



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**PETITION NO. 9 OF 2018**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO PROPERTY, FAIR ADMINISTRATIVE ACTION AND FAIR TRIAL**

**AND**

**IN THE MATTER OF ARTICLE 2, 19, 20, 22, 23, 25, 40, 47, 50, 156, 165, 245 AND 259 OF THE CONSTITUTION OF KENYA**

**SOLOMON NJORA MWANGI (Suing as the Personal Representative of the  
Estate of the late PETER MWANGI MBUTHIA – Deceased).....PETITIONER**

**VERSUS**

**DISTRICT LAND REGISTRAR, KAJIADO NORTH DISTRICT.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT SURVEYOR, KAJIADO COUNTY.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF MAGISTRATES COURT, KAJIADO LAW COURTS....3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**JAMES NDINA GITONGA.....1<sup>ST</sup> INTERESTED PARTY**

**CHRISPUS MBICI GAKUL.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

What is before me for determination is the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties' Notice of Preliminary Objection dated the 27<sup>th</sup> September, 2018 and filed in Court on 28<sup>th</sup> September, 2018. The Interested Parties' raise the following objection:

1. That the Petitioner herein lacks locus standi as the Grant of Letters of Administration Ad Litem was issued for substitution in Senior Resident Magistrate's Court at Kajiado LDT 11 of 2007.
2. That this suit is time barred as the Kajiado Land Disputes Tribunal ruling was delivered on 4<sup>th</sup> January, 2007 and subsequently adopted by the Senior Resident Magistrate's Court on 26<sup>th</sup> April, 2007. Section 9 (2) of the Law Reform Act.
3. That the Application and Petition herein is res judicata as the subject matter of the Application and Petition was successfully determined in ELC Judicial Review No. 407 of 2009. Which is a Court of concurrent jurisdiction.

Peninah Nduta Karongo (suing as representative of the estate of Eunice Wanjiru Munga V Samuel Mwaura Felix Kariuki & 3 others ELC at Nairobi Petition NO. 604 of 2015 (2017) eKLR

4. That the Petition and the Application as filed is bad in law and an abuse of the Court's process as it is intended to keep the matter *ad infinitum*.

5. That the Petition has concealed from this court material facts.

6. That the application is actuated by malice, bad faith and mala fide.
7. That the entire Petition and application is defective and in substance and law.
8. The Application and Petition should thus be dismissed with costs to the Petitioner/ Applicant.

The Respondents supported the Notice of Preliminary Objection but the Petitioner opposed it.

The Petitioner, Respondents and Interested Parties' filed their respective submissions that I have considered.

### **Analysis and Determination**

Upon consideration of the Notice of Preliminary Objection dated 27<sup>th</sup> September, 2018 including the parties submissions, the only issue for determination is whether the Petition herein should be dismissed on the grounds cited in the said Notice.

I note the Petitioner used the Grant Ad litem, which was issued on 14<sup>th</sup> September, 2007 to institute this Petition. On perusal of the said Grant Ad litem, it is evident that it was issued for purposes of substitution in Senior Resident Magistrate's Court at Kajiado LDT 11 of 2007. The Law of Succession Act is very clear that Grant Ad litem is issued for a brief period and for a specific purpose; as the Administrator therein is expected to proceed and apply for a full grant. In associating myself with the decision of the **Re estate of Hellen Wangechi Njoroge (Deceased) (2015) eKLR** where the Court made determination that Grant Ad litem can only be used for a specific period when the estate of a deceased person is required to be represented in Court but not all the time, I find that the Petitioner herein did not have locus to institute this Petition using the Grant Ad litem, he had been issued with on 14<sup>th</sup> September, 2007 for purposes of substitution in Senior Resident Magistrate's Court at Kajiado LDT 11 of 2007.

On the issue as to whether this Petition is statute barred as the Kajiado Land Disputes Tribunal ruling was delivered on 4<sup>th</sup> January, 2007 and subsequently adopted by the Senior Resident Magistrate's Court on 26<sup>th</sup> April, 2007. I note the Petition herein which is dated the 18<sup>th</sup> July, 2018 is seeking for the following orders:

1. The Honourable Court do remove into this Court and quash the determination rendered by the defunct Kajiado Land Disputes Tribunal dated 4<sup>th</sup> January, 2007 and subsequently adopted by the 3<sup>rd</sup> Respondent in Kajiado CMCC LDT No. 11 of 2007 on 26<sup>th</sup> April, 2007.
2. The Honourable Court do issue an order prohibiting the Respondents and the Interested Parties herein, acting jointly or severally or in concert, from implementing the Award and/ or Determination rendered by the defunct Kajiado Land Disputes Tribunal dated 4<sup>th</sup> January, 2007 and subsequently adopted by the 3<sup>rd</sup> Respondent in Kajiado CMCC LDT No. 11 of 2007 on 26<sup>th</sup> April, 2007.
3. The Honourable Court, do issue an order prohibiting the Respondents and the Interested parties herein, acting jointly or severally or in concert, trespassing onto, subdividing, surveying, invading or in any other way interfering with the Petitioner's right of possession and use of a parcel of land known as Title Number NGONG/ NGONG/ 20790.
4. Costs of the Petition

The Petitioner herein sought for leave vide the Machakos HC Misc Civil Application No. 407 of 2009 to institute judicial review proceedings against the Kajiado Land Disputes Tribunal's decision dated 4<sup>th</sup> January, 2017, but his application for leave was struck out on 17<sup>th</sup> April, 2015 as leave was sought after 6 months. I note the Petition has sought for orders which I have cited above, when Magistrate's Court had adopted Tribunal's decision and issued Judgment and Decree in that respect. Further, that the Decree was in the process of enforcement. He has not indicated whether he appealed against the said Decree or Judgment. In the case of **Peterson Maina Karitu V Augustine Mwangi Ndonyi & Another (2009) eKLR**, Justice Makhandia held that: **'The legal effect of the entry of judgment in terms of the award was that the award ceased to exist. ....Unless and until this judgment is set aside, the award of the Land Disputes Appeals Committee is incapable of being challenged since it is of no legal consequence. Whether the award of the Appeals Committee is set aside or not does not change the status of the judgment of the subordinate court.'**

Further, in the case **MASAGU OLE KOITALEL NAUMO v PRINCIPAL MAGISTRATE KAJIADO LAW COURTS & ANOTHER (2014) eKLR**, the Learned Judge was very clear **that once the Award was adopted it ceased to exist but as a judgment of the court and hence could not be challenged on its own.'**

This position was also well articulated in the case of **Florence Nyaboke Machani v Mogere Amosi Ombui (2014) & (2018) eKLR** respectively.

Based on my analysis above and in associating myself with the aforementioned decisions, I find that the since the Award of the Tribunal had been adopted by the Chief Magistrates Court in April 2007, it ceased to have effect and the Decree issued thereafter still stands. I find that the orders the Petitioner is seeking are hence untenable. I opine that he has come too late in the day, insofar as he alleges that his rights have been violated.

On the issue as to whether the Petition and the Application as filed is bad in law and an abuse of the Court's process as it is intended to keep the matter *ad infinitum*. In reference to my findings above, I note the Petitioner's main contention is the quashing of the Tribunal's decision which had been adopted in April 2007. Further, that the Judicial Review Application was also struck out. I opine that this Petition inasmuch as it is coined to demonstrate a violation of the right to property, it is actually dealing with issues already determined by courts of competent

jurisdiction. Further, that the Petitioner had various legal avenues to challenge the Tribunal's decisions which were time bound but failed to do so. In the case of **Godfrey Paul Okutoyi (suing on his own behalf and on behalf of and representing and for the benefit of all past and present customers of banking institutions in Kenya) v Habil Olaka – Executive Director (Secretary) of the Kenya Bankers Association Being sued on behalf of Kenya Bankers Association) & another [2018] eKLR, Justice Chacha Mwita while dealing with an issue on abuse of Court process favourably cited two decisions below and held as follows: ‘D nyandeo Sabaji Nail and Another v Mrs Pranya Prakash Khadekar and others’ (Petition Nos. 25331-33 of 2015 , Dr D Y Chandrachud J speaking for the Court stated;**

*“This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency”... Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.”*

The learned Judge continued;

*“Courts across the legal system - this Court not being an exception– are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes...”*

His Lordship then concluded;

*“...This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.”*

**I fully agree with His Lordship's observation as it represents what is ailing our own judicial system. This petition is truly illustrative of the situation addressed by Dr. Chandrachud J in our own country where the Court system is flooded by illegitimate cases at the expense of genuine ones and therefore delayed justice. It is the duty of this court and in deed every Court to deal firmly with such situations whenever brought to its attention, thus weed out unnecessary causes and ensure that its process is never abused.’**

In associating myself with this decision and based on my analysis above, I hold that the instant Petition is an abuse of court process and concur with the interested Parties that this Petition intends to keep the matter ad infinitum.

It is against the foregoing that I find the Preliminary Objection merited and will proceed to dismiss this Petition with costs to the Respondents and Interested Parties.

**Dated signed and delivered in open court at Kajiado this 30th day of October, 2019**

**CHRISTINE OCHIENG**

**JUDGE**