



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

PETITION NO.54 OF 2016

SAMUEL NGIGI WAHOGO.....1ST PETITIONER
PETER NJURU KIMANI2ND PETITIONER
JOHN NGARI MACHARIA.....3RD PETITIONER
JOHN K. GATHIMBA.....4TH PETITIONER
NGIGE MUNGAI.....5TH PETITIONER

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT
THE NATIONAL LAND COMMISSION2ND RESPONDENT
LAND REGISTRAR, NAKURU3RD RESPONDENT
SAMUEL CHEGE.....INTERESTED PARTY

JUDGMENT

(Petition seeking orders of certiorari to quash the award of the Land Disputes Tribunal and all subsequent orders; petitioners claiming that they were never invited to be heard yet the award and subsequent orders declared that their titles form part of public utility land; clear from the proceedings that the petitioners were never invited to a hearing; cardinal that a title holder be made a party to proceedings before his title can be affected or nullified; there was therefore a breach of the petitioner's right to a fair trial; in any event the Land Disputes Tribunal did not have jurisdiction to make the award; question whether the order of certiorari available beyond 6 months of the award; no prescription of time in the Constitution; award also made by a body without jurisdiction and cannot benefit from the 6 month limitation period; judgment made in favour of the petitioners)

1. This is a constitutional petition said to have been filed pursuant to the provisions of Articles 22, 40 and 50 of the Constitution. The petitioners have averred that they are the registered owners of the following parcels of land:-

- Elburgon/Elburgon Block 2/185 (Mukinyai)
- Elburgon/Elburgon Block 4/893 (Mukinyai)
- Elburgon/Elburgon Block 4/830 (Mukinyai)
- Elburgon/Elburgon Block 4/829 (Mukinyai)
- Elburgon/Elburgon Block 4/183 (Mukinyai)
- Elburgon/Elburgon Block 4/1115 (Mukinyai)
- Elburgon/Elburgon Block 4/1104 (Mukinyai)
- Elburgon/Elburgon Block 4/1114 (Mukinyai)
- Elburgon/Elburgon Block 4/1822 (Mukinyai)

2. It is stated that on 21 March 2011, the petitioners received letters from the law firm of M/s Mirugi Kariuki & Company Advocates giving

them 21 days within which to vacate from their properties purporting that the same are public utility properties. Upon inquiry, they established that the interested party had filed a suit over the above mentioned properties before the Land Disputes Tribunal, being Case No.29 of 2008, which the petitioners allege that they were never notified of. A verdict was given declaring their parcels of land as public utility land and that the persons in occupation ought to vacate the same. The award of the Tribunal was filed at the Magistrate's Court in Molo, and adopted, and a decree for eviction of the petitioners issued. An appeal was filed against the award at the Rift Valley Disputes Appeals Committee but the petitioners were not party to this appeal. The petitioners then filed a Judicial Review case being Nakuru High Court Judicial Review No. 69 of 2011, seeking orders of prohibition against enforcement of the award but the same was dismissed for no order of certiorari to quash the award was ever sought within those proceedings. The petitioners claim that the dispute was heard before a body which had no jurisdiction and further that the dispute was determined without first hearing the petitioners. In this petition, the petitioners ask for the following orders :-

- a. a declaration that the proceedings taken by the defunct Molo Land Disputes Tribunal and registered as Land Disputes Case No. 29 of 2008 were taken in contravention of the petitioners' right to be heard as guaranteed under the Constitution.
- b. A declaration that the appeal filed by the interested party at the Rift Valley Land Appeal Tribunal and registered as Land Dispute Appeal Case No. 22 of 2007, was heard and determined in breach of the petitioners' rights to be heard.
- c. The adoption of the award by the Rift Valley Land Appeal Tribunal by the Magistrates' Court in Molo was done in contravention of the petitioners' rights to be heard.
- d. The award by the Molo Land Disputes Tribunal and the Rift Valley Land Appeal Tribunal are unconstitutional, null and void to the extent that they were made in breach of the petitioners' right to be heard.
- e. The decree and eviction order by the Magistrates' Court in Molo Land Disputes Case No. 29 of 2008 are unconstitutional, null and void to the extent that they are procedural derivatives of proceedings taken in breach of the petitioner's right to be heard.
- f. An order of certiorari be issued to quash the proceedings and orders in Molo Land Disputes Case No. 29 of 2008 and Rift Valley Land Appeals Tribunal No. 22 of 2007 as proceedings taken in breach of the petitioners' right to be heard.
- g. That costs of this petition be borne by the respondents and the interested party.

3. The 1st and 3rd respondents filed a Replying Affidavit, sworn by Caleb W. Sunguti, the Land Registrar, Nakuru, to oppose the petition. He gave a history of the land as first having been leased by the Crown to a white settler by the name of Mr. Grant. In the 1960s, a land buying company called Mukinyai Land Buying Company, was formed, and in 1971, purchased the whole of the land from Mr. Grant. Balloting was done and each member given 2 ¼ acres of land, and also land for public utilities was set aside as follows :-

- a. The primary School, Plot No. 550 – 11 acres.
- b. The Secondary School, Plot No. 552- 14 acres
- c. The polytechnic, Plot No. 551 – 8 acres;
- d. ECD Centres (Mukinyai A & B) – 4 acres and *2acres respectively*;
- e. The public cemetery- 2 acres;
- f. The School Quarry – 18 acres;
- g. The cattle dip – 4.5 acres ;
- h. Water tank point – 0.25 acres;
- i. Churches – 0.25 acres each;
- j. Trading Centre – 21 acres.

4. A sketch map was drawn showing the full demarcation and he has annexed copies of maps said to have been drawn in the years 1975 and 1983. He has deposed that the company officials were to finalize demarcation of the remaining parts and facilitate drawing of a map to enable preparation of individual title deeds from the Lands Office Nakuru, but they failed to do so. By the year 1983, the process had not been finalized prompting further investigation by land owners whereupon it was discovered that there had been massive grabbing of portions especially those set apart for public utilities. He has annexed a map drawn in 1992 and highlighted the areas showing the affected public utilities and the parcels which have encroached on them. The illegal allocation was reported to the District Officer (D.O) Molo, one Mr. Rono, and he then appointed a Probe Committee which Committee was made the Trustees of the Property of the former Mukinyai Farmers Company Limited. In the year 1989, the Probe Committee obtained a court order restraining the former officials from interfering in any way with any parcel of land set aside for public utilities. A copy of the court order is annexed. It is deposed that the directors of the company became wary and deregistered the company fraudulently to avoid being asked to account for grabbed land and/or monies paid by purchasers. He has annexed a report by the PTA Chairman of Mukinyai Secondary School. It is averred that the Probe Committee approached the law firm of M/s Mirugi Kariuki & Company Advocates, seeking legal advice and they were advised to lodge a formal complaint with the Molo

Land Disputes Tribunal. The Tribunal decided on what had been encroached and decided as follows:-

- a. The primary school – 11 acres (not encroached);
- b. The secondary school – from 14 acres to 10 acres (*4 acres grabbed*);
- (c) The polytechnic – from 8 acres to 3 acres (*5 acres grabbed*)
- d. ECD Centres (Mukinyai A & B) – ECD A, 4 acres to 2 acres (*2 acres grabbed*);
- d. The public cemetery – entire plot of 2 acres grabbed;
- f. The school quarry – entire plot of 18 acres grabbed;
- g. The cattle dip – from 4.5 to 0.25 acres (*4.25 acres grabbed*);
- h. Water tank point – 0.25 acres (not encroached);
- i. Churches – 0.25 acres each (not encroached);
- j. Trading centre – 21 acres (not encroached onto).

5. A notice to vacate was then issued on 7 March 2011 prompting a series of suits, to wit, JR No. 44 of 2011, JR No. 69 of 2011, and Civil Suit No. 470 of 2013 which were found to be lacking in one way or another. It is averred that Peter Njuru Kimani and John Ngari Macharia have not displayed any title deed in their names and have no identifiable legal interest in the proceedings herein and lack locus standi. It is acknowledged that the land parcel Elburgon/Elburgon Block 2/185 is registered in the name of Samuel Ngigi Wahogo but it is alleged that this has encroached into the polytechnic land. It is further contended that the land parcel Elburgon/Elburgon Block 4/829, registered in the name of John K. Gathimba, has encroached into the land for the secondary school. Of the parcels of land registered in the name of Ngige Macharia, the land parcel Elburgon/Elburgon Block 4/1104, is said to have encroached into the polytechnic land; and the land parcels No.1114 and 1115 are said to have encroached into the secondary school land. The other land parcels identified as having grabbed public utility land are mentioned to be Elburgon/Elburgon Block 4/893 (Mukinyai) registered in the name of Joseph Kamau Kibe; Elburgon/Elburgon Block 4/830 (Mukinyai) registered in the name of Joseph Githuka Mwauru; and the land parcel Elburgon/Elburgon Block 4/1822 (Mukinyai) registered in the name of Mary Wambui Kiiru. It is said that these persons were in the previous mentioned suits, but they are now not parties to this suit, and thus their parcels of land should not form part of this case. It is said that Joseph Kamau Kibe was a party before the Land Disputes Tribunal, and that he has been deliberately left out of these proceedings so as to misdirect this court into believing that all relevant parties had no knowledge of the proceedings before the Tribunal. It is deposed that on 2 March 2015, the National Land Commission, through its Nakuru County Officer, wrote to several persons including Samuel Ngigi Wahogo, John K. Gathimba and Ngige Mungai, the petitioners herein and summoned them to appear before the Commission to shed light on the alleged grabbing of public land. It is acknowledged that the proceedings before the Tribunal were between Samuel Chege Nganga (a member of the Probe Committee) and some members of the former Mukinyai Farm Company Limited. It is said that this included all persons in occupation of the parcels of land forming part of the land previously owned by Mukinyai Farmers Company, the petitioners herein included. It is thus argued that they were aware of the proceedings. It is further stated that the Tribunal did conduct its investigations in situ and ordered the Government Surveyor to conduct an extensive survey. It is thus suggested that the petitioners were actually and/or constructively aware of the proceedings that led to the cancellation of their titles and cannot claim otherwise. It is also said that the respondents before the Tribunal were sued in their representative capacity as officials of Mukinyai Land Company and the matter attracted the attention of all members and occupants of the wider Mukinyai Farm, the petitioners included. It is further contended that the 1st petitioner who swore the supporting affidavit has not annexed an authority from the other petitioners and that the petitioners have deliberately failed to disclose that Joseph Kibe and John Ngare acted on their behalf as well as all former members of Mukinyai Land Company. It is averred that if the orders herein are granted, it will deny justice to members of the public and give more impetus to other people who are hell bent on grabbing public resources.

6. A supplementary affidavit was sworn by Samuel Ngigi Wahogo, the 1st petitioner. He has annexed copies of the title deed for Peter Njuru Kimani to the land parcel Elburgon/Elburgon Block 4/1105 (Mukinyai) and a share certificate of Peter Njuru Kimani. He has deposed that they were also issued with a notice of eviction.

7. The 2nd respondent and the interested party did not file any affidavits.

8. On 16 February 2017, the 1st and 3rd respondents filed a preliminary objection that this suit is res judicata. I directed that a formal application be filed and this was done on 23 March 2017. The application was argued before me and I delivered a ruling on 23 November 2017. I found that the petitioners indeed had another pending matter, being Nakuru ELC No. 470 of 2013. I gave the petitioners the option of either proceeding with this case or with the said Nakuru ELC No. 470 of 2013 and the petitioners made an election to proceed with this case. The other suit was withdrawn.

9. I invited parties to file written submissions to urge their positions in this petition. The petitioners filed their submissions through their counsel on record. On the part of the respondents, submissions were only filed by the State Law Office for the 1st and 3rd respondents. The 2nd respondent and the interested party did not file any submissions. I have taken these submissions into account. Basically, Mr. Githui for the petitioners submitted that pursuant to Article 50 of the Constitution, there is a right to be heard and additionally, Article 25 of the Constitution provides for the right to a fair hearing which cannot be limited. He elaborated on the right to be heard, and submitted that his clients fit the bill of people who were likely to be adversely affected by the decision of the Tribunal as they were registered owners of land that was subject to the decision of the Tribunal. He submitted that his clients were never named as parties before the Tribunal and the

subsequent appeal. He further submitted that the decree and eviction orders are null and void as they were made in breach of the petitioners' fundamental rights.

10. On the part of the 1st and 3rd respondents, it was submitted inter alia that the petition is defective for no original proceedings of the Tribunal or the award, or decree, which are sought to be quashed are annexed. Counsel submitted that in absence of these, it cannot be proved that the petitioners were denied the right to be heard. It is also argued that the petition is time barred as it seeks orders of certiorari outside the 6 months period prescribed in Order 53 Rule 7 of the Civil Procedure Rules. Counsel submitted that the couching of this suit as a constitutional petition does not obviate the application of the foregoing provision of the law.

11. I have considered the petition. The gravamen of the case of the petitioners is that they were denied the right to be heard before the Tribunal and therefore the proceedings therein are null and void. The 1st and 3rd respondents have tried to argue that this is not the position, and that the petitioners were either represented or that the proceedings were notorious, and they therefore must have been aware of the same. At this juncture I need to distinguish between one being aware of certain proceedings and one being a party to proceedings. I may be aware that there are some proceedings that are on going but that does not necessarily mean that I am a party to the said proceedings. It does not also mean that because I am aware of proceedings, then I have been given an opportunity of being heard. When it comes to the right to be heard, and a decision is going to be made that affects a person, that person needs to be afforded an opportunity of being heard, and being afforded an opportunity of being heard means that the person is invited formally, to give his/her views over the matter that is being discussed.

12. When it comes to judicial proceedings, that is proceedings before a court or a tribunal or arbitral proceedings, I know of no other way of giving the defendant, or accused, or the person against whom an order is sought, the right to be heard, other than making that person a party to the proceedings. An order in judicial proceedings ought not to be given against a person who has not been made a party to those proceedings. If there are proceedings that are going to affect the rights of a person, it is not enough to say that the said persons must have been aware of those proceedings because the proceedings were notorious. What is significant is whether such person was made a party to those proceedings, for you cannot make orders adverse to the interests of a particular person, unless that person is a party to the proceedings that resulted in the orders in issue.

13. Article 50 (1) of the Constitution embodies the right to a fair hearing. It provides as follows :-

50(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

14. I am aware that the proceedings before the Tribunal took place before the Constitution of 2010, under which the above provision is prescribed. Nevertheless, the right to natural justice, still existed even in the regime of the old constitution.

15. One cannot claim that there was a fair hearing in judicial proceedings, where a person whose rights are subject of those proceedings, is not made a party to the said proceedings. In matters of land, where the title of a person is sought to be cancelled, for the proceedings to pass the test of a fair hearing, the title holder must be made a party to the said case. I do not see how it can be any other way. Proceedings cannot be held and title cancelled when the title holder is not a party to those proceedings.

16. In the circumstances before me, I have seen that before the Molo Land Disputes Tribunal, the applicant is noted to be Samuel Chege Nganga (the interested party herein) against Joseph Kibe and 4 Others. The interested party in his evidence stated that he is a member of Mukinyai Farm and that he has brought the suit on behalf of Mukinyai Farm Members. He stated that he came before the Tribunal because of public utilities. It is not very clear to me who the "4 others" who were sued before the Tribunal were. It does however appear to me to have been former directors, for at the Tribunal, the interested party herein stated inter alia that "*when they were elected new directors, the group of Joseph Kibe and others started subdividing the public utility plots into small plots and sold them to some members and other non-members.*" Nevertheless, their identity is not made specific. Before the Appeals Committee, I have seen that the appellants were Joseph Kibe and John Ngare. I assume that John Ngare was a party to the proceeding, but again, I am not too sure if it is the same John Ngare who is named as co-petitioner in this suit. Be that as it may, the Tribunal made the following award :-

"After observing this case carefully the land tribunal members have found out that :-

-All these public utility plots namely cattle deep, cemetery, polytechnic, secondary school and quarry should be surrendered to the Mukinyai farm members as agreed before.

- Whoever has collected a title deed of the said plot should surrender it to the Land Registrar."

17. It will be seen that the award of the Tribunal was very vague. It mentioned the public utility plots and instead of making specific who was affected, it merely stated "*whoever*" has collected a title deed should surrender it to the Land Registrar. Now, how was one going to know whether or not his title deed is among those said to be public utility plots ? The Land Disputes Appeals Committee did not make matters any more specific. It only stated that all public utility plots to retain the same status quo as originally decided by the general members in 1975. It further mentioned that the public utility plots be clearly identified by the survey department. No particular title deeds were mentioned, and no specific individuals mentioned. I have however seen that a Notice of Motion was filed in the Principal Magistrate's Court at Molo, where an order for eviction was sought against "the respondents" named as Joseph Kibe and Joseph Ngare, "and their servants, agents, employees or other persons acting under them from public utility plots decreed by the Honourable Court as such." It will be discerned that there was never any specific land that was decreed to be a public utility plot. Even this application for eviction did not name any specific parcel of land. I am at a loss as to why the petitioners are now said to be those in occupation of public utility plots. If indeed these plots were later identified by a surveyor, and pointed to be the public utility plots, then it is apparent that proceedings were undertaken which affected the land of the petitioners without making the petitioners parties to those proceedings and without inviting them to be heard. There is absolutely no doubt in my mind that the rights of the petitioners to be heard, was trampled upon by the Land Disputes Tribunal.

18. In any event, the Tribunal exceeded its mandate. Section 3 of the Land Disputes Tribunal Act (now repealed) provided as follows on the jurisdiction of the Land Disputes Tribunal :-

3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to—

- (a) the division of, or the determination of boundaries to land, including land held in common;
- (b) a claim to occupy or work land; or
- (c) trespass to land, shall be heard and determined by a Tribunal established under section 4.(2).

19. It will be noted from the above that the jurisdiction of the Tribunal was pretty limited. The only matters that it had mandate to decide were those relating to the division of land or determination of boundaries to land; a claim to occupy or work land; or an issue relating to trespass to land. None of these were before the Tribunal. What was in issue before the Tribunal was what ought to be public utility plots and whether the titles that were said to fall within these public utility plots ought to be cancelled. That was nowhere near the prescribed jurisdiction of the Tribunal. I therefore further hold that the Tribunal exceeded its mandate and its award is null and void for that reason.

20. The petitioners herein seek orders of certiorari. It has been argued by the 1st and 3rd respondents that proceedings seeking such an order ought to have been filed within 6 months pursuant to the provisions of Order 53 Rule 2 which provides as follows :-

Order 53 Rule 2 : Time for applying for certiorari in certain cases

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

21. It is certainly correct to state that in a proceeding under Order 53, where one seeks orders of certiorari, he needs to file his suit within 6 months of the decision. However, in this case, the petitioners contend that they were never made parties to the proceedings before the Tribunal and thus were not aware of its decision. I have seen that they did file a Judicial Review motion dated 5 July 2011, in Nakuru HCCC JR No. 69 of 2011, which sought orders of prohibition. It has been said here, by counsel for the petitioners, that the petitioners could not file for certiorari, as 6 months had lapsed after that decision, hence the choice to only seek orders of prohibition in their judicial review proceedings. The order of prohibition was declined, the court reasoning that it would be pointless to grant this order before first quashing the award. Coming back to the issue in this case, I am not persuaded that the orders of certiorari sought herein are misplaced. Firstly, this is a constitutional petition and not a proceeding under Order 53 of the Civil Procedure Rules. The Constitution does prescribe that orders of judicial review are among the orders that may be granted in a petition seeking to enforce the Bill of Rights. This is provided for in Article 23 of the Constitution which provides as follows :-

Authority of courts to uphold and enforce the Bill of Rights

- (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- (2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

In any proceedings brought under Article 22, a court may grant appropriate relief, including—

- 23. (3) (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

22. It will be seen from the above, specifically, Article 23 (3) (f) that Judicial Review orders may be sought in a petition. The constitution does not prescribe any limitation of time for such orders. Even then, the Court of Appeal, in the case of **Stephen Kibowen vs The Chief Magistrate's Court Nakuru & 2 Others, Court of Appeal at Nyeri (sitting in Nakuru), Civil Appeal No. 211 of 2013**, held that in a case seeking orders of certiorari to quash the decision of the Land Disputes Tribunal that was made out of jurisdiction, the 6 month limitation

period does not apply, for the reason that the award was not made by a body with jurisdiction. The facts of the case were that the appellant applied for an order of certiorari through judicial review proceedings to quash an award of the Bahati Land Disputes Tribunal. The suit was filed more than 6 months after the award. The suit was dismissed by the High Court, the court holding that it was filed out of time. On appeal, the Court of Appeal stated as follows :-

“It is clear from the brief ruling that the learned Judge took a strict approach to the 6-month limitation period and concluded that the application before him was incompetent. Ordinarily, such a conclusion would be impeachable but, in the matter before the learned Judge, what was being challenged was not a decision properly made within jurisdiction against which time could run. Rather, it was a nullity which amounted to nothingness. It was therefore incapable of commencing a reckoning of time and was definitely incapable of triggering a statutory bar, being in every respect barren and of no effect.”

23. It therefore does not help any of the respondents to argue that this suit has been filed outside the 6 month period prescribed by Order 53 Rule 2 for filing proceedings seeking orders of certiorari. The Tribunal did not have jurisdiction and their decision could thus not trigger the 6 month rule. There is therefore nothing to bar this court from issuing the orders of certiorari as sought in this petition.

24. It was further argued that the petitioners have not annexed the original proceedings before the Land Disputes Tribunal. It is true that none were annexed, but the 1st and 3rd respondents in their reply, did annex the said award. The award is thus before me, and it does not matter who has presented it. I cannot assume that there is none before me, while my eyes can see it, merely because it has not been annexed to the affidavit of the petitioners, but is annexed to the affidavit of the respondents. It doesn't matter who annexed it; what is important is that the said award is before me and I can see it. Nothing therefore turns on that argument of the 1st and 3rd respondents.

25. There was also raised in the replying affidavit, that the National Land Commission called the petitioners, through a letter dated 2 March 2015, for a discussion before declaring their parcels of land to be part of public utility property. I have not seen such a letter. The only letter that is annexed from the National Land Commission is one dated 15 October 2015 addressed to the Deputy County Commissioner, Molo, and declaring some parcels of land as forming part of Mukinyai Secondary School. That letter is not copied to the petitioners and I have no evidence that the petitioners were ever heard before that letter was written.

26. The fact of the matter remains that the petitioners were never given an opportunity of being heard before orders seeking their eviction to land that they hold title to were issued against them. They were also never heard or given an opportunity of being heard before their plots were declared to form part of public utility land. Such orders cannot be allowed to stand for they are in breach of Article 50 that provides for the right to a fair trial, and also in violation of the rights of the petitioners to own property as provided for in Article 40 of the current Constitution and Section 75 of the previous Constitution. Moreover, as I have demonstrated above, the dispute was heard by a body that did not have jurisdiction to do so. The decision of the Land Disputes Tribunal and all other bodies subsequent thereto, and all orders and decrees made pursuant to that decision, are null and void. They are hereby quashed by an order of certiorari. It follows that the petitioners succeed in their suit.

27. The Attorney General will have to bear the costs of this petition as it is the Land Disputes Tribunal and Appeals Committee which proceeded to hear a dispute that they had no jurisdiction over and made a decision that affected the petitioners without inviting them for a hearing.

28. For the avoidance of doubt, this court has not made any declarations as to whether or not the land of the petitioners is public utility land. That is a decision that can only be made once appropriate pleadings are presented before a court with jurisdiction. What this court has held is that the award of the Tribunal and all other subsequent orders are null and void for the reasons given in this judgment. The petitioners thus continue holding title to their respective parcels of land, and are within their rights to keep possession of the same, unless and until an appropriate order declaring that they are not entitled to the same is made by a court or institution of competent jurisdiction.

29. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 15th day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

No appearance on the part of M/s Githui & Co. for the petitioners.

Ms. Cheruiyot for the 1st & 3rd respondents and holding brief for Ms. Masaka for the 2nd respondent.

Interested party- Acting in person- Present.

Court Assistant: Nelima Janepher and Patrick Kemboi .

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU