



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELC PETITION NO. 6 OF 2017**

**(FORMERLY NAKURU PETITION NO. 26 OF 2015)**

**PAUL KAMUNYA KIRUNGII (suing as a legal Representative  
of the Estate of Damiano Kirungi Ruimbo  
alias Kirungie s/o Nguierimo).....PETITIONER**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>st</sup> RESPONDENT**

**THE PRINCIPAL MAGISTRATE'S**

**COURT NYAHURURU.....2<sup>nd</sup> RESPONDENT**

**PEST FARMERS CO-OPERATIVE**

**SOCIETY LTD.....3<sup>rd</sup> RESPONDENT**

**RULING**

1. The Petitioner filed his Petition dated 4<sup>th</sup> May 2015 on the 21<sup>st</sup> May 2015 before the High Court of Kenya sitting at Nakuru. Upon the establishment of this court, the same was transferred hereto on the 27<sup>th</sup> July 2017 wherein it was placed before me on the 21<sup>st</sup> September 2017 and directions were taken to the effect that the same be disposed of by way of written submissions.
2. Leave was also granted to the Petitioner to file and serve a response to the replying affidavit dated 29<sup>th</sup> July 2015 within 21 days with corresponding leave to the Respondents to file and serve their further affidavits if need be within 14 days of service. The matter was then scheduled for mention on 21<sup>st</sup> November 2017 to confirm compliance and for further directions.
3. On 21<sup>st</sup> November 2017, the Petitioner had not complied wherein he sought for an extension of time to comply wherein the court obliged him and extended his time by 14 days with corresponding leave to the 3<sup>rd</sup> Respondent to file and serve his response 14 days upon service and thereafter parties were to file and serve their submissions within 14 days. The matter was rescheduled for mention to confirm compliance on the 13<sup>th</sup> February 2018.
4. Came the 13<sup>th</sup> February 2018 the orders of the 21<sup>st</sup> November 2017 had still not been complied with. The court agreed with the sentiments of counsel for the 3<sup>rd</sup> Respondent that leave be granted to the Petitioner to file their supplementary affidavit within 7 days failure to which submissions shall be filed on the basis of the documents already filed. The matter was further rescheduled for mention for the on 20<sup>th</sup> February 2018.
5. On the said dated the court noted that that service of the supplementary affidavit dated the 12<sup>th</sup> February 2018 and filed on the 14<sup>th</sup> February 2018 had not been effected upon the Hon the Attorney General and neither had the Notice of the mention date been served. In that regard the court directed for service to be effected and set the matter for mention for directions for the 18<sup>th</sup> April 2018.
6. Upon service on the Hon the Attorney General, the 1<sup>st</sup> Respondent herein, they filed a Preliminary Objection on the 29<sup>th</sup> March 2018 on behalf of both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents wherein directions were taken for the same to be disposed of in the first instance, by way of written submissions.

7. Parties filed their submissions to the Preliminary Objection which I shall now address as follows.

8. The Preliminary Objection dated the 27<sup>th</sup> March 2018 and filed on the 29<sup>th</sup> March 2018 by the Hon Attorney General sought for the petition to be struck out with costs in limine on the grounds that the Court lacked jurisdiction to preside over and determine the Petition for reason that;

i. The Petition contravened the provisions of Section 5 and 7 of the Civil Procedure Act in that it was Res Judicata in relation to Ndaragwa Divisional Land Disputes Tribunal No. 6 of 2004 and sub judice in relation to Nakuru High Court Civil Appeal No. 175 of 2007 respectively.

ii. That the Petition was frivolous vexatious, a monumental procedural and substantive legal nullity and an unmitigated abuse of the court process.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' submissions**

9. The gist of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' submissions in support of their Preliminary Objection is that the Petition was centered on a cattle dip constructed on land parcel No. Nyandarua/Pesi/32.

10. Their contention was that on the 14<sup>th</sup> September 2004, the 3<sup>rd</sup> Respondent had filed a land dispute No. 6 of 2004 before the Ndaragwa Divisional Land Disputes Tribunal, a matter which proceeded fully wherein the award was later adopted as a judgment by the 2<sup>nd</sup> Respondent on the 22<sup>nd</sup> July 2005. A decree issued on the 27<sup>th</sup> July 2005 and the execution carried out thereafter with the result that the dip was excised from land parcel No. Nyandarua/Pesi/32 which land was then subdivided into land parcel No. Nyandarua/Pesi/678 and land parcel No. Nyandarua/Pesi/679.

11. The 3<sup>rd</sup> Respondent was registered as the proprietor of parcel No. Nyandarua/Pesi/679 measuring 0.163 hectares wherein on the 11<sup>th</sup> October 2006 he filed suit with the 2<sup>nd</sup> Respondent seeking eviction of the family of the late Damiano Kirungi Ruimbo who were residing on the said parcel of land.

12. On the 19<sup>th</sup> March 2007 the Petitioners filed an application dated the 16<sup>th</sup> March 2007 with the 2<sup>nd</sup> Respondent vide land Disputes No. 19 of 2005 seeking;

i. to set aside the judgment and decree that was issued on the 27<sup>th</sup> July 2005

ii. to cancel the sub-division of No. Nyandarua/Pesi/32 as well as the registration in the name of the 3<sup>rd</sup> Respondent.

13. When the 2<sup>nd</sup> Respondent declined to set its orders aside, the Petitioner filed an appeal at the High Court sitting in Nakuru vide Nakuru High Court Civil Appeal No. 175 of 2007 which appeal was dismissed vide a judgment delivered on the 3<sup>rd</sup> August 2012.

14. Not satisfied by the outcome, the Petitioner, filed a second Appeal in the Court of Appeal sitting in Nakuru vide Nakuru Civil Appeal No. 264 of 2012 which Appeal was withdrawn.

15. That although the Petitioners contest the award of the District Tribunal, yet they did not file an Appeal in the Provincial Appeals Committee within the stipulated 30 days as required under Section 8 of the Land Disputes Tribunal Act No. 18 of 1900.

16. That the Petitioner, having been aggrieved by the outcome of their Appeal in the High Court ought to have ventilated issues raised in the present Petition in the court of Appeal instead of moving to a court of concurrent jurisdiction to ventilate the same issues. The petition was therefore Sub Judice and Res judicata and an abuse of the court process.

17. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' further submission was that the prayers the Petitioner sought in the present Petition were in the nature of a Judicial Review yet he did not apply for leave which was in contravention of the provisions of order 53 of the Civil Procedure Rules. The Petition was therefore incompetent, hopeless and ought to be dismissed.

### **The 3<sup>rd</sup> Respondent's Submission**

18. The 3<sup>rd</sup> Respondent's Submission was to the effect that they supported the Preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to the effect that the Petition herein ought to be struck out.

19. They reiterated the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' submission and added that the Petitioner and members of the Damiano's family had been informed of the case against them and given an opportunity to present their side of the story or challenge the case filed against them before the Tribunal wherein they had declined to exercise their Constitutional right. Therefore they could not turn around now and claim that their Constitutional right under Article 50 had been violated.

20. They submitted that the matters in issue in the present Petition as well as the Parties herein were substantially the same as matters that had been canvassed before the Tribunal and at the High Court sitting in Nakuru, which matters had been finalized.

21. The 3<sup>rd</sup> Respondent also referred to the provisions of Articles 20, 22, and 40 of the Constitution to submit that a court should promote values that underlie an open and democratic society based on human dignity, equality, equity and freedom and the spirit, purport and objects of the Bill of Rights in pursuit of Article 20 of the Constitution.

22. They submitted that in relation to the Article 22 of the Constitution, the Petitioner herein had not been denied any of the rights enshrined in the Bill of Rights in the alternative, all rights were available to him. That the provisions of this Article did not allow violation of the principles of Res judicata or the fling of, hearing and determination of matters in a court that have no jurisdiction.

23. That in as far as Article 40(1) of the Constitution was concerned with the protection of property, yet it did not provide for the said protection at the expense of violation of another's rights and freedoms. That at no time had they violated the Petitioner's right under the said Article.

24. That the Land Disputes Tribunal had exercised its jurisdiction under Section 3 of the Land Disputes Act in determining the issue of the division of and/or determination of the boundaries between the two portions of land. They relied on the decided case of **Masagu Ole Koitelet Naumo vs Principal Magistrate Kajjado Law courts & Another [2014] eKLR** to buttress their submission.

25. Their submission further was that section 1A and 1B of the Civil Procedure Act provided for overriding objectives of the Act which is to facilitate the just and expeditious appropriate and affordable resolution of civil disputes, yet the Petitioner herein sought to revive a dispute that had been resolved and concluded through a judicial process which should not be allowed.

26. They submitted that the Petition was Res judicata, vexatious, frivolous and an abuse of the court process and that the same should be struck out with costs.

### **Petitioner's Submission**

27. The Petitioner herein, the legal representative of the Estate of Damiano Kirungii Ruimbo alias Kirungie S/O Nguierimo supported his Petition by confirming that indeed the 3<sup>rd</sup> Respondent had filed a land dispute proceeding before the Ndaragwa Divisional Land Dispute Tribunal. That the award was subsequently adopted wherein land parcel No. Nyandarua Pesi/32 the subject suit herein was sub-divided into 2 wherein parcel No. Nyandarua Pesi/678 was registered in the name of the 3<sup>rd</sup> Respondent while No. Nyandarua Pesi/679 was registered in the name of Damiano Kirungii Ruimbo (deceased)

28. That pursuant to the said development, the family of the late Damiano filed an application to set aside the Decree which application was dismissed and so was their Appeal to Nakuru High Court being Civil Appeal No. 175 of 2007. That they had subsequently filed a further Appeal in the Nakuru Court of Appeal being No. 264 of 2012 which they withdrew on the 8<sup>th</sup> December 2016.

29. The Petitioner's submission was that at the time the matter was before the Ndaragwa Divisional Land Dispute Tribunal, the same was instituted against the family members of the late Damiano Kirungii who had no capacity to sue or be sued, the suit land parcel No. Nyandarua Pesi/32 having been registered in the name of Damiano Kirungii (deceased).

30. That having been the case, notice ought to have been served upon the proprietor who was not even a party to the proceedings, which in fact resulted into denying him a chance to fair hearing where adverse orders were issued affecting his title.

31. That Damiano Kirungii's (deceased) rights to protection of his property under Article 40 of the Constitution as well as his right to Administrative action under Article 47 were infringed.

32. The Petitioner relied on the provisions of Section 4 of the Fair Administrative Action Act, Article 47 and 50 of the Constitution as well as several decided cases amongst them the cases of **Kenya Human Rights Commission & Another vs NGO Co-ordination Board & Another [2018] eKLR** and **Dry Associates Ltd vs Capital Markets Authority & Another [2012]eKLR** to buttress their submission in regard to the process of administrative action stating in no uncertain terms that the Respondents violated his right to a fair administrative action.

33. The petitioner also submitted that under article 23(3) of the constitution, the court was clothed with powers to grant the orders sought.

34. On the issue of the Preliminary Objection raised by the Respondents, it was the Petitioner's submission while relying on the decided case of **Republic v Kuria West District (Masaba Division) Land disputes Tribunal & 3 others Exparte Nchama Chacha Nyarungu [2014] eKLR** to submit that the 1<sup>st</sup> Respondent herein had no jurisdiction to determine disputes of ownership and/or title to land or to determine that the 1<sup>st</sup> and 2<sup>nd</sup> interested parties were beneficiaries of the suit property which ought to be divided between them .

35. Further that the 1<sup>st</sup> Respondent did not have jurisdiction to order the Applicant to vacate the suit land or to cause the distribution of the property of the deceased person in respect of whose estate, no grant of letters of Administration had been obtained. The Petitioner submitted that jurisdiction was of paramount importance without which the tribunal ought to have downed its tools as any proceedings thereafter were a nullity as held in the case of **Desai vs Warsama [1967] E.A 351**.

36. That it therefore followed that the since the decision of the 1<sup>st</sup> Respondent was a nullity, there was nothing that could have been filed before the 2<sup>nd</sup> Respondent for adoption as a judgment of the court. Such judgment would therefore be a nullity. That being the case, the decisions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were liable for review by this court pursuant to the provisions of Section 13(7) (b) of the Environment and Land Act.

37. The Petitioner also took issue with the submissions brought forward by the Respondents to the effect that the Petition was Res judicata vis a vis the finding of the land Tribunal, the award in the 2<sup>nd</sup> Respondent and the Appeal at Nakuru High Court.

38. It was his submission while backed with the Environment and Land Court case of **Joseph Chege Gatua vs Zakaria Karimi Gatua [2015] eKLR** that the issues raised in the present case were not Res Judicata those raised in the previous suit and/or application for reason that the decision of the Tribunal was a nullity since it could not confer any rights to any of the parties in dispute.

39. Further that in the case of **Gitau Kamau vs Ndungu Kamau & another [2017] eKLR**, the Environment and Land Court Judge had held that Res Judicata literally meant a matter that had been adjudicated by a competent court.

40. That section 3 (1) of the Land Disputes Tribunal Act's was explicit on the jurisdiction of the Land dispute Tribunals and did not confer upon them the jurisdiction to determine titles or ownership of land. That the law was settled that a decision which was arrived at without jurisdiction was a nullity.

41. The Petitioner submitted that there having been an award and judgment of the court that were a nullity, the doctrine of Res Judicata ought to fail in the circumstance because these decisions did not meet the test of competent courts, the tribunal having acted without jurisdiction.

### **Analyses and determination**

42. I have considered the contents of the Respondents Preliminary Objection, the Petitioner's Petition and response, the party's written submissions, the relevant provisions of the law and Authorities herein cited. I find the issues arising for determination are as follows:-

- i. Whether the court has jurisdiction
- ii. Whether the said Preliminary Objection has merit and should be upheld.
- iii. Whether Petition No.6 Of 2017 should be struck out.

43. From the pleadings and documents filed in this suit, it is clear that the Respondents herein are challenging the Petitioner's Petition dated the 4<sup>th</sup> May 2015 and filed on the 21<sup>st</sup> May 2015 to the effect that the same was Res Judicata in relation to Ndaragwa Divisional Land Disputes Tribunal No. 6 of 2004 and Nakuru High Court Civil Appeal No. 175 of 2007 respectively.

44. Their argument, as I understand, is that the court has no jurisdiction to determine the matter in the Petitioners Petition dated the 4<sup>th</sup> May 2015 because the issues therein were heard and determined both in the Ndaragwa Divisional Land Disputes Tribunal No. 6 of 2004 and in Nakuru High Court Civil Appeal No. 175 of 2007 respectively.

45. From the pleadings and documents filed in this suit, it is clear that the Petitioner is challenging the sub-division of land parcel No. Nyandarua Pesi/32 in execution of a decree that had been issued on the 22<sup>nd</sup> July 2005 in Nyahururu Principle Magistrate's Court Land Dispute Case No. 19 of 2005.

46. That the said decree, which was pursuant to an adoption of an elder's award, had inter alia awarded the 3<sup>rd</sup> Respondent the right to occupy the Pesi cattle dip 3 as was previously marked. Secondly, that the said decree had sought for District surveyor to conduct a survey on the dip and thereafter correct the map wherein the land register was to adjust the record. Finally, the court executive executed the document on behalf of the Damiano's family.

47. That the said deliberation was done in total disregard to the principles of natural justice as the proprietor of the suit land Mr. Damiano Kirungi (deceased) or his representative/Administrator were not a party to the proceedings and in the process he had been denied both his the right to be heard and the right to fair administrative Action with the result that his right to property was infringed.

48. The Petitioner contends that the acts by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the circumstances were unlawful, unjust and in contravention of his, Constitutional rights. He argues that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents contravened Articles 20, 22, **40, 47, and 50** of the Constitution and should be so declared.

49. The Respondents on the other hand have argued that none of the Petitioner's rights under the said Articles of the Constitution were violated for reasons that at the time the proceedings both in the Land Tribunal and in the Magistrate's court were conducted, the Petitioner had been summoned but had waived his right by refusing to attend the Tribunal sitting.

50. It is on record that the Petitioner filed an application with the 2<sup>nd</sup> Respondent vide land Disputes No. 19 of 2005 seeking to set aside the judgment/decree that had been issued on the 27<sup>th</sup> July 2005 arising from the decision of the Tribunal as well as to cancel the sub-division of No. Nyandarua/Pesi/32 and the registration in the name of the 3<sup>rd</sup> Respondent. The 2<sup>nd</sup> Respondent declined to set its orders aside for reason that it had no jurisdiction.

51. The Petitioner then moved the High Court sitting in Nakuru vide Nakuru High Court Civil Appeal No. 175 of 2007 wherein they raised 7 grounds in their memorandum of Appeal which were condensed as;

- i. The trial magistrate erred in finding that the court had no jurisdiction to entertain the application to set aside the exparte judgment

ii. That the learned trial magistrate in particular erred in holding that the court had no jurisdiction to inquire into the issues of the capacity of the appellants (read Petitioner) to be sued, service of the process before the tribunal, the jurisdiction of the tribunal to interfere with the rights of a registered owner of land.

52. The Appeal was dismissed vide a judgment delivered on the 3<sup>rd</sup> August 2012. The Petitioner further filed a second Appeal to the Court of Appeal being Nakuru Court of Appeal No. 264 of 2007 but withdrew the same vide their application dated the 8<sup>th</sup> December 2016.

53. Following the withdrawal of the Appeal, the Petitioners have now filed the present Petition based on the above captioned grounds to which they sought orders for;

i. Judicial Review order of certiorari to bring before this court and quash the award of Ndaragwa Division Land Dispute Tribunal dated the 12<sup>th</sup> April 2005.

ii. Judicial order of certiorari to bring before this court and quash the order of the Principle Magistrate Court Nyahururu adopting the award of Ndaragwa Division Land Dispute Tribunal and decree issued on the 22<sup>nd</sup> July 2005.

iii. A declaration that Damiano Kirungii (deceased) is the lawful owner of Nyandarua/Pesi/ 679 that was excised from Nyandarua /Pesi/ 32.

iv. An order of injunction restraining Pesi Farmers' Co-operative Society from trespassing on Nyandarua /Pesi/679.

v. Costs of this Petition be met by the Respondents jointly and severally.

54. It was upon the filing of the Petition that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents raised the Preliminary grounds of objection herein above sated.

55. J.A. old sir Charles Hewbold P. in in the case of **Mukisa Biscuits Manufacturing Co. Ltd –v- West End Distributors Limited (1969) EA. 696** had this to say on what constituted a preliminary objection :-

*“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”*

In the same case Sir Charles Newbold, P. stated:

*‘.....a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.’*

56. Looking at the Preliminary Objection raised, the Respondents have attacked the jurisdiction of this court to preside over and determine the Petition for reason that the Petition contravened the provisions of Section 5 and 7 of the Civil Procedure Act in that it was Res Judicata in relation to Ndaragwa Divisional Land Disputes Tribunal No. 6 of 2004 and sub judice in relation to Nakuru High Court Civil Appeal No. 175 of 2007 respectively.

57. It is clear from the above narration that the Petitioner did not appeal the award of the Division Land Dispute to the Lands Appeals Committee in accordance with Section 8(1) of the Lands Disputes Tribunals Act. Alternatively, he should have commenced judicial review proceedings in the nature of certiorari, to quash the award, which also not done, but instead he decided to file an application before the 2<sup>nd</sup> Respondent to set aside the award, which application was dismissed wherein he then filed an Appeal to the High Court, which appeal was also dismissed.

58. This court has jurisdiction to nullify an award of a tribunal, if such an award was made outside the tribunal's jurisdiction, however this jurisdiction is only exercisable where such decision of the tribunal has not transmuted into a judicial determination, through adoption as a Judgment of the Court as in the present circumstance.

59. In the decided case of case of **Florence Nyaboke Machani v Mogere Amosi Ombui & 2 others [2014] eKLR**, the Court of Appeal agreed with the finding of High Court at Kisii in High Court Civil Case No. 139 of 2009 where *Makhandia, J held as follows;*

*“It is trite law that a valid judgment of a court unless overturned by an appellate court remains a judgment of court and is enforceable, the issue of jurisdiction notwithstanding. The plaintiff had all avenues to impugn the award as well as the judgment. He did nothing. As sarcastically put by counsel for the defendants in his submissions, the plaintiff chose to sleep on his rights like the Alaskan fox which went into hibernation and forgot that winter was over. In the meantime the 1<sup>st</sup> defendant's rights to the suit premises crystallized. Equity assists the vigilant and not the indolent. The plaintiff has come to court too late in the day and accordingly, the declaratory relief must fail. I doubt that even the remedy of the declaration is available to the plaintiff to impugn a valid court judgment and decree.”*

60. The award of the Ndaragwa Land Disputes Tribunal having been adopted by the Principal Magistrate's Court at Nyahururu ceased to

exist on its own, and thus, could not be the subject of a declaration but could only be varied, vacated, set aside or reviewed by the same Court, or by an appellate Court in an appropriate proceedings.

61. The Petitioner, having been aggrieved by the outcome of their Appeal in the High Court ought to have ventilated issues raised in the present Petition in the court of Appeal instead of moving to a court of concurrent jurisdiction to ventilate the said issues.

62. In this proceedings, it is the Respondent's case inter alia that this suit should be dismissed with costs as the same was res judicata by virtue of the proceedings in the Nakuru High Court Civil Appeal No. 175 of 2007.

63. The substantive law on *res judicata* is found in Section 7 of the Civil Procedure Act Cap 21 which provides that:

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”***

64. The doctrine of *res judicata* is important in adjudication of case and serves two important purposes;

- i. it prevents multiplicity of suits which would ordinarily clog the courts, and heave unnecessary costs on the parties to litigate and defend two suits which ought to have been determined in a single suit and
- ii. it ensures litigation comes to an end; disappointed parties are barred from camouflaging already decided cases in new garment in the art of pleadings.

65. The test in determining whether a matter is *res judicata* as stated was summarized in **Bernard Mugo Ndegwa -vs- James Nderitu Githae and 2 Others (2010) eKLR**, as follows that:

66. The matter in issue is identical in both suits;

- i. The parties in the suit are the same;
- ii. Sameness of the title/claim;
- iii. Concurrence of jurisdiction; and
- iv. Finality of the previous decision.

67. Having found that the award issued by the Ndaragwa Land Disputes Tribunal became a Judgment of a Court of competent jurisdiction, and further that the same was not varied, vacated, set aside or reviewed by the same Court, or by the High Court as a 1<sup>st</sup> appellate Court with the result that the 3<sup>rd</sup> Respondents herein had been installed as the proprietors of the suit land.

68. I further find that the matters raised in the present Petition constitute matters that were pleaded both at the 2<sup>nd</sup> Respondent as well as in the High Court sitting in its capacity as a first Appellant court. That the Petition is thus a **matter that is directly and substantially in issue with matters in the Nakuru High Court Civil Appeal No. 175 of 2007 and between the same parties. That the issues therein were subsequently heard and finally decided by a court of competent jurisdiction** and therefore are Res judicata in terms of Section 7 of the Civil Procedure Act.

69. To that effect therefore, I find that said Preliminary Objection dated the 27<sup>th</sup> March 2018 is merited and is hereby upheld, with the upshot that the Petition dated the 4<sup>th</sup> May 2015 is herein struck out entirely with costs to the Respondents.

**Dated and delivered at Nyahururu this 17<sup>th</sup> Day of January 2019.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**