to commence and or maintain these proceedings for they have no proprietary interests at all in the suit property for the land was gazetted as "**Kiambu Western Grazing area**", making it **Community land**. Further, that the **4th** Respondent has no mandate in acquiring land for public purposes and compensating the aggrieved land owners, and the said mandate is a preserve of the **3rd** Respondent. That the **4th** Respondent has no role in survey of the land and neither does it have any association with the County Government of Kiambu. That the **4th** Respondent has not infringed on any fundamental rights and thus the Petition is an abuse of the court process.

The **1st & 2nd** Respondents filed grounds of opposition dated **21st November 2019** and opposed the Petition on the grounds that the Petitioners have not annexed evidence of authority to file the Petition on behalf of Ndeiya owners. That no evidence has been produced to show that the properties in issue fall within the **gazetted Kiambu Western Grazing Area**. Further that the Petitioners have not provided any evidence that the government is developing the area where the suit properties are situated nor taken possession of the suit properties and trespassed.

Further, that the process of **compulsory acquisition** has not been completed to necessitate the intervention sought from the Court and the survey of land precedes issuance of Certificate of ownership. That the Petitioners ought to have carried out **due diligence** to ensure that the land was surveyed. That the Petitioners have not demonstrated that the Respondents have failed to carry out their constitutional mandate to warrant intervention sought from the Court.

That the Petition is **misconceived, frivolous and vexatious** and that the Petitioners have failed to establish any Constitutional or statutory right forming the basis of these proceedings and that the Petition has no basis in Law. That the Petitioners have failed to demonstrate which of their fundamental right or freedoms are under threat or have been infringed by the **1st & 2nd** Respondent. That the legality of the title is disputed and the Petitioners cannot base their Petition on the allegations that their rights to properties have been violated.

The **5th** Respondent also filed grounds of opposition dated **25th November 2019**, and opposed the Petition on the grounds that the Petition is incurable defective and is an abuse of the Court process as the Petitioners do not have **locus standi** to institute the Petition as they are not

rightful owners. Further, the Petition does not disclose any reasonable cause of action. That the 5th Respondent in collaboration with other partners have already listed **147 parcels of land**, affected by the **SGR** which have been verified and a list submitted to the 3rd Respondent for consideration and further action.

Further that the 5th Respondent instructed the Interested Party herein to forward the Survey records to the **Director of Survey** to pave way and kick start the process of compensation, and whether the same were forwarded is not within the knowledge of the 5th Respondent. That failure by the Interested party to act cannot be blamed on the 5th Respondent herein.

The Petitioners filed a Supplementary Affidavit sworn by **Okiya Omtatah Okoiti** on **3rd March 2020**, in which he annexed documents relating to the acquisition of the land, title deeds, Valuation report, beacon certificate and the map of KENTRACO transmission line way leave.

The Interested Party swore a Replying Affidavit on **2nd August 2019**, sworn by **S.A Harunani**, who averred that sometime in the **1990s**, he was instructed by the **Defunct County Council of Kiambu** to carry out survey work in four settlement schemes. That he undertook the task and sought to be paid his professional fees, but the same was not forthcoming of which he held onto the subdivisions as a lien. Further that in **May 2018**, upon payment of his professional fees, he released the **Ndeiya Subdivision maps** to County Government of Kiambu for approval and the Interested Party had been waiting to receive back the subdivision maps from the **County Government of Kiambu**, with authorization to submit the same to the Director of Survey.

That the documents sought from the Interested Party are in their custody subject to contractual obligation and degazettement of the **Kiambu Western Grazing** area by the 5th Respondent. That he has been advised by his Advocate that the Petition has no merit and no proper foundation has been laid for the orders sought.

The Petition was canvassed by way of written submissions which the Court has carefully read and considered. The Court has further considered the Petition in general, the Affidavits, Grounds of Opposition and the relevant provisions of law and finds that the issues for determination are;

- 1. Whether the Petitioners have locus standi to institute the suit*
- 2. Whether the Ndeiya Land Owners have any proprietary rights to the suit property*
- 3. Were there any violation of rights*
- 4. Whether the Petitioners are entitled to the orders sought*

1. Whether the Petitioners have locus standi to institute the suit

The Respondents have contended that the Petitioners do not have the **locus standi** to institute this Petition and they have given various reasons among them being that the Petitioners as they have no proprietary rights and that there is no evidence of authority to file the Petition on behalf of Ndeiya Land Owners. In the case of **Law Society of Kenya ...Vs...Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000**, the Court held that;

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue a in court of law”.

Further in the case of **Alfred Njau and Others ...Vs... City Council of Nairobi (1982) KAR 229**, the Court also held that;-

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

Article 22 of the Constitution of Kenya provides that for the enforcement of the Bill of Rights and on issue of locus standi and it provides that

“22 Enforcement of Bill of Rights

(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

- a) a person acting on behalf of another person who cannot act in their own name;***
- b) a person acting as a member of, or in the interest of, a group or class of persons;***
- c) a person acting in the public interest; or***

d) an association acting in the interest of one or more of its members.”

Further under **Article 258 of the Constitution** on enforcement of the Constitution it is stated:-

“258. Enforcement of this Constitution

(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.”

From the above Articles of the Constitution, it is evident that the Constitution allows any person to file a Petition seeking that their rights have been violated. Further any person is empowered by the Constitution to bring a Petition on behalf of another person, claiming that the persons rights have been violated and on behalf of other people. The Petitioners have indicated that they have brought the Petition on behalf of **Ndeiya Land Owners**, and they need not have any proprietary interest nor is an authority required from the said **Ndeiya Land Owners** for the Petition to be properly before Court.

As the Petitioners have filed this suit claiming that the rights of the **Ndeiya Land Owners** have been violated, they have thus filed the same on behalf of the said persons and as per **Article 22 of the Constitution** they are well vested with the appropriate locus as they have a right to do so. See the case of **International Community of Women Living With HIV Registered Trustees ...Vs...Co-ordination Board & 2 others; Teresia Otieno (Interested Party) [2021] eKLR** where the Court held that;-

27. Our constitution under Article 22 and 258 of the Constitution generously allows every person to institute proceedings subject to claims set out in the said Articles without requirement of incorporation. In the instant Petition the Petitioner whether described as an incorporated or unincorporated body or whether a Trust or an NGO meets the qualification of a person who has locus standi to institute suit under Articles 22 and 258 of the Constitution as defined under Article 260 of the Constitution. There is in my view no requirement for a Petitioner to be either a company, or an association or other body of person so long as the person as defined under Article 260 of the Constitution is seeking remedies vide Article 22 and 258 as set out in the respective Articles. There is no requirement for incorporation. I find that it does not matter whether the petitioner is a Trust or an NGO, but an association or body of persons instituting court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. I find and hold the Petitioner has locus standi to maintain the instant suit.”

Taking into account the above holding of the Court, this Court finds and holds that the Petitioners have the requisite **locus standi** to maintain the instant Petition.

2. Whether the Ndeiya Land Owners have any proprietary rights to the suit property

The Petitioners contended that the suit property that is currently known as **Kiambu Western Grazing zone**, whose categorization is referenced to be property that is not privately owned, is owned by members of **Ndeiya Land Owners**. That in the 1990's, the then Municipal Council of Kiambu allocated to the Petitioners land in the said area, and that the then defunct **Municipal Council of Kiambu**, enlisted the services of the Interested Party to subdivide the land. However, the Interested Party was not paid his professional fees and he failed to remit the said maps to the County Council, but has since remitted the maps when he was paid the said fees, but that the same has not been forwarded to the Director of Survey, That the maps at the Survey registry indicate that the suit property is still known as **Western Grazing area**, despite the property being privately owned.

It is the 5th Respondent's contention that the Petitioners have not demonstrated that the maps are in their custody and that it has fulfilled its obligations by compiling final and verified lists of affected parcels. The 1st & 2nd Respondents on the other hand have questioned how the titles were issued without survey being done.

The Court has perused the documentations produced in evidence by the Petitioners. Most importantly, it is worthy to note that the 5th Respondent, who is the **County Government of Kiambu** that took over the functions of the defunct **Municipal Council of Kiambu** has not controverted the Petitioners' allegations that there were private citizens that were allocated the suit property. The Court has seen various allocation cards, allocation letters and titles deeds that were issued to various persons. The Court has further seen a letter dated **13th February 2019** addressed to the Chairman of the **National Land Commission** by **Mr. Martin Njogu Mbugua**, the County Secretary and head of Public Service Referenced **Compulsory Acquisition of Kiambu Western Grazing area** and its noted that amongst the terms of reference of the Committee was to identify and verify the allottees of land in this area and to further Identify the persons affected by **Standard Gauge Railway**. Therefore, there is no doubt in the Court's mind that indeed that the suit property had been allotted to **private citizens** and that there are **Ndeiya Land Owners**, who have proprietary interest in the said schemes that have been listed .

S. A Harunani in his Replying Affidavit sworn on 22nd August 2019, on behalf of the Interested Party did indicate that in the 1990's, he was instructed by the defunct **Kiambu County Council** to carry out survey works in the schemes known as **Nachu/ Ndacha. Nachu Mikuyuini, Nguruibi/Thigio and Nguruibi/ Ndiuni**, to which he undertook the survey works and in **May 2018**, upon subdivisions, he released the **Ndeiya** subdivisions maps to **County Government of Kiambu**, for approval and that the documents sought from the Interested Party are in their custody, subject to contractual obligation and degazettement of the **Western Grazing area**, hence confirming that the **Western Grazing area**, is indeed the schemes.

The Court thus finds and holds that Petitioners who have so far produced verified documentations of land ownership over the said schemes namely **Ndeiya Land Owners** having been allotted the suit property and issued with either allotment letter and others which have titled deeds, have proprietary interest over the suit property.

3. Were there any violation of rights

The Petitioners have contended that the Respondents are in violation of their Constitutional rights including their rights under of **Article 10 of the Constitution**, violation of the right to public participation under **Article 50 (1)** as the people affected by the compulsory acquisition were not afforded a **fair hearing**, and were not engaged in the processes of compulsory acquisition, Violations of their rights under **Article 40**, of the Constitution. Further violations of their rights under **Article 10(2) (a)**, Article 47 amongst other violations.

The Court has found and held that the **Ndeiya Land Owners**, have proprietary rights over the suit property and that means that the said owners were entitled to be consulted on every issue that affected the suit property. This is so since it is the Petitioner's contention that the

suit property that has been Gazetted by the 3rd Respondent for Compulsory Acquisition has been Gazetted as property that is not privately owned. Further, they are also entitled to **Fair Administrative Action**. The Petitioners have averred that during the **Compulsory Acquisition** of the property, the **Ndeiya Land Owners** were not accorded a **Fair hearing** and the Respondents trespassed on their lands and started construction. That the 5th Respondent has failed to submit the survey map on the suit land for registration and authentication by the Director of Survey. That when the land was acquired for SGR Phase 2A, the project affected landowners were not compensated because the Land had collectively been gazetted by the 3rd Respondent as Kiambu Western Grazing area.

Further that their rights under **Article 40** of the Constitution wherein they have a right to enjoy their right to ownership without being Arbitrarily deprived of the said ownership and that before commencing the impugned hearing they were not consulted.

The process of compulsory acquisition was laid down in the decided case of **Patrick Musimba ...Vs... National Land Commission & 4 others [2016] eKLR** where the court held as follows;

“Under Section 107 of the Land Act, the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of the Constitution. In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.

Under Sections 107 and 110 of the Land Act, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.

As part of the National Land Commission's due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the Land Act.

The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.

The burden at this stage is then cast upon the National Land Commission and as can be apparent from a mtheodical reading of Sections 107 through 110 of the Land Act, the landowner's role is limited to that of a distant by stander with substantial interest.

Section 112 of the Land Act then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person

attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.

On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the Land Act.

The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the Land Act.

If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the Land Act. This is in line with the Constitutional requirement under Article 40(3) of the Constitution that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.

The Constitution dictates that acquisition be in accordance with the provisions of the Constitution itself and any Act of Parliament. The Constitution itself only provides for just compensation being made promptly.

The current procedure for acquisition of land by the State is as outlined above. As can be seen parliament took very seriously its constitutional duty to legislate on the State's powers of deprivation or expropriation. Perhaps conscious of the emotive nature of land issues, the Legislature appeared scrupulous and contemplative.

From the above, it is clear that in the process of **compulsory acquisition**, though the role of a land owner is limited to that of a distant bystander, the said role is with substantial interest. Further, the landowner must be directly involved for purposes of determining proprietary interest and compensation. The Contention by the Petitioners that there were land owners who were deprived off their rights to the suit property during **Phase 2A** of the **SGR**, has not been controverted. It is further not in doubt that the fact that the suit property has been Gazetted as **Kiambu Western Grazing area**, the land owners who the Court has held have proprietary interest as they were allotted the suit property were not afforded a chance to be heard or consulted as the decision of compulsory acquisition was ongoing.

Article 40 of the Constitution provides for the protection of rights to property. **Article 40(1)** provides as follows:-

“Subject to article 65, every person has the right, either individually or in association with others, to acquire and own property:-

(a) of any description; and

(b) in any part of Kenya”

Article 40(3) provides as follows:-

“The state shall not deprive a person of property of any description or of any interest in, or right over, property of any description, unless the deprivation:-

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

(b) is for public purpose or in the public interest and is carried out in accordance with this constitution and any Act of Parliament that:-

(i) requires prompt payment in full, or just compensation to the persons; and

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

The said Articles requires prompt payment and that due process must be followed in case of compulsory acquisition. In this instant case, some **Ndeiya Land Owners** failed to be afforded such an opportunity and the Court finds and holds that their rights were indeed violated as every person who has an interest ought to have been served with a copy which in this case the Petitioners were not. Further, there ought to have been prompt and just payment of compensation for the acquisition of the properties. See the case of **John Mitua Kiema ...Vs... Kenya National Lands Commission & 2 others [2020] eKLR**

“It is apparent that once the 1st Respondent expressed their intention to acquire the said parcels of land, then the provisions of Section 112(1) of the Land Act sets in and inquiries stage was to commence. Section 112(1) of the Land Act provides:-

112. (1) At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall—

(a) cause notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry; and;

(b) serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.”

From the letters of allocation produced in evidence, the Petitioners were allocated the suit property in the **1990's**. The Interested Party was then tasked to subdivide the land and further submit the same to the Director of Survey and it seems that this was never done until sometime

in 2018. Though the 5th Respondent has denied being in possession of the maps, the Court has seen the letter dated 17th December 2018, by the Deputy Director Lands Survey & Geo information's confirming that the County Government is verifying the maps registration Section.

While the Court appreciates that it would seem that there were acts ongoing to be able to put their house in order, under the Constitution, the Petitioners are entitled to **administrative action**, that is expeditious, efficient, lawful, reasonable and procedurally fair under **Article 47. (1)** of the Constitution and the Court finds and holds that this right too has been violated.

4. Whether the Petitioners are entitled to the orders sought

The Petitioners have sought for various orders including an Order of quashing the reference in the undated **Kenya Gazette Notice No. 12526** published on 22nd December 2017, An order compelling the National Land Commission to issue a new Gazette Notice of the acquisition of the land indicating the individual owners of the parcels of land erroneously referred to collectively as **Kiambu Western Grazing** area, An order compelling **Kiambu County Government** to within 7 days of the Judgment release Ndeiya Subdivision maps and scheme plans (Maps) for **Nachu/ Mikuyuini , Nachu / Ndacha, Nguirubi/Thigio and Nguruibi/ Ndiuni**, to survey of Kenya for the updating of the National land maps, An order compelling the National Land Commission to make prompt full fair and immediate compensation of all persons affected by the SGR Phase 2A.

The Court has already held that the Petitioners being **Ndeiya Land Owners** who have produced verified documents, have proprietary rights. Further, it is not in doubt that they are unable to enjoy their rights to use of the suit property while the same is still registered as **Kiambu Western Grazing area**, The only thing that would cure the same is if the report of subdivision will be forwarded to the Director of Survey and further upon the said submission, then automatically the subdivisions would be able to show the true reflections of the issues and there would necessitate the process of acquisition being changed as what will be acquired is no longer the "**Kiambu Western Grazing area**" by individual parcels of land from owners. Consequently, the Court thus finds and holds that the Orders sought by the Petitioners are reasonable having found that they have proprietary Interest.

This does not in any way impede or take away the mandate of the **Kiambu County Government** of verification of documents to ascertain who the true land owners are. For the above reasons, the Court finds and holds that the Petitioners herein are entitled to the orders sought in the instant Petition.

The Upshot of the foregoing is that the Court finds and holds that the Petition dated 10th July 2019, as brought by the Petitioners herein is merited and it is allowed entirely in terms of prayers No (a) (b) (c) (d) and the said new gazette Notice to be issued within a period of 30 days from the date of this Judgment.

It is so ordered

DATED, SIGNED AND DELIVERED AT THIKA THIS 8TH DAY OF OCTOBER, 2021.

L. GACHERU

JUDGE

Court Assistant – Lucy