

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC C E002 OF 2024

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND

FREEDOMS UNDER ARTICLE 10, 20, 21(1)&(2), 23(1)&(3), 27, 40, 48, 50, 64(6) AND SECTION 7 OF PART 1 OF THE 6TH SCHEDULE OF THE CONSTITUTION OF KENYA 2010.

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND

THE CONSTITUTION (OLD)

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE REGISTRATION OF LAND ACT

(CAP 300) LAWS OF KENYA (REPEALED) LAWS OF KENYA

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF LAND ADJUDICATION ACT (CAP

284) LAWS OF KENYA

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012 AND THE LAND ACT, 2012

AND

IN THE MATTER OF: PLOT NO. 59 ENOOSAEN ADJUDICATION SECTION NOW LAND

REFERENCE NO. TRANSMARA/ENOOSAEN/59

BETWEEN

LODI MEISEYIEKI XAVIER.....1ST

PETITIONER

JOHN MUTUA.....2ND

PETITIONER

VERSUS

THE COUNTY GOVERNMENT OF NAROK.....1ST

RESPONDENT

CABINET SECRETARY MINISTRY FOR LANDS, HOUSING AND

URBAN DEVELOPMENT THROUGH DISTRICT COMMISSIONER,

TRANSMARA DISTRICT.....2ND

RESPONDENT

DIRECTOR OF LAND ADJUDICATION3RD

RESPONDENT

THE CHIEF LAND REGISTRAR KILGORIS.....4TH

RESPONDENT

ATTORNEY GENERAL.....5TH

RESPONDENT

JUDGEMENT

Background

1. This Petition has a long history having initially being filed as Kisii ELC Petition No. 39 of 2014, before its transfer to Narok where it was registered as Narok ELC Petition No. 265/2017, it was then transferred to Kilgoris and registered as Kilgoris ELC Petition No. 18/2024 where a consent order withdrawing the same and compromising the cross appeal were filed, an application for setting aside the said consent order was filed together with an application for recusal of the court necessitating its transfer again to Narok ELC where this time round it was registered as ELC LC No. 3 of 2023.

2. Upon transfer of Hon. Mr. Justice Washe who had previously recused himself, and upon determination of the application for setting aside the consent order, leave was granted to the 2nd Interested Party Mr. John Mutua, to further amend the petition and prosecute the same. the suit was transferred back to Kilgoris ELC where it was registered not as a Constitutional Petition but ELCLC No. E002 of 2024, and a Further Amended Petition was filed on 12th of July 2025.
3. The facts giving rise to the petition shall be necessary so as to give context to the issues herein.
4. The Original Petition filed by Mr. Sanamwola Ole Mutua Nkaiprian(hereinafter referred to as **Mr. Sanamwala or the Original Petitioner**) dated 10th of November 2014 was Amended on 9th of March 2022 with Mr. Lodi Meseyeki Xavier being substituted as the sole Petitioner thereof, ostensibly as an Administrator of the Estate of Mr. Sanamwola and a further Amendment done on 12th July 2025, in which John Mutua hitherto the 2nd Interested Party (also an Administrator of the Estate of Mr. Sanamwola) become the 2nd Petitioner.
5. Directions were issued on 31/7/2025 on the hearing of the Petition by way of affidavit evidence and written submissions. At the time of issuance of the said directions, the Further Amended Petition was not on the court file, but at the time of writing this Judgment, the court found that the Further Amended petition filed by the 2nd petitioner who was initially the 2nd interested party was on record and been filed on 12th of July 2025, and shall now consider the Further Amended Petition as the main pleading.
6. It is to be noted that the Ruling of Mbogo J of 6th of March 2024, *interalia*, allowed John Mutua to prosecute the petition, and set aside the orders of Washe J made on 8th June 2023, which orders

adopted the consent that the 1st Petitioner and the 2nd to 5th respondents and the 1st Interested party had reached and filed in court.

7. Essential the said ruling thus reinstated the Amended Petition that had been withdrawn, and set aside the order compromising the Amended Cross -Petition.
8. Having set out the history and particulars leading to the filling of the further Amended petition, the court shall now set out the Further Amended Petition.

THE FURTHER AMEDNED PETITION

9. In this Further Amended Petition (hereinafter referred to as the **“petition”**) the 2nd Petitioner sought for reliefs for alleged violation of rights to acquire and own property in violation of Article 40(3) of the Constitution of Kenya (2010).
10. The legal foundation of the Petition was Article 2, 10, 40, 48, 50(1) and 64, 73 and 75 of the Constitution of Kenya.
11. The 2nd Petitioner alleged that his petition transcended both the former Constitution and the Kenya Constitution 2010 as the Articles violated herein were provided for in the former Constitution.
12. The 2nd Petitioner equally pleaded that the Petition was founded on Sections 13, 28 and 29 of the Land Adjudication Act, Section 28 and 32 of the registered Land Act (repealed).
13. The factual foundation of the Petition was pleaded as follows; -
 - (i) That the Petitioner is the registered proprietor of land reference No. Transmara/Enoosaen/59 (plot No. 59) measuring about 8.78 Hectares allocated to the Petitioner in 1982.
 - (ii) That the Petition has been in physical possession of the suit property.

- (iii) That Enoosaen area was declared ad adjudication zone and adjudication committee allocated the parcel to 1st Respondent to hold in Trust for Endoretet Primary School.
14. Aggrieved by the said allocation the Petitioner filed objection No. 76/2002 before the Land Adjudication Officer who awarded the property to the Original Petitioner.
15. The 1st Respondent proceeded to file an Appeal under Section 29 of the Land Adjudication Act to the Minister on behalf of the Interested Party.
16. The said Appeal case No. 405/2003 was heard and determined by the District Commissioner Transmara District (delegated powers given by Minister of Lands) who made a Ruling on 30.07.2005 in favour of the Appellant (1st Respondent) reverting the suit property to the Interested Party.
17. The 2nd Petitioner contended that the Minister's decision was tainted with illegality, was irrational and procedurally improper, having not taken all the evidence submitted by all parties; hence the decision was contrary to law, thus illegal, irrational hence unconstitutional null and void abintio.
18. As a result of the unconstitutional decision the Petitioner set out particulars of the violation of the constitution and fundamental rights and freedoms in which he pleaded.
- (1)Gross violation of Articles 27, 40 and 50 of the Constitution in that
- (i) His rights to have the dispute resolved by application of the law under Article 50(1) was infringed in that
- (a)The District Commissioner did not take into account the evidence submitted by all parties, especially by the Petitioners herein.

(b)The District Commissioner, Transmara did not make a site visit as contended in the Ruling thus was not versed with the facts on the ground.

(c)The District Commissioner, Transmara District failed to make a reasoned ruling.

(d)The Ruling of the District Commissioner Transmara District was irrational and in defiance of logic in view of the evidence placed before him.

(e)The District Commissioner, Transmara District, failed to apply the law correctly, in particular the provisions of Land Adjudication.

19. On the basis of the facts and grounds a forestated, the 2nd Petitioner sought for the following reliefs; -

(a)That an order of certiorari do issue removing to this Honourable Court for purposes of being quashed the proceedings and Ruling/Judgment of the District Commissioner Transmara District, dated 30th July 2005, in Minister's Land Appeal Case No. 405 of 2003 and the same be quashed.

(b)A declaration that the hearing and determination of the District Commissioner in relation to Plot No. 509 now L.R Transmara/Enoosaen/59 and in particular the finding and award dated 30th of July 2005 is in breach of the Petitioner's right protected under Article 48 and 50 (1) of the Constitution of Kenya 2010 or those proceeding and findings be declared null or void ambition and an order for compensation for general damage for breach of article 48 and 50 (1) of the constitution of Kenya 2010.

(c)A declaration that the petitioner is the absolute and legal proprietor of plots No 59 now Cr. No. Transmara/Enoosaen /59 or a declaration that the findings of 30th July 2005 retrieving

plot no L.R No. Transmara Enoosaen to the interested party is unconditional or contra verse the petitioner fundamental rights or freedoms.

(d)Consequently, an order prohibiting the Respondent whether by themselves their officers, agents, and or employees from restricting or otherwise limiting the petitioner's peaceful enjoyment and of and access to their parcel of land unknown as plot No.59 now Cr. No. Transmara/Enoosaen/59 and costs these proceedings so far.

(e)All such other orders as thus Honorable court shall deem just or fit to grant in all circumstances.

20. The further Amended Petition was drawn and filed by Messrs Kiprotich Roberts or Co. Advocates and was supported by the further affidavit of the 2nd Petitioner Mr. John Mutua who reiterated the grounds in support of the petition in his deposition and annexed the following documents in support therefore;

- (i) Letters dated 7th February 1982.
- (ii) Copies of proceedings and findings before the Land Adjudication officer.
- (iii) Copies of the Adjudication record
- (iv) Copies of judicial review proceedings
- (v) Copies of proceedings and decision of the Minister under the hand of the District Commissioner Transmara.
- (vi) Copies of letter dated 7th June of 2011 and notice of withdrawal of the Kisii High Court Mlsc Application dated 13th March 2012.
- (vii) Copies of proceedings before the senior Resident Magistrate seeking removal of the caution.

21. It is to be noted that no Further Amended -cross petition was filed in respect of the Further Amended Petition, but as the further Amended petition only substituted and introduced the

new petitioner, The Amended cross petition dated 5th day of October 2021 shall be deemed to be the Response to the Further Amended petition and the court shall set out the particulars of the Amended -cross petition.

AMENDED CROSS-PETITION

22. The 1st Interested Party in the Main Petition, being the Board of Governors Endoretet Primary School sought and was granted leave to file a cross-petition which they amended thereafter
23. The facts in support of the Amended cross-petition being
 - (i) That the Endoretet Primary School (hereinafter referred to as **the school**) was registered under Enosaen Adjudication Section with two parcels to wit Transmara/Enosaen/56 and Transmara/Enosaen/59, and the school was set up on parcel number Transmara/Enosaen/56.
 - (ii) That the Mr. Sanamwala the Original Petitioner filed an Objection to the allocation of Transmara/Enosaen/59 to Enoretet Primary School being objection No. 70/2002 which objection was decided in his favour on 13th March 2003 by the Land Adjudication Officer.
 - (iii) The school filed an Appeal to the Minister dated 30th of July 2003 through Appeal No. 405/2003 where a determination was made in favour of the Appellant - Transmara County Council the predecessor of the 1st Respondent in the main Petition-on behalf of the school, in a decision dated 30th of July 2005.
 - (iv) Aggrieved by the Minister's decision the Mr. Sanamwala filed Kisii High Court Misc. Application No. 2 of 2006 before the which application was withdrawn before it could be

heard and determined, and a restriction was placed on the parcel.

- (v) Mr. Sanamwala immediately thereafter filed another suit before the Senior Principal Magistrate Court Kilgoris in SPMCC No. 11 of 2012, and in exparte proceedings taken on 25th January 2010 he obtained orders of removal of the restriction resulting in registering of a title deed in respect of Transmara /Enoosaen/59 in his names.
- (vi) That an application was filed to set aside the Exparte Orders which application was allowed and he was required to surrender the said title to the Land register
- (vii) Aggrieved by the direction to surrender the said title to the Land Registrar Mr. Sanamwala filed this petition but passed on before it was heard and determined and it was taken over by Lodi Meseyieki Xavier as an Administrator of the Estate of Mr. Sanamwala.
- (viii) That parcel No. Transmara/Enoosaen/59 was is public utility and the Petitioner acquired to same illegally and irregularly and fraudulently hence his rights were not protected under Article 40(1) of the Constitution, as the registration to him was unlawful, illegal and unconstitutional.

24. The cross Petitioner sought for the following orders; -

- (i) A declaration that the registration of all that piece of land compromised in Transmara/Enoosaen/59 to the 1st Respondent is irregular, unlawful, null and void, and ought to be revoked.
- (ii) A declaration that land title number Transmara/Enoosaen/59 was obtained illegally, unlawfully and without following legal proceedings are in blatant violation of the law and hence a nullity ab initio.

- (iii) A declaration that the title documents created land title No. Transmara/Enoosaen/59 is illegal and confers no proprietary interest to the Respondent as per Articles 40(1) of the Constitution of Kenya.
 - (iv) An order of permanent injunction restraining the Respondents either by himself, his agents, servants or by any other person whomsoever from laying claim, interfering with the possession, interrupting with the activities.
 - (v) That the 1st Respondent in the Amended cross-petition be condemned to bear the costs of this cross-petition and the petition.
25. The Amended Cross-Petition was supported by the supporting affidavit of Mr. Crispin Omondi Ogutu a Sub-county Director of Education Transmara; who deposed *inter alia*; -
- (i) That the primary school had over 500 pupils; and he annexed copy of the decision of the Objection Case No. 76/2002, copy of the decision delivered in Appeal No. 405/2003, copy of High Court Misc. Application No. 204/2006, pleadings in Kilgoris SPMCC No. 11 of 2012, order in Kilgoris SPMCC No. 11 of 2012 removing the restrictions, copy of title deed in the Original Petitioner's name.
26. Parties complied with directions as noted at paragraph 5 of this judgment and filed their respective submissions, and as observed by Mbogo J. in his Ruling dated 6th of March 2024, the 1st Petitioner Lodi Meseyieki Xavier and the 2nd Interested Party now 2nd Petitioner where both Administrators of the Estate of the Late Sanamwala Ole Mutua, but not beneficiaries of the said Estate thus each of the two Petitioner filed his own set of submissions which the court summarizes.

1st Petitioner Submission

27. The 1st Petitioner (a Prose litigant) filed very lengthy and somehow incoherent submissions. The court deciphers from the said submissions that the 1st Petitioner submitted thus:
- (i) that the Petition was filed erroneously and based on false information and because of that he had withdrawn his Amended Petition and prayed that he is not condemned to pay costs.
 - (ii) He submitted further having withdrawn the Amended Petition, the 2nd Interested Party could not Further Amend the same hence there was no proper Further Amended Petition before court.
 - (iii) He equally submitted that the Further Amended Petition was *Resjudicata* there having been a similar Judicial Review Application to wit, Kisii High Court Misc. Application No. E002/2006 which had sought similar prayers rendering thus rendering this petition *Resjudicata*.
 - (iv) The 1st Petitioner equally submitted that the Petition had abated, and urged the court to dismiss the same.

The 2nd Petitioner's Submissions

28. Mr. Kiprotich Learned Counsel filed submissions in respect of the 2nd Petitioner; He submitted that
- (i) the suit property had been established to belong to Mr. Sanamwala -now represented by His Administrator the 2nd Petitioner - whose rights to own the suit property were enshrined under Article 40 of the Constitution ostensibly on the ground that the 1st Respondent misled the Mr. Sanamwala vide the letter dated 07.06.2011 into believing that the 1st Respondent had no claim over the suit parcel

leading him to withdraw the Judicial Review; thus depriving him the Original Petitioner of the suit property and his Estate was thus depriving him of the property.

(ii) The 2nd Petitioner submitted that the Petition was not *Resjudicata* as the previous J.R had been withdrawn hence not heard on its merits.

29. The 2nd Petitioner submitted that the withdrawal of the Petition would result in an injustice since there was concession by the State that the had no interest in the suit property, vide its letter dated 07.06.2011.

30. The 2nd Petitioner urged the court to allow the Further Amended Petition.

2nd to 5th Respondents submissions and 2nd Interested Party's Submissions

31. Mr. Motari Learned Litigation Counsel on behalf of the 2nd to 5th Respondents as well as the cross petitioner submitted that the process of adjudication in respect of the suit property was done in accordance with the law and plot No. 59 was reserved for public utility and the process was duly followed through the Objection proceedings filed by Mr. Sanamwala under section 26 of the Land Adjudication Act and thereafter an Appeal to the Minister was preferred by Transmara County Council , and that Mr. Sanamwala misled the subordinate court to remove the caution and fraudulently registered himself and when the title was recalled, he filed this petition pleading violation of the Constitutional rights, yet his acquisition of the property was not lawful and the court cannot sanitize an illegality.

32. Mr. Motari submitted further that the establishment of a school was an issue of public interest and cited the decision in Kenya

Anti-Corruption Commission Vs. Deepak Kamani and 4 Others on the definition of a public interest.

33. It was the Respondents Further submission that the suit was already concluded by consent and hence it is *Resjudicata*, as the petition had been withdrawn and the Amended Cross petition compromised.
34. On costs the Respondents submit that the 2nd Petitioner John Mutua be condemned to pay costs of the Further Amended Petition and the Amended cross-petition

Issues for Determination

35. Having analyzed the Further Amended Petition, and the Amended Cross-Petition, together with their respective affidavits, and the submissions herein, considered the law.
36. The court frames the following as issues for determination
- (i) Whether or not there is a competent petition before court in view: -
 - (a) Issue of *Resjudicata*.
 - (b) Withdrawal of the petition.
 - (ii) Whether or not petition is merited? In analyzing the same, the court shall analyze whether the petitioner made out a case of Constitutional violations of his rights? If so, what remedies ought to issue?
 - (iii) Whether or not the cross-petitioner made a meritorious case? If so, what remedies ought to issue.
 - (iv) Who bears the costs of the Petition and/or cross-petition?

Analysis and Determination

37. On issue number 1, both the 1st Petitioner and the 2nd to 5th Respondents have submitted that the Further Amended Petition is incompetent since the Original Petition had been withdrawn and the cross-Appeal had been compromised hence there was no

proper Further Amended Petition before court; on the strength of the above they sought for dismissal of the Further Amended Petition. The 2nd Petitioner's submission on this point were silent.

38. The position taken by the 1st Petitioner as well as the 2nd to 5th Respondents is not tenable, because the consent orders upon which the withdrawal of the petition and compromise of the cross-petition and were pegged was set aside by Justice Mbogo in his ruling dated 6th of March 2024, as observed at paragraph 7-8 of this Judgment.
39. In the said Ruling the Learned Judge granted leave to the 2nd Interested Party to prosecute the Petition, the import of the ruling dated 6th of March 2024 was to set aside the withdrawal order, thus revived the Petition and the in granting leave to the 2nd Interested Party, to prosecute the petition, the 2nd Interested Party became the 2nd Petitioner in the petition. The issue in respect of this aspect of the competence of the petition is that there is a competent Further Amended Petition before court.
40. On the incompetence of the Further Amended Petition by virtue of *Resjudicata*, as submitted by the 1st Petitioner and 2nd and 3rd Respondents but opposed vehemently by the 2nd Petitioner, the court finds the Further Amended Petition is not *Resjudicata* for reasons that, a contrary to the submissions of the 1st Petitioner, the previous suit Kisii High Court Miscellaneous 02/2006 the same was withdrawn, thus not heard on its merits, hence the argument falls short of the principles of *Resjudicata* set out at Section 7 of the Civil Procedure Act, and the decision of John Maritime Florence Services Limited and Another Vs. Cabinet Secretary and Transport and Infrastructure 2021 (KESC) 39 where the court held *inter alia*:

“for the doctrine to apply the following must be demonstrated

(a) There is a former judgment or order which is final.

(b) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties.

(c) There must be between the first and second suits, identical parties, subject matter and cause of action”.

Further contrary to the submissions of the 2nd to 5th Respondents that the Further Amended Petition is *Resjudicata* since the Original Petition was withdrawn and the cross-Appeal compromised, I have already found that the consent order withdrawing the Petition and cross-Appeal was set aside, hence Original Petition was revived by virtue of the Further Amended Petition, and it is live before court in this very petition and hence it cannot be *Resjudicata* as Mr. Motari Learned Counsel submits to the court.

41. The court thus finds that the Further Amended Petition is not *Resjudicata* in the two limbs as submitted by the counsel for the Respondents and the Prose litigant and in answer to the issue of *Resjudicata*, the court finds the petition is not *Resjudicata* and it is properly and competent before court.
42. On issue No. 2 as to whether the Further Amended Petition is merited? The Gravaman of the Petition is the Petitioner believes that a letter dated 7th June 2011, gave assurances by the 1st Respondent and led to the withdrawal of the Judicial Review Kisii Misc. Application No. 02/2006 and further as pleaded at paragraph 13 of the petition the violations of the Constitution and fundamental Rights and freedoms as set out at paragraph 19 of this judgment, to wit, the unlawfulness of the decision of the District Commissioner exercising the Minister’s delegated Authority.
43. The Judicial Review Orders herein have been sought in a Constitutional Petition, and not under order 53 of the Civil Procedure Rules, the implication are that a merit review of the issues raised by the petitioners ought to be conducted, as was held by the Supreme Court in Dande and 3 Others Vs. Inspector General,

National Police Station and 5 Others where the court held *inter alia*; ***“when a party approached the court under the provisions of the Constitution then the court ought to carry out a merit review of the case. However, if a party filed a suit under the provisions of Order 53 of the Civil Procedure Rules or even violation of the Constitution then the court could only limit itself to the process and manner in which the decision complained of was reached or actions taken and not merits of the decision perse. A court could not issue judicial review orders under the Constitution if it limited itself to the traditional review known to common law. The dual approach to judicial review existed but that approach must be determined based on the pleadings and procedure adopted by the parties at the inception of proceedings.”***

44. The court shall now consider a merit review of the issues pleaded by the Petitioners that led to violation of his fundamental rights, from the Petitioner’s point of view being the import of the letter dated 07.06.2011 as well as the Ruling by the District Commissioner exercising delegated authority by the Minister under Section 29 of the Land Adjudication Act.
45. In terms of chronology of events the decision of the Minister’s Appeal came first and shall be considered first.
46. The proceedings and the Minister’s decision are captured at pages 17 to 58 of the Original Petition and at pages 21 to 49 of the Amended cross-petition.
47. The Minister’s Appeal was conducted by Mr. J.M Mathenge who was the District Commissioner Transmara (under delegated authority). The Appellant therein was Transmara County Council while Mr. Sanamwala Original Respondent was the second Respondent, the first respondent was another parcel owner as the appeals were

consolidated and heard together. 3 elders sat in the Appeal and an interpreter was recorded as having been present.

48. The proceedings record the Appellants witnesses present as well as the Respondent's witnesses.
49. Mr. Sanamwala in cross-examination, confirmed that the suit property had belonged to his father who had been alive during adjudication and had surrendered parcel No. 59 for building of a future school willingly during the said exercise without any protest.
50. Mr. Sanamwalas's witness had stated that Mr. Sanamwala had being another parcel, adjudicated to him and he wondered why the Original Petitioner wanted the school land.
51. Upon consideration of the evidence, the District Commissioner observed that MR. SANAMWALA's father had not objected to the reservation of Plot 59 for building of a future school in his lifetime, and other family members did not object to the same, and the MR. Sanamwala had another parcel, the only school was 4kms away and he allowed the Appeal, to allow establishment of the school and the property was to be registered in the favour of the Transmara County Council.
52. The decision of the Minister under Section 29 of the Land Adjudication Act is final, and having allowed the Appeal by Transmara County Council for the suit property to be registered in their name, in Trust for the school, Mr. Sanamwala had a recourse in Judicial Review to quash the Minister's decision, which recourse he initially exercised by filing Kisii High Court Misc Application No. 2 of 2006 which he withdrew ostensibly on the strength of the letter dated 07.06.2011 by Transmara County Council.
53. Did the letter dated 07.06.2011 constitute an admission of ownership by Mr. Sanamwala so as to be considered as documentary Estoppel? I shall reproduce the said letter for context.

"Momany Aunga and Co. Advocates

**P.O Box 671
KISII**

Dear Sir

RE: KISII MISC. APPLICATION NO. 2 OF 2006

L.R NO. TRANSMARA/ENOOSAEN/56 AND 59

The search certificate from the District Land Registrar is clear on which title belongs to who, the council is therefore not concerned about the above case.

Yours faithful

Daniel M. Twala

County Clerk"

Would this have been an admission of ownership of the parcel to the Original Petition, so as to led him to withdraw the Misc. Application E204/2006 as he did on 13th of March 2012.

54. The said letter does not enclose the copies of the searches and at the date of the letter the Minister's decision still stood as the proceedings before the Kisii High Court were still alive meaning that the restriction was in place as the proceedings leading to the removal of the restrictions having been commenced on 15th of March 2012. This letter did not constitute any confirmation that the Transmara County Council did not have any proprietary interest in the suit land so as to constitute an confirmation of ownership on the part of Mr. Sanamwala so as to mislead him to withdraw the Kisii High Court Misc. Application no 2 of 2006 and so as to constitute an estoppel herein.
55. With regard to the decision of the Minister having reviewed the same, the decision of the Minister took into account the testimony of Mr. Sanamwala and his witnesses, there was compliance with known

procedure having allowed Mr. Sanamwala to testify, call a witness and cross examine the Appellants I and thus the same was not irrational or illegal and unlawful as pleaded by the Petitioners so as to lead to a finding that the Petitioner's rights were infringed as a result thereof.

56. The court finds thus that the Petitioners did not acquire any proprietary rights in Transmara/Enoosaen/59, the land having been reverted to the school in the Minister's Appeal under section 29 of the Land Adjudication Act and the Title procured by Mr. Sanamwala was illegally obtained and cannot be protected under section 26(1) of the Land Registration Act as well as Article 40 of the constitution
57. Having conducted a merit review of the Minister's decision and found no reason to interfere with the same the decision is hereby upheld and is final in terms of section 29 of the Land Adjudication Act, which provides as follows" **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.**" Thus, the Petitioners have thus not demonstrated any violation or infringement of their right to own the suit property under Article 40 of the Constitution.
58. The Petition thus lacks merit in answer to issue No. 2.
59. With regard to the cross Petition, the cross-petitioner has pleaded that the school is the rightful proprietor of the suit property by virtue of the Minister's decisions which remains unchallenged having found the Minister's decision to be sound and upheld the same, the decision on a Minister's Appeal under Section 29 (2) of the Land Adjudication Act is final, and the cross-petition has merits and the same is hereby allowed.

60. On the reliefs to issue, the Further Amended Petition is herewith dismissed, while the cross-petition is allowed as prayed save that costs of the petition and the cross-petition shall be borne by the 1st and 2nd Petitioners herein who are the administrator of the Estate of the Original Petitioner.
61. The restrictions orders issued by Washe J, are hereby set aside to allow the 1st Respondent to be registered as proprietor of Transmara/Enoosaen/569 in Trust for Endoretet primary school.

Dated at Kilgoris 12th Day of February, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA - Sylvia/Sandra/Clara

Mr. Kiprotich for the 2nd Petitioner

Lodi Maseyieki Xavier prese litigant the 1st petitioner

Mr. Motari for the 2nd to 5th Respondents and cross petitioner