



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KERUGOYA**  
**CONSTITUTIONAL PETITION NO. 4 OF 2019**

**BETWEEN**

**LEONARD KURIA WANGARI.....PETITIONER**

**VERSUS**

**COUNTY GOVERNMENT OF KIRINYAGA.....1<sup>ST</sup> RESPONDENT**

**DEPARTMENT OF LAND, HOUSING AND UBRAN DEVELOPMENT,**

**KIRINYAGA COUNTY.....2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).....1<sup>ST</sup> INTERESTED PARTY**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

The Petitioner, Leonard Kuria Wangari filed this petition on 25<sup>th</sup> September 2019 seeking to have a Constitutional determination as follows:

- 1. That a declaration of violation of the rights to access to information do issue against the respondent.**
- 2. That a declaration be made that the public land should not be disposed of or otherwise used without express terms of the intended use by the beneficiary.**
- 3. That a Memorandum of understanding be prepared to enumerate; the plan for the project and the resultant benefits for the resident of Kirinyaga County.**

The petition is based upon grounds on the face thereof and the supporting affidavit of the Petitioner sworn the same date. The petition was filed contemporaneously with a Notice of Motion under certificate of urgency which sought the following interlocutory reliefs:

- 1. Spent.**
- 2. That the Honourable Court be pleased to issue an order of inhibition against land parcel No. MWEA/MUTITHI/STRIP/1449 pending the hearing and determination of this application and thereafter pending the hearing and determination of this petition.**
- 3. That pending the hearing and determination of this application, the Respondents be restrained from further alienating, transferring and/or dealing in whatsoever way or manner with land parcel L.R. No. MWEA/MUTITHI/STRIP/1449 pending the hearing and determination of this petition.**
- 4. That pending the hearing and determination of this application, the Respondents be restrained from authorizing or licensing or approving further the Interested party's construction of a Medical Research Institute facility, gathering of building material, digging of a foundation or any other interference by the Interested party on land parcel L.R. No.**

5. That pending the hearing and determination of this application, the Interested party be restrained from constructing a Medical Research Institute facility, gathering building material, digging foundation or in any other way interfering and/or dealing with land parcel L.R. No. MWEA/MUTITHI/STRIP/1449 pending the hearing of this application and thereafter pending the hearing and determination of this petition.

6. That the costs of this application be costs in the cause.

After the interlocutory application was placed before the duty Judge on 30<sup>th</sup> September 2019, it was certified urgent and directed to be served for interpartes hearing on 3<sup>rd</sup> October 2019. On the said date, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents only filed their response to the said application vide a replying affidavit sworn on 1<sup>st</sup> October 2019. However, the 1<sup>st</sup> Interested party sought adjournment stating that she was served within a short notice and needed time to file their response. She therefore sought adjournment to file their response. The Petitioner opposed the application stating that the Interested party was continuing with construction on the suit land and stated that should the Court be inclined to grant the adjournment, the Interested party should be restrained from continuing with the construction pending the interpartes hearing. After carefully considering the submissions by the counsels, the Court allowed the application and granted interim orders in terms of prayers No. 1 & 2 of the said application. On 24<sup>th</sup> October 2019, the Interested party filed her replying affidavit. On 12<sup>th</sup> November 2019, an entity described as KIMIKE CO-ORDINATING COMMITTEE filed an application under certificate of urgency seeking to be enjoined as intended 2<sup>nd</sup> interested party. The Court heard the parties in support and in opposition to the said application and their counsels and in a ruling delivered on 6<sup>th</sup> December 2019, the Court dismissed the said application but on its own motion enjoined the National Land Commission as the 2<sup>nd</sup> Interested party being the entity charged with managing all public land on behalf of both the National and County Government. On 15<sup>th</sup> January 2020, the parties agreed by consent to withdraw all interlocutory applications and to proceed with the main petition herein. Pursuant to that consent, they agreed to file their compliance documents within time lines set by consent of the parties in Court.

Before the dust could settle, the 1<sup>st</sup> Interested party filed a Notice of Motion on 20<sup>th</sup> February 2020 under certificate of urgency seeking for orders inter alia that this Court do immediately vacate, discharge, vary, and/or set aside the inhibition orders and/or injunctive orders issued on 3<sup>rd</sup> October 2019. The 1<sup>st</sup> Interested party sought an alternative prayer that this Honourable Court do issue an order directing the respondents herein to issue an acceptable and irrevocable undertaking that they shall fully indemnify all the losses that the Applicant/1<sup>st</sup> Interested party is likely to suffer as a result of the subsisting inhibitory orders and/or injunctive reliefs including an order for the deposit of the sum of Kenya Shillings Eighteen Million three hundred and fourty four Thousand three Hundred and eighty (Ksh. 18,344,380) in a joint interest earning account within three (3) days. When the said application was placed before the duty Judge on the said 20<sup>th</sup> February 2020, the Court certified the application urgent and directed that the same be heard interparties on 9<sup>th</sup> March 2020.

When the matter was called out on the said 9<sup>th</sup> March 2020, Mr. Lusi, counsel for the 1<sup>st</sup> Interested party drew the Court's attention to a Notice to Act in person and another Notice of withdrawal of this petition by the Petitioner, Leonard Kuria Wangari dated 5<sup>th</sup> March 2020 and filed on 6<sup>th</sup> March 2020. The learned counsel urged the Court to act upon the said Notice of withdrawal of this petition and have it marked as withdrawn. Mr. Nyamodi, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents strenuously opposed the application to have the said Notice of withdrawal of this petition adopted as an order of the Court arguing that a Constitutional petition is not like the ordinary civil cases where the same can be acted upon without hearing the other parties. The learned counsel submitted that this petition is governed by **Section 27 of the Mutunga rules** which requires that leave ought to be sought before a petition is withdrawn. He submitted that before a petition is withdrawn, a party seeking to have it withdrawn is required to file an application to be served upon all the parties.

Upon hearing the arguments and submissions, the Court directed the parties to file their submissions on whether the Notice to withdraw this petition should be adopted by this Honourable Court or not.

#### SUBMISSIONS BY THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS

- The 1<sup>st</sup> and 2<sup>nd</sup> Respondents through the firm of V.A. Nyamodi and Company Advocates filed their submissions on 13<sup>th</sup> March 2020 which she submitted that there is only one issue for determination by this Honourable Court in respect of the Notice of withdrawal that is whether this Honourable Court should discontinue these proceedings?
- The learned counsel submitted that it is apparent from the petition dated 25<sup>th</sup> September 2019 that this matter was instituted by the Petitioner herein to enforce rights of the residents of Kirinyaga County at large and not his personal/individual rights.
- He stated that none of the prayers being sought in the petition concerns enforcement of his personal rights. It is submitted that all the prayers sought in the petition affect the 1<sup>st</sup> Respondent herein and the residents of Kirinyaga County at large.
- It is further submitted that paragraph 4 and 6 of this petition shows beyond peradventure that by filing the instant petition, the Petitioner was not acting for his personal interest but for the interest of the residents of Kirinyaga County at large.
- The 1<sup>st</sup> and 2<sup>nd</sup> Respondents also submitted that withdrawal of a petition is governed by **Rule 27 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013**; which provides as follows:

“(1) The Petitioner may:-

- a. On notice to the Court and to the Respondent, apply to withdraw the petition; or

**b. With the leave of the Court, discontinue the proceedings.**

**(2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of the decision.**

**(3) Despite sub-rule (2), the Court may, for reasons to be recorded, proceed with the hearing of a case in spite of the wish of the Petitioner to withdraw or discontinue the proceedings”.**

- The 1<sup>st</sup> and 2<sup>nd</sup> Respondents further submitted a petition cannot simply be withdrawn at the whims of the petitioner and cited the case of *Peter Makau Musyoka & 19 Others* (Suing on their own behalf and on behalf of the Mui Coal Basin Local Community) Vs Permanent Secretary Ministry of Energy & 14 others (2014) e K.L.R where the Honourable Court laid down the test to be applied before a petition is withdrawn.

- It is further submitted that the withdrawal of the petition as wished by the Petitioner herein will have an adverse juridical effect not only to the public interest but also the interest of the 1<sup>st</sup> Respondent herein.

- The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the crux of this matter is ownership of the land parcel No. MWEA/MUTITHI/STRIP/1449 which she submitted is vehemently contested between 1<sup>st</sup> Respondent and the 1<sup>st</sup> Interested party who are both claiming ownership of the same and that the 1<sup>st</sup> Interested party has produced a title deed in respect of the said parcel of land whose legality has been vehemently challenged by the 1<sup>st</sup> Respondent on grounds that the suit land is legally and lawfully registered in the name of the 1<sup>st</sup> Respondent and even a current search at the Land Registry confirms that the land is owned by the 1<sup>st</sup> Respondent.

- The 1<sup>st</sup> and 2<sup>nd</sup> Respondents further submitted that it is apparent from the pleadings that the 1<sup>st</sup> Interested party has made a litany of allegations of fraud, illegality, defacing and destroying of land records to impeach the 1<sup>st</sup> Respondent’s title.

- Based on those allegations, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that it is therefore clear that issues arising in this petition transcend any of the personal interest the Petitioner might be having in this petition and that the withdrawal of the petition would leave hotly contested issue of ownership of the suit land, which does not concern the Petitioner at all unresolved and the rights of the 1<sup>st</sup> Respondent adversely affected. She also cited the case of **JOHN JUMA & 2 OTHERS VS PATRICK LIHANDA & ANOTHER; ZEDEKIAH ORERA & 4 OTHERS (INTERESTED PARTIES) (2019) e K.L.R.**

- In conclusion, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that this Honourable Court being seized with the petition and having the requisite jurisdiction to determine issues relating to ownership of the land should proceed with the hearing of the petition and determine the issue herein to their logical conclusion regardless of the Petitioners wish to discontinue the proceedings.

1<sup>ST</sup> INTERESTED PARTY’S CASE

The 1<sup>st</sup> Interested party submitted that **rule 27, Mutunga Rules, 2003** does preserve the Court’s discretion in considering a request and/or application such as the one lodged by the Petitioner indicating intent to withdraw a petition.

- The 1<sup>st</sup> Interested party argued that in the absence of justiciable reasons and plausible juridical effect, the Honourable Court is lawfully constrained to allow the Notice to withdraw petition lodged by the Petitioner. The Interested party further argued that the petition before Court is expressed as being brought to assert alleged violation of Constitutional Rights under **Article 35 and 43 of the Constitution**. She submitted that **Article 35** relates to the right to information whereas **Article 43** relates to economic and social rights.

- The 1<sup>st</sup> Interested party further submitted that this Honourable Court is Constitutionally entrenched enjoying the status of the High Court but as a Court of equal rights, it has a distinct specialized jurisdiction from that of the High Court. She cited the case of *Seven Seas Technologies Limited Vs Eric Chege (2014) e K.L.R.*

- The 1<sup>st</sup> Interested party submitted that the jurisdiction of this Honourable Court to adjudicate over the subject of dispute as lodged by the Petitioner/Applicant is entrenched under **Article 165 (3) (b), (d) (iii), (e) and Article 165 (6) & (7) Constitution, 2010.**

- The 1<sup>st</sup> Respondent stated that this jurisdiction is particular, specific and peculiar to the High Court and not any other Court. She cited the case of *Ararita Karimi & Another Vs Republic (1979) e K.L.R.* She stated that the Petitioner has with specificity and particularity alleged violation of two rights relating to access to information as guaranteed under **Article 35** of the Constitution of Kenya 2010 and the Economic and Social Rights as guaranteed under **Article 43** of the Constitution of Kenya, 2010.

- The 1<sup>st</sup> Interested party cited the case of *S.K. MACHARIA & ANOTHER VS KENYA COMMERCIAL BANK & 2 OTHERS (2012) e K.L.R.*

- It is further submitted that under **Article 162 (2) (b)** of the Constitution, the Supreme law envisages the establishment of specialized Courts with the status of the High Court to “**hear and determine disputes relating to the environment and the use and occupation of and title to land**”. Further at **Article 162 (3)**, Parliament is empowered to, “**determine the jurisdiction and functions of the Court contemplated in clause (2)**”.

- The 1<sup>st</sup> Interested party also submitted that the Environment and Land Court established as a specialized Court under **Article 162 (2) of the Constitution** as read with **Section 4**, the Environment and Land Court (ELC) Act; has a circumscribed mandate under **Section 13 (2) (a) to (e)**, of the ELC Act itemized the specific matters the Court can adjudicate over.

- It is submitted that on matters enforcement of fundamental rights and freedoms, **Section 13 (3)**, ELC Act limits the jurisdiction of the ELC Court to “*hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and health environment under Article 42, 69 and 70 of the Constitution*”. As such questions outside this jurisdiction (under alleged violations of Articles 42, 69 and 70 of the Constitution) cannot though convenience or exigencies be lawfully adjudicated upon by the ELC. The Petitioner or any party in these proceedings ought not and cannot be allowed to abuse the Court’s Constitutional authority.

- The 1<sup>st</sup> Interested party also submitted that the ELC does not have the status of a High Court, including power to issue prerogative orders as set out under **Section 13 (7) ELC Act**. She cited the holding by the Supreme Court in **REPUBLIC VS KARISA CHENGO & 2 OTHERS (2017) e K.L.R.**

- The 1<sup>st</sup> Interested party further submitted that the Honourable Court is divested of lawful authority or jurisdiction to adjudicate over the alleged violation of **Article 35 and 43 of the Constitution** and that the juridical effect of allowing the notice to withdraw mostly certainly lies in favour of allowing the same.

- It is further submitted that this Honourable Court did not grant the subsisting conservatory orders suo moto; but was moved by the Petitioner’s assertions that his rights under **Article 35 and 43** of the Constitution had been violated. She also submitted that the premise for which the Court was moved to grant the orders has been revoked as averred by the Petitioner on public interest.

- The 1<sup>st</sup> Interested party argued that before the grant of conservatory orders under **rule 23, Mutunga Rules, 2003**, the Honourable Supreme Court of Kenya in the case of **GITARAU PETER MUNYA VS DICKSON MWENDA & 3 OTHERS (2014) e K.L.R** urged for consideration of proportionality and public interest. She also cited the case of **CENTER FOR RIGHTS EDUCATION AND AWARENESS (CREAW) AND 7 OTHERS VS THE HON. ATTORNEY GENERAL (2011) e K.L.R.**

- In light of the cited cases, the 1<sup>st</sup> Interested party submitted that the Petitioner’s apprehensions have been confirmed by the 2<sup>nd</sup> Interested party (NLC) and that no prima facie case subsists and no prejudice or reasonable apprehension of prejudice exist and that the notice of withdrawal should be allowed.

- On the issue of public interest, the 1<sup>st</sup> interested party submitted that there is no justifiable reasons or juridical effect warranting denial of the notice of withdrawal by the Petitioner. She stated that evidence abounds and also patently apparent that execution of the project estimated at Ksh. 15,000,000,000/= (Kenya Shillings Fifteen Billion) projected to include hospital, mortuary, manufacturing facility, recreational centre, conference centre will benefit the people of Kirinyaga and the country at large.

- The 1<sup>st</sup> Interested party stated that the construction of the project was to commence sometime in 2016 and the prolonged delay continues to prejudice and cause irreparable damage on the 1<sup>st</sup> Interested party and the general public.

- It is further submitted that in meetings with Mutithi Community leaders including on 31<sup>st</sup> August 2013, 4<sup>th</sup> November 2014, 8<sup>th</sup> November 2014, 10<sup>th</sup> March 2015, 18<sup>th</sup> March 2015 and 19<sup>th</sup> March 2015, the scope of the project and benefits accruing therefrom were discussed and identified including:

- a. Growth and development of Wamumu area in terms of housing estates and infrastructure.
- b. Land values will go up which will be an advantage to the locals owning land within the area.
- c. Research will benefit the people of Kirinyaga County, the Central region at large, the Eastern and North Eastern region.
- d. The university will offer employment opportunities to both the professional and non-professional staff.
- e. The manufacturing plant and ancillary facilities in the project will create formal and informal employment and
- f. The centre will provide a market for farmers within Mwea for their agricultural produce such as rice, tomatoes, French beans etc.

## 2<sup>ND</sup> INTERESTED PARTY’S CASE

The 2<sup>nd</sup> Interested party, the National Land Commission was enjoined as an interested party by the Court on its own motion.

- In her response to petition sworn by one Brian Ikol on 13<sup>th</sup> February 2020, the 2<sup>nd</sup> Interested party stated that she is an Independent Commission established under **Article 67 (1)** of the Constitution and is operational by the **National Land Commission Act No. 5 of 2012**.

- She stated that following the promulgation of the new Constitution and subsequent enactment of the **National Land Commission**

**Act**, she took overall management of land administration from the defunct office of the Commissioner of Lands and has inherited all land administration records.

- The 2<sup>nd</sup> Interested party also stated that in addition to the functions denoted to it under the Constitution, the 2<sup>nd</sup> Interested party has its fundamental functions, the management of public land on behalf of the National and County Government.

- The 2<sup>nd</sup> Interested party further stated that from records available, the chronology of the subject parcel (MWEA/MUTITHI/STRIP/1449) is as follows:

- That the subject parcels MWEA/MUTITHI/STRIP/1449 measuring 40.29 Ha. was a resultant of a sub-division from MWEA/MUTITHI/STRIP/229 which measured approximately 66.5 Ha.

- That MWEA/MUTITHI/229 was initially reserved for Wamumu Approved School back in 1973 before the resultant sub-division that gave rise to the subject parcel No. MWEA/MUTITHI/STRIP/449.

- That in 2013, the 1<sup>st</sup> Respondent received a request by the 1<sup>st</sup> Interested party to allocate them 100 acres for the construction (realization of a level 5 Hospital, Post-graduate University and Training Centre and an Ultra Modern Research Centre amongst other Medical facilities.

- That further to the above, since the land parcel No. MWEA/MUTITHI/229 was reserved for Wamumu Approved School which was vested under the Ministry of Labour, Social Security and Services, the 1<sup>st</sup> Respondent requested the then Cabinet Secretary in Charge of the Ministry for allocation of the 100 acres (40.29 Ha) to the 1<sup>st</sup> Interested party and the remaining 64 acres be surrendered to the land bank that then resulted to the allocation and registration of MWEA/MUTITHI/1449.

- That the then relevant Cabinet Secretary vide a letter referenced; MJ SSS46/13 dated 14<sup>th</sup> January 2015 confirmed the approval for request for 100 acres (40.29 Ha) for the activities proposed by the 1<sup>st</sup> Interested party but not the 64 acres as together requested for the proposed land bank by the 1<sup>st</sup> Respondent.

- That on 29<sup>th</sup> September 2016, the subject parcel MWEA/MUTITHI/1449 was then registered and a certificate of title issued to the 1<sup>st</sup> Interested party.

- That it has however been noted by the 2<sup>nd</sup> Interested party that the current status of the subject parcel MWEA/MUTITHI/STRIP/1449 at the Kirinyaga Land Registry has fraudulently changed and is now currently registered to the 1<sup>st</sup> Respondent but reserved for the 1<sup>st</sup> Interested party.

- That further to the above and information gathered from the records at the Lands Registry Kirinyaga, it is worth nothing that the change in registration of the subject parcel from the 1<sup>st</sup> Interested party to the 1<sup>st</sup> Respondent was advised/informed through two (2) memos that originated from the 1<sup>st</sup> Respondent copies of which are annexed and marked “**B1 – 3**”.

- That under the current legislative set up, only the Environment and Land Court and the National Land Commission have jurisdiction to determine the legality of grants of disposition of public land order for subsequent revocation. Therefore, the actions by the 1<sup>st</sup> Respondent in instructing the Land Registrar to revoke the title held by the 1<sup>st</sup> Interested party were illegal and noticeably ultra vires.

- That the Petitioner herein is being uncandid and misrepresenting of facts to this Honourable Court by claiming that public participation was never conducted. She stated that the 1<sup>st</sup> Interested party together with representatives from the Local Government and the relevant officials from various stake holders undertook public participation as evidenced by minutes of the meeting conducted on 31<sup>st</sup> August 2013 as dictated by the Constitution. He annexed copies of the minutes of the meeting as **B1 – 4**.

#### SUBMISSIONS BY THE PETITIONER

The Petitioner filed an affidavit in support of his notice to withdraw petition sworn on 12<sup>th</sup> March 2020 which he deponed as follows:

**1. That I am a male adult of sound mind and disposition, the Petitioner in this case and fully conversant with the facts of the case and I therefore swear this affidavit in support of the Notice to withdraw the petition dated 5<sup>th</sup> March 2020 and filed in Court on 6<sup>th</sup> March 2020.**

**2. That I am a youth as defined in the Constitution of Kenya, 2010 and I am generally knowledgeable in matters affecting the youth.**

**3. That I am a public spirited individual and I filed this petition on 25<sup>th</sup> September 2019 on public interest seeking orders barring the transfer of Land Reference Number MWEA/MUTITHI/STRIP/1449 measuring approximately 100 acres from the County Government of Kirinyaga to the 1<sup>st</sup> Interested party Kenya Medical Research Institute (KEMRI) on the following grounds:**

4. That I have been actively participating in the Court proceedings since filing the petition even though I previously had a firm of Advocates.

5. That I have now read and understand all the interlocutory applications and replying affidavits and/or defences filed in this case and confirm that KEMRI together with the National Land Commission conducted public participation forums in various locations within Kirinyaga County and the residents gave positive views and comments on the project and urged KEMRI to proceed.

6. That I have also appreciated the nature of the project envisaged by KEMRI and the expected benefits that the project will bring to the people of Kirinyaga County and Kenyans at large and therefore the petition should be marked as withdrawn and the project allowed to proceed as planned.

7. That as a result of the public views collected during the various public participation on the intended utilization of the suit parcel of land, I am now convinced that the public was adequately consulted and they gave KEMRI the green light to proceed with the project on the suit parcel of land.

8. That public interest is what informed my decision to file the Notice to withdraw the petition which would in turn lead to the vacation of the inhibitory orders issued in the case to enable the project to proceed for the benefit of the people of Kirinyaga County and all Kenyans”.

9. That I confirm to this Honourable Court that since I filed this petition and the Court issued the inhibitory orders stopping the commencement of the project, certain persons have attempted to take over this case and steer it in a different direction and that is why I filed the Notice to withdraw the petition since I do not want the petition hijacked.

10. That in light of what I have stated above, I therefore filed the Notice to act in person and Notice of withdrawal of the petition wholly in the public interest”.

This affidavit was subjected to cross-examination by counsels for the parties.

#### SUBMISSIONS BY THE 2<sup>ND</sup> INTERESTED PARTY

The 2<sup>nd</sup> Interested party did not file any submissions.

#### ANALYSIS AND DECISION

I have considered the petition and the response by the parties. I have also considered the Notice to act in person and the Notice of withdrawal of this petition by the Petitioner together with the affidavit in support of the said Notice of withdrawal and the submissions by the parties.

- The withdrawal of a petition is governed by *Rule 27 of the Constitution of Kenya* (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which provides as follows:

“The Petitioner may:

- a. On the notice to the Court and to the respondent, apply to withdraw the petition; or
- b. With the leave of the Court, discontinue the proceedings.

(2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision.

(3) Despite sub-rule (2), the Court may, for reasons to be recorded, proceed with the hearing of a case petition in spite of the wish of the Petitioner to withdraw or discontinue the proceedings”.

The pleadings by the parties in response to the petition particularly the replying affidavit by one Brian Ikol on behalf of the 2<sup>nd</sup> Interested party herein indicated that the suit property parcel No. MWEA/MUTITHI/STRIP/1449 measuring 40.29 Ha. is registered in the name of the 1<sup>st</sup> Interested party and a certificate of title issued marked B1 – 2. The land in dispute is a public land which under the new Constitution and the enactment of the National Land Commission Act No. 5 of 2012 came under the management of the National Land Commission on behalf of the National and County Governments. The certificate of title which has been annexed by the 2<sup>nd</sup> Interested party as B1 – 2 indicated that the 1<sup>st</sup> Interested party is registered as the absolute and indefeasible proprietor. Under *Section 26 of the Land Registration Act* (No. 3 of 2012), the law provides as follows:

“26 (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:

**a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**b. Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme”.**

The National Land Commission who is the entity authorized in law to oversee the management and administration of public land on behalf of National and County Government through its authorized officer one Brian Ikol has sworn an affidavit in response to this petition stating that the due process was followed in the acquisition of the suit land. The Petitioner in this case, Leonard Kuria Wangari is not challenging the 1<sup>st</sup> Interested party’s title to the suit land. His claim according to the petition is for declaration of violation of the right to access information under Article 35 of the Constitution, a declaration that the public land should not be disposed of or otherwise used without express terms of the intended use by the beneficiary and a Memorandum of understanding be prepared to enumerate the plan for the project and the resultant benefits for the residents of Kirinyaga County. The 1<sup>st</sup> Interested party has stated that she is renowned bio medical research institute of global repute established in 1979 as a State Corporation under the Science and Technology Act, Cap. 250 Laws of Kenya (now repealed) and currently its affairs are governed by the Science, Technology and Innovation Act, 2013. It is not in dispute that one of its objective is to propagate and advance the interest of the people of Kenya aimed at improving human health and quality of life through research especially at this point in time, when the world is facing the epidemic of covid – 19.

- In view of the above analysis, I find the Notice of withdrawal of this petition supported by the Petitioner’s affidavit merited with no juridical effect and the same is allowed in the following terms:

**1. The Petitioner’s Notice of withdrawal of petition dated 5<sup>th</sup> March and filed on 6<sup>th</sup> March 2020 is allowed and this petition is hereby marked as withdrawn.**

**2. The interim/conservatory orders issued on 3<sup>rd</sup> September 2019 be and is hereby vacated forthwith.**

**3. Each party to bear his /her own costs of this petition.**

**READ, DELIVERED and SIGNED in open Court at Kerugoya this 3<sup>rd</sup> day of April, 2020.**

.....

**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of:

1. Mr. Lusi alongside Mr. Machira for the 1<sup>st</sup> Interested party and also holding brief for Mr. Wambugu for the 2<sup>nd</sup> Interested party

2. Ms Kinyua holding brief for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

3. Petitioner – absent

4. Ms Ann – Court Assistant.