



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC PETITION CASE NO. 02 OF 2018

IN THE MATTER OF ARTICLES 20, 21, 22, 13 AND 165 (3) (B) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ARTICLES 1 (1), 40, 42, 53 AND 156(6) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS

AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF SECTIONS 3, 4 (3) AND 13 OF THE ENVIRONMENT

AND LAND COURT ACT NO. 19 OF 2011

BETWEEN

THE HON. ATTORNEY GENERAL.....PETITIONER/APPLICANT

VERSUS

ISAIAH MUTURI MUCEE.....RESPONDENT

JUDGMENT

1. This Petition reads as follows:

TO: THE ENVIRONMENT AND LAND COURT AT CHUKA

HUMBLE PETITION of the Hon. Attorney General & Department of Justice, Miriga Mieru Building opposite St. Paul's Church P. O. Box 51-60200 Meru in the Republic of Kenya is as herein under.

A. DESCRIPTION OF PARTIES

1. The petitioner is the Chief Legal Advisor to the Government of Republic of Kenya and the defender of public interest.
2. The respondent is an adult male of sound mind resident of Riamikuu village within Ntoroni Location, Tharaka North Sub County, in Tharaka Nithi County. Service of summon upon the defendant through the petitioner.

B. THE LOCUS OF THE PETITIONER

3. The Petitioner is the Chief Legal Advisor to the Government of Republic of Kenya and the Defender of public interests, with

instructions to defend the interests of Riamikuu Primary School registered with the ministry of Education, Science and Technology as a public institution offering basic education within Tharaka North Sub County Tharaka Nithi County, the legal recorded owner of Parcel No. 5 Ntoroni Adjudication Section to safeguard it from land grabbing and defacing by the respondent.

C. THE PETITIONER'S CASE AGAINST THE RESPONDENT

4. The Hon. Attorney General the Chief Legal Adviser of the Government suing on behalf of the Board of Management Riamikuu Primary School and in the interest of the General Public.

5. That at all material time the Riamikuu Primary School has been the lawfully recorded owners of parcel of land P/No 5 Ntoroni Adjudication Section since the early 1980's.

6. The Respondent has trespassed on the said parcel of land and has been harvesting sand in total disregard of the ownership by Riamikuu Primary School.

7. That the respondent has repeatedly an unlawfully trespassed and remaining in the suit parcel without the authorization of the Riamikuu Primary School, he illegally scoops ad sell sand from the said parcel thus destruction and interfering with the general land scape of the parcel and has continuously threatening the owners and learners within the suit parcel. This is a threat to the learners who are entitled to basic education without any threats to their learning process.

8. That the actions of the Respondent are a threat to the learners at Riamikuu Primary School right to education and a threat to the public institution ownership of property as enshrined in the constitution.

D. GROUNDS ON WHICH THE PETITION IS FOUNDED

9. The Petitioner is the Chief Legal Advisor to the Government of Republic of Kenya. He is the defender of public interests, with instructions to defend the interests of Riamikuu Primary School registered with the Ministry of Education, Science and Technology, as a public institution offering basic education within Tharaka North Sub County, Tharaka Nithi County, the legal recorded owner of parcel No. 5 Ntoroni Adjudication Section to safeguard it from land grabbing and defacing by the Respondent.

10. That the actions of the Respondent are a threat to the learners at Riamikuu Primary School right to education and a threat to the public institution ownership of property as enshrined in the constitution the petitioner is mandate to protect.

E. DETAILS OF RELATED PROCEEDINGS

11. The Petitioner contends that there was a previous civil suit Meru CMCC 164 of 2015 filed by the Respondent herein against the petitioner and the parents Teachers Association Riamikuu Primary School which was dismissed with costs.

F. THE PETITIONER THEREFORE HUMBLY PRAY

- a) A declaration that the Respondent has threatened the interests of the public.
- b) A declaration that the right to education has been threatened on the learners of Riamikuu Primary School by the Respondent.
- c) A declaration that the right to own property by Riamikuu Primary School has been infringed by the Respondent.
- d) Permanent injunction restraining the respondent his servants or agents from trespassing on parcel No. 5 Ntoroni Adjudication Section.
- e) Compensation for violation of constitutional rights.
- f) A conservatory order to conserve suit land from environmental degradation caused by the Respondent.
- g) Costs of this petition.

Dated at Meru this 19th day of March, 2018

J.M. KIONGO,

SENIOR LITIGATION COUNSEL

FOR: HON. ATTORNEY GENERAL & DEPRTMENT OF JUSTICE.

2. Rather unorthodoxically, this Petition was heard both orally and through written submissions because the respondent was a lay citizen who was not represented by an advocate.

3. The petitioner called 5 witnesses.

4. PW1, Nyaga Mutiria Muthengi generally gave garbled evidence. He asked the court to adopt his witness statement dated 20th March, 2018 as his evidence in this suit. Although he was a retired teacher and a former chief, he told the court that he did not know or understand English and Kiswahili. He opted to testify in Kitharaka language. He told the court that Riamikuu Primary School was given land by among others, Mzee Ciankuru, Godfrey Kathambi, Kijogi Mwithi, Iguna Gitonga and himself. He denied that Mzee Ciankuru was the father of Isaiah Mucee. Generally he was a difficult witness who hesitated when being asked questions by Mr. Kiongo, Senior State Counsel. He, however, was unequivocal that the school was started in 1977 and that the respondent Isaiah Mutiri Mucee was a student at the school. He also during re-examination testified that he did not know the acreage of the land belonging to the school.

5. PW1's witness statement reads as follows:

I, NYAGA MUTIIRIA ID NO. 2366145 became a residence (sic) of Riamikuu village in 1983.

1984, I was posted by the government as a teacher of MCK Riamikuu Primary School.

1985 I was considered as Senior teacher and then promoted to be a Deputy Head Teacher. 1986, I assisted my head teacher to mark the school boundary using Ndaru trees as our marks. During this time, Isaiah Mutiri (Juta) was my pupil in lower primary. After marking the school boundary, I boarded the school east side, followed by Karambu Mucee being given a piece of land by Mucee Ciankuru (2 acres) where she called me as her father. From Mucee Ciankuru the school bordered with the following people, Joshua Kiambi, Godfrey Kathumbi, Nyaga Kiratu, Kamai Kibariu, Joseph Iguna, Kijogi Mwithi, Mutiiria Macharia and Ben Muthui.

1993 April, I became chief of Kanjoro location whereby I worked for six good years. During this period there was no land dispute in Riamukuu Primary School.

Thanks.

6. PW2, John Gitonga Iguna told the court that he was a teacher. He told the court that the respondent, Isaiah Mutiri Mucee, was his classmate at Riamukuu Primary School. He also said that at one time he was the chairman of the Board of Management of the school. He said that the area belonging to the school was about 50 acres. He further told the court that he shared a boundary with the school. He testified that from 2016 Isaiah Mutiri Mucee had blocked a path that led to the school.

7. PW2, asked the court to adopt his witness statement filed on **20th March, 2018** as his evidence in this suit. His witness statement reads as follows:

LAND DISPUTE

I John Gitonga Iguna having schooled at the above named school (Riamikuu), and now serving as a teacher at Ntongoro Primary School (sic).

The land dispute between Isaiah Mutiri and Riamikuu Primary School started in the month of May in the year 2000, then Isaiah cultivated the land belonging to school. He was advised not to do so but ignored. The school reported the case to the area chief and gave the ruling showing the land belonged to the school. He was advised to obey the chief's ruling but ignored. He has done the same up to now and the school is seeking for your interference to save the school from people who want to grab even the remaining part. He has threatened some parents who wish to report to other authorities. He has taken the school to the court but the court has dismissed the case. It's my prayer that justice will be prevailed to bring back the 15 (fifteen) acres of land grabbed by Isaiah Mutiri.

8. PW3, and PW4 asked the court to adopt their witness statements, all filed on **20th March, 2018** as their evidence in this court. By and large their evidence was that the suit land belonged to Riamikuu Primary School and that the respondent had encroached upon the school land.

9. PW5, Zablon Mwangi, told the court that he was the Chief Land Adjudication Officer, Tharaka North and South sub counties. He produced a report dated 9th January, 2019 which he said he had made pursuant to this court's order. The said report is reproduced in full herebelow:

RE: REPORT ON GROUND VISIT – ELC PETITION CASE NO. 2 OF 2018

Your court order on ELC Petition Case No. 2 of 2018 dated 14th November, 2017 refers.

As per your court order, we visited the locus on 9th January, 2019. Those who were present included:-

- The Deputy County Commissioner – Tharaka Division
- The Assistant Deputy County Commissioner – Mukothima Division
- Administration Police Commander – Mukothima

- O.C.S. – Makutano Police Station
- Head teacher – Riamikuu Primary School
- Chairman of Board of Management – Riamikuu Primary School
- State Counsel, Petitioner
- District Land Adjudication/Settlement Officer, Tharaka
- Isaiah Muturi Mucee, Respondent and
- Six elders for each party

We went round the whole area the petitioner's elders claimed to be occupied by M.C.K. Riamikuu Primary School. The respondent on his part pointed out and indeed took us around the area he claimed was his. He also showed us the houses he has constructed in the disputed portion.

From this ground visit, the following facts were noted:-

1. The total acreage the petitioner claims to be occupied by the school is 49.14 acres.
2. The total area of the disputed portion is 28.09 acres
3. The total area that is not disputed is 21.05 acres.
4. The respondent and his family cultivates and utilizes 3 acres of the disputed area.
5. The respondent has constructed a house in the 3 acres which he utilizes. Another house is under construction.
6. The swampy area is growing and may soon take over a sizeable chunk of land being used as the school field.

ZABLON MWANGI

SUB-COUNTY LAND ADJUDICATION/SETTLEMENT OFFICER,

THARAKA SOUTH/NORTH SUB COUNTIES

10. During cross-examination by the respondent, DW5 strenuously defended his report. He was categorical that during his visit to the suit land when all parties were in the company of their chosen elders, six for each party, it was found that the respondent only occupied 3 acres and that the house the respondent's brother occupied was inside the school. The respondent was told by DW1 that all the security team, including the Deputy County Commissioner, the OCS and the AP were present when he undertook the measurements which formed the basis of his report.

11. DW1, Isaiah Muturi Mucee, asked the court to adopt his witness statement dated **2nd November, 2018 and filed on 6th November, 2018** as his evidence in this suit. The witness statement reads as follows:

RESPONDENT'S STATEMENT

- I am Isaiah Muturi Mucee the defendant herein. I come from Riamikuu village.
- My land borders to the west side; Riamikuu Primary School, ABC Church and Godfrey Njue. To the North side bordering Zablun Njagi, Gilson Muthee and Jesse Muriithi. To the side of east bordering Kijogi Mwithi and Ben Muthui. To the south bordering Miru Nduyo, Mutiiria Macheria, Iguna Rukangu Stanley Ntugi and Kireru Mwithi.
- I inherited the land from my father David Mucee Muturi now deceased. My father was one of those who gave the land to the school in 1977 to start Riamikuu Primary School. He gave them 6 acres. The Gataiigwa stream became the border between my land and school land (6 acres) where school and (sic) planted emphobia grass as boundary along this stream. They got land from other people.
- In 2012 the school started laying claim on my land and was preparing to trespass. I instructed my lawyer to write a demand letter, dated 30.7.2012 and they stooped (sic). Later in January, 2015 the school started laying claim on my land and I was called by the Assistant Chief, Ntoroni sub-location, at the school on 12.1.2015. When I arrived at the school the Assistance

(sic) chief prompted (sic) to deliver a ruling that I had trespassed to the school land and that I should have moved in 2004. I disagreed and I told him I did not know about it.

- I instructed my lawyer to write a demand letter, letter dated 12.1.2015 demanding against the Assistant Chief Ruling but he did not send the letter to my lawyer.
- Later on 27.2.2015 the three defendants; the Assistant Deputy County Commissioner, the District Education Officer, the Deputy County Commissioner – Tharaka North and Reverend in charge of Mukothima circuit of the Methodist church came to my land and prompted to fix a new boundary thereby further trespass (sic) to my land.
- The above acts amount to trespass. The boundary is clear and I have been farming on my part for many years and the school on its own part.
- The school is trespassing and should be stopped. The school is trespassing on my land.
- That is all I state.

DATED AT MERU THIS 2ND DAY OF NOVEMBER, 2018

12. DW1's evidence was more or less in consonance with his witness statement. He told the court that the ABC church was behind this suit as eventually it wanted the school to give it part of the land. Asked during cross-examination why he did not call any of his neighbours as his witness, he told the court that that was because he had disputes with the 10 neighbours. The court noted in its record that DW1 was being evasive. It is quite clear that the respondent has not only had a dispute with the school but had disagreements with his neighbours.

13. DW2, James Kathere Muthengi, gave garbled evidence and the court noted that he evaded answering pertinent questions. He could not explain inconsistencies in his written statement. He was categorical that he could not vouch for the veracity of the Respondent's written statement. At the close of his evidence, the respondent opted to not re-examine him.

14. DW3 told the court that the Respondent's father gave Riamukuu Primary School 6 acres of land and one Kamae gave the school 1 more acre. DW3, however avoided answering pertinent questions. He gave confusing evidence that before the respondent's father gave land to the school, the school had a bigger parcel of land than that it had been given by the respondent's father. He was unable to tell the court what features boarded the school land. He said that Riamukuu Primary School was 3 kilometres from his home. After trying to evade the question, he told the court that the respondent's home was 4 kilometres away from the school. Put to him by the petitioner's advocate that the respondent did not live near the school, he firstly refused to answer the question but later said that the respondent lived 2 kilometres away from the school. The respondent opted not to clear the inconsistencies in PW3's evidence by refusing to examine him.

15. DW4, Stephen Nyaga Kayau, told the court that though he was the headmaster of Riamikuu Primary School between 1982 and 1987, he did not know from where the school got its land. He owned up that his home was not near the school and that he did not know much about the suit land, including how much the respondent's father donated to the school. The respondent did not re-examine DW4 to clear grey issues.

16. DW5, Julius Nyaki Mioro told the court that the school had been given land by its neighbours. He was, however, categorical that he did not know how much land each of the neighbours gave to the school. He told the court that he would not know the distance from his home to Riamikuu primary school because he had not measured it. He was continuously evasive and also told the court that he did not know anything about kilometres. He told the court that the respondent did not stay near the school.

17. The parties filed written submissions

18. The Petitioner's written submissions are pasted in full herebelow without any alterations whatsoever, including correction of spelling or other mistakes, if they exist:

PETITIONER (sic) SUBMISSIONS ON THE PETITION

May it please your Lordship.

We submit for the petitioner as follows:

Your lordship, the petitioner filed the petition dated on 19th March, 201 and filed in court on 20th March, 2018 seeking reliefs as set out in paragraph F of the petition inter alia that the respondent is threatened public interest and that he has infringed on the petitioners right to land and education.

Your Lordship the respondent filed a replying affidavit to the petition on dated 9th April, 2018 and filed in court on 10th April, 2018 contesting the allegations filed in the petition.

Your Lordship, the Honourable honorable court gave directions that the petition be heard by way of oral evidence which was agreeable to all the parties. The petitioner and the respondent fled their respective list of witnesses and their statements.

Your Lordship parties further agreed to have a scene visit to the suit land which visit was done on 9th January, 2019 and report by the District Land Adjudication office Tharaka dated 9th January, 2019 and same was filed in court.

Your Lordship, at the hearing the petitioner called five witnesses who testified on his behalf.

Your Lordship, it was the testimony of all petitioner witnesses that the land in dispute belonged to the school (Riamikuu Primary School) offering basic education under the Ministry of Education in the Republic of Kenya. It was their testimony that the respondent was a pupil in that school and that his home is far away from the school. PW2 one John Gitonga Iguna told court that he was a classmate of the Respondent at Riamikuu Primary School in the same class. He stated that the respondent does not border the school.

Your Lordship, when the Land Adjudication officer testified as he produced the report as PW5 he stated that the respondent was encroached on the school land by crossing the road which separates the school and its neighbours. He stated that the land occupied by the school is 49.14 acres, disputed land as 28.09 acres and non-disputed land as 21.05 acres, he stated that the respondent only cultivated 3 acres of the disputed land. This is confirmed in his report. It was his testimony that he respondent had encroached on public land that belonged to the petitioner.

Your Lordship, the respondent also called five witnesses who testified on his behalf. He as among the five that testified. The respondent stated that he got his land from his father. He could not on cross examination state the location and size of the land he inherited.

Your Lordship, his witnesses were contradictory. DW3 stated that respondents home was about 2 kilometres way from the school. DW5 also stated that he respondent lived far from the school. The other witnesses DW1 (respondent) DW2 and DW4 stated that the respondent lived next to the school. Your Lordship, all petitioner witnesses including the adjudication officer testimony was similar to that of DW5 and DW3 who stated that the respondent lived far away from the school. It is our submissions that the respondent witnesses were contradictory and had falsehoods. Their evidence on the size of the land that they alleged was donated to the school was inconsistent. Some said 8 acres others 6 acres others had no idea of the donations.

Your Lordship, it is our submissions that public interest is at risk and its caused by the respondent. He wants to grab public land and further cause violation of right to education in an conducive environment to the pupils of Riamikuu Primary School. It is our submission that public land grabbing is a tendency that has cropped in our country and which we need to contain.

Your Lordship, there is a locas clasicas case of grabbing of school land in the famous Lang'ata Primary School land grabbing incident that occurred sometime back and which is judicial notice to every Kenyan.

We pray that this honourable court grant the prayers sought by the petitioner in order to protect public interest and further to prevent the respondent from further violating the constitutional rights (s) the petitioner as enshrined in the constitution.

Your Lordship, we pray that your do find that petitioner has proved their case and grant the prayers sought. This is our humble submission and prayer.

We so pray.

Dated at Meru this 11th day of July, 2019.

J. M. KIONG'O

SENIOR LITIGATION COUNSEL

FOR HON. ATTORNEY GENERAL &

DEPARTMENT OF JUSTICE

19. The Respondent wrongly headed his submissions as "Submissions On the Preliminary Objection Dated **10th April, 2018**". His submissions are pasted in full herebelow without any alterations whatsoever, including correction of spelling or other mistakes, if they exist:

SUBMISSION ON THE PRELIMINARY OBJECTION DATED 10TH APRIL 2018

May it please your honour.

I wish to submit on my own behalf on the preliminary objection dated 10th April 2018 as herein under;

I Isaiah Muturi Mucee this piece of land is mine which I inherited from my father. Besides this piece of land, nothing else that we (his sons) inherited from my father since neither goats, cattle nor any other kind of wealth except this piece of land before his demise. My father is one of the four pioneers who owned a piece of land in Riamikuu area. The others are Muthambi Mutuota, Njiata Mairucha and Kiratu wa Ncugu all of them having more than seventy acres of land (70) each.

During his days of life, my father lived in this piece of land, cultivating it and nobody complained about it not even those we bordered to. My father was a member of ABC Church during his days and he used to travel for a long distance to Nkondi to attend church services because that is where the church was situated. After the population increased, my father gave ABC Church a small

piece of land where the church was started and it is located there to date.

In 1976, there was an outbreak of measles, my younger sister(Rebecca) died of this disease and my father buried her near Gataigua stream in this land.

In 1977 when the need to start a school as a result of population Increase. There was no free land at Riamikuu area because of occupation by people (population increase), the elders approached my father and requested him to give the school some piece of land to get started. My father agreed and they set a boundary at Gataigua stream. Euphorbia tree and miura tree were planted and they exist even today.

To be sincere, out of twenty-one (21) acres of land that the school has and which I am not complaining about, around nineteen acres (19) are from my father's piece of land. So I hereby ask the court to be just and let the boundary remain as it was set at Gataigua Stream. The school should be contented with what it has.

Gataigua stream used to drain its water to a swamp which was there when the school was starting and it was about a quarter an acre (1/4). As a result of water from this stream and the floods of river Ruunkunu, the swamp increased in size occupying both part of the school and our land, So I ask the court to consider because the swamp is expanding if the school take our land we will not have a place to live. Before my father died, he had planted sugarcanes, and bananas in this our swamp which are still there even today so we ask the court to allow us to continue enjoying his sweet.

My father was a goat trader. Unfortunately, as he was on his usual business he met thugs on sides of Mwingi County who killed him and left us in this piece of land. After the death of my father we were left with mum, living and cultivating this piece of land, where I live with other brothers and cultivate until when she died in the year 2005 and she was buried at the centre of this piece of land. I didn't hear the school complain. I ask the court not to consider my poverty or the wealth of the school but to deliver justice just like king Solomon did in the bible in the case of the two women who had dispute on who was the true mother of the child. I want to tell the court that the report given by the land officer that we cultivate only three (3) acres is false because I personally, I cultivate more than eight acres (8) while my brothers Zabron Njagi cultivate more than five acres (5) Jesse Murithi cultivate more than four acres (4) my sister cultivate more than four acres (4) and Gibson Muthee cultivate more than five acres (5) and no road cut across this shamba as a boundary as stated by land officer.

I huge the court to come in this piece of land to see whom is giving the true information either me or the school. The evidences given by the school doesn't show clearly when the boundary that was there during the days of my father changed, because the boundary cannot change without awareness of the school's head teacher or those who boarder the school.

Other four government schools which are surrounding Riamikuu primary school which are not exceeding more than 3 Kms from Riamikuu primary school, none of them has big piece of land size like Riamikuu primary. Gatithini primary which started in the year 1971 has 7 acres of land, Rukani primary which also started in the year 1975 has also 5^{1/2} acres piece of land, Kioru primary school which started in the year 1979 and has 6 acres and Riamwanki Primary school which started in the year 1982 has 9 acres.

When my father was partitioning this piece of land (before his demise) I was given the part bordering Riamikuu primary school. I am a father of six children of whom three are in secondary school while others are in Riamikuu primary. In addition, I have other two orphans and am the care giver. They are also in secondary school. I am a peasant and solely depend on this piece of land to sustain and meet the basic needs of my family. If the school displaces me, it means that my hope and that of my children will be shattered. Some people, who border Riamikuu primary school, settled after my father David Mucee Muturi have more than 50 acres each.

I therefore ask the court to consider me as one of the schools benefactor and grant me justice. I as a member of Riamikuu primary school. If the school is in short of land for its development, it should organize a sit-down with all those who boarder it to discuss and donate a certain piece of land and not to grab mine because if this happens it means that I will not benefit or enjoy the fruit of the school which was the intention of my father when he was giving (lending) that piece of land.

I request the court to do its ruling just because I am a parent of the school to avoid the parties revolving around the court. This case has been to court for four years and months now. From Meru law court and Chuka High Court. Because of this issue, I have gone a lot of expenses and stress which lend me suffer from acid of expirer bacteria. The school witnesses have placed many false allegations but I have never been arrested according to their attention. Because the God who led King David of Israel in war has been with me.

Your honor, this is my humble submission and prayer.

I pray for the justice of the suit

If this case comes to an end I don't want the school to refund me anything. The lord God will pay me.

I so pray.

DATED at CHUKA this 21st DAY OF ..6.. 2019

a) Is the Petitioner entitled to the prayers sought in the Petition?

b) Who will bear the costs of this petition?

21. I do note that the respondent had filed Meru CM's Court Suit No. **164 of 2013** against Riamikuu Primary School and two other defendants. This suit was dismissed for non-compliance with section 30 of the Land Adjudication Act which requires a litigant to obtain the consent of the Land Adjudication Officer before filing a suit in circumscribed circumstances. This suit was dismissed on **18th October, 2017**. It is clear that the respondent never appealed. It is also clear that he did not initiate any other action. This inaction entitled the school to exclusive use of the suit land.

22. In Civil cases, litigants have to prove their cases on a balance of probability. In this case, the petitioner's witnesses, except PW1, gave credible evidence. PW1 gave garbled evidence. PW1 who was previously a teacher and a chief, later on explained to the court that he had an accident that culminated to a medical condition that led him to suffer from memory loss.

23. The evidence of the Respondent and his witnesses was riddled with inconsistencies. Indeed none of the evidence of the respondent's witnesses contained any meaningful probative value. Juxtaposing the respondent's evidence with that of the petitioner, I find that the evidence of the petitioner, on a balance of probability, debunks the evidence of the respondent and his witnesses.

24. I agree with the petitioner that the activities ascribed to the respondent place public interest at risk. If he is allowed to perpetrate his activities further, public land will be grabbed to the detriment of the public good. I opine that where rights and interests in land are not definitively determined, the public interest should be paramount. The respondent cannot be allowed to arrogate to himself authority to pronounce himself owner of land which is subject to the process decreed by the Land Adjudication Act. It is instructive that in his evidence, the respondent told the court that he could not call any neighbour as his witness because he had disputes with 10 of his neighbours. And yet these neighbours would help his case if he took his claim to the institutions that settle disputes under the Land Adjudication Act and the Land Consolidation Act.

25. Article 22(1) of the Constitution expands the *locus standi* of persons who can prosecute the threat of violation of rights. It reads as follows: "**Article 22(1): (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.**

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by-

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members."

26. I do find that the petitioner had locus to bring this petition to court even though the subject land falls within an adjudication section.

27. Article 23(3) of the Constitution states:

23(3) In any proceedings brought under Article 22, a court may grant appropriate relief including-

(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

28. In the interest of justice and in consonance with sections 1A, 1B and 3A of the Civil Procedure Act, I deem this Petition to be falling under the expanded *locus standi* provided for in Article 22 of the Constitution.

29. I find that the petitioner is entitled to some of the reliefs he seeks.

30. Judgment is entered for the petitioner in the following terms:

a) A declaration is hereby issued that the Respondent has threatened the interests of the public.

b) A declaration is hereby issued that the right to education for learners in Riamikuu Primary School has been threatened by the Respondent.

c) A declaration is hereby made that the right to own property by Riamikuu Primary School has been infringed upon by the Respondent.

d) A permanent injunction is hereby issued restraining the respondent, his servants or agents from trespassing on parcel No. 5, Ntoroni Adjudication Section.

e) A conservatory order is hereby issued against the respondent that he should not cause any further environmental degradation in parcel No. 5, Ntoroni Adjudication Section.

31. To the court, the respondent looks like a man of straw, a common peasant. As this petition evinces, as in favour the Respondent, a very thin veneer of public interest litigation (although as concerns the petitioner, it has strong public interest ramifications), I reluctantly decline to order the respondent to pay costs apposite to this petition. I also decline to order that the respondent should pay compensation for violation of constitutional rights of the petitioner.

32. Orders accordingly.

Delivered in open Court at Chuka this 13th day of November, 2019.

in the presence of:

CA: Ndegwa

Kiongo present for the Petitioner

Isaiah Muturi Mucee - Respondent

P. M. NJOROGI,

JUDGE.