



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC PETITION NUMBER 5 OF 2021

DAVID NKOITOI OLE KIPINTOI.....PETITIONER

VERSUS

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....1ST RESPONDENT

THE LAND ADJUDICATION & SETTLEMENT OFFICER

(TRANSMARA EAST/WEST SUB-COUNTY).....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

PETER NYAKUNDI4TH RESPONDENT

MARU WAMBUI MBUCHIRI..... 5TH RESPONDENT

LEKAENY NTURKUL.....6TH RESPONDENT

JEREMIAH OURE MIRWA.....7TH RESPONDENT

GEORGE NDERITU.....8TH RESPONDENT

RICHARD KIBOR MUNA..... 9TH RESPONDENT

STEPHEN L.O LEMPASO.....10TH RESPONDENT

JOHN NYAMWEYA OANDA.....11TH RESPONDENT

SAMUEL PARSOILAL..... 12TH RESPONDENT

SAMUEL OTIENO.....13TH RESPONDENT

KEREMENSIA JUMA.....14TH RESPONDENT

TELESIA MORAA MACHUKI..... 15TH RESPONDENT

CECILIA WUAPARI.....16TH RESPONDENT

ELEMETA OLOJU SANARE.....17TH RESPONDENT

RICHARD KIPROTICH CHIRCHIR.....18TH RESPONDENT

EUNICE MERCELINE.....	19 TH RESPONDENT
ONYANGO ORUGI.....	20 TH RESPONDENT
SARAH ADHIAMBO ORUGI.....	21 ST RESPONDENT
ANNAH KIRUTI NAIPOL.....	22 ND RESPONDENT
ESTHER NYABOLE BOGONKO.....	23 RD RESPONDENT
SAMUEL OLANDO TUKERO.....	24 TH RESPONDENT
MICHAEL OLOLDIKIR SEME.....	25 TH RESPONDENT
ESTHER KIPENO.....	26 TH RESPONDENT
TAPSAPEI SILATEL.....	27 TH RESPONDENT
LEKILABU OLE TANYAE.....	28 TH RESPONDENT
FRANCIS LEBOO KIPENO.....	29 TH RESPONDENT
SIMEL OLE SAMPERU.....	30 TH RESPONDENT
SAMPERU OLE KIMIENO.....	31 ST RESPONDENT
LIKAMA OLE SAMPERU.....	32 ND RESPONDENT
METETEI NYAIYIA.....	33 RD RESPONDENT
ALICE MORAA NAMBANI.....	34 TH RESPONDENT
LUCY WAIRIMU KIRUTI.....	35 TH RESPONDENT
NEKISANYA OLE NAIGEYO.....	36 TH RESPONDENT
KONTENI KONCHELLAH.....	37 TH RESPONDENT
GEDION OLE MARANDU.....	38 TH RESPONDENT
NELSON TINEGA.....	39 TH RESPONDENT
PETER SEREMEI KITRAP.....	40 TH RESPONDENT
NAGURUNI WUAPARI.....	41 ST RESPONDENT
JONATHAN KIMEL.....	42 ND RESPONDENT
CHONGU DIKIR.....	43 RD RESPONDENT
MEGOKORIN OLE KIMEL.....	44 TH RESPONDENT
JOSEPH OLE CHEMECHA NDIRA.....	45 TH RESPONDENT
SAMUEL MOGOI MATAGARO	46 TH RESPONDENT
JOHN KINUTHIS THUKU.....	47 TH RESPONDENT
FRANCIS OOISHAI KISAKA.....	48 TH RESPONDENT

PIUS NYABARO OMACHE.....	49 TH RESPONDENT
LEKOKWAKISAKA.....	50 TH RESPONDENT
ZEBEDEO JUMA OMACHE.....	51 ST RESPONDENT
SALANKE OLE KULALE.....	52 ND RESPONDENT
STANLEY GAKIO.....	53 RD RESPONDENT
OGOTI NYANGORO.....	54 TH RESPONDENT
WILLIAM MAINE KONCHORY.....	55 TH RESPONDENT
SOMPISHA JOSEPH KORSAL.....	56 TH RESPONDENT
MOORLAND DANIEL.....	57 TH RESPONDENT
MOSINKO DANIEL.....	58 TH RESPONDENT
JANE MOKEIRA OLE MISO.....	59 TH RESPONDENT
JOSEPH ORKUNY LEMRUT.....	60 TH RESPONDENT
TAPAPUL OLE KIU.....	61 ST RESPONDENT
HILLARY RUTTOH.....	62 ND RESPONDENT
JOHN KIPTONUI SAKAJAH.....	63 RD RESPONDENT
PASUA OLE NAMPAYIO SHIRA.....	64 TH RESPONDENT
KONINI NALUTU KINYAMAL.....	65 TH RESPONDENT
PERIA OLE KIPENO.....	66 TH RESPONDENT
LEKINI OLE KULALE.....	67 TH RESPONDENT
JOSHAU ACHOCHI SABOKE.....	68 TH RESPONDENT
RUMAIN OLE KISIKO.....	69 TH RESPONDENT
SIKOI MORONKO.....	70 TH RESPONDENT
PARSHAU OLE MASOI.....	71 ST RESPONDENT
FRANCIS MARAPEI MASOI.....	72 ND RESPONDENT
JOHN SIKANA MASOI.....	73 RD RESPONDENT
DANIEL KANKE.....	74 TH RESPONDENT
RAPHAEL SANKALE.....	75 TH RESPONDENT
RAPHAEL KOYIAKI SAKAJA.....	76 TH RESPONDENT
TATEI OLGUN.....	77 TH RESPONDENT
OPON SEYIO.....	78 TH RESPONDENT

JOSEPH PEMBA TUKEIRO.....	79 TH RESPONDENT
NTULITO MANYASA.....	80 TH RESPONDENT
JOSEPH TUBULA KONCHORY.....	81 ST RESPONDENT
KISEMEI TUBULA.....	82 ND RESPONDENT
KIRENGWA OLE TIGIRAN KIREN.....	83 RD RESPONDENT
PETER OKEMWA NYAMOSI.....	84 TH RESPONDENT
JAMES GICHUKI KABUTHA.....	85 TH RESPONDENT
REUT OLE KISERI.....	86 TH RESPONDENT
ROSEMARY WAMBUI MWANGI.....	87 TH RESPONDENT
JOHN MPASIANY OLE NTURUR.....	88 TH RESPONDENT
GERALD MWANGI.....	89 TH RESPONDENT
CHARLES MULWA MWANGI.....	90 TH RESPONDENT
LABAN KULALE TUKAI.....	91 ST RESPONDENT
JENNIFER OLTETIA OLARIKUNI.....	92 ND RESPONDENT
EDWARD KIPLANGAT ARAP SOI.....	93 RD RESPONDENT
JAMES KIRIRO NDERITU.....	94 TH RESPONDENT
JACKSON ABUYA NYANCHOKA.....	95 TH RESPONDENT
RONKEI TIYIO.....	96 TH RESPONDENT
JOHN MEIMUTI OLE KIMIENO.....	97 TH RESPONDENT
THOMAS OSOITO KIMIENO.....	98 TH RESPONDENT
OMROKA KUSIMBA LEO.....	99 TH RESPONDENT
CHARLES MULWA MUTIKU.....	100 TH RESPONDENT
JOHN BULDEGUN KOMBO.....	101 ST RESPONDENT
ALOICE ODEK OBARA.....	102 ND RESPONDENT
WILSON SANTOI.....	103 RD RESPONDENT
SAMSON BOSIRE NYANCHOKA.....	104 TH RESPONDENT
VERIONICAH NTHENYA ITULE.....	105 TH RESPONDENT
KIRIPYOT OLE LEKINI.....	106 TH RESPONDENT
KIROTIE OLE KIRIPOT.....	107 TH RESPONDENT
KAKAI SILE.....	108 TH RESPONDENT

MOONO SILE.....	109 TH RESPONDENT
CURTIS KARIUKI KAHUGI.....	110 TH RESPONDENT
EDMOND LEMISO MORONKO.....	111 TH RESPONDENT
SARUNI OLE MORONKO.....	112 TH RESPONDENT
PETER WAIRERA MWAURA.....	113 TH RESPONDENT
PETER EBURIA EKOYION.....	114 TH RESPONDENT
IANKAS OLE NTUKUSOI.....	115 TH RESPONDENT
ESTHER KEMUNTO MATAYO.....	116 TH RESPONDENT
CHARLES NYANKORO SOMPISHA.....	117 TH RESPONDENT
MORIS NYANKORO SOMPISHA.....	118 TH RESPONDENT
CAROLYNE CHEPKEMOI.....	119 TH RESPONDENT
FRANCIS OLAI KANOI.....	120 TH RESPONDENT
RAEL CHEPKORIR SIEM.....	121 ST RESPONDENT
KIRENGWA OLE TIGIRAN KIREN.....	122 ND RESPONDENT
PETER OKEMWA NYAMOSI.....	123 RD RESPONDENT
JOHN KINUTHIA THUKU.....	124 TH RESPONDENT
OMOROKA KUSIMBA.....	125 TH RESPONDENT
JAMES TUKERO.....	126 TH RESPONDENT
KIBII ARAP BETT.....	127 TH RESPONDENT
BETTY N CHEPNGENO.....	128 TH RESPONDENT
ANNA KERUBO JACOB.....	129 TH RESPONDENT
AGNES WAIRIMUTHURU.....	130 TH RESPONDENT
KOYIAKI OLE NGATUNY.....	131 ST RESPONDENT
MEKUYUANI OLE NOONGOBOI.....	132 ND RESPONDENT
ARUSAT OLE KIRKAM.....	133 RD RESPONDENT
ANNAN CHEPKIRUI KIPENO.....	134 TH RESPONDENT
OLEL SULUL.....	135 TH RESPONDENT
MELITA OLE NAKUYU.....	136 TH RESPONDENT
JOSEPH SANKALE NTAIYIA.....	137 TH RESPONDENT
KINYAMAL OLE TARI.....	138 TH RESPONDENT

TELEU LEKOLEL.....	139 TH RESPONDENT
MUNTETI LEKOKEL.....	140 TH RESPONDENT
JAHANA ORUGUNY.....	141 ST RESPONDENT
JOSHUA RUTTO A TUM.....	142 ND RESPONDENT
DANIEL LEBOI KONCHORY.....	143 RD RESPONDENT
SAITOTI KONCHORY.....	144 TH RESPONDENT
JANE WANGARE CHEG.....	145 TH RESPONDENT
LYDIA MUTHONI.....	146 TH RESPONDENT
PETER LEMAN OLE NTIOI.....	147 TH RESPONDENT
LWSIRUA NTUKUSOI.....	148 TH RESPONDENT
SANKAI OLE DIRIMA.....	149 TH RESPONDENT
JACKSON KEMOI OLE ANGORO.....	150 TH RESPONDENT
FRANCIS LESHANOLBATITHI OLE TUKERO.....	151 ST RESPONDENT
FSBIFOEINO OTONKO.....	152 ND RESPONDENT
VHSTLRD OLR TINKS OLOLRMNRO.....	153 RD RESPONDENT
ASCAR MILIYIO KONCHORY.....	154 TH RESPONDENT
EMMANUEL SANKALE.....	155 TH RESPONDENT
SEKENTO LOOSAKEKE OLE RIPET.....	156 TH RESPONDENT
SANDER OLE KONBLUCIA KONCHORY.....	157 TH RESPONDENT
LOSIMBAN TIYOI.....	158 TH RESPONDENT
BENJAMIN MAYIAN OLE KESERI.....	159 TH RESPONDENT
KISERIAN OLE MAYIANI.....	160 TH RESPONDENT
JEMES LESHAO MAYIANI.....	161 ST RESPONDENT
TEKENDAI OLE KIU.....	162 ND RESPONDENT
SAYIALE NTITI.....	163 RD RESPONDENT
SAMUEL LANKAS KILETIA.....	164 TH RESPONDENT
OLE KANASA MAESIA.....	165 TH RESPONDENT
SAMUEL K. GITURO.....	166 TH RESPONDENT
SAMEL KOMINGOI KIPENO.....	167 TH RESPONDENT
PERIA KIPENO.....	168 TH RESPONDENT

PETER MUZAE LEWEKA.....	169 TH RESPONDENT
JOSEPH MUITA.....	170 TH RESPONDENT
LESINKO OLE SHIRA.....	171 ST RESPONDENT
NAMUNTER OLE SHIRA.....	172 ND RESPONDENT
AGNES NYASAKA MOGIRE.....	173 RD RESPONDENT
TUBULA KESERI.....	174 TH RESPONDENT
JOSEPHAT KILINGAT.....	175 TH RESPONDENT
JOHN OLARIKONI.....	176 TH RESPONDENT
NYANG'AU PETERSON ACHOCHI SABOKE.....	177 TH RESPONDENT
JOHN CHARLES LEMISO.....	178 TH RESPONDENT
JANET NJERI MWANGL.....	179 TH RESPONDENT
WILLIAM MUCHIRI KAHUGU.....	180 TH RESPONDENT
DANIEL MWANGI KUNYIH.....	181 ST RESPONDENT
RONKEI TIOYIO.....	182 ND RESPONDENT
PASCAL MBATA OLIECH.....	183 RD RESPONDENT
JACOB NBEGO ARWA.....	184 TH RESPONDENT
DAVID KIMANI MBOGO.....	185 TH RESPONDENT
KISEMEI OLE LEKOKEL.....	186 TH RESPONDENT
FRANCIS KANTAI KOSIKIR.....	187 TH RESPONDENT
AGNES WAIRIMU THUKI.....	188 TH RESPONDENT
LUCIA NJERI WANJAGE.....	189 TH RESPONDENT
DANIEL OLE SINKO.....	190 TH RESPONDENT
ADREA OMBASA.....	191 ST RESPONDENT
SAMUEL KONCHORY.....	192 ND RESPONDENT
TAMAI KARIA.....	193 RD RESPONDENT
MWANGI KIMANI.....	194 TH RESPONDENT
PATRICK NJUGUNA.....	195 TH RESPONDENT
JOSEPH MWANGI CHOMBA.....	196 TH RESPONDENT
ELKANA KIU.....	197 TH RESPONDENT
RUTH MUNDA GITURO.....	198 TH RESPONDENT

PASUA OLE NAMPAYIO.....	199 TH RESPONDENT
ANNA KIRUTINAIPAINOI	200 TH RESPONDENT
DAMARIS WANGECI KARANJA	201 ST RESPONDENT
KAPEEL OLE SHONTE	202 ND RESPONDENT
EVANS OOGA MOCHACHE.....	203 RD RESPONDENT
TRUPHENA KEMUNDO BOGONGO.....	204 TH RESPONDENT
ZAKAYO MAITIKA GITEMBE.....	205 TH RESPONDENT
STEPHEN SILEI SHIRA.....	206 TH RESPONDENT
DANIEL KISAISA MUTENDEL.....	207 TH RESPONDENT
KISIOLO TUKAI.....	208 TH RESPONDENT
SUSAN NJERI NDERITU.....	209 TH RESPONDENT
DAVID KINAMPU LEKIJORO.....	210 TH RESPONDENT
JOSEPH NKOKERE.....	211 TH RESPONDENT
TUKAI OLE TUNAI.....	212 TH RESPONDENT
CICILIA MILIYIO KONCHORY.....	213 TH RESPONDENT
ODUPOI KOIDUNGU OLE GILAI.....	214 TH RESPONDENT
FRANCIS LEBOO KIPENO.....	215 TH RESPONDENT
NOONKONGWA ENE MORIS KIMA.....	216 TH RESPONDENT
GERTRUDE OLOCHO.....	217 TH RESPONDENT
BEATRICE NJOKI NGANGA.....	218 TH RESPONDENT
ANNASITAZIA GATI MACHUMA.....	219 TH RESPONDENT
JOSEPH MWANGI CHOMBA.....	220 TH RESPONDENT
MARY NYAMBURA TORRON.....	221 ST RESPONDENT
KIRIGA SOIT.....	222 ND RESPONDENT
KENTUYIA OLE NGIRO.....	223 RD RESPONDENT
PAREKEN OLE NGIRO.....	224 TH RESPONDENT
TANYAE OLE SADIRA.....	225 TH RESPONDENT
SEREN OLE NAITE.....	226 TH RESPONDENT
DANIEL PARLEKO SHIRA.....	227 TH RESPONDENT
HILLARY SAITOTI.....	228 TH RESPONDENT

SATUNI SERENY.....	229 TH RESPONDENT
DAVID KNAMPU LEKIJORO.....	230 TH RESPONDENT
JULIUS MUTISO MATHEKA.....	231 ST RESPONDENT
LEKAKENY NTURKUL.....	232 ND RESPONDENT
SAMUEL OMAO NYANGERI.....	233 RD RESPONDENT
LEMAREN SULUL.....	234 TH RESPONDENT
JOHN KASANA LUKOTANA.....	235 TH RESPONDENT
SARUME BWARI OGAE.....	236 TH RESPONDENT
LUCIA WAIRIMUKIRUTI.....	237 TH RESPONDENT
DAVID MASHERI.....	238 TH RESPONDENT
MIMIYO ENE LOLI.....	239 TH RESPONDENT
SIMPALA OLOISHOYUA.....	240 TH RESPONDENT
NYABETA NYACHEO OANDA.....	241 ST RESPONDENT
MOMANYI OGANO.....	242 ND RESPONDENT
NICHOLAS MONKI NTUKUSOI.....	243 RD RESPONDENT
OLARASHA NTURKUR.....	244 TH RESPONDENT
LEKAKENY LERIONKA MOSEET.....	245 TH RESPONDENT
PAREKEN OLE NGIRO.....	246 TH RESPONDENT
PENINAH NOOKOKUA SANKALE.....	247 TH RESPONDENT
NAISU AKU ENE SANSON.....	248 TH RESPONDENT
LUCY WANJA KINYUA.....	249 TH RESPONDENT
NGIGI CHOMBA.....	250 TH RESPONDENT
JAMES SIRONKA KAMWARO.....	251 ST RESPONDENT
RODAH SOMPISHA.....	252 ND RESPONDENT
FLORENCE CHEPKEMOI.....	253 RD RESPONDENT
DAMARIS WANGECI KARANJA.....	254 TH RESPONDENT
MARY NJOKI KIARIE.....	255 TH RESPONDENT
RAEL BOSIBORI ABUYA.....	256 TH RESPONDENT
DANIEL KOUKOU SHIRA.....	257 TH RESPONDENT
TIKAN NONGOBOI.....	258 TH RESPONDENT

AGNES TORRON.....259TH RESPONDENT

ANNASITANZIA GATI MACHUMA.....260TH RESPONDENT

JUDGMENT

The Petitioner's dispute in this matter is contained in the Amended Constitutional Petition dated 5th November 2020.

The Petitioner is seeking for the following Orders against the 1st to the 260th Respondents herein; -

A) That this Honourable Court be pleased to declare that the 1st Respondent's decision of secretly proceeding to parcellate, demarcate and or create and superimpose numerous titles and interests and register their relatives, proxies, acquaintances, friends who have never resided and occupied the suit land and creating parcels numbers was unconstitutional and constituted to an abuse of power and office and violation of Articles 23,40,47 and 50 of the new constitution.

B) An Order quashing the registration of parcels numbers 489, 513, 570, 580, 601, 611,617, 618, 619,620, 624,626, 628, 629,631, 632, 633,634, 636, 641, 642, 630, 643, 644, 645, 648, 649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740, 741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 745 into the names of the Respondents, together with entries and records held by the Respondents and directing the registration of the said parcels into the name of the Petitioner who has been in occupation of the suit land for decades.

C) Order directing the Director of Land Adjudication & Settlement, the Director of Survey and the Chief Land Registrar, the Land Adjudication and Settlement Officer (Trans-Mara West/East Sub-County, to rectify the records, register and maps in their possession to revert the suit properties to the Petitioner and amalgamate the same in the Name of the Petitioner.

D) Costs of the Amended Petition and interest.

E) Any further and/or such Orders that the Honourable Court may deem fit and just to grant in the circumstances.

The Amended Petition dated 5th November 2020 is supported by the Affidavit of the Petitioner who in a nutshell outlines the following grounds in support of the said Amended Petition dated 5th November 2020.

1. The Petitioner avers that he is the actual owner, resident and/or occupant of the ground which has been unlawfully and unconstitutionally reconstituted into various parcels of land namely 489, 513, 570, 580, 601,611, 617, 618, 619, 620, 624, 626, 628, 629, 631, 632, 633, 634, 636, 641, 642, 630, 643, 644, 645, 648,649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740, 741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 745.

2. The Petitioner further avers that his relatives and himself are the original inhabitants and occupiers of the suit property since the year 1960s when they settled on the said land.

3. In the year 1985, the relevant Ministry gazetted the area in which the Petitioner and his relatives were occupying as an Adjudication Area known as Nkararo Adjudication Section.

4. The Petitioner states that demarcation and land adjudication was done and the Petitioner and/or the relatives were identified as the owners of the aggregate land area which constitute the suit parcels namely 489, 513, 570, 580, 601, 611, 617, 618, 619, 620, 624, 626, 628, 629, 631, 632, 633, 634, 636, 641, 642, 630, 643, 644, 645, 648, 649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740, 741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 745.

5. The Petitioner's position is that after the said identification as the original inhabitants of the suit properties known as 489, 513, 570, 580, 601, 611, 617, 618, 619, 620, 624, 626, 628, 629, 631, 632, 633, 634, 636, 641, 642, 630, 643, 644, 645, 648, 649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740, 741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 745, the proprietary interests thereof were conferred on him and his relatives and no any other person advanced any adverse interest in the form a dispute or objection thereof.

6. However, for unknown reasons and without regard to the legal process, the 1st and 2nd Respondents allocated a small portion of land in the name of the Petitioner and/or his relatives and took away a large chunk of the Petitioner's ancestral land by sub-dividing it and allocating it to their relatives, acquaintances, friends and proxies and the information thereof kept secret as a cover up of the illegality thereof.

7. The Petitioner alleges that the various parcels of land namely 489, 513, 570, 580, 601, 611, 617, 618, 619, 620, 624, 626, 628, 629, 631, 632, 633, 634, 636, 641, 642, 630, 643, 644, 645, 648, 649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740,

741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 745 created from their ancestral original land were done unprocedurally, illegally and unconstitutionally for the sole benefit of the 1st and 2nd Respondents' relatives, friends, acquaintances and proxies.

8. The Petitioner again avers that during the demarcation process, the resident community proposed two public utility portions of land for purposes of a Trading Centre to be known as Nentekey Trading Centre and a Primary School to be known Ntekey Primary School.

9. The portion of land earmarked for the Primary School known as Ntekey Primary School was subsequently assigned Parcel Number 762 and the Trading Centre was assigned Parcel Number 763.

10. According to the Petitioner, the total area assigned as Parcel Number 763 which was a Trading Centre was expanded by the 1st and 2nd Respondents beyond what the resident community had identified thereby overlapping, transcending and spreading over neighbouring parcels of land and in particular the area being occupied by the Petitioner and his relatives thereof.

11. The Petitioner believes that out of this expanded, overlapping, transcending and spread-out portion of land comprising the Trading Centre, the 1st and 2nd Respondent were able to sub-divide the excess land, create new numbers and allocate the same to their relatives, friends, acquaintances and proxies thereof.

12. The Petitioner under Paragraph 12 of the Supporting Affidavit pleads Particulars of the Illegalities and Breaches of Duty perpetuated by the 1st and 2nd Respondents herein as follows; -

i) Proceeding to create numerous parcels and confer interests over the same without adhering to the machinery and procedure espoused under Section 17-30 of the Land Adjudication Act, Cap 284 Laws of Kenya.

ii) Divesting the Petitioner's proprietary rights in land he had occupied for decades and which were vested in him by virtue of his long right of occupation and use, thus depriving and violating the Petitioner's Constitutional right to property.

iii) Making a secret decision and conferring interests and rights over the land which was otherwise vesting upon the Petitioner and his relatives without notice and without the right to contest such a conferment of the rights before a determination was done.

iv) Conspiring between the recording officer, the surveyors, the demarcation officer and the Land Adjudication officers to create parcels on the Petitioner's land and register their proxies, relatives, spouses & children, to indirectly and disentitle the Petitioner of their land they have occupied for decades.

v) Abusing office, position, power and mandate to indirectly acquire interests on the Petitioner's land which was otherwise vesting upon the Petitioner.

vi) Stone walling, protecting and concealing the corrupt scheme and filtering information so as to validate the illegalities and breach of law committed.

vii) Breaching position of trust to enrich self and cronies and relatives.

viii) Violating the Petitioner's constitutional rights by depriving the Petitioner of land which would not have otherwise awarded or recorded in other person's name other than the Petitioner and conferring interests to proxies whom have never settled on the land to date.

ix) Working in concert to conceal the records and register as pertaining the suit parcels until the expiry of the period when the same could be challenged thereby defeating the Petitioner's right to fair administrative action and fair hearing before depriving the Petitioner of his entitlement to property.

x) Failing to attend or address the Petitioner's complaint and allowing the illegalities to remain thereby perpetuating the unconstitutional conduct.

xi) Divesting the Petitioner of his property right through dubious and criminal conduct.

xii) Taking advantage of their collective position to hide the record and prevent the Petitioner of knowing the alteration and curtailment of rights over the suit land so as to sustain and protect the illegal act.

xiii) Taking away the Petitioner's land and conferring the interests thereon to persons whom have never been to the suit property and neither are aware of the location of the suit property.

xiv) Doing all within their power and control so as to mislead the office of the Director of Land Adjudication & Settlement, the Director of Surveyor and the Chief Land Registrar that the demarcation and adjudication process were properly done in respect of the suit land and the proxies and individuals whose name have been illegally factored in the records lawfully acquired interests over the suit property and are in occupation.

xv) That the Adjudication officers and demarcation officers at the time, one SAMWEL KAHUGI GITURO and D.NZIBO colluding and altering and manipulating records so as to create numerous parcels and interests for their spouses, children, friends and individuals of their choice or proxies.

13. Consequently, due to the unlawful and illegal conduct of the Respondents, the Petitioner who has been in actual occupation and use of the whole parcel which since parceled and constituted into the suit parcels has now been constrained to live as squatter on his own land while his interest confined to a small portion of land which

14. The Petitioner further states that the Respondents actions of concealing and manipulation the adjudication process has left him without remedy as the Respondents curtailed the Petitioner's right by concealing the information touching on the suit parcels thus allowing the time within the machineries set out under the Land Adjudication Act to address any complaint to expire without recourse thus leaving the Petitioner with only recourse vide this Petition.

The above Amended Petition has been opposed by the 1st, 2nd and 3rd Respondent through a Replying Affidavit sworn by Maurice Otieno dated 29th January 2020.

The Deponent of the Replying Affidavit filed on behalf of the 1st, 2nd and 3rd Respondents dated 29th January 2020 states that the entire Amended Petition is pre-mature, an abuse of the Court process and the same ought to be struck out with costs.

The 1st, 2nd and 3rd Respondents aver that the disputed suit parcel emanates from Nkararo Adjudication Section which was established pursuant to a declaration notice dated 27th May 1985.

According to the 1st, 2nd and 3rd Respondents, the demarcation exercise began on 10th June 1985 and ended on 29th October 1990.

During this demarcation exercise, a total of 938 parcels of land were recorded and the Register for the Nkararo Adjudication Section was published as complete on the 30th of October 1990 pursuant to Section 25 of the Land Adjudication Act, Cap 284.

On the date of publishing the Register for the Nkararo Adjudication Section which is 30th October 1990, a public baraza was also held and a notice of 60 days issued to anyone who is affected by the adjudication register (the maps and adjudication record) and considered it incorrect or incomplete, to object to the Land Adjudication Officer in writing.

The 1st, 2nd and 3rd Respondent reaffirm that the suit parcels alleged to have been illegally and unconstitutionally created as pleaded by the Petitioner were legally demarcated pursuant to provisions of Sections 5(2), 13,14,15,16,17,19 and 20 of the Land Adjudication Act, Cap 284.

According to the 1st, 2nd and 3rd Respondents, the Petitioner's contention emanates from the portion of land earmarked for the shopping Centre which has been shown by the map extract annexed to the Petitioner's supporting Affidavit.

The 1st, 2nd and 3rd Respondents' position is that it was the work of the Land Adjudication Committee to identify and set-aside public utility plots which included Shopping Centres.

The 1st, 2nd and 3rd Respondents therefore highly doubt that the Land Adjudication Committee would actually set-aside an area which was occupied by people to be a public utility area.

According to the records held by the 1st, 2nd and 3rd Respondents, the Petitioner is a beneficiary of Plot Number 711 within the Trading Centre, a fact which the Petitioner has not disclosed.

In addition to the above allocation, the Petitioner's father by the Name Loli Ole Kipintoi has been allocated Plot No.360 within the same Nkararo Adjudication Section, a fact which the Petitioner has again failed to disclose.

Similarly, the 1st, 2nd and 3rd Respondents state that the Petitioner has failed to provide any evidence and/or show the parcel of land or plot number which was initially recorded to him during demarcation and was later unlawfully and unprocedurally sub-divided into multiple parcels constituting the suit properties herein.

The 1st, 2nd and 3rd Respondents cast doubt on the fact that the Petitioner actually lives and/or occupies the suit properties outlined in the Amended Petition as he would have filed an appropriate Objection way back in November and/or December 1990 against the register as provided for under Section 25 of the Land Adjudication Act.

On the issue of the 1st, 2nd and 3rd Respondents concealing and manipulating any information regarding the adjudication process, the same is denied by the 1st, 2nd and 3rd Respondents totally and their position is that any time the Petitioner requested for any information or permission, the same is dealt with expeditiously.

The 1st, 2nd and 3rd Respondents point out three (3) instances in support of the above position.

a) On the 6/11/1986, the Petitioner wrote a Complaint Letter to the Demarcation Officer and the Land Adjudication Officer-Kilgoris sub-District.

The gist of the Complaint letter by the Complainant was that the Land Adjudication Committee visited their homes on the 28/10/1986 and demarcated their land in their absence.

On the 18/11/1986, the Land Adjudication Officer responded to the Complaint by the Petitioner and was properly advised and guided on what to do.

b) On the 11/07/2012, the Petitioner again wrote to the Land Adjudication officer Transmara District seeking consent to institute legal proceedings against Nentekeny Center which letter was responded to by the issuance of the Consent on the 18/07/2012.

c) On the 9/05/2014 on the request for the Petitioner, the Land Adjudication Officer Transmara District against granted a Consent to institute any legal proceedings thereof

The other pertinent issue that has been raised by the 1st, 2nd and 3rd Respondents in their Replying Affidavit is the location, allocation and/or total aggregate area of the suit parcels pleaded by the Petitioner.

Paragraph 22 of the Replying Affidavit by the 1st, 2nd and 3rd Respondents states that not all the suit parcels are within one area to make one aggregate block which the Petitioner can make claim to.

An example provided by the 1st, 2nd and 3rd Respondents is that Parcel Number 489,513,601 and 630 are all located far away from the area being claimed by the Petitioner.

Again in Paragraph 25 of the Replying Affidavit by the 1st, 2nd and 3rd Respondents dated 29th January 2020, it is pleaded that according to the Map extract annexed in the Petition, the whole area mapped out as the Trading Area ought to have been the Petitioner's area of occupation, residence and/or allocated area.

However, there are several plots that are left out which abut some of those listed in the Petition such as Parcels Number 867, 927, 729, 910, 728, 748, 746, 730, 672,671,670,623,676,744,926,635,636,470,649,650,738,693,740 among many others.

The net effect of leaving out these parcels of land within the Trading Centre is that the Petitioner cannot lay claim to the whole area.

On another front, the 1st, 2nd and 3rd Respondents allege that the Petitioner has listed and included a number of parcels of land in the Amended Petition without obtaining the Consent of the Land Adjudication Officer hence omitted having them as Respondents yet their rights would be affected by this Amended Petition.

Examples of those parcels of land is as follows;-

- a) Parcel Number 618 recorded in the name of the Narok County Council reserved for SDA Church.
- b) Parcel Number 630 recorded in the name of Kisioi Tukai and Susan Njeri Nderitu.
- c) Parcel Number 661 recorded in the name of Ateti Wembo.
- d) Parcel Number 669 recorded in the name of Nasieku Ntaiya and Miriam Nyokabi Mwihi.
- e) Parcel Number 718 recorded in the name of Narok County Council reserved for the Catholic Church.

In Paragraph 24 of the Replying Affidavit dated 29th January 2021, the 1st, 2nd and 3rd Respondent again state that the Petitioner has sued several Respondents without indicating which parcels of land would be taken away from them among those outlined in the Amended Petition.

Consequently, the 1st, 2nd and 3rd Respondent state that the entire Petition has been filed in bad faith, lacks merit and is calculated to frustrate the Respondents and distract them from discharging their constitutional duties.

Lastly, under Paragraph 27 of the Replying Affidavit dated 29th January 2020, the 1st, 2nd, 3rd Respondents state that the Petitioner has failed to plead any particulars of infringement of his fundamental rights with the necessary precision as was held in the case of Anarita Karimi or as is required by the Rules.

The 4th to 260th Petitioners also opposed the Amended Petition dated 5th November 2019 through Five (5) Grounds of Opposition dated 11th February 2019 which are as follows;-

1. The Petitioner who sues in respect of an adjudication exercise which was concluded over 44 years ago in the year 1975 is guilty of laches. The Petition is brought after inordinately long period of time, without any justifiable or plausible reason advanced for the delay. As a result, the Respondents are prejudiced in their Defence of the claim.
2. The Petition does not raise any constitutional issue calling for the interpretation or application of the Constitution or any question meriting a claim of human rights and fundamental freedoms.

3. The Petition does not set out the precise provisions of the Constitution that have been violated and the manner of violation.
4. The jurisdiction of this Honourable Court is ousted by Section 26,29 & 30 of the Land Adjudication Act, Cap 284.
5. The Petitioner has not made out a case warranting grant of the reliefs sought in the Petition.

The 55th Respondent and the 206th Respondent again filed separate but similar Replying Affidavits sworn by WILLIAM MAINE KONCHORY and STEPHEN SILEI SHIRA respectively and both filed on the 27th of March 2019.

The 55th Respondent avers that he is the person allocated Parcel 611 and the 206th Respondent is allocated Parcels 631.

According to the 55th and 206th Respondents, the Petitioner is seeking adverse possession against their Parcels of land.

Consequently therefore, the 55th and 206th Respondents respond by stating that the Petitioner has not qualified for any claim of adverse possession as required by law in terms of the settled principle of “nec vi,nec clam, nec precario” which means the occupation must have been peaceful, open and continues for a period of Twelve (12) years.

Secondly and in the ALTERNATIVE, the 55th and 206th Respondents aver that the Petitioner fully being aware of the finalization of the adjudication process ought to have taken proper actions to address the alleged claims, something that the Petitioner neglected to do hence he was indolent, guilty of laches and does not deserve the Orders sought in the Petition.

Lastly, the 55th and 206th Respondents have challenged the jurisdiction of this Court to entertain this Petition thereof.

On the 22/09/2020, Honourable Justice Mohamed Kullow issued directions that the Petition would be canvassed by way of written submissions and granted Sixty (60) days for parties to prepare, file and exchange submissions thereof.

Despite numerous mentions to confirm submissions, it is only the Petitioner who filed their submissions on the 27th July 2021 and none of the Respondents filed any submissions thereof.

Be as it may, the Honourable Court shall strive to deal with the issues comprehended from the Pleadings and the Submissions of the Petitioner.

ANALYSIS OF THE FACTS & THE LAW.

ISSUE NO.1- JURISDICTION.

Before this Honourable Court deals with the substantive issues appertaining the Petitioner’s Constitutional Petition, the 4th to 260th Respondents have raised an issue of Jurisdiction which this Honourable court is obliged to evaluate first.

Its settled law that truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it.

In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same.

This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination.

If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be annulity ab initio and any determination made by such court will be amenable to being set aside *ex debito justitiae*.

The Amended Constitutional Petition dated 5th November 2020 has been instituted pursuant to the provisions of Articles 1, 10, (1),(c) & 2(b), 19(1), 20(1) & (2), 21(1),22(1),23(3),27(1),40(1),47,48,73,159,165,232 & 258 of the Constitution of Kenya.

According to the Amended Petition herein, the Petitioner alleges to have been deprived of his property in contravention of Article 40 of the Constitution which provides for Protection of the right to property.

According to the Petitioner, the 1st and 2nd Respondents officers who were bestowed with the constitutional and legislative powers to conduct the adjudication failed to be alive to the provisions of Article 73 and 232 of the Constitution.

Consequently thereof, the Petitioner is now invoking Section 47, 48 , 159, 165 & 258 of the Constitution to enforce his right to property as provided in Article 40 of the Constitution.

Under Article 159 (Chapter 10) of the Constitution, the People of Kenya established the Judiciary of Kenya to consist of Courts and tribunals established by or under the Constitution.

Article 162 established the System of Courts and in particular Article 162 (2)(b) establishes this Court as a Court of equal Status to the High Court of Kenya.

The Environment & Land Court Act, No. 19 of 2011 which established the Environment & Land Court brought into life the provisions of Article 162 (2) (b) of the Constitution.

Section 13 of the Environment & Land Court Act, No. 19 of 2011 gives jurisdiction to the Environment & Land court to hear and determine disputes relating to public, private and community and contracts, choses in action or other instruments granting any enforceable interests in land as well as any other dispute relating to environment and land.

It is therefore the finding of this Honourable Court that it has appropriate jurisdiction to hear and determine this Constitution Petition.

The 4th Respondent- 260th Respondents plead that Section 26, 29 & 30 of the Land Adjudication Act, Cap 284 has ousted the jurisdiction of this Court.

Section 26 of the Land Adjudication Act deals with the preparation of the adjudication Register and the procedure and/or methodology of determining an objection thereof.

Section 29 of the Land Adjudication Act, Cap 284 deals with handling and determination of an Appeal lodged under Section 26.

Section 29 (1) provides that the **Minister shall determine the appeal and make such orders thereon as he thinks just and the order shall be final.**

The Honourable Court's plain reading of Section 29(1) makes it mandatory that there must have existed an Objection which was dealt with at the first instance by Adjudication Officer under Section 26 (1) of the Land Adjudication Act, Cap 284.

The presence or absence of a determination of an Appeal by the Minister under Section 26 (1) of the Land Adjudication Act, Cap 284 is not a constitutional issue but a dispute resolution mechanism under the Land Adjudication Act, Cap 284.

The provisions of Section 29 of the Land Adjudication Act, Cap 284 cannot take away the Constitutional jurisdiction that the Petitioner has invoked in this Constitutional Petition.

Again Section 30(1) of the Land Adjudication Act, Cap 284 Laws of Kenya reads as follows;-

“Except with the Consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29 (3) of this Act.”

The first limb of the interpretation of this Section is that the Consent from the adjudication officer is only mandatory in regards to instituting Civil proceedings.

In instances where a Constitutional right is infringed or threatened with violation, there is no express provision under this section of the Act which makes it mandatory for such a consent to be obtained.

The second limb is that where the adjudication register is finalized as provided for in Section 29(3) of the Land Adjudication Act, Cap 284, then a consent from the adjudication officer is no longer required by any person who seeks to institute either a civil proceeding and/or a constitutional petition.

According to Paragraph 6 of the 1st, 2nd and 3rd Respondents' Replying Affidavit filed in Court on the 18th February 2020, it was their averment that the Register of Nkararo Adjudication Section was complete and published on the 30th October 1990.

In other words, the said adjudication register became final after Sixty (60) days which lapsed on the 30th December 1990 under Section 29(3) of the Land Adjudication Act, Cap 284.

In conclusion thereof, this Court is therefore well seized of this proceeding without the necessity of the Consent from the Adjudication officer as pleaded by the 1st, 2nd and 3rd Respondent.

The 55th and 259th Respondents have also raised the issue that this Court has no jurisdiction but have not provided any legal provisions or circumstances to that effect.

There was no submissions filed to expound on their allegations and therefore having made the above finding above, it is of no use to discuss the same further.

ISSUE NO. 2 - CONSTITUTIONAL PETITION

The Honourable Court has duly perused the Amended Constitutional Petition dated 5th November 2020, its prayers therein , the replies by the

1st, 2nd and 3rd Respondents filed on the 18th February 2020 as well as the Grounds of Opposition filed by the 4th to 260th Respondents thereof.

Similarly, the Honourable Court has perused the 55th and 206th Respondents Replying Affidavit and noted the allegations thereof.

According to the Petitioner herein, this Amended Constitutional Petition seeks to enforce Article 40 of the Constitution of Kenya, 2010.

Article 40 provides as follows:-

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

(a) of any description

(b) and/or in any part of Kenya”

(2) Parliament shall not enact a law that permits the state or any person-

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

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

(3) The state shall not deprive a person of property of any description, or of any interest in, or right over, property of any description
.....

The Amended Constitutional Petition dated 5th November 2019 places the omissions and/or illegal actions which have resulted to the Petitioner’s right being infringed on the offices of the 1st and 2nd Respondents.

The Petitioner is of the view that the 1st and 2nd Respondent’s officers who were bestowed with the constitutional and legislative powers to conduct the adjudication failed to be alive to the provisions of Article 73 and 232 of the Constitution.

Consequently thereof, the Petitioner is now invoking Section 47, 48, 159, 165 & 258 of the Constitution to enforce his right to property as provided in Article 40 of the Constitution.

The Petitioner’s claim is around Parcel Numbers properties known as 489, 513, 570, 580, 601, 611, 617, 618, 619, 620, 624, 626, 628, 629, 631, 632, 633, 634, 636, 641, 642, 630, 643, 644, 645, 648, 649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740, 741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 745 which the Petitioner claims have been for not only his use but also for the use and occupation of the immediate families as well as clan thereof.

The Petitioner states that the 1st and 2nd Respondents unlawfully and illegally took away land which he had used, occupied and utilized for over Fifty (50) years and created it to be a public utility plot before Sub-Dividing it and creating numerous times which were then allocated to person who were not residents and/or occupants of the area under Adjudication.

The Petitioner therefore seeks to have the said suit properties known as properties known as 489, 513, 570, 580, 601, 611, 617, 618, 619, 620, 624, 626, 628, 629, 631, 632, 633, 634, 636, 641, 642, 630, 643, 644, 645, 648, 649, 650, 660, 661, 651, 655, 664, 663, 665, 666, 667, 668, 669, 675, 680, 681, 683, 684, 686, 687, 688, 689, 690, 692, 695, 702, 703, 708, 707, 711, 713, 714, 715, 716, 717, 718, 719, 724, 725, 726, 731, 732, 733, 734, 735, 737, 738, 740, 741, 742, 743, 761, 764, 814, 872, 921, 930, 962, 970 and 74 cancelled, the register rectified, an amalgamation of all the above plots done and thereafter a registration in the Petitioner’s name done.

On the other hand, the 1st, 2nd and 3rd Respondents deny infringing the Petitioner’s Right to property and aver that all the procedures and/or legal steps were duly followed during the adjudication of the Nkararo Adjudication Section.

The 1st, 2nd and 3rd Respondents have provided various key documents including the Notice of Completion of the Adjudication Register-Nkararo Adjudication Section in Trans-Mara Sub-District- Narok District dated 30th November 1990 as well as Adjudication Register of the Land Owners thereof.

The 1st, 2nd and 3rd Respondents have stated that the Petitioner as of right was allocated Parcel No.711, a fact which the Petitioner has not denied and/or refuted.

Similarly, the 1st, 2nd and 3rd Respondents have stated that in addition to the Petitioner being allocated the Parcel Number 711, the father known as Loli Ole Kipintoi was also allocated a second parcel of land known as Parcel 360.

In essence therefore, the 1st, 2nd and 3rd Respondents performed their duties and obligations in accordance to the relevant laws and

constitution.

Lastly, the 1st, 2nd and 3rd Respondents allege that the Petitioner has failed to plead any particulars of infringement of his fundamental rights with the necessary precision.

The 4th to the 260th Respondents have opposed the Petition through the Grounds of opposition dated 11th February 2019 which state that this Petition is full of latches.

The 4th to 260th Respondents state that the Petition has been brought about 44 years after the cause of action and therefore there is an inordinate long delay without any justification thereof.

Secondly, the Amended Constitutional Petition does not raise any constitutional issue calling for the interpretation and/or application of the Constitution meriting a claim of human rights and fundamental freedoms.

Lastly, the Petition does not set out the precise provisions of the Constitution that have been violated and the manner of the Violation.

In adjudicating the issues before this Honourable Court as filled by the parties therein, it is clear in the mind of the Honourable Court that the Petitioner is seeking the fundamental Right to Property under Article 40 of the Constitution.

The Petitioner's contention is that when the Adjudication process within the Nkararo Adjudication Section was commenced, there was a portion of land which was occupied, utilized and/or used by the Petitioner and/or his immediate family.

The legitimate expectation of the Petitioner was that during the adjudication, the 1st and 2nd Respondents would alienate and allocate the total portion of land which was under the occupation, utilization and/or used by the Petitioner to him.

However, the same did not happen and instead the Petitioner got a small portion of land which was less than two (2) Acres.

The first issue is to verify whether or not the Petitioner was allocated any parcel of land within Adjudication Section known as Nkararo.

Indeed, the answer to this question is found in Paragraph 11 of the Replying Affidavit by the 1st, 2nd and 3rd Respondents.

The contents of Paragraph 11 of the Replying Affidavit filed by the 1st, 2nd and 3rd Respondents confirm that as of right, the Petitioner got a parcel of land known as Parcel No.711 which the Petitioner has not disputed and in fact confirmed in Paragraph 11 of the Petitioner's submissions.

It is therefore safe to make a finding that the Petitioner's Right to own Property within the Nkararo Adjudication Section was upheld by the 1st and 2nd Respondents hence the Petitioner herein is the beneficial owner of Parcel Number 711 within the Nkararo Adjudication Section.

The Second Question is whether or not the Respondents jointly and/or severally infringed on the Petitioner's right to have a larger portion of land which comprises of the outlined disputed parcels of land in the Petitioner Constitutional Petition?

The purpose of any adjudication process is to settle members of a certain community or residents of a particular area and allow them to have individual title documents.

This would in effect empower such occupants and establish certainty of ownership to various beneficiaries and/or occupants of the particular area.

The Petitioner's main issue is that the offices of the 1st and 2nd Respondents alienated a large portion of his ancestral land and demarcated, sub-divided and registered the same to their cronies, relatives and friends thereby infringing the Petitioner's right to own the said property.

Paragraph 3 of the Amended Constitutional Petition reads as follows:-

“That by dint of the lengthy occupation and use of the suit parcels spanning to 50 years, the Petitioner and his family were entitled to be identified, ascertained and adjudged as the owners of the area of land encompassing the suit properties enumerated in Para 1 hereto, having acquired interest and it was the Petitioner's legitimate expectation that he would be constituted as the owners of the suit land having been owners for decades”

Paragraph 5 of the Amended Constitutional Petition again reads as follows:-

“That during the demarcation and Land Adjudication process, the Petitioner was identified as the owners, occupants of the aggregate land area which has been constituted as suit properties and the extent of boundaries duly identified and the Petitioner believed and had the legitimate expectation that the interests thereon was conferred upon him and family in so far as no other persons were in occupation or advanced any claims against the Petitioner and neither was there any disputes to be adjudicated over the portion of land in occupation of the Petitioners and has since been constituted as suit parcels.”

In answering the Question above, one needs to ascertain the manner in which persons who are within an area declared as an Adjudication Section are required by law to identify themselves and the area or portions they occupy so as to have a legitimate expectation in terms of their ownership rights.

The answer to this immediate question is provided for under Section 5 of the Land Adjudication Act, Cap 284.

Section 5(1) provides that an Adjudication Officer shall establish adjudication Sections and/or establish one whole adjudication area as an adjudication section.

Section 5(2)- provides that a notice shall be published in respect of each adjudication section and in each such notice the adjudication officer.

Section 5 (2) (c) - requires the adjudication officer to fix a period which a person claiming an interest in land within the adjudication section must make his claim to the recording officer, either in writing or in person or by his agent duly authorized according to law.

Section 5 (2)(d)- requires any person making a claim to point out to the demarcation officer or to demarcate or to assist in the demarcation of the boundaries of the land in which he claims to be interested or to clear any such boundaries or any other line in the manner and before a date fixed by the demarcation officer.

Section 5 (2) (c) and (d) places an obligation of the person claiming an interest in an Adjudication Section to identify himself and lay a claim of his rights to the Recording Officer on the area and/or portion to which he or she claims an interest in.

The Act does not bestow ownership rights by making presumption of the people within an adjudication section and/or the portions of land in use by such persons.

A thorough perusal of the Petitioner's Pleadings and documents does not give the date, place and or recording officer/demarcating officer that the Petitioner registered his claim as required under Section 5 (2) (c) of the Land Adjudication Act, Cap 284.

Similarly, the Petitioner has not provided any information as to when and in the presence of which Recording officer and/or demarcating officer the Petitioner pointed out the boundaries of the land in which the Petitioner claims an interest or clear any such boundaries or any other line in the manner that would be clear of his interest over the said portion of land.

It is clear to the mind of this Honourable Court that even at the time of prosecuting this Appeal, the Petitioner has still not provided any demarcation boundaries of the portion of land which he was claiming but simply wanted the Honourable Court to presume that all the suit parcels were within the area of the Petitioner's occupation.

Unfortunately, it is settled law that "He who alleges must prove" and the Petitioner has an obligation to prove each and every allegation of Constitutional infringement made against the 1st Respondent to the 260th Respondent.

It's therefore the finding of this Honourable Court that the Petitioner has failed to discharge this burden of proof and the Court does not find any infringement of the Petitioner's Rights under Article 40 or any other provision of the Constitution as pleaded in this Amended Constitutional Petition dated 5th November 2020.

The last issue for determination is whether the Petitioner is guilty of laches having brought this Petition 44 years since adjudication was concluded.

The pleadings before this Honourable Court confirm that the adjudication register was finalized on the 30th of December 1990.

This is about 30 years ago and not 44 years are pleaded in the Grounds of Opposition dated 11th February 2019.

However, various court have made pronouncements that there is no limitation of time in respect of Constitutional Petitions alleging violation of fundamental rights.

Reference is made to the Case of Joan Akinyi Kabasellah and 2 Others vs Attorney General, Petition No 41 of 2014 where the Learned Judge observed that:

"[24] Nonetheless, I take into account the views of the court with regard to limitation in respect of claims for enforcement of fundamental rights.

In a line of cases such as Dominic Arony Amolo vs Attorney General, Nairobi High Court Misc. Civil Case No 1184 of 2003 (OS) [2010] eKLR, Otieno Mak'Onyango vs Attorney General and Another, Nairobi HCCC NO 845 of 2003 (unreported), Courts have consistently held that there is no limitation with respect to constitutional petitions alleging violation of fundamental rights.

However, this Honourable Court looking at the period of 30 years which has passed since the final adjudication register was closed, it respectfully agrees that it is an inordinate delay which cannot be ignored.

In High Court Petition No.306 of 2012 between **OCHIENG KENNETH K'OGUTU -VERSUS- KENYATTA UNIVERSITY & 2 OTHERS**, the Court was of the following view;-

“[36]There is a great danger that parties are abusing the constitutional protection of rights to bring claims before the court whose sole aim is enrichment rather than vindication of rights. A delay of 10 years or more before one comes to court to allege violation of rights is clearly not justifiable. As Nyamu J observed in Abraham Kaisha Kanzika and Another vs Central Bank of Kenya (supra): “Even where there is no specified period of limitation it is proper for the court to consider the period of delay since the accrual of the claim and the reasons for the delay. An applicant must satisfactorily explain the delay. In this case a delay of 17 years is inordinate and it has not been explained.”

The Learned Judge thereafter concluded that:

“In my view failure by a Constitutional Court to recognize general principles of law including, limitation expressed in the Constitution would lead to legal anarchy or crisis. It would also trivialize the constitutional jurisdiction in that applicants would in some cases ignore the enforcement of their rights under the general principles of law in order to convert their subsequent grievance into a “constitutional issue” after the expiry of the prescribed limitation periods.””

The above conclusion by the Learned Judge has reminded me of Paragraph 20 of the Petitioner’s Submissions dated 27th July 2021 which state as follows:-

“The Petitioner is therefore left without remedy as the Respondent curtailed the Petitioner’s right by concealing the information touching on the suit parcels thus allowing the time within the machinery set out under the Land Adjudication Act to address any complaint to be expire without recourse thus leaving the Petitioner with only recourse vide this Petition.””

The Honourable Court finds it rather strange for the Petitioner to have made such a submission yet he requested at least three Consent to institute proceedings from way back on 11/07/2012, 18/07/2012 and 9/05/2014.

It is therefore this Honourable Court’s finding that the Petition in this matter has been brought to Court after an inordinate delay which has not satisfactorily explained thereof.

In Conclusion thereof, this Honourable Court makes the following Ruling; -

1. The Amended Constitutional Petition dated 5th November 2019 be and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON THIS 17TH DAY OF NOVEMBER, 2021.

HON.EMMANUEL.M. WASHE

JUDGE

In the Presence of:-

1. Court Assistant – Matiko
2. O.M Otieno – Counsel for the Petitioner
- 3.