

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**

**ELC PETITION NO. 1 OF 2019**

**IN THE MATTER OF ARTICLES 22(1), 23(1) & (3),**  
**159 (2)(a), (e), 165 (3)(b), (d), (6) & (7) & 258 OF**  
**THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE ALEGED CONTRAVENTION**  
**OF ARTICLES 3, 10(1), 10(2), 19, 20, 21(1),**  
**27(1)&(2), 40(1) &(3), 47(1), 50(1), 60(1)(b) OF**  
**THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE DECISION BY THE**  
**NATIONAL LAND COMMISSION EMBODIED IN THE**  
**LETTER DATED 13<sup>TH</sup> DECEMBER 2018, TO THE**  
**EFFECT THAT THE CHIEF LAND REGISTRAR**  
**CANCELS THE TWO TITLES HELD BY MR. SIMON**  
**KIRORI KAGUATI AND MR. GEORGE NJUGUNA**  
**MWANGI REGISTERED AS KAISAGAT/CHEPKOILEL**  
**BLOCK 5/AMUKA/260 AND 261, AND VESTED THE**  
**SAME IN THE NAME OF THE COUNTY**  
**GOVERNMENT OF TRANS NZOIA FOR A**  
**POLYTECHNIC AND A DISPENSARY RESPECTIVELY**

**BETWEEN**

**SIMON KIRORI KABUAGI-----1<sup>ST</sup>**  
**PETITIONER**

**GEORGE NJUGUNA MWANGI-----2<sup>ND</sup>**  
**PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION-----1<sup>ST</sup>  
RESPONDENT**

**THE CHIEF LAND REGISTRAR-----2<sup>ND</sup>  
RESPONDENT**

**THE COUNTY GOVERNMENT OF  
TRANS NZOIA-----3<sup>RD</sup>  
RESPONDENT**

**AMUKA FARM COMPANY LIMITED-----4<sup>TH</sup>  
RESPONDENT**

**HON. ATTORNEY GENERAL-----5<sup>TH</sup>  
RESPONDENT**

## **RULING**

- 1.** This ruling relates to the issues of jurisdiction, competency, and non-exhaustion of alternative avenues under the law. The matter before the court is the amended petition dated **5/11/2019**, which is opposed by the 2<sup>nd</sup> and 5<sup>th</sup> respondents' joint response, cross-petition dated **26/3/2019**, and the 3<sup>rd</sup> and 4<sup>th</sup> respondents' joint response dated **28/3/2019**.
- 2.** The petitioners describe themselves as the registered owners of **Kaisagat/Chepkoilel Block 5/Amuka 260** and **261**, (hereinafter the suit properties), situated in Trans Nzoia County, which the 1<sup>st</sup> respondent, by a letter dated **13/12/2018**,

held that the suit properties were public land, illegally carved out of the 4<sup>th</sup> respondent **L.R. No.1921/4**, and illegally transferred to the petitioners.

3. The petitioners aver that the 1<sup>st</sup> respondent therefore advised the 2<sup>nd</sup> respondent to revoke the title deeds issued in respect of the suit properties and to vest the same on the 3<sup>rd</sup> respondent for a polytechnic and a dispensary. The petitioners term the 1<sup>st</sup> respondent's decision as unlawful, unprocedural, an infringement of the right to own property, and made without allowing them to be heard under **Article 47** of the Constitution, to respond to any complaint that any have been lodged with the 1<sup>st</sup> respondent by the 4<sup>th</sup> respondent.
4. Further, the petitioners aver that the decision of the 1<sup>st</sup> respondent contravened their right to equality and freedom from discrimination, equality before the law, protection and benefit of the law, fair hearing, right to own property, and right to fair administrative action.
5. The petitioners state that initially the 4<sup>th</sup> respondent owned **L.R. No. 1924/4**, to which the 2<sup>nd</sup> petitioner's father was a shareholder, who after a resolution made on **10/3/1986** by about **220**

shareholders, to offload some of the company assets to offset debt with the Agricultural Finance Corporation, bought plot No. **35** measuring **5** acres, later subdivided into two portions No. **260** and **261**, as private parcels of land.

- 6.** Further, the petitioners aver that while awaiting the title to be processed, their late father passed on, after which the directors of the 4<sup>th</sup> respondent obtained Land Control Board Consents and transferred them as land Title Numbers **Kaisagat/Chepkoilel Block 5/Amuka 260** and **261**.
- 7.** The 1<sup>st</sup> and 2<sup>nd</sup> petitioners aver that in **2002**, their titles were illegally, irregularly, and fraudulently transferred and issued to Amuka Polytechnic and Dispensary, respectively, yet they did not form part of public utilities, without their consent as the *bona fide* registered owners, and contrary to due process of the law on change of user and of the area list.
- 8.** The petitioners aver that what was initially public utility plots were Nos. **83** and **84**, which the 2<sup>nd</sup> and 4<sup>th</sup> respondents irregularly and fraudulently transferred to Samuel Ndungu Mbugua and Ambrose Nzioka Kiangi as Title Nos. **Kaisagat/Chepkoilel Block 5/Amuka 83** and **84**,
- 9.** The petitioners pray for:

- (1) Declaration that the decision of the 1<sup>st</sup> respondent, as embodied in a letter Ref. NLC/GEN.CORRE.VOL. V111(25) violates their constitutional rights and is therefore unlawful, null, and void.**
- (2) An order of certiorari to quash the entire decision of the 1<sup>st</sup> respondent.**
- (3) Prohibition restraining the respondents, their agents, servants, or any other person, whatsoever, from having any dealings in the suit properties, in a manner that will interfere with the ownership, use, or interest of the 1<sup>st</sup> and 2<sup>nd</sup> petitioners on land Title No. Kaisagat/Chepkoilel Block 5/Amuka 260 and 261.**

**10.** The petition is supported by an affidavit sworn on **5/4/2019** by Simon Kirori Kabuagi attaching copies of title deeds, ID Cards, letter dated **18/12/2018**, certificate of the 4<sup>th</sup> respondent, company minutes of **10/3/1986**, bank statement, cheque, and receipts of Agricultural Finance Corporation, letter dated **25/3/1986**, photocopy of minutes, letter dated **22/9/1993**, photocopy of area list dated **24/1/1994**, Registry Index Map register, pleadings in **Kitale HCCC No. 73 of 2002**, proceedings before the District Officer, copy of grant and court order, copy of District Officer's letter dated **4/10/2007**, chief's letter dated **11/10/2007**, request by the deceased widows to the Board to

have titles dated **29/8/2007**, District Officer's letter dated **15/10/2007**, 4<sup>th</sup> respondent application for Land Control Board Consent and Land Control Board consent, copies of transfer form and relevant documents as annexures marked **SK-(1)-26 (a)** and **(b)** respectively. Further, the petitioners rely on written statements and a list of documents dated **18/12/2023**.

- 11.** The 1<sup>st</sup> respondent relies on a response dated **6/5/2024**. It states that its establishment, mandate, and functions are governed by **Article 67(1)** of the Constitution and the National Land Commission Act **2012**, to manage public land on behalf of the National and County Governments.
- 12.** The 1<sup>st</sup> respondent states that under **Article 68(c)** of the Constitution, it has a mandate under **Section 14(1) and (3)** of the National Land Commission Act to review all grants and dispositions of public land to establish their proprietary or legality on its own motion, or through a complaint, and to reconsider an appropriate redress.
- 13.** The 1<sup>st</sup> respondent deposes that the 4<sup>th</sup> respondent lodged a complaint with it regarding the petitioners, who made a response through their advocates, Mr. Kiarie, after which all interested parties were invited through advertisement in the local dailies and

notices on various dates, and heard the issue to conclusion. It recommended its determination by a letter dated **13/12/2018** for the 2<sup>nd</sup> respondent to revoke the titles, as per **The Matter of The National Land Commission [2015] eKLR.**

- 14.** The 1<sup>st</sup> respondent avers that it acted and followed the law in the public interest and not for self-gain, which outweighs the interest of the petitioners. The 1<sup>st</sup> respondent avers that the suit properties of land were public land, which were not available for allocation for private use, hence the titles held by the petitioners cannot be protected by the court, having been allocated or acquired illegally and unlawfully.
- 15.** Further, the 1<sup>st</sup> respondent avers that where a registered root title is under challenge, it is not enough to present the instrument of title as proof of ownership, and as in this case, it had not only been reserved for public use, but also subsequently registered as government land and titles to that effect issued.
- 16.** The 1<sup>st</sup> respondent avers that the petitioners have not presented to the court any offer made, if any, to have the land alienated to them, making the petition untenable, lacking merits, and only to derail

the implementation of its said determination and recommendations.

- 17.** The 2<sup>nd</sup> and 5<sup>th</sup> respondents filed a response and a cross-petition dated **26/3/2019**. They confirmed that **Kaisagat/Chepkoilel Block 5/Amuka 260** and **261** were part of **L.R. No. 1921/4** allocated to the 4<sup>th</sup> respondent, whose titles were registered and issued on **13/6/2002**.
- 18.** The 2<sup>nd</sup> and 5<sup>th</sup> respondents aver that once the suit properties were set aside for public utility, it became public land, and the farm committee, District Officer, District Commissioner, or any other body had no statutory or constitutional mandate or powers to deliberate or issue consent to the allocation of such land as alleged or at all.
- 19.** It is averred that from the foregoing, the titles held by the petitioners were illegally or unlawfully acquired, and in the best interest of the public, they were revoked as advised by the 1<sup>st</sup> respondent, as reserved for public purposes, and were no longer available for allocation or alienation for private purposes.
- 20.** The 2<sup>nd</sup> and 5<sup>th</sup> respondents aver that, save for the petition exposition, the Constitutional provisions as to their meaning, purport, and import, the petition disclosed no cause of action against them, was

incurably defective, and untenable. The 2<sup>nd</sup> and 5<sup>th</sup> respondents aver that any transaction purporting to create titles in the names of the petitioners or any other person, out of a public land, was tainted with fraud or illegality, particulars set out in paragraph **10** of the response.

**21.** By way of a cross-petition, the 2<sup>nd</sup> and 5<sup>th</sup> respondents as cross-petitioners cited **Articles 2, 19, 24, 40(1) and (5), 62, and 67** of the Constitution on the supremacy of the Constitution, national values and principles of governance, limitation of a right, right and property, public land and its administration, role of the National Land Commission in public land administration as held in **Kipsirgoi Investments Ltd -vs- Kenya Anti-Corruption Commission [2011] KECA 326 (KLR)** and **Funzi Island Development Limited & 2 others -vs- County Council of Kwale & 2 others [2014] KECA 882 (KLR)**.

**22.** The cross-petition sought:

- i. The petition be dismissed.**
- ii. Declaration that Kaisagat/Chepkoilel Block 5/Amuka 260 and 261 were part of L.R. No. 1921/4 allocated to the 4<sup>th</sup> respondent.**
- iii. Declaration that the petitioners' acquisition of the said titles was illegal, unlawful, and fraudulent.**

**iv. Cancellation of the titles issued to the petitioners.**

**v. Declaration that the two titles are public land and should remain so.**

**vi. Permanent injunction.**

**23.** The cross-petition was supported by an affidavit sworn by Nelson Otieno Odhiambo on **26/3/2019**, attaching a copy of the green card or register as annexure **NOO -1(A) & (B)**. The 2<sup>nd</sup> and 5<sup>th</sup> respondents aver that the suit property measuring **1.214 Ha** was set aside by the 4<sup>th</sup> respondent for a Village Polytechnic, while parcel No. **261** measuring **1.26 Ha** was set aside for a dispensary, hence both were not available for alienation for private use, making the titles held by the petitioners incapable of protection by this court.

**24.** The 2<sup>nd</sup> and 5<sup>th</sup> respondents aver that the suit properties remained public land until **2008**, when there were irregular, illegal, unprocedural, and improper alienations by the petitioners.

**25.** Further, the 2<sup>nd</sup> and 5<sup>th</sup> respondents aver that the issue was considered by the 1<sup>st</sup> respondent under **Section 14** of the National Land Commission Act, concluding that the petitioners obtained titles to the suit properties unprocedurally, unlawfully, and illegally.

- 26.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents opposed the petition through an amended joint response dated **8/5/2021**. They aver that the petitioners were served with the complaint registered with the 1<sup>st</sup> respondent, hence were at all times alive to its contents.
- 27.** The 4<sup>th</sup> respondent averred that it was registered in **1975** to acquire a lease over **Kaisagat/Chepkoilel Block 5**, and through the financing of the Agricultural Finance Corporation, it bought the land measuring **1162 acres** at **Kshs.260,000/=**, which it later subdivided into **275** plots among its shareholders, leaving special Plot No. **35**. Later, Nos. **260** and **261** are reserved for the construction of a polytechnic and a dispensary to serve the members of the public.
- 28.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents aver that sometimes in **1985**, the chairperson of the 4<sup>th</sup> respondent and the father of the 2<sup>nd</sup> petitioner attempted to unlawfully fence the suit properties, which fence on **26/8/1986** was pulled down by the members, causing some of them to be arrested, charged, and acquitted for lack of proof of ownership.
- 29.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents aver that title deeds were later issued in the names of the polytechnic and dispensary, only for the 1<sup>st</sup> and 2<sup>nd</sup> petitioners to

fraudulently acquire the titles for public land, leading to a complaint with the 4<sup>th</sup> respondent, which made a declaration that the suit properties remain public land.

**30.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents also relied on a replying affidavit sworn by Philip Musundi on **23/6/2019**, attaching copies of the certificate of incorporation, subdivisions schedule, proceedings and judgment in the criminal court, and newspaper cuttings.

**31.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents also filed a cross-petition based on **Articles 2, 10, 24, 40(1)&(5), 62, and 67** of the Constitution, that the suit properties remained public land and were not available for alienation.

**32.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents in the cross-petition pray for:

**(a) Declaration that the suit properties are public land set out for public utilities.**

**(b) Revocation of the title deeds issued to the petitioners.**

**(c) Permanent injunction.**

**33.** The 4<sup>th</sup> respondent also opposed the petition through a replying affidavit attaching documents such as the replacement of the former Board of Directors, letter dated **24/8/1993** to the District Commissioner, letter from the Senior Assistant

Registrar General on a Special General Meeting dated **17/9/1999**, letter to Agricultural Finance Corporation for release or surrender of title deed for **L.R. No. 1921/4**, presentation of a subdivision schedule on **17/5/2001**, Annual General Meeting notice for **13/4/2002**, minutes and signed list of members present, copies of title deeds in the names of the polytechnic and dispensary dated **13/6/2022**, notice to vacate the suit properties dated **26/9/2022**, copies of official search certificate, copy of minutes for a meeting on **1/11/2008**, acknowledgement letter for a complaint letter dated **16/5/2009** to the office of Public Communication, copy of acknowledgement letter by Kenya Anti-Corruption Commission for intervention dated **16/7/2010**, complaint to the 1<sup>st</sup> respondent received on **25/7/2015**, notice to appear on **25/2/2015** before the National Land Commission, response to the National Land Commission regarding the complaint by the petitioners through a letter dated **4/3/2015** by their lawyers, letter dated **12/2/2018** to the National Land Commission Nairobi by the County Coordinator, decision by the National Land Commission dated **13/12/2018**, as annexures marked **PM-(1) to (25)**, respectively.

- 34.** In a further replying affidavit sworn by Emmanuel Mutange, a surveyor with the 3<sup>rd</sup> respondent, on **15/7/2019**, it is deposed that it received the complaint by the 4<sup>th</sup> respondent dated **13/12/2018** to the 1<sup>st</sup> respondent, and subsequently it recommendation for the suit lands to vest under the County Government of Trans Nzoia, following hearing and determination of the 1<sup>st</sup> respondent with the participation of the petitioners as per annexures **EM-(1), EM-(2), and EM-(3)**,
- 35.** Directions herein were issued for the parties to address the question of jurisdiction of both the main petition and the cross petition. The petitioners rely on written submissions dated **25/8/2022** and **13/12/2025**. It is submitted that the cross-petition by the 2<sup>nd</sup> and 5<sup>th</sup> respondents is inept, incompetent, discloses no cause of action, is fatally defective, and should be struck out for non-compliance with **Article 15(3)** of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure *Rules*, 2013 (Mutunga Rules). The petitioners submit that their amended petition has merit as there was a violation of **Articles 21(1), 27(1) & (3), 47, 50(1), 40(1)(3), and 60** of the Constitution, after the petitioners had legally, procedurally obtained titles to their land.

reliance is placed on **Chief Land Registrar & Others -vs- Nathan Tirop Koech & Others [2018] eKLR**, and **Zinj Ltd vs Attorney General & Others [2019] eKLR**.

- 36.** The petitioners submit that the allegation that the suit parcels were public land converted to private use has no basis at all. The petitioners submit that the acts of the 1<sup>st</sup> and 4<sup>th</sup> respondents were illegal and fraudulent.
- 37.** As to the jurisdiction of the court, the petitioners submit that the court only has jurisdiction to hear and determine the amended petition and not the cross-petition. The petitioners submit that what is before the court is not whether the parties have grievances against each other, but whether those grievances have been presented before the proper forum, in the proper and procedural manner, and within the constitutional and statutory limits of the court's mandate.
- 38.** The petitioners submit that the court has jurisdiction to hear and determine the petition due to the **18/12/2018** decision by the 1<sup>st</sup> respondent, which was unlawful and procedurally unfair, for lack of fair hearing contrary to **Article 47** of the Constitution for they were not notified of the complaints for response, under **Articles 20, 21, 22, 27, 40, 47,**

and **60** of the Constitution, which this court under **Article 162 2(b)** of the Constitution as read together with **Section 13(2) (d)** of the Environment and Land Court can handle.

**39.** On cross-petition, it is submitted that the court lacks jurisdiction since it raises no constitutional violation or relief but dwells on contested issues relating to title, ownership, fraud, and alleged illegal acquisition of public land, which falls under the ordinary jurisdiction of a civil court. Reliance is placed on **Ernest CO Muga -vs- Attorney General [2018] eKLR, Ntongai -vs- Kaberia & Others [2023] KEHC 508 [KLR], Bernard Murage -vs- Fine Serve Africa Ltd & Others [2015] eKLR, Paul Okutoyi & Others -vs- Habil Olaka & Another [2018] eKLR,** and **Greys Jepkemoi Kiplagat -vs- Zakayo Chepkonga Cheruiyot [2021] eKLR.**

**40.** The 2<sup>nd</sup> and 5<sup>th</sup> respondents rely on written submissions dated **14/7/2022**, isolating four issues for determination. It is submitted that the suit parcel of land was public land unavailable for allocation. Reliance is placed on **Kipsirgoi Investments Ltd -vs- Kenya Anti-Corruption Commission, Eldoret CM No. 288 of 2010, Lucy Mirigo & Others -vs- Minister for Lands &**

**Others [2014] eKLR, Funzi Island Development Ltd & Others -vs- County Council of (supra), Republic -vs- Land Registrar, Kilifi & Another, Ex parte Daniel Ricci [2013] eKLR, Scott -vs- Brown [1982] 2 QBD 724.**

- 41.** Jurisdiction is everything. Without it, a court downs its tools. Once raised in the pleadings, it has to be determined first. The petitioners have brought a constitutional petition challenging the decision by the 1<sup>st</sup> respondent made on **13/12/2018**, pursuant to its powers under **Article 68(c)(v)** of the Constitution as read together with **Section 14(1)** and **(3)** and **5** of the National Land Commission Act.
- 42.** The 1<sup>st</sup> respondent relies on paragraphs **7 - 32** of the answer to the amended petition dated **6/5/2024**, to state that the petitioners, after the receipt of the 4<sup>th</sup> respondent's complaint, fully participated in the exercise through an answer by the law firm of M/S Kiarie & Co. Advocates.
- 43.** The 3<sup>rd</sup> and 4<sup>th</sup> respondents rely on two affidavits in which they attach the annexures of the notice on the 1<sup>st</sup> respondent's website for hearing dates at Eldoret Social Hall, response by the petitioners to the complaint dated **4/3/2015**, received by National Land Commission on **5/3/2015**, attaching annexures **SK-(1)-(18)**, letter dated **13/12/2018**

addressed to Simon Kirori Kabuagi and George Njuguna Mwangi P.O. Box 2185 Kitale.

- 44.** In the replying affidavit of Philip Musundi dated **23/6/2019**, he attached annexure **PM-(13)**, title deeds for Amuka Village Polytechnic and Dispensary, issued on **13/6/2002**, notice to vacate, copy of the search showing that the petitioners became owners on **28/10/2008** for the same parcels of land, National Land Commission complaint received on **25/7/2014**, and a copy of the response by the petitioners.
- 45.** The statutory procedure of hearing and determining complaints, such as the one that had been lodged with the 1<sup>st</sup> respondent by the 4<sup>th</sup> respondent, is the National Land Commission (Review of Grants and Disposition of Public Land) Regulation, **Legal Notice N No. 11 of 2017**. The powers of the National Land Commission are set out in **Rule No. 4**. A complaint takes the form set out in **Rule No. 5**. A register and issuance of notice are governed by **Rules No. 8 and 9**.
- 46.** The manner of conducting a hearing is set out in **Rules 14, 16, 17, 18, 19, and 27**. **Rule 28** relates to the consideration of the lawfulness of a grant or disposition.

- 47.** Decisions of the National Land Commission are governed by **Rule 29**. Any aggrieved party by the decision of the Commission has to within **14 days** of the decision file an appeal to court.
- 48.** The court has looked at the answer to the complaint by the petitioners through their lawyer dated **4/3/2015**. It leaves no doubt in my mind that the petitioners were accorded adequate notice to respond, answer, attend, or appear and participate in the hearing and determination of the complaint.
- 49.** Coming to the awareness of the decision, communication was made by a letter dated **13/12/2018**, which is addressed to the petitioners by the National Land Commission. The petitioners, with effect from **13/12/2018**, had **14 days** to appeal to the court. Instead, the petitioners lodged a constitutional petition based on judicial review on **21/1/2019**.
- 50.** In **County Government of Kericho -vs- National Land Commission JR Appl. No. E012 of 2023 [2023] KEELC 19086 [KLR] (27<sup>th</sup> July 2023) (Ruling)**, the court found the application filed 4 years after as time-barred. The court said that the applicant should have exhausted the available local remedies, including appealing the National Land Commission decision within the stipulated period.

51. Jurisdiction is everything; without it, a court downs its tools as held in **Motor Vessel Lillian "S" -vs- Caltex Oil (K) Ltd [1989] KLR 1**. A court of law can only exercise jurisdiction donated by a Constitution or a Statute. The petitioners challenged the respondent's decision to have their titles revoked. They seek orders of judicial review, namely certiorari and prohibition. **Rule 30** only relates to an appeal and not judicial review or a constitutional petition.

52. In **Republic -vs- National Land Commission & Others Ex parte Betty Rono Kitale ELC JR No. 4 of 2019**, the court cited **Speaker of National Assembly -vs- James Njenga Karume [1992] eKLR**, that where there is a clear procedure for redress of any particular grievance, prescribed by the Constitution or an Act of Parliament, that procedure must be strictly followed.

53. In **Geoffrey Muthinja Kabiru & Others -vs- Samuel Munga Henry & Others [2015] eKLR**, the court held that where a dispute resolution mechanism exists outside court, the same must be exhausted before the jurisdiction of the court is invoked, courts are the fora of last resort and not the first port of call, and the moment a storm brews.

In this case, **Rule 30** refers to an appeal and not a constitutional petition.

- 54.** In ***Malindi Musketeers Limited -vs- National Land Commission & 5 others [2021] KEELC 3125 (KLR)***, the court held that the failure to file an appeal within **14 days** of the decision to revoke the title made the decision final and valid.
- 55.** The court found both the petition and the application for conservatory orders statutorily time-barred under the relevant provisions of the law. The court struck out the petition and the application, emphasizing the importance of respecting the constitutional powers of quasi-judicial bodies and their decisions.
- 56.** In ***Republic -vs- National Land Commission & Another Ex parte Pinnacle Development [2018] eKLR***, the court declined to resolve the ownership dispute between the applicant and the interested party, stating that judicial review was not the most appropriate forum for determining land title validity. It upheld the National Land Commission's mandate to review the legality of public land converted to private land. The court clarified that judicial review focuses on the decision-making process, rather than the merits of the decision.

57. In **Republic -vs- National Land Commission & Another [2016] eKLR**, the court held that the revocation of the titles was done unilaterally within due process by providing the applicant with a fair hearing under **Article 47(2)** of the Constitution and **Section 4** of the Fair Administrative Action Act.

58. In **Republic -vs- National Land Commission, Kenya Airports Authority (IP) [2022] KEELC 1529 [KLR]**, the court took into consideration the creation of the National Land Commission due to historical land-related injustices such as illegal hiving off of public and trust lands. The court cited **Pati Ltd -vs- Funzi Island Development Ltd & Others [2022]**, where land allocation previously allocated to a forest or beach was quashed by the court.

59. The court cited **Republic -vs- National Land Commission Ex parte Krystalline Salt Ltd [2015] eKLR**, that **Article 40** of the Constitution and **Section 26** of the Land Registration Act, only protect lawfully acquired property, and that any title illegally, unprocedurally, or through a corrupt scheme acquired is not protected. The court held that the National Land Commission is mandated by

law to inquire into allegedly unlawfully acquired public land and direct the revocation of title or regularize a disposition where it finds land to have been illegally or irregularly converted to private property.

**60.** The court cited **Tom Dola & Others -vs- Chairman National Land Commission & Others [2020] eKLR**, that the power to review grants and disposition of public land to establish their proprietary as legality is a jurisdiction specific to the National Land Commission and cannot be usurped by any other body or agency.

**61.** As regards the procedure used by the petitioners said to require delving into the merits of the decision rather than the process, in **Sanghani Investment Limited -vs- Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354**, the court said that judicial review is not the most appropriate forum to adjudicate on a dispute on land ownership or decide on the authenticity of title to property.

**62.** In **Republic -vs- National Land Commission Ex parte Harbour Properties Ltd [2016] eKLR**, the court said that under **Section 14(1)** of the National Land Commission Act, a judicial review can cover land that has been converted from public to private

land. As to public interest in **Market Plaza Ltd -vs- Commissioner of Lands & Others [2017] eKLR**, the court cited with approval **AXA General Insurance Limited & Others -vs- The Lord Advocate [2011] UKSC 46**, that courts must determine whether a fair balance was struck between the demand of the general interest of the community and the requirement of the protection of the individual fundamental rights.

**63.** In this petition, the respondents have tendered evidence that not only was the suit properties reserved for public utilities, but were also registered as government land and title deed issued in **2003** as per copies of title deed attached as annexures marked **PM-(13)** and **(14)**, notice to vacate attached as **PM-(15)**, copies of search attached as **PM-(16)** and **(17)**, complaints to the public complaint office and Ethics and Anti- Corruption Commission as annexures **PM-(18)**, **(19)**, and **(20)**.

**64.** It is a trite law that when the root of title is under challenge, it is not enough to waive the instrument of title without going behind the same to show that the process of its acquisition was legal, formal, procedural, and free of any encumbrances, including those not noted on the register. See

**Torino Enterprises Ltd -vs- Attorney General [2023] KESC 79 [KLR], Dina Management Ltd -vs- County Government of Mombasa [2023] KESC 30 [KLR] and Sehmi -vs- Tarabana [2023] KESC 21 [KLR] (11<sup>th</sup> April 2025) (Judgment).**

65. In **Hubert L. Martin & Others -vs- Margaret J. Kamar & Others 2016] KEELC 1092 ( KLR)**, the court said that where there are two competing titles, an investigation must start at the root of the titles and follow all processes and procedures that brought forth the two titles at hand, and in that case each party has to demonstrate how they got their title starting with from its root and show a good foundation.

66. In the **Board of Trustees NSSF -vs- D Keiyo Teacher Co-operative Savings Society Ltd & Others [2026] KECA 327 [KLR] (27<sup>th</sup> February 2026) (Judgment) Eldoret Civil Appeal No. E076 of 2020**, the court was confronted with gazetted prison land purportedly allocated for private use.

67. The court cited **Torino Enterprises Ltd -vs- Attorney General** (*supra*), that the Commissioner of Lands had no authority to alienate or allocate public land that was already reserved for a particular public purpose.

- 68.** In **General & Another -vs0 Hussein & Others Civil Appeal No. 100 Eldoret 32 of 2018 [2025] KECA 1022 [KLR] (5<sup>th</sup> June 2025) (Judgment)**, the court cited **Presbyterian Foundation -vs- Kibera Siranga SHG Nursery School [2025] KLR**, the elements of a good root of title include:
- (a)** *It must deal with or show the origin of ownership.*
  - (b)** *It must contain a recognizable description of the property.*
  - (c)** *It must not contain anything that casts any doubt on the title.*
- 69.** The court said that a title document is not sufficient proof of ownership of property where the origin of that title has been challenged. In this petition, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents have tendered a paper trail starting with the certificate of incorporation, subdivision schedules, proceedings and judgment in the criminal case, District Commissioner's letter dated **24/8/1993**, Special General Meeting, letter to the Ethics Anti-Corruption Commission, Subdivision Schedule, Annual General Meeting list, copies of title deed as annexures **PM-(1)-(22)**.
- 70.** The petitioners, on the other hand, do not explain how, despite the issuance of titles on **13/6/2002** for **Kaisagat/Chepkoilel Block 5/Amuka/260** and

**261**, to the 4<sup>th</sup> respondent, they were able, before cancellation of the said titles, to transfer the said parcels. An application for Land Control Board Consent, Land Control Board No. **8/09/01**, Land Control Board consent dated **11/10/2007**, and through an undated transfer form whose particulars on behalf of the public entities, such as names, signatures, photographs, ID Cards, and addresses, are missing.

**71.** A valid transfer from must be preceded by a sale agreement and a transfer document duly executed by the parties. See **Lucy Wangui Mwaura -vs- Linet Achieng Amala [2019] eKLR**, and **Moses Njaramba Kamau -vs- Mary Muthoni Njaramba [2017] eKLR**. No court can enforce an illegal contract or allow itself to be made an instrument of enforcing an obligation alleged to arise out of a contract or transaction which is illegal, if illegality is duly brought to the attention of the court. A person invoking the aid of the court when himself is implicated in the illegality should not get the assistance of the court, as held in **Mistry Amar Singh -vs- Kulubya [1963] EA 408**, and in **Kenya Airways Ltd -vs- Satwant Singh Flora [2013] eKLR**.

- 72.** A title obtained through fraud, misrepresentation, or illegality cannot get the protection of the court. A certificate is an end product. If the process leading to its issuance is tainted with illegality, it cannot pass the test.
- 73.** A nullity is a nullity no matter how many hands it passes. It cannot be sanitized. See **Kassim Ahmed Omar & Another -vs- Anwar Ahmed Abed & Others, Malindi ELC No. 18 of 2015.**
- 74.** From the foregoing, the court finds that the process by which the 1<sup>st</sup> respondent made a finding after attending the hearing and making a presentation cannot be faulted. As held in **Royal Media Services -vs- IEBC & Others [2019] eKLR,** judicial tradition in this country is to frown upon illegal contracts. From a dishonourable cause, an action cannot arise. The evidence tendered by the petitioners before the 1<sup>st</sup> respondent is a response to the 4<sup>th</sup> respondent's complaint showed that the conversion of public land to private land based on the transfer form, the application for the Land Control Board, and the consents fell short of being legal, formal, and free of any encumbrances. The petitioners' version of public land to private land, as held in **Dina Management Ltd -vs- County Government of Mombasa & Others**

**[2023] KESC 30 (KLR)**, is impossible if the suit properties had been designated as public utilities.

**75.** In the reservation, registration, and issuance of titles for public utilities in **2002**, which preceded the petitioners' titles, as held in **Wreck Motor Enterprises Ltd -vs- The Commissioner of Lands & Others Civil Appeal No. 71 of 1997**, where there are two competing titles, the one registered earlier is the one that takes priority. In **Gateway Investments Ltd & Others -vs- Commissioner of Lands HCCC No. 1114 of 2002**, the court said that the first in time prevails.

**76.** I think I have said enough that even if the petitioners' constitutional petition was an appeal properly before the court, still, the decision by the 1<sup>st</sup> respondent, having met the requirements of the governing **Rules 2017** as a fair hearing, I find the constitutional petition incompetent, statute-barred, and improperly invoking the court's jurisdiction. It is dismissed with no order as to costs.

**77.** As to the cross-petition, again I find the same incompetence in view of the non-compliance with the Constitution of Kenya (Protection of Rights and

Fundamental Freedoms) Practice and Procedure Rules, 2013, and lacking merits. The letter dated **13/12/2018**, in view of **Section 14(5)** of the National Land Commission Act, is self-executing and does not require any orders of this court to be implemented. The existing conservatory orders are hereby vacated.

**78.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **11<sup>th</sup>** day of **March 2026**.

**In the presence of:**

Court Assistant - Dennis

Teti for the petitioners present

Odeyo for Chilaka for the 2<sup>nd</sup> and 5<sup>th</sup> respondents present

Mongina for Macharia for the 3<sup>rd</sup> respondent

Odeyo for Obino for the 1<sup>st</sup> respondent



**HON. C.K. NZILI**  
**JUDGE, ELC KITALE.**