



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MURANG'A**

**PETITION NO.1B OF 2017**

**IN THE MATTER OF ARTICLES 22(1), 23, 258 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER THE CONSTITUTION OF KENYA CONTRARY TO ARTICLE 19, 21, 22 & 23**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 40(1) & (3) OF THE CONSTITUTION AND ALL THE ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**MUTHITHI INVESTMENTS COMPANY LIMITED.....PETITIONER**

**AND**

**THE COMMISSIONER OF PRISONS.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**CROSS PETITION**

**COMMISSIONER OF PRISONS.....CROSS PETITIONER**

**VERSUS**

**MUTHITHI INVESTMENTS COMPANY LIMITED .....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MURANGA.....2<sup>ND</sup> RESPONDENT**

**(REFERRED TO IN THE JUDGMENT AS THE "3<sup>RD</sup> RESPONDENT")**

**JUDGMENT**

**The Introduction and Evidence.**

1. Vide a Petition filed on the 19/3/2013 the Petitioner impleaded this Court alleging contravention of rights and fundamental freedoms contrary to Articles 19, 21, 22, 23 & 40 (1) and (3) of the Constitution and all other enabling provisions of the law.
2. The facts relied on are stated in the affidavit in support sworn by Mike Maina Kamau, a Director of the Petitioner in which he deponed that the Petitioner is the registered owner of the MURANG'A MUNICIPALITY/BLOCK 2/525 (suit land). He averred that the Petitioner acquired the suit land through purchase from one Stanley Maina Njuguna trading as Joheda Developers in 1997 at the costs of Kshs 1.0 Million. Consent to transfer was duly obtained from the then Municipal Council of Murang'a and a certificate of lease issued in the name of the Petitioner on 21/7/1997. Since acquisition the Petitioner has been in possession of the suit land paying rates to the 3<sup>rd</sup> Respondent.

3. The Petitioner sought the following reliefs;

- a. A declaration that the 1<sup>st</sup> Respondent's actions of threatening to forcefully take over Title No. MURANG'A MUNICIPALITY BLOCK 2/525 is illegal and a violation of the Petitioner's fundamental right to protection of property.
- b. A declaration that the Petitioner is the rightful owner of the property.
- c. That the 1<sup>st</sup> Respondent by themselves or their agents be permanently restrained from interfering with the Petitioner's property known as Title No. MURANG'A MUNICIPALITY BLOCK 2/525.
- d. That the 1<sup>st</sup> Respondent by themselves or their agents be permanently restrained from harassing intimidating and/or in any other manner whatsoever interfering with the Petitioner's agents/servants.
- e. That costs be in the cause.
- f. Such further and other orders/directions as the Honourable Court may deem fit just and appropriate to safeguard the fundamental rights of the Petitioner under the Constitution of Kenya.

4. The 1<sup>st</sup> Respondent filed a cross petition against the Petitioner (Muthithi) and the 3<sup>rd</sup> Respondent (County Government of Muranga) on the 19/12/13 alleging contravention of fundamental rights and freedoms under Art 19, 21, 23 and 40(1) and (3) of the Constitution and all enabling provisions of the law.

5. Further the 1<sup>st</sup> Respondent denied the claim of the Petitioner and raised a cross petition seeking the following orders;

- a. A declaration that the County Government of Murang'a had no powers to excise public land contrary to Statute and the Constitution.
- b. That the title documents/leasehold interest created in MURANG'A MUNICIPALITY BLOCK 2/525 is illegal and confers no proprietary interests to the Respondents per the provisions of Article 40(6) of the Constitution of Kenya.
- c. That the title for MURANG'A MUNICIPALITY BLOCK 2/525 be revoked and the parcel of land comprised herein to revert to the Murang'a G.K. Prison and the Murang'a juvenile home.
- d. That the Respondents be condemned to bear the costs of this cross petition and the cost of the petition.
- e. Any other appropriate relief this Honorable Court may deem fit to grant.

6. The 2<sup>nd</sup> Respondent resisted the petition with grounds of opposition filed on the 21/11/13 and termed the Petition misdirected on the basis that the title to the suit land was issued illegally, irregularly and fraudulently acquired. They contend that the Murang'a Municipal Council lacked the power to allocate land hitherto owned by the 1<sup>st</sup> Respondent.

7. The 3<sup>rd</sup> Respondent (Muranga County Government) by way of cross petition in its Replying Affidavit filed on the 13/5/14 and sworn by Jeremiah Kamau Mwirigi deponed that he is the Town Administrator. He stated that from their records the suit land did not belong to the Cross Petitioner. He gave a history of the manner in which the suit land was allocated and transferred to the 1<sup>st</sup> Respondent (Muthithi) by way of cross petition in 1996 up to the filing of the current suit. That the alleged allocation of the suit land to the Cross Petitioner by the District Development Committee (DDC) was illegal for want of process and for excluding the 3<sup>rd</sup> Respondent.

8. At the hearing of the case the Petitioner led evidence through Bernard Njau Mungai who stated that he is the Manager of the Petitioner. He relied on his witness statement dated the 21/2/18. He produced the documents in support of his testimony dated the 14/12/17 marked as PEX No 1-17.

9. He stated that the Petitioner purchased the property in 1997 from Stanley Maina Njuguna trading as Joheda Developers for a sum of Kshs 1.0 million. That the said Maina Njuguna produced the allocation documents which showed he had been allocated the suit land by the Commissioner of Lands; that the allottee had paid the allotment fees and accepted the offer after which a lease was issued in the name of the allottee by the Commissioner of Lands. Prior to the purchase, he testified, the Petitioner obtained consent to transfer from the Municipal Council of Murang'a a copy which was produced in evidence. After the purchase the Petitioner has been in occupation since 1997 and has continued to pay ground rent and rates up to 2012.

10. He informed the Court that following a notice of completion of the development plan proposing an extension of GK Prisons Murang'a which notice invited objections, the Petitioner raised its objection on the ground that the extension was going to encroach on its land. He stated that on the 27/3/12 the Prisons moved onto the property with a view to forcefully taking possession prompting the Petitioner to seek the assistance of the Ministry of Home Affairs who responded that the District Development Committee (DDC) allocated the land to Murang'a GK Prisons legally and therefore were advised to follow up the matter with the said DDC. That after one year the Prisons again threatened to invade the land and in doing so arrested the Petitioner's workers. Upon the police carrying out investigations it was noted that the land was registered in the name of the Petitioner and that no charges were preferred against the workers. The Land Registrar also confirmed the position of the land in the registry as being in the name of the Petitioner.

11. That the joint survey confirmed the suit land to be 1.045 ha and not 5 acres as stated variously by the 1<sup>st</sup> Respondent.
12. In cross examination by the 1<sup>st</sup> Respondent in the Petition, the witness informed the Court that he started working with the Petitioner in 1995 and was involved in the acquisition of the suit land from Stanley Maina Njuguna trading as Joheda Developers. He confirmed that the Letter of Allotment is not supported by the appropriate approved development plan. He stated that he did not understand the meaning of the clause that exonerated the Government of Kenya in the letter of allotment were it to be found that the plot was committed prior to allocation to Joheda Developers.
13. Further he informed the Court that at the time of purchasing the suit land, it was vacant. That the Petitioner was not aware that the land had been gazetted and reserved for a juvenile Remand home in the 1960s. He wondered how the said Joheda could be allocated land that had hitherto been allocated to a Juvenile Remand home.
14. He stated that the letter of allotment was issued by the Commissioner of Lands who signed the lease to Joheda Developers on behalf of the Municipal Council of Murang'a. The said Council issued a letter of no objection as well as the consent to transfer the suit land from Stanley Njuguna to the Petitioner. The Petitioner paid all the rates to the 2<sup>nd</sup> Respondent from 1997 to 2012 for which receipts were issued. That the Petitioner has been in possession and occupation of the suit land for the last 22 years.
15. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents evidence was led by DW1- Leonard Ogotu Odhiambo, employed by the Prisons Department as a Surveyor. He relied on his statement dated the 8/1/18. He stated that the land upon which the Murang'a GK Prison and Murang'a Juvenile Remand Home stands was designated as public land vide Gazette Notice No 751 of 1963. He testified that the Part development plan (PDP) No 27/72/5 (approved as No 63) was completed in 1972 for Murang'a Municipality and the suit land was clearly delineated as public land. That initially the Juvenile Remand Home was put under the Ministry of Home Affairs and placed under the Prisons Department. He informed the Court that the land held by the Murang'a Juvenile Remand Home was 2.94 ha adjacent to the Murang'a Prisons. That in 2002 Murang'a Juvenile Remand Home was placed under the former Ministry of Gender and Sports.
16. That on 8/8/11 the Officer In-Charge of Prisons sought allocation of the Juvenile remand land comprising of approx. 7 acres for the extension of the Murang'a GK Prison. That the request was approved on the 11/1/2012 by the DDC in the presence of the County Clerk of the defunct Murang'a East Development Committee. Murang'a Prisons paid Kshs 6000/- to the County Government of Murang'a being approval fees. That when the PDP was forwarded to the Council for their approval, it objected on the grounds that the proposed extension would encroach on private property.
17. He informed the Court that upon investigation it was discovered that the Murang'a County Government had illegally curved out a portion of the land preserved for Murang'a Juvenile Remand Home and leased it out to private individuals, the Petitioner included. That the local District Commissioner then protested through a letter to the District Planning Officer demanding to know why public land had been allocated to private individuals.
18. At the trial he stated that the land was designated for the Fort Hall (Murang'a) juvenile home vide the Legal Notice No 751 of 1963 which he produced in evidence. That the said legal Notice has never been revoked not degazetted and that the buildings on the suit land were demolished after the juvenile home was relocated elsewhere in around the year 2000. That the property currently is semi-fenced. He stated that the land reserved for the juvenile Remand Home originally measured 2.94 ha while the land registered in the name of the Petitioner is 1.045 ha. That the suit land was part of the land reserved for the Juvenile Remand Home.
19. He clarified the role of the District Commissioner in allocation of unalienated Government land in the county as that of the chair of the allocation committee. That all applications for unalienated public land starts at the county level before it goes to the National Land Commission who are mandated to alienate the same subject to conditions. That the County Government is consulted at all levels including at the planning stage.
20. That since the suit land was public land the 1<sup>st</sup> Respondent applied for it through the procedure laid down by the law for the extension and construction of the women's wing. He stated that the application by the 1<sup>st</sup> Respondent was objected by the County on the ground that the land was committed to a private owner. That since the suit land was public land the 1<sup>st</sup> Respondent applied for it through the procedure laid down by the law for the extension and construction of the women's wing.
21. In respect to the joint survey report carried out in 2013/2015, he clarified that the area in the title is 1.045 ha but, on the ground, it is 1.115 ha which is negligible and the variance arose because the fence was included. He confirmed that the said land subject of the site inspection formed part of the land reserved for the Juvenile Remand Home. He explained that it is a joint report of the Surveyors of the Petitioner and the 1<sup>st</sup> Respondent in which both surveyors identified the suit land as being adjacent the main GK Prisons land which was separated by a 18 meters road.
22. DW2- Samuel Maina Karuru testified and stated that he is employed by the 3<sup>rd</sup> Respondent as a Physical Planner and he relied on his statement dated the 18/6/18. He stated that he has worked for the 3<sup>rd</sup> Respondent since 2015. He stated that the suit land was earmarked for the Juvenile Remand home and there are no records that the land belongs to the Murang'a Prison. He stated that currently the suit land is vacant but according to the plan in his custody it belongs to the Juvenile Remand Home. He produced and relied on the documents filed on the 26/2/18 which are marked as DEX No 11-15 and the sketch map marked DEX 16.
23. While under cross examination by the counsel of the Cross Petitioner, the witness stated that the allocation of land within the Municipal Council is the mandate of the council in conjunction with the Commissioner of Lands. That though the land was allocated to Joheda Developers as per the allotment letter the said allotment was not supported by a PDP. He testified that the said letter of allotment is irregular. That the suit land having been alienated for public purposes was not available for allotment to Joheda Developers before the earlier gazette notice is degazetted.

24. Further he clarified that though the current position is that the Petitioner holds a registered title in its name, the land still remains public land.
25. The parties carried out a site visit on the 8/5/19 and a report was filed in Court on the 17/9/19.
26. Parties elected to file written submissions which I have read and considered.
27. As to whether the certificate of title was acquired illegally, unprocedurally or through a corrupt scheme, the Petitioner relied on the case of **Eunice Grace Njambi Kamau & Anor Vs General & 5 others EKLK** where the Court held that in determining the question, one has to take into account the circumstances how the title was obtained. That in this case the Petitioner purchased the suit land at the costs of Ksh 1.0 million from an allottee who was allotted the land by the 3<sup>rd</sup> Respondent after carrying out due diligence and obtaining the requisite consents. On conclusion of the purchase the Petitioner became registered as owner of the suit land on the 21/7/97. That the process that the Petitioner obtained title was legal and procedural.
28. The Petitioner explained that the process of alienating land as alluded by the 1<sup>st</sup> Respondent's witness is provided for in the Physical Planning Act which came into force on the 29/10/98 and therefore inapplicable as the allotment in this case was issued in 1996. The Petitioner stated that the absence of a PDP accompanying the letter of allotment did not invalidate the letter of allotment in the name of Joheda. It maintained that the lease was issued to the allottee by the 3<sup>rd</sup> Respondent who has been demanding and collecting rates from the Petitioner for over 21 years and has never raised any objections to the Petitioner's title.
29. Relying on the case of **Katende V Haridar & company Limited (2009) EA 173** the Petitioner maintained that it is a bonafide purchaser for value and as such its title should be protected under Art 40(3) of the Constitution, 2010.
30. The Petitioner stated that it holds a valid title and is therefore the absolute and indefeasible owner of the suit land pursuant to Section 26 (1) of the Land Registration Act. That this fact was confirmed by the Land Registrar Murang'a in the letter dated the 26/2/2013.
31. As to whether the suit land was reserved for the juvenile remand home, the Petitioner stated that there were no buildings on the suit land and or evidence of buildings that were destroyed before. Referring to the gazette notice No 751 of 1963 on page 4 of the 1<sup>st</sup> Respondent's bundle, which made reference to that piece of land situated adjacent to the Detention Camp Fort Hall Township containing the buildings commonly known as the Fort Hall Juvenile Remand Home, the Petitioner contended that the notice does not refer to the suit land. This is because there are other parcels of land within the vicinity or that are adjacent to Murang'a Prison and the suit land cannot be the one being described in the gazette notice.
32. The Petitioner faulted the PDP No 63 produced by the 1<sup>st</sup> Respondent as being ambiguous and lacking in specifics in respect to its area, location and therefore is of no evidential value in this case. It averred that the PDP cannot be said to bear any reference or nexus to the suit property.
33. Further it submitted that the suit land is 2.06 acres while the 1<sup>st</sup> Respondent is claiming land measuring 5 or 7 acres allegedly belonging to the Murang'a Juvenile Remand Home which further goes to show that it cannot be the suit land.
34. In conclusion the Petitioner submitted that there is no evidence to ascertain that the suit land is the one that is claimed to be Murang'a Juvenile Remand Home because; the acreage is at variance; the suit land has no buildings and the documents produced lack in specificity.
35. The Petitioner challenged the 1<sup>st</sup> Respondent's evidence that it was allocated land by the DDC on the 8/12/2011 and argued that by the time the said allocation took place the Petitioner had become registered owner since 1997. In any event it argued the DDC did not have the legal mandate to allocate or cancel any title to land. That the proposal to extend the GK Prisons onto the suit land was objected by the 3<sup>rd</sup> Respondent on the basis that the suit land had been allocated to various individuals, the Petitioner included.
36. Further that the PDP produced by the 1<sup>st</sup> Respondent was not approved as provided for by the provisions of the Physical Planning Act, 1998. That the proposal cannot impugn a title such as the one held by the Petitioner.
37. The Petitioner submitted that based on the evidence of the Cross Petitioner, the Cross Petitioner has no better title to the property than that held by the Petitioner. It was its submission that it has a valid legal and indefeasible title protected by Art 40 (3) of the Constitution as well as the statutory provisions found in section 26 of the Land Registration Act in so far as no evidence has been produced by the Cross Petitioner to impeach the said title.
38. Further it submitted that that no evidence was availed in support of the allegations that the suit land belonged to the Murang'a Juvenile Remand Home. That having failed to prove their case the actions of the 1<sup>st</sup> Respondent in the threatened forceful takeover of the suit land is illegal and a violation of the Petitioner's fundamental rights to own property. That these actions offend the rights to property which are protected by the Constitution.
39. As to whether the suit land fell within the meaning of public land as set out in Art 62(4) and 62(5) of the Constitution, the Petitioner submitted that the title was registered in the name of the Petitioner in 1997 and by 2010 at the promulgation of the new Constitution, this land was already classified as private property. Further that the land was part of Trust land held in trust for the inhabitants of the area and once it was allocated it changed to private land. That the allocating authority was the Murang'a County Council and the lease was signed by the Commissioner of Lands on behalf of the allocating authority. That in any event if default occurs in the observance of any of the requirements stipulated in the lease, the county council would re-enter upon the land and the term created thereunder would cease.

40. The Petitioner submitted that the provisions of the Trust Land Act were repealed by the new Constitution. That the suit land belonged to Murang'a County Council who were mandated to allot the said land to Joheda Developers pursuant to its powers within the Trust Land Act.

41. As to whether the Petitioner's title is illegal and in breach of Article 40(3) of the Constitution, the Petitioner submitted that Art 40(3) protects a person from deprivation of land by the state unless that deprivation is for a public purpose or in the public interest and it is carried out in the public interest and relevant legislation.

42. The Petitioner argued that the Cross Petitioner has not availed any evidence to impugn its title in any way, least of all, as provided by Section 26 of the Land Registration Act which provides for the indefeasibility of title and that title cannot be challenged unless fraud is proven to which the person is a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. It was its submissions that none of the vitiating factors have been proven by the cross Petitioner and the Respondents.

43. Relying on the case of **Elizabeth Wambui Githinji & 28 others and Kenya Urban Roads Authority & 4 others 2019 ECLR** the Petitioner reiterated that there is no evidence of impropriety that has been placed before the Court on the part of the Petitioner. That the title was acquired within the confines of the law. That the documents relied on emanated from the 3<sup>rd</sup> Respondent who was the custodian of the land records and the Petitioner duly exercised its due diligence in the acquisition of the suit land.

#### **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Cross Petitioner's submissions.**

44. The Respondents and the Cross Petitioner submitted that the suit land was gazetted and reserved for the juvenile remand home which evidence has not rebutted. That a juvenile remand principally exercises the mandate of correctional services and retention of underage prisoners. That their witness Leonard Ogutu testified and stated that once reserved for public purposes land is not available for alienation without planning, surveying and preparation of PDP and degazettement of the reserved user. See the case of **Norbixin Kenya Limited Vs The Hon Attorney General NBI Civil Suit No 1814/2002**.

45. They further submitted that according to the evidence of the 3<sup>rd</sup> Respondent's witness (Physical Planner) the suit land is still public land for which no new PDP was prepared to pave way for its allocation. That alienated land set aside for public purposes is not available for allocation. To buttress this point the Respondents relied on the case of; **Cycad Properties Limited Vs Attorney General HCCC Petition No 70 of 2010; Dhanji Jadra Ramji Vs Commissioner of Lands & Anor 275 of 1998; Joseph Kuria Kibiru Vs AG ELC No 2175 of 2007; Joram Nyaga & Anor Vs AG and others HCCC No 1732 of 2004; Adan Abdirahani Hassan & 2 others Vs The Registrar of Titles, Ministry of Lands & 2 others (2013) ECLR**.

46. In addition, they submitted that the Petitioner's title is void ab initio since the suit property was not available for alienation and therefore the Plaintiff has no entitlement.

47. As to whether the County Government allocated the suit land, the Respondents submitted that the evidence of the 3<sup>rd</sup> Respondent's evidence supported their case that the suit land is public land on the ground that there is no resolution by the said council to allocate the said land to Stanley Maina.

48. In their submissions, they submitted that public interest will always outweigh an individual's right to own the same property. See the case of **Republic Vs Registrar of Lands in Kilifi Exparte Daniel Ricci, Malindi JR No 6 (2013) ECLR**.

49. The 3<sup>rd</sup> Respondent submitted that the Petitioner's witness conceded that the actual document which conferred ownership to the Petitioner was lacking, that is the PDP. That for any allotment letter to be valid it must be accompanied by an approved PDP which must be reflected and annexed to the letter of allotment. It went further to emphasise that lack of a PDP may invalidate the whole allocation process.

50. In response to the cross-Petitioner's claim, the 3<sup>rd</sup> Respondent submitted the evidence availed to the Court by the three parties that is to say the Commissioner of Prisons, The Hon Attorney General and the Murang'a County, converge that Murang'a GK prisons has never owned the suit land. That it is not in doubt that the land belonged to or was reserved for the Juvenile Remand Home after independence and that the said Juvenile Remand Home took possession of the suit land upto the year 2000 when it was relocated elsewhere. It urged the Court to determine that the land belongs to the Juvenile Remand Home.

51. That the letter purporting to allocate land to the GK Prisons by the DDC became moot for lack of legal authority. That the land for the GK Prisons was distinctly shown to be separate from the one of the Juvenile Remand home. That from the site visit it would appear that the suit land only measures 2.5 acres approx. and not 7 acres and the difference had been demarcated and allocated to other individuals as could be seen on the Registry Index Map adduced in evidence. That the 3<sup>rd</sup> Respondent rejected the allocation of the land to G K Prisons chiefly on this ground as the land had been committed to private ownership. It further added that a finding in favour of the 1<sup>st</sup> Respondent would be taking away land reserved for the Juvenile Remand Home unlawfully without following the due process in law.

52. In conclusion the 3<sup>rd</sup> Respondent states that the title of the Petitioner is faulty and that the 1<sup>st</sup> Respondent is not entitled to the suit land and thirdly that the suit land can only revert to the Juvenile Remand Home.

53. Having analysed the Pleadings, the evidence, written submissions and to my mind the issues that have crystallised for determination are;

- a. Whether the Petitioner has a valid title to the suit land.
- b. Whether the Petitioner is a bonafide purchaser for value without notice.

c. Who meets the costs of the petition and the cross petition?

54. The suit projects two competing interests, that of the right to title and the other of public land and land reserved for public use.

55. This case was filed as a petition whose essence is to protect Constitutional rights. It is so expressed in both the Petition and the Cross-Petition.

56. Nevertheless, the content by all of the pleadings, evidence and submissions have taken a complete turn. These lead to and disclose a dispute on the validity of the alienation, allocation, registration and issuance of the document of title to all that piece of land known and registered as MURANG'A MUNICIPALITY/BLOCK 2/525 (the suit land) to the Petitioner. All the parties have without any objection prosecuted their case amply in this regard.

57. It is the case of the Petitioner that it is the registered proprietor of the suit land having acquired it through purchase for value without any notice of any third party interests or taint. That its right of ownership and title is being violated by the 1<sup>st</sup> Respondent by its threat to forcefully occupy the suit land as well as its attempt to seek allocation of the said land from the DDC for purposes, allegedly, being extension of the GK prison.

58. The 1<sup>st</sup> Respondent's case is that the suit land is part of public land reserved for public use as a Juvenile Remand Home vide a gazette notice No 751 of 1963. That the said gazette notice has never been degazetted to allow for alienation of the land to a private ownership. That the County Council then and the Commissioner of Lands did not have power to excise and alienate the suit land to the Petitioner given that the said gazette notice is still in force.

59. Whether the Petitioner has a valid title to the suit? It is not in dispute that the suit land was originally allocated to Stanley Maina Njuguna vide a letter of allotment dated the 15/4/96 under authority 102749/13/GA/13/ of 18/3/1996. The plot is described as a residential Plot "A"-Murang'a Municipality. There is a sketch map attached to the letter of allotment in addition to the PDP approved on the 13/3/1996 denoting the area marked as "A". On the 8/5/1996 the said allottee accepted the terms and conditions contained in the allotment letter aforesaid and annexed the payment of stand premium, *inter alia*, through a banker's cheque addressed to the Commissioner of Lands. Vide a letter dated the 8/5/1996 the then County Council of Murang'a in a letter addressed to the Commissioner of Lands intimated that it had no objection to the issuance of a lease. A lease was issued in the name of the allottee on the 10/3/1997 and registered on the 14/3/1997. On the 18/7/1997 the Council again gave its consent to the transfer of the said property to the Petitioner and a title was issued on the 21/7/1997.

60. The Petitioner stated that it took possession of the suit land and adduced evidence in form of receipts of payment of rates up to the year 2012. It would appear that all was well until the year 2012 when its attention was drawn to a notice in the Daily Nation issued by the Director of Physical Planning dated the 23/2/12 in respect of completion of development plan for the proposed extension of the GK Prisons, Murang'a. The said notice informed the public that the development plan was ready for public inspection at the offices of the District Physical Planning Officer Murang'a North District. It also called for representation or objections in connection with the development plan within 60 days from the date of the notice.

61. It is the Petitioner's case that it quickly lodged an objection to the said development plan on grounds that the proposed extension touched on its land for which it held a title. What broke the camel's back came on 23/2/2013, a year later, when the 1<sup>st</sup> Respondent in an attempt to forcefully enter the suit land arrested the Petitioner's workers for alleged trespass on the land. It is the Petitioner's position that the action of attempted forceful entry and takeover of the property by the 1<sup>st</sup> Respondent was illegal and a violation of its rights to property as enshrined under Art 40 of the Constitution of Kenya and hence the instant petition.

62. In the cross petition the 1<sup>st</sup> Respondent (hereinafter called the Petitioner) contended that the suit land was reserved and alienated for public purpose in 1963 and reserved for Murang'a Juvenile Remand Home by publication in the Kenya Gazette Legal Notice No 751 of 1963, which notice is still in force. That the initial area reserved for the juvenile home was 2.94 ha. That in 1996 the County Council then excised and alienated 1.045 ha from the reserved land and purported to allocate to Stanley Njuguna Maina t/a Joheda Developers who in turn purported to transfer to the Petitioner. It is the case of the cross Petitioner that the excision, alienation and allotment of the 1.045 ha of the reserved land was illegal, irregular and fraudulent.

63. Art 40 of the Constitution provides protection against arbitrary deprivation of property unless that deprivation results in compulsory acquisition of land or a conversion in land, is for public purposes or public interest and is carried out in accordance to the Constitution and any act of parliament which requires prompt payment in full and just compensation to the person and accords any person with interests in the said land a right to access a Court of law. This protection is however not available in respect to land that has been found (adjudged by due legal process) to have been unlawful acquired.

64. The suit land was allocated to Joheda developers in 1996 and the applicable law was the retired Constitution, the Government Land Act, and the Land Registration Act. Article 40(3) of the Constitution, 2010 and Article 75 of the retired Constitution protects a person from deprivation of property by the State unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with the Constitution and the relevant pieces of legislation. In the case of **Adan Abdirahani Hassan & 2 others v Registrar of Titles, Ministry of Lands & 2 others [2013] eKLR** the Court stated;

"Section 75 of the repealed Constitution recognised the doctrine of public trust which applies to land set aside for public purpose. Such parcels of land are held by the Government in trust for the public and any purported allocation to individuals or legal persons cannot be said to fall under the purview of the protected property pursuant to the provisions of Section 75 of the repealed Constitution. It is true that under Section 23 of the Registration of Titles Act cap 281, a title is sacrosanct and indefeasible and can only be challenged on the ground of fraud and misrepresentation. However, any alienation of land contrary to the provisions of section 75 of the repealed Constitution or the provisions of the Government Land Act or any other Act of parliament would be null and void ab initio. Article 40 of the current Constitution, just like section 75 of the repealed Constitution protects the right to own

property. This Article should however be read together with the provisions of Article 40(6) which excludes the protection of property which has been found to have been unlawfully acquired. This requirement recognises the fact that the Constitution protects certain values such as human rights, social justice and integrity amongst others. These national values require that before one can be protected by the Constitution, he must show that he has followed the due process in acquiring that which he wants to be protected.”

65. It is the contention of the cross Petitioner and the Hon Attorney General that the suit land is public land. The 3<sup>rd</sup> Respondent in its submissions has associated itself with the case of the cross Petitioner and the Hon. Attorney General to the extent that the suit land is public land and that the same should revert to the Juvenile Remand Home. Indeed, the 2 Legal Notices referred to in paragraphs 76 and 77 above do not allocate the land described therein to the 1<sup>st</sup> Respondent or any of the Respondents who are cross-Petitioners.

66. The term public land has been defined in Art 162 (1) of the Constitution to, *inter alia*, include unalienated Government land, land lawfully held by the state either by lease or transfer, land lawfully defined as *bocana vacantia* (unclaimed land), Government forests, roads etc. Public land is vested in the County Government in trust for the residents of the county or National Government and held in trust for the people of Kenya. The concept of public land or land held for public purposes is not new. Section 75 of the retired Constitution took cognizance of the term and provided for the concept of land held in public trust that is to say for public purpose for the people of Kenya.

67. It is the case of the Petitioner that the land was not public land because the gazette notice lacked in specificity in describing the land or linking the suit land to the land referred to in the gazette notice, the acreage of the land was not disclosed, no buildings on the suit land belonging to the Juvenile Remand home and that there is no material before the Court to enable it make a finding that the suit land is or was part of the land referenced in the gazette notice.

68. The gazette notice referred to in the Legal Notice No 751 of 1963 stated as follows;

“Fort Hall Juvenile Remand Home. That piece of land situated adjacent to the Detention camp Fort Hall Town ship, containing commonly known as the Fort Hall Juvenile Remand Home together with the necessary curtilage and established under the Gazette Notice No 195 of 1960”.

It is clear from the above notice that land was alienated or set aside land for the Juvenile Remand Home by the Government then. The Juvenile Remand Home was established under the Gazette Notice No 195 of 1960. The same gazette notice designated and vested land in the Government of Kenya for purposes of Court houses in various Towns. Under the Prisons department subheading, land used for the purposes of Juvenile remand homes were designated in various towns such as Mandera, Wajir, Nyeri, Likoni, Nakuru, Eldoret, Kisumu and Fort Hall (present day Murang’a).

69. In order to settle with finality the dispute, it is prudent to find out if the suit land was excised from the larger gazetted land reserved for the Juvenile Remand Home. The Petitioner does not think so. It sought to persuade the Court that the suit land is different. It is commonly accepted that the acreage of the suit land is 1.045 ha whilst that of the juvenile remand home is disclosed to be 2.94 ha. DW1 informed the Court that in 2015 a joint survey was undertaken by himself on behalf of the cross Petitioners with a surveyor namely Evans Maghas representing the Petitioner. In the said report the two surveyors described the land as follows;

“the site is situated opposite the main Murang’a GK Prison just off the main road leading to Murang’a Town from Thika. It is undeveloped and is bounded by other developed private properties in the eastern and southern sides as shown on google pictures below. An 18 meter road reserve separates it from the main prison to the west and is separated by a 10 meter to the north of the administration police camp”.

70. The Court visited the locus in quo on the 8/5/19 in the presence of the parties and their surveyors. The cross Petitioners were represented by Leonard Ogutu (DW1) while the Petitioner was represented by a Surveyor namely Mr Evans Maghas. The land was described in the site report as the land adjacent to the Main GK Prison, separated by an access road which is about 9 meters. There is a curved portion occupied by an old lady near the GK Prison side and to the north is the administration Police houses previously occupied by the Veterinary department (emphasis is mine).

71. The description of this land is captured in a Survey map contained in the 3<sup>rd</sup> Respondent’s further list of documents filed on the 6/7/2018 and adduced in evidence by DW2, the Physical planner and marked DEX No 16. This map agrees with the Registry Index Map referenced Folio 312 Register 163 which denoted and delineates the suit land and annexed to the survey Report of the two joint surveyors prepared in 2015 after the site inspection.

72. The letter of allotment dated the 15/4/1996 issued to Joheda Developers described the suit land as UNS. Residential Plot A – Murang’a. Annexed to the said letter of allotment is a sketch map marked and denoting the area as 1.110 Ha and to the southern part are indicated other plots with a note that they (these plots) “transferred from the Juvenile Remand Home next to G K Prison. To the north of the said sketch map is the Administration Police and the Veterinary clinic. These details are further captured in the approved development plan dated the 13/3/1996 which showed the plot A and to the northerly is the Veterinary clinic and to the westerly is the GK prison.

73. It is true that the said gazette notice did not indicate the area of the land so designated. However, DW1 informed the Court that the area is shown on the part development plan of Murang’a Town which was concluded in 1972 and is annexed to the gazette notice as approved development plan No 63- Fort Hall. On the said map the area is denoted by reference to the words “Juvenile Remand Home” printed on the said map. It abuts the Proposed Veterinary Clinic and the Murang’a College of Technology to the north. The land is adjacent to the GK Prison and is separated by a road on the western side.

74. Both DW1 and DW2 led evidence and stated that before the year 2000 there were buildings on the suit land belonging to the Juvenile Remand home. That the said buildings were demolished when the home was relocated elsewhere. This agrees with the gazette notice No 751

of 1963 which described the property in reference with buildings thereon. DW1 informed the Court that the GK Prison used to cultivate the land before until 2013 when it was injunctioned by the Court from doing so. This evidence was not rebutted by the Petitioner.

75. The land described in the gazette notice may not have been registered but is clearly marked in the PDP of 1972. The suit land as registered comprises part of the larger land designated in the gazette notice as Fort Hall Juvenile Remand Home. The 3<sup>rd</sup> Respondent explained to the Court through its witness, DW2, that other parts of the original Juvenile land have been alienated to private individuals. Going by the publication of Legal Notices Number 751 of 1963, the Registry Index Map, the PDP of 1972 backed by the evidence of DW1 and DW2, the Joint Surveyors' and the site Reports, it is irresistible to conclude that the suit land was excised and falls within the boundaries of the land designated for public use vide the Legal Notice No 751 of 1963.

76. At the risk of repetition, given the report of the two joint surveyors, the site report of the Court and all the sketch maps, survey plans, approved part development plans and the Registry Index Map discussed above it is clear to the Court that there is no contradiction that the suit land is within the gazetted designated land reserved for the Juvenile Remand Home.

77. The cross Petitioner led evidence through DW1 which evidence was supported by the 3<sup>rd</sup> Respondent that the gazette notice is still in force, that is to say that it has not been varied, revoked and or degazetted. The Petitioner did not rebut this evidence.

78. Section 69 of the Interpretation and General provisions Act provides as follows;

“The production of a copy of the Gazette containing a written law or a notice, or of a copy of a written law or a notice, purporting to be printed by the Government Printer, shall be prima facie evidence in all Courts and for all purposes whatsoever of the due making and tenor of the written law or notice.”

79. By analogy where there is a gazette notice, it is deemed to be notice to both the Government, its agencies and the whole world. In this case that the land which comprised the suit land was land designated for public use, that is to say Fort Hall Juvenile Remand Home.

80. Under the Torrens land system a title is taken to be conclusive and indefeasible unless its acquisition has been found to be vitiated by fraud, misrepresentation, illegality or such taint for which the person was a party to. Section 23 of the Registration of Titles Act, Sections 27, 28 and 143 of Registered Land Act and Section 26 (1) a and b of the Land Registration Act provide circumstances under which a title can be successfully challenged. A title can only be rectified or cancelled in circumstances permitted by law.

81. The next question is whether the land was lawfully acquired by the Petitioner. Having held that the suit land formed part of the land designated in the gazette notice for public purpose i.e the juvenile remand home for the correction of juvenile offenders, the question is whether this land was unalienated Government land capable of being appropriated.

82. Section 2 of the Government Lands Act Cap 280 (now repealed) defines Government Land as land for the time being vested in the Government by virtue of Sections 21, 22, 25 and 26 of the Constitution of Kenya, 1964 (now repealed). In the same text unalienated Government Land means; -

“Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment”.

83. Section 3 of the Physical Planning Act defines unalienated Government Land as;

“ unalienated Government land” means Government land which is not for the time being leased to any person, or in respect of which the Commissioner of Lands has not issued any letter of allotment or reservation.”

84. Section 3 of Government Lands Act vested the power to the President, subject to written law to make grants or dispositions of any estates, interests or rights in or over unalienated Government land. The powers of the President were delegated to the Commissioner of Lands and limited to alienation of unalienated Government land. In this case the allocation of the suit land vide the allotment letter dated the 15/4/1996 being land comprised in the area designated by a gazette notice No 751 of 1963 for use by the Fort Hall Juvenile Remand Home cannot be said to be unalienated Government land. This land was already alienated for a public use and purpose and therefore was public land.

85. Section 9 of the Government Lands Act, only empowers the Commissioner of Lands to cause any portion of a township which is not required for public purposes to be divided into plots suitable for erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the prescribed manner.

86. The Petitioner submitted that the suit land was Trust Land and therefore the 3<sup>rd</sup> Respondent had power to allocate it to Stanley Maina and not the Commissioner of Lands. It is trite that even where land was held under the Trust Land Act, the allotting authority is that of the Commissioner of Lands exercising delegated powers from the President under the then Government Land Act. The commissioner would allocate the land on behalf of the County Councils who held the land in trust for the residents therein. I have perused the letter of allotment to Joheda Developers which describes the land as Uns. Residential Plot A – Murang'a Municipality. Going by the provisions of section 9 of Government Lands Act, unalienated Government land could be allocated for residential or commercial purposes only if it met the qualification which is that it was not required for public use. In this case the suit land was already committed for public use and so unavailable for alienation even under Section 9 of the Government Lands Act. Public interest/use carried a higher consideration than private interest/use.

87. The 2010 Constitution carries a comprehensive definition of Public Land in Article 62. For purposes of this case Public Land is defined in the 2010 Constitution in Art 62 (1) (a) and (b) which states as follows;

(1) Public land is; -

(a) Land which at the effective date was unalienated Government land as defined by an Act of Parliament in force at the effective date;

(b) Land lawfully held, used or occupied by any state organ except any such land that is occupied by the state organ as lessee under a private lease.

(2). Public land shall vest in and be held by a County Government in trust for the people resident in the County, and shall be administered on their own behalf by the National Land Commission,

(3). Public land classified under clause (1) (f) to (m) shall vest in and be held by the National Government in trust for the People of Kenya and shall be administered on their behalf by the National Land Commission.

88. The Constitution further states that public Land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

89. The drafters of the Constitution did their best to bring about certainty in both the definition and the operative architecture of how Public land is to be managed. The National Land Commission is the body mandated to manage public land in trust for the People of Kenya, be it at the County or National Government level. The Land Act No. 6 of 2012 has adopted the definition provided in Article 62 of the Constitution. It has gone ahead to describe what public purposes are to include schools etc. which is in consonance with the public user in this instant case. Under the National Land Commission Act No.5 of 2012, no public land shall be alienated without the consent of the National and County Governments who hold the public land in trust for the People of Kenya.

90. Going by the definition of what a public purpose is, it is the finding of the Court that a juvenile remand home qualifies to be public purposes due to its public use.

91. There are countless legal decisions and authorities in Kenya where Courts have held that the Commissioner of Lands had no power to allocate land that was designated appropriated or alienated for public purposes/use. In the case of the **Adan Abdirahani Hassan & 2 others v Registrar of Titles, Ministry of Lands & 2 others [2013] eKLR** Court held as follows;

“My take is that the Commissioner of Lands or his subordinates, while alienating Government land, can only do so over unalienated Government land as defined in the Constitution and under the repealed Government of Lands Act. The Commissioner of Lands or his subordinates cannot purport to alienate land which has already been set aside for public purpose.

92. Similarly in the case of *Norbixin Kenya Ltd v Attorney General Nairobi HCCC No.1814 of **Norbixin Kenya Limited vs The Hon. AG in HCCC Case No. 1814 of 2002*** wherein the Court dismissed a claim of public land on the ground that:-

“Once a suit property was designated as a Police Station, it ceased to be un-alienated Government land as it was set aside for use as a public utility for the general public. The Commissioner of Lands henceforth became a trustee with regard to this public utility plot.....the suit property having been set aside and planned as a police station for public use...was not therefore available for further alienation or allocation.”

93. In the case of **Paul Nderitu Ndungu & 20 Nthers vs. Pashito Holdings Limited & Another** (*Nairobi HCCC No. 3063 of 1996*), Mbhogoli Msagha J held-

"that the Commissioner of Lands had no legal authority to allocate two pieces of land which had been reserved as a Police Post and a Water Reservoir as they had already been allotted."

94. The same thread is to be seen in the decisions of the Court in **Kenya National Highways Authority v Shalien Masood Mughal, Nairobi CA No. 327 of 2014; eKLR; Funzi Island Development Ltd & 2 Others v County Council of Kwale (2014)eKLR** which I have read and considered.

95. Any alienation of land reserved for public purpose and issuance of a title for the same, whether under the Registration of Titles Act, cap 281 or the Registered Land Act, cap 300 is null and void ab initio. Such a title does not exist in the first place because the land belonged to the Public and was not available for alienation. See **R v Registrar of Lands, Kilifi ex parte Daniel Ricci (2013)**.

96. It is the finding of the Court that the land that was allocated to Stanley Njuguna Maina was part of the land reserved for Juvenile Remand Home. The land was not available for alienation to this initial allottee. It follows therefore that the purported allocation of the suit property which was created from a gazetted juvenile Remand Home was unlawful. In my view, the title held by the Petitioner having been created illegally following unlawful allocation of the reserved Juvenile Remand Home could not confer upon it any valid interest in the suit property. In the absence of a valid proprietary interest in the suit property the said Stanley Njuguna Maina had nothing to transfer to the Petitioner. The title that was conveyed to the Petitioner by the said Stanley Njuguna Maina was in the circumstances invalid, null and void.

97. In the absence of any degazettement of the Notice No 751 of 1960, I find no violation of the rights of the Petitioner in accordance with Art 40. The burden to prove that the title was legally acquired rested on the shoulders of the Petitioner. It is not enough to waive a title to the Court but it becomes its duty to prove that the same was acquired legally and that the title is legal. In the case of **Munyu Maina v Hiram Gathiha, Nyeri C.A No. 239 of 2009 [2013]eKLR** the Court stated that where a title is under challenge, a registered proprietor must go beyond the instrument of title and prove the legality of how he acquired the title.

98. The 1st Respondent argued that the Petitioner had a duty to demonstrate that it legally acquired the suit properties by producing evidence showing that the process of degazetting the land from which the suit properties were created was completed.

99. The Petitioner failed in this regard.

100. Is the Petitioner a bonafide purchaser for value without notice? Black's law Dictionary 8th Edition defines 'bona fide purchaser' as:

“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.” ...

101. For one to successfully rely on the bonafide purchaser doctrine he must prove that he holds the certificate of title ; purchased the property in good faith; he had no knowledge of the fraud; he purchased for valuable consideration; the vendors had apparent valid title; he purchased without notice of any fraud; he was not privy to the fraud. See the case of **Hannington Njuki Vs Willian Nyanzi HCCC No 434 of 1996** quoted with approval in the case of **Katende V Harridas & Company Limited EALR (2008) 2EA.**

102. The Petitioner cannot be said to have acquired an apparent valid title in view of the evidence that it purchased land that had been lawfully alienated to the Juvenile Remand Home for public purposes. Further the gazette notice through which the alienation was made was published. It has the effect of the law. The Petitioner ought to have known or deemed to have known that the suit property was land reserved for the Fort Hall Juvenile Remand Home. In any event the publication is a document in the public domain. Section 26 (1) (b) of Land Registration Act does not protect the Petitioner's title at all. Equally this is a title that does not enjoy the protection of the law under Art 40 (3) of the Constitution as it has been found to be unlawful under Art 40(6) of the Constitution.

103. The provisions of Section 23 of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) and Article 40 of the Constitution which were cited by the Petitioner in its submissions only protect property acquired lawfully. Article 40(6) of the Constitution provides that protection given to a right to acquire and own property does not extend to property that has been acquired unlawfully. It is my finding that the Petitioner has no valid proprietary rights in the suit property capable of protection by law.

104. In the case of **Chemey Investment Limited v Attorney General & 2 Others [2018] eKLR**, the Court of Appeal stated as follows:

“Decisions abound where Courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example **Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR; Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra); Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 Others KLR (E&L) 1, 563; John Peter Mureithi & 2 Others v. Attorney General & 4 Others [2006] eKLR; Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others (2017) eKLR; Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others [2015] eKLR; Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Milan Kumar Shah & Others v. City Council of Nairobi & Others, HCCC No. 1024 of 2005.**The effect of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense.”

105. The Court holds that the Petitioner has not proved any violation of rights under Art 40 (3) of the Constitution or any other by the cross Petitioners. I therefore find no merit in the Petitioner's contention that its rights to property under Article 40 of the Constitution were violated by the Respondents

106. That notwithstanding, the Petitioner is not without remedy. It has recourse to the original allottee that sold it the suit land for relief, if it so desires.

107. As I am persuaded as above, I find that the title held by the Petitioner is null and void given that it was appropriated in contravention of the law. It is the finding of the Court that Section 143 of the Registered Land Act (now repealed) and Section 80 of the Land Registration Act empowers it to cancel an illegally acquired title. Equally the said title is impeachable under Section 26 (1) (b) of the Land Registration Act which provides that a title can be challenged where the certificate of title has been acquired illegally unprocedurally or through a corrupt scheme.

108. Further the Court proceeds to declare that the said parcel of land belongs to the Murang'a Juvenile Remand Home. The Legal Gazette Notice No 751 of 1963 alienated and reserved the land as such and the cross Petitioner did not present any evidence that the suit land was at any time allocated to it. It is on record that the Cross Petitioner applied for allotment of the land gazetted and reserved for the Juvenile remand home (which included the suit land) and other lands. It is also borne out the evidence and the record that the process stalled because it was objected by the 3<sup>rd</sup> Respondent on the grounds that the land was registered in the name of the Petitioner. This shows that the cross Petitioner recognized that the land was reserved for the public use for the benefit of Juvenile remand home. This evidence was admitted by its witness during the trial. It is the conclusion of the Court that the cross-Petitioner's claim in the cross-petition to the extent that it be registered as owner of the suit land cannot be allowed for the above reasons.

109. It is noteworthy that in this case the Cross-Petitioner attempted forceful takeover of the suit land was wrongful. Kenya has chosen the rule of law in all its legal strictures and a party cannot be allowed to take the law into its hands. If aggrieved a party should bring its dispute before a Court of law for resolution but not to forcefully enforce its own edict through the law of the jungle.

110. In respect to costs, ordinarily costs follow the event. The Petitioner and the cross Petitioner have not been successful in their claims. I order each party to meet their own costs.

**111. Final orders;**

- a. The Petition fails and it is dismissed.
- b. It is hereby declared that the suit land is public land having been alienated and reserved for public use vide the Legal Gazette Notice No 751 of 1963.
- c. It is further declared that Commissioner of Lands/County Government of Murang'a had no powers to excise and allocate public land contrary to Statute and the Constitution.
- d. That the title documents/leasehold interest created in MURANG'A MUNICIPALITY BLOCK 2/525 is illegal and confers no proprietary interests to the Petitioner per the provisions of Article 40(6) of the Constitution of Kenya.
- e. That the title for MURANG'A MUNICIPALITY BLOCK 2/525 be and is hereby revoked/cancelled and the suit land comprised therein do and is hereby reverted to Public land for the benefit of Murang'a Juvenile Remand Home.
- f. The Petitioner, by itself, or its agents be and are hereby permanently restrained from interfering with the suit property known as Title No. MURANG'A MUNICIPALITY BLOCK 2/525.
- g. The cross Petitioner is not entitled to the suit land and to that extent its cross petition is dismissed.
- h. Each party to meet its own costs.

**112. It is so ordered.**

**DELIVERED, DATED AND SIGNED AT MURANGA THIS 27<sup>TH</sup> DAY OF JANUARY, 2020.**

**J.G. KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

Ms Chumba for the Petitioner

AG for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents – Absent

3<sup>rd</sup> Respondents – Absent

Irene and Njeri, Court Assistants