**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT EMBU**

**E.L.C. PETITION NO. 54 OF 2015**

**(FORMERLY H.C PET 4 OF 2011)**

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS**

**AND BILL OF RIGHTS OF THE CONSTITUTION OF KENYA, 2010**

***AND***

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**UNDER ARTICLES 19, 20, 21, 22 (1), (2), (4), 23, 24, 28 (C), 40, 43 (B), 63 OF THE CONSTITUTION, 2010**

***AND***

**IN THE MATTER OF THE ARTICLE 2 (5) OF THE CONSTITUTION OF KENYA, 2010**

***AND***

**IN THE MATTER OF THE ARTICLES 1, 8(2), 9, 10, 18, 26, 28, 33, 37, 42, 43 AND 46 OF THE**

**UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)**

***AND***

**IN THE MATTER OF HISTORICAL AND CURRENT INFRINGEMENT OF THE CULTURAL,**

**SETTLEMENT AND ECONOMIC RIGHTS OF THE RESIDENTS OF WACHORO ADJUDICATION**

**SECTIONS MBEERE SOUTH DISTRICT AS INDIGENOUS PEOPLE WITHIN THE MEANING OF**

**THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE**

**(UNDRIP) AND THE CONSTITUTION OF KENYA**

***AND***

**IN THE MATTER OF PROTECTION FROM DEPRIVATION OF PROPERTY AND LAND**

***BETWEEN***

**FRANCIS MUSYOKI MAKENZI & 61 OTHERS.....PETITIONERS**

***VERSUS***

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

**THE ATTORNEY GENERAL.....2ND RESPONDENT**

**THE REGISTRAR OF LANDS.....3RD RESPONDENT**

**AND**

**NJIRU CIMBA & 65 OTHERS.....1ST INTERESTED PARTIES**

**NYAGA MWABE & 25 OTHERS.....2ND INTERESTED PARTIES**

**JUDGEMENT**

## A. INTRODUCTION

1. By a petition dated 18th March 2011, amended on 11th October 2012 and further amended on 1st April 2019 expressed to be brought under **Articles 2 (5), 19, 20, 21, 22 (1), (2), (4), 23, 24, 28, 29 (C), 40, 43 (B) & 65** of the **Constitution of Kenya 2010** *(the Constitution),* and **Articles 1, 8(2), 9, 10, 18, 26, 33, 37, 42, 43 & 46** of the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** the Petitioners alleged contravention of their fundamental rights under the **Constitution** and **UNDRIP** and consequently sought the following reliefs against the Respondents:

*a. A conservation order restraining the Respondents/their agents/servants and/or employees from issuing Title Deeds to persons other than the Petitioners.*

*b. A declaration that the Petitioners are entitled to their respective parcels of land in Karaba, Wachoro and Riakanau Adjudication Sections as beneficial owners.*

*c. A permanent injunction order directed at the Respondents or any other party from interfering with their ownership, occupation, use and interest over the suit land or otherwise from evicting or attempting to evict the Petitioners and other residents from the suit land or from issuing Title Deeds or in any other way alienating the suit land other than to the Petitioners and other residents.*

*d. An order cancelling the titles issued to the Interested Parties herein amongst other persons with respect to the Petitioners' parcels of land known as Plot No. 166, 335, 477, 42, 265, 270, 830, 79, 239, 292, 291, 277, 213, 212, 246, 266, 92, 525, 657, 874, 274, 474, 206, 1359, 1463, 394, 289, 826, 94, 186, 1711, 852, 428, 827, 204, 432, 896, 559, 487, 741, 48, 503, 508, 506, 845, 233, 569, 485, 257, 229, 866, 842, 343, 809, 559, 572, 1392, 813, 108, 994, 473, 124, 42, 862, 775, 227, 854.*

*e. A declaration be made that the act of registration in favour of the Interested Parties herein amongst other persons other than the Petitioners in respect of parcels of land known as Plots No. 166, 335, 477, 42, 265, 270, 830, 79, 239, 292, 291, 277, 213, 212, 246, 266, 92, 525, 657, 874, 274, 474, 206, 1359, 1463, 394, 289, 826, 94, 186, 1711, 852, 428, 827, 204, 432, 896, 559, 487, 741, 48, 503, 508, 506, 845, 233, 569, 485, 257, 229, 866, 842, 343, 809, 559, 572, 1392, 813, 108, 994, 473, 124, 42, 862, 775, 227, 854 in Wachoro Registration Sections, within Mbeere South Registration unit in violation of the Petitioners' rights under **Articles 40 and 47** is unfair, unreasonable, illogical and in violation of **Article 61** of the **Constitution of Kenya.***

*f. An order that the said land is community land and/or held under native title in terms of **Article 63 (1) and (2)** of the **Constitution of Kenya** belonging to the Petitioners, successors and other bona fide residents.*

*g. An order directed to the Government of Kenya to immediately survey the suit land and proceed to issue Title Deeds to the Petitioners and other bonafide residents of Karaba, Wachoro and Riakanau Adjudication sections in terms of the current settlement pattern.*

*h. Exemplary damages and costs of the petition.*

## B. THE PETITIONERS' CASE

2. Although the further amended petition filed on 1st April 2019 was neither signed nor dated, the Petitioners pleaded that they were residents and occupants of various parcels of land *(the suit properties)* within Karaba, Wachoro and Riakanau Adjudication Sections within Mbeere South District (now Mbeere South Sub-County). The Petitioners considered the suit properties to be their ancestral land on the basis that their forefathers had resided thereon since time immemorial. They, therefore, considered themselves to be legitimate beneficiaries of the suit properties.

3. The Petitioners further pleaded that during the land adjudication process in 1978 or thereabouts the Respondents illegally and unlawfully allocated the suit properties and issued letters of allotment to strangers even though the Petitioners were still in occupation as indigenous people of the area. The Petitioners further contended that they had a valid "native title" to the suit properties which was recognized by the **Constitution.**

4. The Petitioners pleaded that the purported adjudication over the suit properties would lead to their eventual eviction thereby violating their fundamental rights and freedoms under the **Constitution** and their rights under **UNDRIP** hence the reasons to seeking redress in the instant petition.

**C. THE RESPONDENTS' RESPONSE**

5. The Attorney General filed a replying affidavit in answer to the petition sworn by Speranza Njiru on 15th August 2011 on behalf of the 1st, 2nd and 3rd Respondents. She stated that she was the District Land Adjudication and Settlement Officer – Mbeere South Sub-County hence conversant with the matters in controversy in the petition. It was contended that the suit properties fall within Karaba, Riakanau & Wachoro Adjudication Sections which constituted trust land vested in the defunct Embu County Council. It was denied that the same was the Petitioners' ancestral land.

6. It was stated that the suit properties were declared adjudication areas under **Section 3 (1)** of the **Land Adjudication Act (Cap. 284)** and sub-divided into Riakanau, Wachoro and Karaba Adjudication Sections. It was further stated that the adjudication process was undertaken openly after due publicization in accordance with the law.

7. The Respondents contended that upon completion of the adjudication process the relevant final adjudication registers for the respective adjudication sections were published and made available to the public to lodge any objections thereto within sixty (60) days as stipulated under **Section 26** of the **Land Adjudication Act.** Copies of notices of completion of the adjudication registers were annexed to the replying affidavit.

8. The Respondents further contended that there were several objection cases which were still pending hearing and determination with respect to the said adjudication sections and that the ultimate beneficiaries of the suit properties shall be known upon conclusion of the process as stipulated by law.

9. Finally, it was contended that the petition did not raise any constitutional issues and that it was merely an abuse of the court process since the process of land adjudication was a lawful process which was being undertaken strictly in accordance with the law. The court was, therefore, urged to dismiss the petition in its entirety.

**D. THE PETITIONERS' REPLY**

10. The Petitioners filed a further affidavit sworn by Raphael Nzomo Kitonyi on 19th December 2011 in reply to the Respondents' replying affidavit. The Petitioners denied being unlawfully in occupation of the suit properties and stated that they and their forefathers had been in occupation for over 30 years prior to the commencement of the adjudication process.

11. The Petitioners denied that the suit properties constituted trust land which was vested in the defunct County Council of Embu or that the same was set apart as Mwea Grazing Scheme. The Petitioners expressed doubts on the genuiness and accuracy of the adjudication process by contending that there were grave discrepancies between the beneficiaries shown in the adjudication register and the persons in occupation on the ground.

**E. THE INTERESTED PARTIES**

12. By their further amended petition of 2019 the Petitioners joined Njiru Cimba & 65 Others as Interested Parties. Those parties were with leave of the court served through substituted service by advertising in the newspapers. Those Interested Parties were said to have been issued with titles for some parcels falling within the suit properties. There is no indication on record that they ever entered appearance or filed any response to the Petition.

13. The material on record also indicates that vide a notice of motion dated 19th November 2019 the firm of Kahuthu & Kahuthu Advocates sought the joinder of a second set of Interested Parties to the petition. The said application was allowed on 28th January 2020 whereby Nyaga Mwabe & 25 Others were joined as the second set of Interested Parties.

**F. DIRECTIONS ON THE HEARING OF THE PETITION**

14. It would appear that the Petitioners and the Respondents had way back in 2012 agreed to canvass the petition through written submissions. Consequently, the Petitioners filed their submissions on the original petition on 7th May 2012 whereas the Respondents filed theirs on 17th January 2012.

15. When the petition was mentioned for directions on 24th February 2020 the Interested Parties were granted 30 days to file and serve their affidavits and submissions within 30 days. The rest of the parties were granted leave to file any supplementary submissions within 45 days. The petition was thereupon slated for highlighting of submissions on 13th May 2020 but the court had to dispense with the same due to the prevailing Covid-19 situation. The material on record indicates that the two sets of Interested Parties did not file any affidavits or submissions. The Petitioners and the Respondents had not filed any supplementary submissions by the time of preparation of the judgement.

**G. THE ISSUES FOR DETERMINATION**

16. The court has considered the amended petition and the accompanying affidavit, the Respondents' replying affidavit, the Petitioners' further affidavit and the documents on record in this matter. The court is of the opinion that the following issues arise for determination in the petition:

a) *Whether the Petitioners are indigenous people and whether UNDRIP applies to them.*

b) *Whether the instant petition raises any constitutional issues.*

c) *Whether the Petitioners have demonstrated any violation of their fundamental rights under the Constitution.*

d) *Whether the Petitioners are entitled to the reliefs sought in the petition.*

e) *Who shall bear costs of the petition.*

**H. ANALYSIS AND DETERMINATIONS**

***a. Whether the Petitioners are indigenous people***

17. The court has considered the pleadings, affidavits, documents and submissions on record on this issue. The Petitioners did not attempt to define who indigenous people are and neither did they refer to any definition from an authoritative source. The court has noted that neither the **Constitution** nor **UNDRIP** defines the term. The court shall therefore resort to the ordinary dictionary meaning of the term bearing in mind its contextual usage in **UNDRIP.**

18. The online encyclopedia *Wikipedia*, defines indigenous people as follows:

> **"Indigenous peoples, also known as first peoples, aboriginal peoples or native peoples, are ethnic groups who are the original settlers of a given region, in contrast to groups that have settled, occupied or colonized the area more recently …"**
>
> *[See https://en.m.wikipedia.org/wiki/indigenous_peoples last visited on 4.6.2020]*

19. The *World Bank* website describes indigenous people as:

> **"Indigenous peoples are culturally distinct societies and communities. The land on which they live and the natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods as well as their physical and spiritual well-being …"**

*[See https://www.worldbank.org/en/topic/indigenouspeoples#1 last visited on 4.6.2020]*

20. The *United Nations Permanent Forum on Indigenous Issues* describes them as:

> **"… they are descendants – according to a common definition – of those who inhabited a country or geographical region at the time when people from different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means".**

*[See https://www.un.org/esa/socder/unpfill/documents/5 session_factsheet1.pdf last visited on 4.6.2020]*

21. The said website indicates that the United Nations system has not adopted an official or universal definition of indigenous people. However, an understanding has been developed on the following attributes:

a) *Self-identification at the individual level and acceptance by the community as a member.*

b) *Historical continuity with pre-colonial and or pre-settler societies.*

c) *Strong link to territorial and surrounding natural resources.*

d) *Distinct social, economic or political systems.*

e) *Distinct language, culture and beliefs.*

f) *Form of non-dominant groups of society.*

g) *Resolve to maintain and reproduce their ancestral environment and system as distinctive peoples and communities.*

22. Upon a consideration of the material on record the court is unable to hold that the Petitioners have demonstrated that they are an indigenous people upon the suit properties. Although they alleged that their forefathers had resided thereon since time immemorial, there was no evidence tendered to demonstrate such occupation. There is no evidence on record to demonstrate that the Petitioners have a distinctive culture, language, or socio-economic system which is inextricably bound up with the suit properties. There was no demonstration of historical continuity with pre-colonial or pre-settler societies. In a nutshell, there was really no evidence to demonstrate that the Petitioners are indigenous occupants of Karaba, Wachoro and Riakanau Adjudication Sections in Mbeere South Sub-County as claimed in the petition.

23. The second aspect of the 1st issue is whether **UNDRIP** applies to the Petitioners. The applicability of **UNDRIP** to Kenya under **Article 2 (6)** of the **Constitution** was not adequately addressed by the Petitioners. Although it is clear from that article that the only international treaties and conventions applicable to Kenya are those which have been signed and ratified, no evidence was tendered to demonstrate that **UNDRIP** had been signed and ratified by Kenya. The court's online search at the Ministry of Foreign Affairs website did not reveal that Kenya has ratified **UNDRIP.** In the circumstances, the court finds that **UNDRIP** is not applicable to the Petitioners.

***b. Whether the petition raises any constitutional issues***

24. The Attorney General submitted that the Petitioners' grievances in relation to the suit land did not raise any constitutional issues since the impugned process of land adjudication was a lawful process. It was further submitted that even if there were any irregularities in the process, such grievances should have been resolved in accordance with legal mechanisms laid down by law. It was contended that it was not every irregularity or violation of the law which would raise constitutional issues worth ventilating in a petition. The Attorney General relied on the case of **Harrikisoon V Attorney General [1979] 3 WLR 63** and **Rodgers Mwema Nzioka V Attorney General and Others [2006] eKLR** in support of the latter submission.

25. The court has considered the material on record and the submissions of the parties. The Petitioners hold the view that the process of land adjudication was unlawful because it resulted in allocation of the suit properties to undeserving people whom they termed as 'strangers'. It was their case that the entire suit properties ought to have been allocated to them in their capacity as indigenous people and people who were in actual occupation. It is noteworthy, however, that the Petitioners did not challenge the constitutionality of the **Land Adjudication Act (Cap. 284).**

26. There is no doubt from the material on record that the suit properties were declared an adjudication section under **Section 3** of the **Land Adjudication Section (Cap. 284)** in 1980. There is no doubt that they were sub-divided into 3 Adjudication Sections namely, Karaba, Wachoro and Riakanau Adjudication Sections. The material on record further reveals that the process of land adjudication was undertaken and the final adjudication register opened for inspection in 1981. It is also evident from the record that several objections were lodged thereafter most of which were pending hearing at the time of filing the instant petition. In fact, there is some evidence on record to demonstrate that at least two of the Petitioners herein (Nos. 24 & 28) lodged objections after publication of the adjudication registers.

27. The court has noted from the material on record that the adjudication process had its fair share of hiccups. In her letter dated 26th October 2018 to the Attorney General the Land Adjudication Officer identified some of the challenges encountered as follows:

*a. That some parcels had more than one allocation form.*

*b. That some residents who had already developed their portions of land were allocated land outside those plots.*

*c. That some residents who had already settled on the suit land were not allocated any land.*

*d. That some families were allocated several plots including minors within the families.*

*e. That some deserving local residents were left out whereas less deserving people from outside were allocated plots.*

28. The court is of the opinion that the challenges identified by the Land Adjudication Officer cannot be effectively resolved in a constitutional petition since they do not raise any constitutional issues. Parliament has provided an elaborate mechanism for resolution of such grievances under the **Land Adjudication Act (Cap. 284).** If the Petitioners considered that they had been unfairly excluded in the allocation of the suit properties, they had the avenue of lodging objections to the Land Adjudication Officer under **Section 26** of the **Land Adjudication Act** which stipulates as follows:

> **"(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.**
>
> **(2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection."**

29. Upon resolution of such objections any party dissatisfied with the decision of the Land Adjudication Officer could still seek further redress from the Minister for Lands under **Section 29** of the **Land Adjudication Act. Section 29 (1)** stipulates that:

> **"(1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—**
>
> **(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and**
>
> **(b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final."**

30. It has been held that where the Constitution or parliament has provided a mechanism for the redress of certain grievances, such mechanism must be strictly followed and a departure therefrom can only be permitted in very exceptional circumstances. In the case of

**Peter Muturi Njuguna V Kenya Wildlife Service [2017] eKLR** the Court of Appeal held, *inter alia*, that:

> **"From the foregoing, it is abundantly clear to us that where there is a specific procedure as to the redress of grievances, the same ought to be strictly followed. Having arrived at that conclusion, we are satisfied that the learned judge of the High Court did not err by upholding the lower court's finding. Section 62(1) of the Act is explicit on the procedure to be followed by any person who suffers bodily injury from or is killed by any animal. Such person is required to make an application to the District Committee. It is good practice intended to foster public confidence and trust to let each organ perform its mandate. The Appellant ought to have approached the District Committee first and followed the appellate system designed under the Act …"**

31. In the said case, the Court of Appeal emphasized the necessity of exhausting the stipulated procedure for dispute resolution as follows:

> **"The issue of exhausting specific procedure has been considered at length by this Court as well as the High Court in many decisions. In *The Speaker of the National Assembly -vs- Karume [2008] 1 KLR 426 (EP),* this Court stated that, where there is a specific procedure provided for redress of grievances, that procedure ought to be strictly followed. *Similarly in* Kimani Wanyoike -vs- Electoral Commission Civil Appeal No. 213 of 1995 (UR) which was decided before the cause of action in this matter arose, the Court held:-**
>
> **"where there is a law prescribed by either a constitution or an act of Parliament governing a procedure for the redress of any particular grievance, that procedure should be strictly followed"**.

32. The court is unable to find any material on record to justify the conclusion that the Petitioners' grievances, however credible and however genuine, would constitute constitutional issues warranting the filing of a constitutional petition. The court accepts the Attorney General's submission that it not every irregularity or violation of the law in the course of public administration which would give rise to constitutional issues. There are numerous authorities to support such a view such as **Kenya Bus Service Ltd & 2 others V Attorney General [2005] 1KLR 787; Harriksoon V Attorney General of Trinidad and Tobago [1970] 3WLR 62;** and **Four Farms V Agricultural Finance Corporation [2014] eKLR;** and **Rodgers Mwema Nzioka V Attorney General & 8 others [2006] eKLR.**

33. In the case of **Kenya Bus Service Ltd & 2 Others V Attorney General** *(supra)* Nyamu J (as he then was) held, *inter alia*, that:

> **"In addition, although there is no direct local authority on the point, the holding No. 3 in the Trinidad and Tobago Constitutional case of Re-Application by Bahader [1986] LRC (Const) 297 at page 298 represents our position as well;**
>
> **"The Constitution is not a general substitute for the normal procedures for invoking judicial control of administrative action. Where infringements of rights can found a claim under substantive law, the proper course is to bring the claim under that law and not under the Constitution." See Harrikson Vs Attorney General of Trinidad and Tobago [1979] 3 WLR 62 applied".**

34. Similarly, in the case of **Rodgers Mwema Nzioka Vs Attorney General & 8 others** *(supra)* Nyamu J cited with approval the following passage of the Privy Council in the case of **Harrikisoon V Attorney General** *(supra):*

> **"The notion that whenever there is a failure by an organ of the Government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under Section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened is an important safeguard of those rights and freedoms but its value will be diminished if it is allowed to be misused as a general substitute for the normal proceedings for invoking judicial control of administrative action. In an Originating application to the High Court under Section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedoms."**
>
> **…**
>
> **"What the appellant was entitled to under the paragraph was the right to apply to a court of justice for such remedy (if any) as the law ... gives him. There is nothing in the material before the High Court to give any colour to the suggestion that he was deprived of the remedy which the law gave him. On the contrary he deliberately chose not to avail himself of it."**

***c. Whether the petitioners have demonstrated any violation of their fundamental rights***

35. This issue is predicated upon the immediately preceding issue. The court has already found and held that the petition does not raise any constitutional issues. It would, therefore, follow that there is no way the Petitioners would be able to demonstrate the violation of fundamental rights in relation to non-existent constitutional issues. It would appear that the Petitioners were simply trying to circumvent the elaborate procedures and mechanisms for resolution of land adjudication disputes by attempting to mask the dispute as a constitutional issue.

36. It has been held that where there is competition for allocation of resources which allocation falls within the competence of the executive,

the judiciary should not usurp the jurisdiction of the executive and make the allocation itself. In the case of **Lucy Mirigo & 550 Others V Minister for Lands & 4 Others [2014] eKLR,** the appellants had sought orders compelling the Respondents to allocate them a portion of a government forest whose allocation had allegedly been approved by a former President of the Republic of Kenya. In dismissing the Appellants' claim the court held, *inter alia*, that:

> **"In the case of *R – v- Lancashire County Council Ex p Gayer (1980) 1 WLR 1024* it was stated that courts should be acutely conscious that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. We adopt the above dicta in *R –v- Lachashire County Council Ex p Gayer (supra)* and observe that it is not the duty of the courts to allocate land and decide how national resources are to be allocated between competing claims."**

***d. Whether the petitioners are entitled to the reliefs sought in the petition***

37. The court has found and held that the Petitioners have failed to demonstrate that they are indigenous people on the suit properties. The court has also found that the petition does not raise any constitutional issues. The Petitioners have not demonstrated a violation of any of the constitutional rights and freedoms cited in the petition. It would, therefore, follow that the Petitioners are not entitled to the reliefs sought in the petition or any one of them.

***e. Who shall bear the costs of the petition***

38. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See **Hussein Janmohammed & Sons Vs Twentsche Overseas Trading Co. Ltd [1967] EA 287.** However, the court has considered the nature and circumstances of the case and the fact that the land adjudication process is yet to be concluded under the **Land Adjudication Act.** The court is thus of the opinion that each party to the petition should bear its own costs.

## I. SUMMARY OF THE COURT'S FINDINGS ON THE ISSUES

39. In summary, the court makes the following findings on the issues for determination:

a) The Petitioners have not demonstrated that they are indigenous people on the suit properties and neither have they demonstrated that **UNDRIP** applies to them.

b) The instant petition does not raise any constitutional issues for determination.

c) The Petitioners have not demonstrated any violation of the fundamental rights pleaded in the petition.

d) The Petitioners are not entitled to the reliefs sought in the petition or any one of them.

e) Each party shall bear his own costs of the petition.

## J. CONCLUSION AND DISPOSAL ORDER

40. The upshot of the foregoing is that the court finds no merit in the petition and consequently the further amended petition filed on 1st April 2019 is hereby dismissed in its entirety. Each party shall bear his own costs. It is so decided.

**JUDGEMENT DATED** and **SIGNED** in Chambers at **EMBU** this **4TH DAY** of **JUNE 2020** and delivered via the zoom platform in the presence of Mr. Mungai holding brief for Mr. Nyamu for the Petitioners, Mrs. Njoroge for the Attorney General for the Respondents and in the absence of the 1st & 2nd Interested Parties.

**Y.M. ANGIMA**

**JUDGE**

**04.06.2020**