



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CONSTITUTIONAL PETITION NO. 8 OF 2013**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION.**

**IN THE MATTER OF: ARTICLES 2(6), 10,27,28,32,39,40,42,43 AND OF THE CONSTITUTION OF KENYA 2010 AND SECTIONS 70 & 75 OF THE RETIRED CONSTITUTION**

**IN THE MATTER OF: THE RESPONDENTS' VIOLATION OF THE PETITIONER'S RIGHTS PROVIDED IN ARTICLES 27,28,32,39,40,42,43 AND 56 OF THE CONSTITUTION OF KENYA 2010 AND ARTICLE 70 & 75 OF THE RETIRED CONSTITUTION.**

**IN THE MATTER OF: THE RESPONDENTS VIOLATION AND CONTRAVENTION OF ARTICLES 2,4,14,17,21 AND 22 OF THE AFRICAN CHARTER ON PEOPLE S AND HUMAN RIGHTS**

**IN THE MATTER OF: THE PROPER INTERPRETATION OF THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, 1950, AND THE VIOLATIONS BY THE PRECEDINGS SOVEREIGN OF THE COLONY OF KENYA FROM 1953 TO 1963 OF ARTICLES 8,9,13 AND 14 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS READ WITH SECTION 26 OF THE CONSTITUTION OF KENYA (AMENDEMENT) ACT 1964**

**IN THE MATTER OF: THE PROPER INTERPRETATION OF S.4(1) OF THE KENYA INDEPENDENCE ORDER IN COUNCIL, 1963 (THE ORDER) AND ITS EFFECT ON THE CERTIFICATE OF OWNERSHIP DATED 14/8/1911 FOR PROTION NO.1427 ISSUED UNDER THE LAND TITLES ORDINANCE 1908 AS READ WITH S.19 OF THE CONSTITUTION OF KENYA, 1963 PROMULGATED VIDE SCHEDULE 2 OF THE ORDER.**

**IN THE MATTER OF: TITLES NUMBER 1-1374, TEZO/KIBARANI-TEZO-KONORO BLOCK (KAGAA) SHOWN ON REGISTERED INDEX SERIES SK 21**

**IN THE MATTER OF: ARTICLE 63(2) d(ii) AND THE ANCESTRAL LANDS OF THE GIRIAMA ETHNIC PEOPLES AS OF RIGHT OF MZEE MCHUNGU PRIOR TO 14TH DECEMBER, 1895**

**IN THE MATTER OF: APPROPRIATE RELIEF UNDER ART 23(3) FOR ORDERS OF**

**DECLARATION OF INVALIDITY, INJUNCTION, CONSERVATORY ORDER AND INTERIM RELIEFS**

**BETWEEN**

**1. FEDERATION OF WOMEN LAWYERS (FIDA KENYA)**

**2. EMMANUEL CHANGAWA**

**3. ARNOLD BUNDI**

**4. KAIRU KAZUNGU**

**5. RAPHAEL KENGA.....PETITIONERS**

**AND**

**1. THE ATTORNEY GENERAL AS REPRESENTING**

**THE COMMISSIONER OF LANDS.....1ST RESPONDENT**

**2. THE KAGAA FARMERS CO-OPERATIVE SOCIETY LTD.....2ND RESPONDENT**

**3. THE NATIONAL LAND COMMISSION.....INTERESTED PARTY**

**J U D G M E N T**

**Introduction:**

1. In the Petition dated 16<sup>th</sup> May, 2013, the 2<sup>nd</sup> -5<sup>th</sup> Petitioners have described themselves as individuals residing in Kilifi County and members of the Giriama Ethnic people whose ancestors have been residing on the suit property. The Petitioners have filed the Petition on their behalf and on behalf of other members of the Giriama ethnic people and the Midzichenda people generally.

2. The Petitioners are seeking for several declaratory orders in respect to a piece of land which was initially known as portion number 1427, including a declaration that the process and award of the Certificate of Title to Sheik El Mazrui for the property was unconstitutional; a judicial review order quashing all subsequent deeds, agreements, and assignments relating to the Certificate of Title to the property; a declaration that the operation and effect of Section 2 and 15(1) of the Land Titles Ordinance were inconsistent with Article 8, 9, 13 and 14 of the European Convention on Human Rights (ECHR) and Article 1 of 1<sup>st</sup> protocol of the ECHR and a declaration that the existence of the Certificate of Title that was issued in respect of the property after 1963 and after 2010 constituted a violation of rights of the Petitioners under Article 27, 28, 32, 39, 40, 42, 43 and 56 of the Constitution.

**The Petitioners' case:**

3. The 2<sup>nd</sup>-5<sup>th</sup> Petitioners have averred in the Petition that all that land whose boundaries are described on plan number portion 1427 measuring approximately 1162 acres (the suit property) is their ancestral land.

4. It is the 2<sup>nd</sup> – 5<sup>th</sup> Petitioners' case that they are members of the Midzichenda people of Giriama ethnic group who settled on the Kenyan Coast in the 16<sup>th</sup> century having migrated from Shugwaya, a locate north of Lamu.

5. The Petitioners have averred that Mzee Mtsunga was one of those who left the traditional lands of the Giriama and settled on the suit property before 1895; that mzee Mtsunga had ten wives with several

children and that the 2<sup>nd</sup> – 5<sup>th</sup> Petitioners are either amongst the descendants of the ten wives of mzee Mtunga or his close relatives.

6. The Petitioners have averred in the Petition that the first registered proprietor of the suit property was listed in the Certificate of Title dated 14<sup>th</sup> August, 1911 as the heir of Sheikh Salim bin Khamis Elmazrui; that prior to the issuance of the title, the heirs of Sheikh El Mazrui, Sheikh Rashid Shah Nasura and Mohammed had convented by a deed to transfer the property to Brigadier General Sydney Herbert.

7. The Petitioners' case is that when some of them were born, Gilbert Lily White had passed away and Mr. John Keen was in control of the suit land and that the land was subsequently divided into two, that is Kibarani Settlement Scheme and Konjora sub-location which was sold to Kaaga Investments, the 2<sup>nd</sup> Respondent, where some of the Petitioners are currently staying as squatters.

8. It is the Petitioners' case that the Giriama people possessed certain inalienable rights, before the British Zanzibar agreement of 1895 and even before the Berlin agreement that partitioned Africa in 1884 and that the agreements and the British policy violated the natural rights of the Giriama people to own and use their land in accordance with culture, religion and economic requirements.

9. According to the Petitioners, the provisions of the Land Title Ordinance of 1908 which required people residing on land in the protectorate to apply for a Certificate of Ownership or in the default to lose possession of the land to those who applied violated the natural rights of their ancestors.

10. It is the Petitioners' case that the entire provisions of the Land Titles Ordinance were designed to deprive the Giriama people in general, and the ancestors of the 2<sup>nd</sup> – 5<sup>th</sup> Petitioners in particular of their natural rights to land and that the implementation of the LTO has occasioned Giriama people to suffer displacement from their ancestral lands.

11. The Petitioners have averred that the provisions of the Land Titles Ordinance violated the rights of their ancestors under Articles 8, 9, 13 and 14 and 1<sup>st</sup> protocol dated 20<sup>th</sup> March, 1952 of the ECHR.

12. PW1 retrieved documents from the Ministry of Lands and produced them in this court.

13. PW1 informed the court that the copy of the Certificate of Title for portion number 1427 together with the first Deed Plan dated 8<sup>th</sup> August, 1911 issued to Mohamed bin Salim shows the presence of Mzee Mtsunga's homestead. PW1 produced in evidence the family tree of Mzee Mtsunga and all the titles that have been issued in respect to the suit property since 1911 until 19<sup>th</sup> May, 1978 when the suit property was transferred to the 2<sup>nd</sup> Respondent by the Coast Development Company Limited.

14. PW1 informed the court that the 2<sup>nd</sup> Respondent bought LR No.1427 and 2859 from Coast Development Company Limited for Kshs.6,000,000 whereafter the property was charged to the Kenya Co-operative Bank of Kenya in 1978.

15. According to PW1, the 2<sup>nd</sup> Respondent surrendered the Title document to the government in exchange of a subdivision under the Registered Land Act.

16. It was the evidence of PW1 that although the land was subdivided into several portions, the consent of the Board was never obtained.

17. After the subdivision of the suit property, PW1 informed the court that Title Deeds were released to the 2<sup>nd</sup> Respondent's 302 beneficiaries; that the said Title Deeds were issued by the land registrar in Muranga instead of the land registrar in Kilifi and that most of the beneficiaries of the suit property were residents of Thika and Murang'a.

18. PW1 informed the court that research showed that the late Mzee Mtsunga and his ten wives were

buried on the suit property and that the Deed Plan that was prepared and issued in 1911 shows that Mzee Mtsunga was occupying the land even before the survey was done.

19. In cross examination, PW1 stated that Mzee Mstunga lived on the suit property together with his family and that the Certificate of Title should never have been issued to Mohamed bin Salim.

20. The grandson of Mzee Mtsunga, PW2, informed the court that a white man borrowed land from his grandfather for research purposes; that when the white man left, an Asian man took over the land and continued with the research in respect of a tree known as “Mpira” and that later on, Mr. John Keen took over the land.

21. PW2 informed the court that it was Mr. Keen who transferred the land to the 2<sup>nd</sup> Respondent; that the 2<sup>nd</sup> Respondent tried to evict the residents from the suit land without any success and that the land belongs to them.

22. In cross examination, PW2 stated that the Petition was filed on behalf of the Giriama people living on the land.

23. PW2 denied that people invaded the suit property in 1992.

24. PW3 informed the court that he lives on the suit property, otherwise known as Sokoke area; that when he was born, the title to the suit property was in the name of John Keen whereafter the 2<sup>nd</sup> Respondent acquired the land.

25. In cross-examination, PW2 stated that he was the Chairman of “Chendo na enye” group; that his father and grandfather used to work for Mr. Gilbert who had borrowed the land from the government and that although Mr. Gilbert sold the land, he had no right to sell it.

26. The evidence of PW4 was that he lives in Sokoke having been born and brought up in the area; that his father and grandfather worked for a white man known as Lily white and that by the time Mr. Lily came on the land, they were already living there.

27. Later, it was the evidence of PW4 that two Asians took over the farm before Mr. Keen took over.

28. When the members of the 2<sup>nd</sup> Respondent asked PW4 to vacate the land, he informed them that he wont leave because that was his ancestral land.

29. PW5 informed the court that he was born in 1937 in Sokoke area and that when he was born, Gilbert Lily White was farming in the area.

30. PW5 stated that Mr. Lily used to farm pineapples, coconut and cashewnuts and that there were also other whites who used to farm rubber.

31. According to PW5, when the whites went to the area in 1890 to find out the kind of crops they could cultivate, his grandfather was already living in the area.

### **The Respondents' case:**

32. The 1<sup>st</sup> Respondent's counsel filed Grounds of Opposition in which he averred that the Petition is an abuse of the court process because the Petitioners have disclosed that there is a pending suit between themselves and the 2<sup>nd</sup> Respondent; that the disputed land is private land and that the Petitioners have not annexed any authority to show that they are acting on behalf of the members of the Giriama Community.

33. The 2<sup>nd</sup> Respondent averred that the Petition is wanting in material evidence of the alleged contravention of the Articles of the Constitution; that the suit property has always been privately owned

and that in any event, the whole country was colonised.

34. The 2<sup>nd</sup> Respondent averred that it bought the suit property from John Keen, with the intention of subdividing the land amongst its members; that the subdivision was done and individual titles granted to the members and that the Chief Land Registrar issued title deeds to individual.

35. When DW1 appeared before this court, he stated that the 2<sup>nd</sup> Respondent borrowed kshs.5.4 million from Barclays Bank of Kenya and purchased the suit property from Mr. Keen in 1978; that they then subdivided the land and that members of the 2<sup>nd</sup> Respondents were issued with Title Deeds in the year 1988.

36. DW1 informed the court that during the subdivision process, 40 acres was set aside to cater for the squatters and that 74 squatters were settled on the said parcel of land.

37. However, it was the evidence of DW1 that there was a political wave and violence in 1992 and a majority of upcountry people were displaced and some of them were even killed; that one of their manager was killed on the suit property and that the land belongs to individual society members.

38. The surveyor, DW2 informed the court that he is one of the surveyors who undertook the survey of the suit property between 1988-1989; that he received instructions from the 2<sup>nd</sup> Respondent to survey the land and that after the survey, the old title document was surrendered and individual Title Deeds were issued to the 2<sup>nd</sup> Respondent's members.

39. During the survey, it was the evidence of DW2 that there were squatters on the suit property; that he made a provision for the said squatters during the survey and that the squatters agreed to own half an acre each.

40. According to the surveyor, the squatters were occupying that portion of land and they were retained on that basis and that Title Deeds were then issued.

41. In cross-examination, DW2 stated that they surveyed the land for months and that they had a work force of about 50 people.

42. According to DW2, the 2<sup>nd</sup> Respondent's members were 2,141 and each one of them was supposed to get a title deed and that during the survey, he saw about 20 homes in the middle of the land.

43. Other than the 20 homes, DW1 informed the court that the other areas were bushy.

#### **Submissions:**

44. The Petitioners' advocate submitted that the purported alienation and allocation of the suit property to various individuals who are not and have never been residents of the area is unconstitutional and violates the rights of the Petitioners and the Giriama ethnic people.

45. Counsel submitted that the 2<sup>nd</sup> Respondent failed to show that due process was followed when it acquired the suit property.

46. Counsel submitted that the 2<sup>nd</sup> Respondent did not produce the agreement for sale, proof of payment of purchase price, duly executed transfer documents and the necessary documents for sub-division.

47. The Petitioners counsel submitted that it is not clear how the heirs of Sheikh Salim Bin Khamis el Mazrui were allocated the suit property in 14<sup>th</sup> August, 1911 which they transferred within 7 days to Mr. Cherington on 21<sup>st</sup> August, 1911. According to the Petitioners, the allocation of the land to Sheikh Salim was unconstitutional.

48. The Petitioners' counsel finally submitted that the entire provisions of the Land Title Ordinance of 1908 were designed to deprive the Giriama ethnic people of their natural rights to land in breach of pre-constitutional rights, that the implementation of the LTO has occasioned Giriama people in general and the ancestors of the 2<sup>nd</sup> and 5<sup>th</sup> Petitioners in specific to suffer and that the rights of the Petitioners have been violated under the provisions of Article 8, 9, 13 of the European Convention on Human Rights.

49. Counsel finally submitted that Section 19 of the Constitution of Kenya, 1963 provided for protection from deprivation of property in similar terms to those found in Section 75 of the retired Constitution; that the LTO unconstitutionally deprived the ancestors of the 2<sup>nd</sup> Petitioners of the suit land and that the 1<sup>st</sup> Respondent failed to properly interpret the LTO in light of the ECHR.

#### **The 1<sup>st</sup> Respondent's submissions:**

50. The 1<sup>st</sup> Respondent's counsel submitted that the Petitioners are neither the lawful nor the registered owners of the suit property; that the violation of the law relating to the first registration of land will have the effect of re-writing history which will open a flood gate of litigation and that the quashing of the title documents will infringe on the rights of the registered owners who have not been sued in this matter.

#### **The 2<sup>nd</sup> Respondent's submissions:**

51. The 2<sup>nd</sup> Respondent's advocate submitted that none of the registered owners of the suit property are parties to the action; that the court is being invited on a flight of fancy to find that long gone ancestors were discriminated against and that the issues raised in the Petition are irrelevant.

#### **Analysis and findings:**

52. The 2<sup>nd</sup> – 5<sup>th</sup> Petitioners have alleged that they have filed the claim on their own behalf and on behalf of the Giriama ethnic people. According to the 2<sup>nd</sup> – 5<sup>th</sup> Petitioners, Mzee Mtsunga together with his ten wives lived on the suit property way before the land was surveyed and allocated to Mohamed bin Salim in 1911.

53. The Petitioners have asked this court to find that the process of issuance of the Certificate of Title to Sheikh El Mazrui in 1911 for the property was unconstitutional; a judicial review order quashing all subsequent deeds, agreements and Certificates of Title relating to the suit property; a declaration that section 2 and 15(1) of the Land Titles contravenes Articles 8, 9, 13 and 14 of the European Charter on Human Rights (ECHR) and a declaration that the Land Title Act (repealed ) was inconsistent with the provisions of the retired and the current Constitution.

54. The Petitioners produced in evidence title documents showing that land known as portion number 1427 measuring 1,162 acres was allocated to the heirs of Sheikh Salim bin Khamis, Elmazrui of Takaungu and were issued with a Certificate of Ownership on 11<sup>th</sup> August, 1911.

55. The Deed Plan in respect of the suit property was prepared in the same year and at one corner, it recognises the presence of the “hut” of Mzee Mtsunga.

56. The heirs of Sheikh Salim transferred the suit property to Mr. S.H. Charnyton on 21<sup>st</sup> August, 1911 who transferred it to a company known as Sokoki Plantation Ltd owned by white settlers vide an Indenture dated 30<sup>th</sup> April, 1920.

57. The duly registered Indenture shows that the title document in respect of the suit property was used by the said company as security for loans to various individuals.

58. When the company ran into financial difficulties, the receiver sold the suit property to William Gilbert Lilly White vide an Indenture dated 5<sup>th</sup> February, 1946. The executor of the estate of the late Mr. Lily

White transferred the property to Coast Development Company Ltd who transferred it to the 2<sup>nd</sup> Respondent vide an Indenture dated 19<sup>th</sup> May, 1978.

59. The documents produced by the Petitioners shows that “CDCL” had charged the property to Agricultural Finance Corporation and when the property was sold to the 2<sup>nd</sup> Respondent, the 2<sup>nd</sup> Respondent charged it to Co-operative Bank.

60. The Petitioners have conceded in the Affidavit that was deponed by PW1 that on 18<sup>th</sup> June, 1991, the 2<sup>nd</sup> Respondent surrendered the title of portion number 1427 so as to convert the land from the Land Titles Act to the Registered Land Act whereby the individual shareholders of the 2<sup>nd</sup> Respondent would be registered as individual proprietors.

61. PW1 informed the court that although the subdivision of the suit property was done, the consent of the Board was not obtained.

62. PW1 produced a letter showing that the Title Deeds had been issued to the 2<sup>nd</sup> Respondent's members by the District Land Registrar Murang'a.

63. The facts on how the suit property changed hands from 1911 until the year 1978 when the 2<sup>nd</sup> Respondent acquired the land has not been disputed by the Respondents. Indeed, the Petitioners informed the court that their grandfathers and fathers worked on the land at the request of the registered owners.

64. Most of the Petitioners remember their fathers or grandfathers working for Mr. Lilly White who acquired the land in 1946. Of course, all the people who worked for the previous land owners before Mr. Lily White acquired it have since died.

65. From the day of the proclamation of the protectorate in 1895 until when the Land Title Ordinance of 1908 was enacted, there was no formal set of land laws at the Coast.

66. It is not in dispute that the suit property was first registered in 1911 pursuant to the provisions of the then Land Titles Ordinance of 1908. Legal Notices Vol. XI – No.221 of 15<sup>th</sup> January, 1909 shows that the Ordinance was first applied to the then Malindi District from 15<sup>th</sup> January, 1909.

67. History shows that on 1<sup>st</sup> July 1895, the East Africa Protectorate was proclaimed by Sir Arthur Hardinge. Regarding rights to land at the Coast, the colonial government claimed that as the heirs and successors to the Imperial British East Africa Company, they inherited all the rights to acquire, regulate and alienate land within the 10 mile coastal strip which remained under the sovereignty of the Sultan of Zanzibar.

68. The Land Titles Ordinance required all persons who claimed interest in land along the coastal strip to lodge their claims with the Recorder of Titles. Any dispute that arose from those claims was dealt with by the Land Registration Court (See Section 15 of the LTA).

69. Where the Recorder of Titles was satisfied that a claim was valid, a Certificate of Ownership would issue to the claimant.

70. Section 17 of the Land Titles Act (repealed) provides that all land situated in an area to which the Act applies which no claim for a Certificate of Ownership has been made shall be deemed to be Government land. That provision explains why land which is not private land in the coastal region is government land as opposed to Trust land.

71. Section 21 of the Act provides that every Certificate of Title issued by the Recorder of Titles shall be conclusive evidence against all persons (including the Government) of the matters contained therein, and the Certificate of Ownership shall be conclusive proof that the person to whom the Certificate is granted

is the owner of the land.

72. The Petitioners have conceded that indeed the suit property was surveyed in 1911 and the Recorder of Titles issued to the first registered owner the Certificate of Ownership. There is no evidence before this court to show that the 2<sup>nd</sup> – 5<sup>th</sup> Petitioners' ancestors were not aware that the suit property was adjudicated in 1911.

73. Indeed, from the Petitioners own evidence, their ancestors worked on the farm of the initially registered owners.

74. Having not presented their claim to the Recorder of Titles as required by Section 15 of the Land Titles Act (repealed), the 2<sup>nd</sup> -5<sup>th</sup> Petitioners cannot claim, after 105 years down the line, that their ancestors' rights were breached by the allocation of the land to the heirs of El Mazrui.

75. In any event without evidence to show that indeed their ancestors rights were breached, the 2<sup>nd</sup> – 5<sup>th</sup> Petitioners cannot purport to be in a better position to speak on behalf of their ancestors who were alive, and even worked on those farms, as at the time the initial registered owner of the suit land made his claim.

76. Although the Petitioners have argued that the provisions of Land Titles Ordinance contravened the provisions of the pre-2010 Constitution and the current Constitution, I have not been shown how that contravention arose.

77. I say so because, Section 75 of the retired Constitution guaranteed the right to own property. Section 40 of the current Constitution provides that every person has the right, either individually or in association with others, to acquire and own property in any part of Kenya, except where that property has been found to have been unlawfully acquired. The Respondents have shown how they acquired the suit property.

78. There is no evidence to show that the suit property was unlawfully acquired. There is also no evidence before me to show that Mzee Mtsunga or the Giriama people laid any claim with the Recorder of Titles, and that the said claim was never considered.

79. Although the Petitioners have claimed that the provisions of the Land Titles Ordinance contravenes the provisions of the European Convention on Human Rights of 1950, the said Convention was ratified (if at all) after the enactment of the Land Titles Ordinance, which is subject to the Constitution and not international conventions.

80. It is trite that before the promulgation of the 2010 Constitution, Kenya followed the dualist approach in interpretation of domestic laws viz-a-viz international conventions. In the case of **Okunda Vs R (1970) EA 453**, the Court held as follows:-

**“If we did have to decide a question involving a conflict between Kenya law on the other hand and principles of usages of international law on the other, and we found it impossible to reconcile the two, we as a Municipal Court, would be bound to say that Kenya law prevailed.”**

81. In any event, I have gone through the said Convention and I do not see any inconsistencies between its Articles and the provisions of the repealed Land Titles Act.

82. Before I pen off, I appreciate the Petitioners contention that the adjudication of land pursuant to the provisions of the Land Titles Ordinance might have been unfair to their ancestors.

83. However, considering that the whole of this country was colonized, and in view of the fact that with that colonization, the country borrowed its laws heavily from England and India, which laws were enacted pursuant to the Constitution of the country, we cannot afford to go back to the situation that was existing before the era of the enactment of the laws by the then legislators in conformity with the

Constitution.

84. Indeed, having agreed as a country to be governed by the rule of law, and having adopted word for word the laws that were borrowed by the colonialists, we have to abide by that state of affairs unless and until it is shown that those laws are unconstitutional.

85. It is with the above observations in mind that I agree with the 2<sup>nd</sup> Respondent's submissions that the Petitioners are inviting the court on a flight of fancy by asking it to find that their ancestors were discriminated against and that the enforcement of the alleged infringed rights should be enforced now. If that were to happen, then almost all Kenyans will be entitled to that order considering that the whole country was colonised and a new legal system of land ownership was put in place.

86. Considering that the 2<sup>nd</sup> Respondent acquired this property in 1978, and has since subdivided the land with individual title deeds having been issued to its members, I find and hold that they have the constitutional right to own the property. In any event, the Petitioners did not sue the individual members of the 2<sup>nd</sup> Respondent despite averring that the suit property has been subdivided and Title Deeds issued to the said members.

87. The 2<sup>nd</sup> – 5<sup>th</sup> Petitioners' right to access land should be directed to the Government, which under Section 134 of the Land Act, has the obligation to implement settlement programmes to provide to its citizens land for shelter and livelihood.

88. It is for those reasons that I dismiss the Petition. However, considering that the issues raised in the Petition are in the interest of the public, each party shall bear their own costs.

Dated, signed and delivered in Malindi this **14<sup>th</sup>** day of **September**, 2016.

**O. A. Angote**

**Judge**