



REPUBLIC OF KENYA



**Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) & 4 others v Management of Tea Hotel & 3 others; Onsongo t/a Hegeons Auctioneers (Interested Party) (Constitutional Petition E003 of 2022) [2024] KEELC 231 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 231 (KLR)

**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION E003 OF 2022**

**MC OUNDO, J**

**JANUARY 25, 2024**

**IN THE MATTER OF THE ALLEGED INFRINGEMENT OF AND/  
OR THREAT TO RIGHTS OR FUNDAMENTAL FREEDOMS UNDER  
ARTICLES 2, 3, 10, 19, 20 (1)-(4), 21, 22, 23, 24, 28, 40 (1) (A) (B), 41(1), 2  
(A)-(B), 47, 50(1), 159, 165(3), 258 AND 259 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE ALLEGED DENIAL, VIOLATION AND  
INFRINGEMENT OF AND/OR THREAT TO THE RIGHT TO PROPERTY**

**AND**

**IN THE MATTER OF ALLEGED DENIAL, VIOLATION AND INFRINGEMENT  
OF AND/OR THREAT TO THE RIGHT TO FAIR LABOUR PRACTICES**

**AND**

**IN THE MATTER OF ALLEGED DENIAL, VIOLATION AND INFRINGEMENT  
OF AND/OR THREAT TO THE RIGHT TO FAIR ADMINISTRATIVE ACTION**

**AND**

**IN THE MATTER OF ALLEGED DENIAL, VIOLATION AND INFRINGEMENT  
OF AND/OR THREAT TO THE RIGHT TO ACCESS TO JUSTICE**

**AND**

**IN THE MATTER OF THE ALLEGED DENIAL, VIOLATION, AND  
INFRINGEMENT OF AND/OR THREAT TO THE RIGHT TO FAIR HEARING**

**BETWEEN**

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS,  
HOSPITALS AND ALLIED WORKERS (KUDHEIHA) ..... 1<sup>ST</sup> PETITIONER**



SHASHIKANT KANJIBHAI PINDORIYA ..... 2<sup>ND</sup> PETITIONER  
KANJI DEVJI CHHABHADIA ..... 3<sup>RD</sup> PETITIONER  
CHANDRAKANTI DEVJI CHHABHADIA ..... 4<sup>TH</sup> PETITIONER  
RAVJI DEVJI CHHABHADIA ..... 5<sup>TH</sup> PETITIONER

AND

THE MANAGEMENT OF TEA HOTEL ..... 1<sup>ST</sup> RESPONDENT  
TEA HOTEL LIMITED ..... 2<sup>ND</sup> RESPONDENT  
LAND REGISTRAR, KERICHO LAND REGISTRY ..... 3<sup>RD</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT

AND

HEZRON GETUMA ONSONGO T/A HEGEONS  
AUCTIONEERS ..... INTERESTED PARTY

### RULING

1. Vide their Petition dated the 8<sup>th</sup> November, 2022, the Petitioners herein sought for the following orders;
  - i. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do pay general damages to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners for the illegal trespass visited on him and his land (sic)
  - ii. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, its servants or agents or otherwise howsoever from continued alienation, disturbing the original boundaries and trespass on the Petitioners' land parcel being L.R No. Kericho Municipality Block 4/295.
  - iii. A declaration be issued that the action of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents purporting to cancel the title deed to L.R No. Kericho Municipality Block 4/295 violated the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' rights to property guaranteed under Article 40(1) of the Constitution and Section 25 and 26 of the Land Registration Act.
  - iv. A declaration be issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purporting to continue to receive the proceeds of the land parcel L.R No. Kericho Municipality Block 4/295 after the sale and transfer of title to the said property to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners violated the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' rights to property in the form of mesne profit guaranteed under Article 40 (1) of the Constitution.
  - v. A declaration be issued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purported application resulting into judgement dated 18<sup>th</sup> January, 2022 leading to setting aside, sale and cancel the transfer of the said property and by ordering that the 3<sup>rd</sup> Respondent rectify the entries in the register on land parcel L.R No. Kericho Municipality Block 4/295 violated the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' right to property as provided under Article 40 of the Constitution of Kenya 2010 (sic).
  - vi. A declaration be issued that the action of the Employment and Labour Relations Court working in concert with all the other Respondents not to give written reasons to the Petitioners



in its ruling dated 18<sup>th</sup> January, 2022 as to why it assumed the jurisdiction of the Notice of Motion Application dated 26<sup>th</sup> April, 2021 on the land parcel L.R No. Kericho Municipality Block 4/295 violated the Petitioners' right to fair administrative actions guaranteed under Article 47(1) and (2) of the Constitution and Section 4(1), (2) (3) of the Fair Administrative Action Act, 2015.

- vii. A declaration be issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to invoke the public auction's procedural technicalities to cancel and set aside the sale of land parcel L.R No. Kericho Municipality Block 4/295 and order the 3<sup>rd</sup> Respondent to rectify the entries of the register in regards to the said parcel violated the Petitioners' right to access to justice without undue regard to procedural technicalities guaranteed under Article 48 and 159(b) of the Constitution.
  - viii. A declaration be issued that the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' employees, servants and agents readiness of destruction, fencing, partitioning and/or selling of the suit property land parcel L.R No. Kericho Municipality Block 4/295 while Civil Application No. E002 of 2022 and Civil Appeal Nos. E023 and E028 of 2022 are pending in the Court of Appeal Nakuru, threatens the right of the Petitioners to fair hearing in the Court of Appeal guaranteed under Article 50 of the Constitution and Section 87 of the Land Registration Act, 2012 (sic)
  - ix. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents actions in the Petitioners' parcel of land L.R No. Kericho Municipality Block 4/295 are in contravention of Articles 2, 3, 10, 28, 29, 31, 40, 42, 48, 60 (1) (b) and 69 of the Constitution of Kenya and are therefore illegal hence null and void.
  - x. An Order for General damages be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at court's rate from the date of the issuance of the title of the suit property was transferred being 19<sup>th</sup> December, 2019 to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners (sic)
  - xi. An Order for exemplary damages be and is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for violating various provisions of the Constitution with impunity to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners.
  - xii. An Order for payment of mesne profit by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents being the proceeds from L.R No. Kericho Municipality Block 4/295 to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners from the date of the issuance of the title on 19<sup>th</sup> December, 2019 to the date of the Judgement of the court.
  - xiii. An Order do issue for remittance of the balances being the proceeds over sale of L.R No. Kericho Municipality Block 4/295 to be deposited in court less all payments and incidental costs and expenses remitting the net thereof.
  - xiv. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents hereby be directed to bear the costs of this Petition jointly and severally.
  - xv. Interest on i, ii, iii, iv, v, vi, vii, viii above from the date of judgement until the date of payment in full (sic).
  - xvi. That this Honorable Court be pleased to grant such further order as may be just and appropriate.
2. The Petitioners' Petition, was supported by the Affidavit sworn by Ruth Ngelechei, the 1<sup>st</sup> Petitioner's Secretary General to the effect that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had encroached over L.R No. Kericho Municipality Block 4/295 portioned out, fenced off part of it and stationed a heavy earth moving machinery and excavated and destroyed the fence on the Kericho-Nakuru Highway side and



- commenced erecting a metal fence with a bee hive of activities going into late night forging in for more illegal constructions on the said parcel.
3. That the genesis of the instant matter emanated from a claim by the 1<sup>st</sup> Petitioner's members to be paid the agreed amount of Kshs. 51, 463,694.30 pursuant to a directive by Kericho Employment and Labour Relations Court which amount was to be recovered from the sale of L.R No. Kericho Municipality Block 4/295 (the suit property) as proposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  4. That subsequently, Hegeons Auctioneers, the Interested Party herein, conducted the auctioning of the suit property on 24<sup>th</sup> January, 2019 whereby the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners were declared the highest bidder at Kshs. 110,000,000/= after which the transfer of the suit property to the said 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners was effected vide the Court's Orders of 4<sup>th</sup> November, 2019 and 20<sup>th</sup> November, 2019. That resultantly, the matter was handled to its logical conclusion on 3<sup>rd</sup> April, 2019 via Court's Ruling that paved way for the execution of necessary documentation after which the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners were issued with the Title Deed to the suit property on 19<sup>th</sup> December, 2019.
  5. That aggrieved by the above proceedings, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proceeded to the Court of Appeal in Nyeri, sitting in Nairobi, for Stay Orders, which application was dismissed vide court's Ruling dated 29<sup>th</sup> January, 2019. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents then filed a similar application before the Employment and Labour Relations Court at Nakuru seeking to set aside the sale, transfer and that the 3<sup>rd</sup> Respondent be compelled to cancel the alleged illegal entries on the suit property. That vide a Ruling dated 3<sup>rd</sup> April, 2020 Hon. Justice Monica Mbaru dismissed the 1<sup>st</sup> and 2<sup>nd</sup> Respondents applications dated 9<sup>th</sup> March, 2019 and 16<sup>th</sup> December 2019 hence confirming the transfer of the suit property to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.
  6. That subsequently, on 21<sup>st</sup> April, 2021, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents made another application before the Employment and Labour Relations Court at Nakuru with the same prayers of seeking to set aside the sale, transfer and that the 3<sup>rd</sup> Respondent be compelled to cancel the alleged illegal entries on the suit property. That vide a Ruling dated 18<sup>th</sup> January, 2022 the Hon. Justice Hellen Wasilwa cancelled the entries on the suit property despite the Petitioners challenging the court's jurisdiction with regards to cancellation of transfers to land which was a preserve of the Environment and Land Court.
  7. That consequently, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners filed a Notice of Appeal to stay the execution of the said ruling but the Court of Appeal was yet to deliver a ruling on the said application. However, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents took advantage of the absence of any conservatory or stay orders in place and in haste executed the orders issued by the Employment and Labour Relations Court in its ruling dated 18<sup>th</sup> January, 2022.
  8. That accordingly, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners were apprehensive that the Respondents will dispose of and/or destroy the suit property hence denying the Petitioners' the right to be heard in the Court of Appeal and thus threatening, violating and/or infringing their right to property as guaranteed under Article 40 (1) (a) (b) of the Constitution, Right to fair Labour Practices to the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners as guaranteed under Article 48 of the Constitution and right to fair hearing as guaranteed under Article 50(1) of the Constitution.
  9. The Respondents did not file any response.
  10. On the 6<sup>th</sup> December, 2022, directions were issued to the effect that the Petition be disposed of by way of written submissions, wherein only the Petitioners and the Interested Party complied which would mean in effect that the Petition was unopposed and therefore I shall have to determine it on its merit.



## Petitioners' Submissions.

11. The Petitioners summarized the factual background of the matter at length before framing their issues for determination as follows:
  - i. Whether the cancelation of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' title to the land parcel L.R No. Kericho Municipality Block 4/295 by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents working in concert with the 3<sup>rd</sup> Respondent violated or threatens to violate the national values and principles provided for under Article 10(2) (a) (b) of the [Constitution](#) to wit the rule of law, human rights, human dignity and good governance.
  - ii. Whether the development of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners' land parcel number L.R No. Kericho Municipality Block 4/295 by fencing off and partitioning by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without waiting for the conclusion of the Civil Application No. E022 of 2022 and Civil Appeal Case Nos E023 and E028 of 2022 violated or threatened to violate Petitioners' right to property guaranteed under Article 40 (1) of the [Constitution](#) and Section 25 of the [Land Registration Act](#), 2012.
  - iii. Whether the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to continue receiving the proceeds of the land parcel L.R No. Kericho Municipality Block 4/295 after the sale and transfer of the title to the said property to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners violated the said Petitioners' right to property in the form of the mesne profit guaranteed under Article 40(1) of the [Constitution](#).
  - iv. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in concert with all other Respondents purported to set aside sale and cancel the transfer of the said property by ordering the 3<sup>rd</sup> Respondent to rectify the entries in the register on land parcel L.R No. Kericho Municipality Block 4/295 violated the rights of the 1<sup>st</sup> Petitioner's members to fair labor practices guaranteed under Article 41(2) (a) and (b) of the [Constitution](#).
  - v. Whether not giving any written reason to the Petitioners by the Employment and Labour Relations Court as to why it assumed jurisdiction to the Civil Application No. 26 of 2021 on the land parcel L.R No. Kericho Municipality Block 4/295 violated the Petitioners' right to fair administrative actions guarantee under Article 47(1) and (2) of the [Constitution](#) and Section 4 (1) (2) (3) of Fair Administrative Actions Act, 2015.
  - vi. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in concert with all the other Respondents invoked the auctioning procedural technicalities to cancel and set aside the sale of land parcel L.R No. Kericho Municipality Block 4/295 and rectification of the entries of the register violated the Petitioners' right to access to justice without undue regard to procedural technicalities guaranteed under Article 48 and 159 (2) (b) of the [Constitution](#).
  - vii. Whether the rectification of the entries of the land Parcel L.R No. Kericho Municipality Block 4/295 by the 3<sup>rd</sup> Respondent in concert with all other Respondents in readiness of destruction and/or selling of the said property while an appeal is pending in the Court of Appeal, violated or threatened the Petitioners' right to a fair hearing in the Court of Appeal guaranteed under Article 50 of the [Constitution](#) and Section 87 of the [Land Registration Act](#), 2012.
  - viii. Who should bear the costs of the Petition?
12. On the first issue for determination, the Petitioners placed reliance on the provisions of Articles 2, 10, 21(1) to submit that the rule of law and good governance principles required that every state organ or officer acts only within the powers conferred on them by and in accordance with the [Constitution](#).



13. On the second issue for determination, the Petitioners relied on the provisions of Article 40(1) of the Constitution, Section 25 and 59 of the Land Registration Act, 2012 on the right to acquire property, indefeasibility of a title and rectification of the register to submit that with regards to rectification by cancellation or amendment of the registration of a title as defined under Section 2 of the Land Registration Act, the Environment and Land Court as opposed to the Employment and Labour Relations Court was the court clothed with the power to order such rectification of the register. Further that the Respondents neither proved fraud in their application to have the Petitioners' title to land parcel L.R No. Kericho Municipality Block 4/295 cancelled nor did they prove that the Petitioners had knowledge and were part of fraud or mistake.
14. On the third issue for determination, the Petitioners placed reliance on the definition of mesne profit from the Black's Law Dictionary, 9<sup>th</sup> Edition as well as the decided case in *Park Towers Ltd v John Mithamo Njika & 7 others* [2014] eKLR to reiterate that the suit property was transferred and registered in the names of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners. That subsequently, the said Petitioners had a right to the proceeds yielded by the suit property between 16<sup>th</sup> December, 2019 and 18<sup>th</sup> January, 2022 when the title to the suit property remained in their names.
15. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents having trespassed and continued to receive the proceeds from the suit property, the Petitioners were entitled to a claim mesne profit since the act of trespass was enough to give rise to such claim without prove of any damage.
16. In regard to the fourth issue for determination, the Petitioners relied on the Provisions of Article 41 of the Constitution on the rights to fair labour practices to reiterate that the 1<sup>st</sup> Petitioner moved the Employment and Labour Relations Court claiming for the monies owed to its members as salary arrears and terminal dues to the retirees being a claim of Kshs. 51, 463, 694.30/= . That since the 1<sup>st</sup> and 2<sup>nd</sup> Respondents could not pay the decretal amount to the members of the 1<sup>st</sup> Petitioner, the parties agreed that the suit property herein be sold by way of Private Treaty whereby the said suit property was attached and auctioned to realize the decretal amount pursuant to the parties' agreement.
17. That consequently, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners acquired the suit property pursuant to an auction on 24<sup>th</sup> January, 2019 resulting in the rights of the 1<sup>st</sup> Petitioners members to fair labour practices being realized, only for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to challenge the procedure on how the suit property was auctioned and by so doing tried to circumvent the provisions of Article 41 of the Constitution since they had not given an alternative on how the decretal amount of Kshs. 51,463,694.30/= would be realized. That accordingly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had violated and or threatened to violate the Petitioners' right to Fair Labour Practices.
18. On the fifth issue for determination, the Petitioners placed reliance on the provisions of Article 47 of the Constitution to reiterate that notwithstanding the Petitioners' challenge of its jurisdiction, the Employment and Labour Relations Court entertained Civil Application No. 26 of 2021 and proceeded to deliver a ruling dated 18<sup>th</sup> January, 2022 without giving written reasons to the Petitioners as to why it assumed the jurisdiction of the Environment and Lands Court. Therefore, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in concert with the said Employment and Labour Relations Court violated the Petitioners' right to fair administrative action by not giving written reasons.
19. In regards to the sixth issue for determination, the Petitioners placed reliance on the provisions of Article 48 and 159 of the Constitution as well as the equity maxim of "Equity looks on that as done which ought to have been done" to submit that despite the above provisions, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in concert with all other Respondents sought to defeat the substance of the Petitioners' claim of Kshs. 51,463,694.30/= by invoking procedural technicalities. That by the Employment and



Labour Relations Court invoking the auction procedure to cancel and set aside the sale of the suit property and directing the 3<sup>rd</sup> Respondent to rectify the register entries in regards to the suit property, it violated the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents right of access to justice on their hard-earned money used to purchase the suit property as well as the 1<sup>st</sup> Petitioner members' statutory benefits that were protected by the law. Consequently, the Respondents violated and/or threatened to violate the Petitioners' right of access to justice without undue regard to procedural technicalities.

20. On the seventh issue for determination, the Petitioners relied on the Provisions of Article 50 of the Constitution and Section 87 of the Land Registration Act, 2012 to submit that they had a right to be impartially heard by the Employment and Labour Relations Court in ELRC No. 10 of 2016 dated 24<sup>th</sup> April, 2021 by the application of law but the said Employment and Labour Relation Court did not apply the provisions of law especially on the assumption of the jurisdiction hence condemning them unheard. Further that the Petitioners had moved the Court of Appeal vide Civil Application No. E002 of 2022, Civil Appeal E023 of 2022 and Civil Appeal E028 of 2022 (purchasers appeal) seeking to stay and challenge the ruling of the Employment and Labour Relations Court sitting in Nakuru hence the Petitioners had the right to be heard by the Court of Appeal on their Appeal filed. That resultantly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in concert with all other Respondents violated the Petitioners' right to fair hearing before a court.
21. As to who should bear the costs of the Petition, the Petitioners placed reliance on the Provisions of Section 27 of the Civil Procedure Act and the decided case of Director of Public Prosecutions vs. Michael Sistu Mwaura Kamau & 4 others [2020] eKLR to submit that this being a Petition on an individual's rights which had been violated, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents should bear the cost of the same. treaty

### **Interested Party's Submissions**

22. The Interested Party also summarized the factual background of the matter before framing its issues for determination as follows;
  - i. Whether the sale of Block 4/295 was above board
  - ii. Whether the rights of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners to property, fair labour practices, fair administrative actions, access to justice and fair hearing were infringed by the Respondents.
  - iii. Who bears the cost of the suit.
23. On the first issue for determination, the Interested Party answered in the affirmative and submitted that on 23<sup>rd</sup> August, 2018, it caused the advertisement on the Star Newspaper for the sale of the suit property in which the date of the Public Auction on the said advert was 30<sup>th</sup> August, 2018, whereby the auction took place as scheduled but they could not find bidders. That subsequently, the Interested Party caused the suit property to be advertised a second time in the Star Newspaper on 9<sup>th</sup> January, 2019 and that the two adverts met the legal requirements as it stated the details of the property, the venue of the auction and the time. That the property prior to the auction as required by Rule 15 of the Auctioneers Rules vitiates an auction and that such an omission was just a mere irregularity that did not invalidate a sale conducted through a public auction as was held in the decided case of Eric Odindo v National Bank of Kenya Limited & 2 Others [2008] eKLR.
24. On the second issue for determination, the Interested Party while relying on the provisions of Articles 40, 41, 47, 48, 50 and 159 of the Constitution, Section 25, 26 and 59 of the Land Registration Act, 2012 submitted in the affirmative and reiterated the Petitioners' submissions on the subject as summarized above.



25. As to who should bear the cost of the Petition, the Interested Party placed reliance on Section 27 of the *Civil Procedure Act* to submit that the Petitioners having labored to institute the instant Petition, they should be awarded costs.

#### **Determination.**

26. I have anxiously considered the above captioned Petition, the prayers as sought there to, the submissions the law, the authorities cited and the fact that there was no response to the said Petition by the Respondents.
27. I have further considered that through a Private Treaty, L.R No. Kericho Municipality Block 4/295 (the suit property herein), where the 2<sup>nd</sup> Respondent is situate, was sold to the highest bidders being the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners herein, on 24<sup>th</sup> January, 2019 in an auction conducted by Hegeons Auctioneers, the Interested Party herein and in redemption of amounts owing to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's workers, the 1<sup>st</sup> Petitioner's members herein. That thereafter, there had been a transfer of the suit property to the said 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners and a Title Deed issued on 19<sup>th</sup> December, 2019.
28. I am also aware of the reported case in *Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEHIA) v Management of Tea Hotel & 4 others; Yas Angwan Holdings Limited & another (Proposed Interested Parties)* [2022] eKLR where in an application dated 26<sup>th</sup> April, 2021, filed before the Employment and Labour Relations Court in ELRC No. 10 of 2016, the 2<sup>nd</sup> Respondent herein sought amongst other prayers, to set aside the purported sale and eventual transfer of the suit property herein, a mandatory injunction restraining the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners from dealing with the said suit property as well as an order of mandatory injunction compelling the Chief Land Registrar, Kericho to cancel the entries made on the said suit property. That in a ruling delivered on the 18<sup>th</sup> January 2022, the said Employment and Labour Relations Court had issued orders of mandatory injunction compelling the Chief Land Registrar, Kericho to cancel the entries made on the suit land. The court also set aside the purported sale and eventual transfer of the suit property to 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Petitioners.
29. Dissatisfied with the Employment and Labour Relations Court's decision, the 1<sup>st</sup> Petitioner herein filed an Application before the Court of Appeal seeking stay of execution of the ruling and orders therein which application was, vide the Court of Appeals' ruling of 17<sup>th</sup> March 2023 granted. Also granted, were orders of a stay of further proceedings in ELRC Cause No 10 of 2016, pending the hearing and determination of an intended Appeal. (See *Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) v Tea Hotel Limited & 3 others* (Civil Application E002 of 2022) [2023] KECA 320 (KLR) (17 March 2023) (Ruling))
30. Having considered the history of this matter and the above captioned analysis of the same, and in view of the fact that there is pending before a superior Court a determination touching on the subject matter which is intertwined with the present Petition, it would not be prudent of me to determine this Petition at this time. I therefore find that the ultimate directions to issue, which I now issue, is to arrest the delivery of the Judgment herein, pending the outcome of the decision by the Court of Appeal in the 1<sup>st</sup> Respondent's intended appeal.
31. It is so ordered.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 25<sup>TH</sup> DAY OF JANUARY 2024**



**M. C. OUNDO**  
**ENVIRONMENT & LAND – JUDGE**

