



**M'Mugambi & 4 others v Chairman Meru Central District Land Disputes Tribunal & 2 others; Munga & another (Interested Parties) (Environment and Land Constitutional Petition E002 of 2023) [2024] KEELC 249 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 249 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E002 OF 2023**

**CK NZILI, J**

**JANUARY 24, 2024**

**IN THE MATTER OF ARTICLES 20 (2), 21(1) AND (2), 23(1),  
40(2) AND 165 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT  
OF THE PROPERTY RIGHTS OF THE PETITIONERS**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012**

**AND**

**IN THE MATTER OF THE ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011**

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990 (REPEALED)**

**AND**

**IN THE MATTER OF MERU CENTRAL DISTRICT  
LAND DISPUTES TRIBUNAL CASE 42 OF 2011**

**AND**

**IN THE MATTER OF MERU CM'S LAND DISPUTES TRIBUNAL CASE NO. 77 OF 2011**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULES 2013**

**BETWEEN**

**FRANCIS NGONDOKI M'MUGAMBI ..... 1<sup>ST</sup> PETITIONER**



FESTUS MWENDA MURIUKI ..... 2<sup>ND</sup> PETITIONER  
JOSEPH KATHUNKUMI KIRIINYA ..... 3<sup>RD</sup> PETITIONER  
DOUGLAS KOOME KITHURE ..... 4<sup>TH</sup> PETITIONER  
EZEKIEL MWIRIGI NKUMBUKU ..... 5<sup>TH</sup> PETITIONER

AND

CHAIRMAN MERU CENTRAL DISTRICT LAND DISPUTES  
TRIBUNAL ..... 1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATES MERU LAW COURTS ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT

AND

EDWARD MUNGA ..... INTERESTED PARTY  
STEPHEN MUTWIRI MUGAMBI ..... INTERESTED PARTY

### JUDGMENT

1. The 1<sup>st</sup> petitioner described himself as a registered owner of LR No. Abothuguchi/Kariene/1153. He averred that he acquired the land as a gift from his late father, subdivided into LR No's. 4912 and 4913, and the latter re-subdivided into LR No. 5774, 5775, and 5776. The 1<sup>st</sup> petitioner averred he sold and transferred the re-subdivided portions to the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners as LR No's Abothuguchi/Kariene/5775 and 5774, respectively.
2. Further, the 4<sup>th</sup> and 5<sup>th</sup> petitioners described themselves as bonafide lessees of  $\frac{3}{4}$  and  $\frac{1}{4}$  of an acre from the 1<sup>st</sup> petitioners LR No. Abothuguchi Kariene/5776, respectively.
3. It was averred that on 12.9.2011, the 1<sup>st</sup> respondent admitted, heard, and determined a dispute lodged before it and registered as Meru Central District LDT No. 42 of 2011, signed by five members of the Tribunal on 3<sup>rd</sup> and 5<sup>th</sup> October 2011. The petitioners averred the award was forwarded to the 2<sup>nd</sup> respondent, who registered it as Meru CMCC LDT Case No. 50 of 2011, read the award on 9.12.2011 and adopted it as a decree of the court without jurisdiction.
4. The petitioners averred that the 1<sup>st</sup> and 2<sup>nd</sup> interested parties made efforts to implement the court decree by visiting the land in the presence of the county surveyor on 9.8.2022.
5. More so the petitioners averred their rights under Article 40 of the *Constitution* were violated since on 30.8.2011, the 1<sup>st</sup> respondent had ceased to exist after Section 30 of the *Environment and Land Court Act* repealed the *Land Disputes Tribunal Act* No. 8 of 1990, and therefore, any action taken by the 1<sup>st</sup> & 2<sup>nd</sup> respondents under that Act was a nullity and void, which the 1<sup>st</sup> & 2<sup>nd</sup> interested parties cannot derive benefits from the 1<sup>st</sup> petitioners land.
6. Further the petitioners averred that the 1<sup>st</sup> and 2<sup>nd</sup> respondents entertained or adjudicated upon proceedings without jurisdiction for as of 30.8.2011, the law had ceased to exist, and therefore, the 2<sup>nd</sup> respondent could not adopt an award of a non-existent entity.



7. The petitioners termed the decision patently, illegal, null, void, and any decree from the 2<sup>nd</sup> respondent a violation of the petitioner's right, to have their property subjected to a decision by a non-existent entity. The petitioners prayed for a declaration that as of 12.9.2011, the Land Disputes Tribunal Act was in operation since the Environment and Land Court Act had commenced operation on 30.8.2011; declaration that the proceedings, award and decree from the tribunal case was illegal, null, and void for want of jurisdiction, declaration there was an infringement to the petitioners right to due process of the law; certiorari to quash the decision and decree of the proceedings and order of prohibition against the implementation and enforcement of the award and the subsequent decree of the 2<sup>nd</sup> respondent.
8. In support of the petition, the petitioner relied on the supporting and supplementary affidavits of Francis Ngondoki M'Mugambi sworn on 14.7.2023 and 3.11.2023 on his behalf and that of the 2<sup>nd</sup> – 5<sup>th</sup> petitioners. Briefly, the 1<sup>st</sup> petitioner averred that he was gifted LR Abothuguchi/Kariene/1153 by his father, who transferred it on 9.9.2010 and acquired a title deed on 27.1.2011. He attached the title deed as annexure FNM "1". The 1<sup>st</sup> petitioner averred he took possession of the land immediately, and in September 2011, the 1<sup>st</sup> respondent received a dispute from his father to subdivide the land, which proceedings he did not participate, in but distributed his land as per the decision dated 3.10.2011 and a forwarding letter dated 24.10.2011. He attached it as annexure FNM "2".
9. The 1<sup>st</sup> petitioner averred the award was forwarded to the 2<sup>nd</sup> respondent and was read on 18.11.2011, made an order and eventually sought through another order and letter for the police assistance, which was communicated by letter to the chief dated 8.6.2023 all, attached as annexures marked FNM "3", - "7" respectively.
10. The petitioners averred on oath that the award was null and void and contrary to Article 162 (2) (b) of the Constitution and Sections 30 of the Environment & Land Court Act since the Land Disputes Tribunal had ceased to exist after the Land Dispute Tribunal Act was repealed. Therefore, the petitioners averred that the respondents were engaged in unconstitutional activities.
11. Further, the 1<sup>st</sup> petitioner averred that while the said was happening, he lawfully subdivided LR No. 4913 into three portions as per the mutations forms annexed as FNM "9", transferred LR No. 5774 and 5775 to the 2<sup>nd</sup> & 3<sup>rd</sup> petitioners, who acquired a title attached as FNM "10" and "11" and was left with LR No.5776 as per attached title as annexure FNM "13". The 1<sup>st</sup> petitioner averred he had leased  $\frac{3}{4}$  and  $\frac{1}{4}$  of LR No. 5776 to the 4<sup>th</sup> & 5<sup>th</sup> petitioners for 15 and 10 years, respectively, as per attached leases as annexure FNM "14" & "15".
12. The 2<sup>nd</sup> respondent opposed the application through a replying affidavit sworn by Stephen Omuse, the senior court administrator. It was averred that an action for land recovery could not be brought after the expiration of 12 years; hence, the petition was time-barred. Further, it was averred that the 2<sup>nd</sup> respondent was a court of competent jurisdiction when it adopted the award, and thus its decision should be upheld as conclusive and final, more so when the aggrieved party by the decision did not exercise his right of appeal and should therefore not relitigate the matter by way of a petition. He averred the petition as unfit under the law and falling short of the standard of proof in a constitutional petition, given there were no particulars pleaded on how the constitutional rights of the petitioners had been violated. Lastly, the 2<sup>nd</sup> respondent termed the petition as brought with inordinate delay, and since equity only aids the vigilant but the indolent, the petition should be dismissed.
13. In addition, the 1<sup>st</sup> interested party opposed the petition by a replying affidavit sworn on 30.10.20203. He averred that the 1<sup>st</sup> petitioner had tagged along the other petitioners to magnify and add weight to the petition. It was averred that the 1<sup>st</sup> petitioners used crooked and criminal means to swindle their father of the whole family land recorded under his name at the expense of other family members.



14. The 1<sup>st</sup> interested party averred there was no such gift by his father to the 1<sup>st</sup> petitioner as alleged other than merely conning him, hence the reason his late father filed the land dispute tribunal case, which, as per annexure FNM "2" the 1<sup>st</sup> petitioner attended yet he is dishonestly denying the fact.
15. The 1<sup>st</sup> interested party termed the petition as incompetent since Mugambi Mburugu (deceased), was not sued as a party through a legal representative, for he was the one who participated in the land dispute tribunal proceedings. Additionally, the 1<sup>st</sup> interested party averred that the 2<sup>nd</sup> respondent was immune from being sued in judicial proceedings while discharging its mandate. The 1<sup>st</sup> interested party averred there was no appeal preferred against the decision by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, yet the petition was coming 12 years later when the decision was caught up by time to execute a decree.
16. Similarly, the 1<sup>st</sup> interested party described the 1<sup>st</sup> petitioner as a fraudster who stole family land and was now using procedural technicalities to deprive family members of their birth rights, yet he was in occupation of the land, unlike the 1<sup>st</sup> petitioner, together with the 2<sup>nd</sup> interested party. The 1<sup>st</sup> interested party termed the award as a decree validly issued by a competent court and could not be deemed unconstitutional or issued by courts without jurisdiction.
17. In a supplementary affidavit dated 3.11.2023, the 1<sup>st</sup> petitioner insisted the gift by his late father of the original land was legally and procedurally affected on 9.9.2010. He denied attending the land dispute tribunal case, which he alleged was an attempt to grab his land.
18. The 1<sup>st</sup> petitioner averred that after his father passed on, the 1<sup>st</sup> interested party was appointed a legal representative of the deceased estate as per annexure marked FNM "16" and a limited grant was issued. He averred that the 2<sup>nd</sup> respondent was sued for acting without jurisdiction, which is properly before the court as it exercises its supervisory jurisdiction on void orders or proceedings contrary to the ends of justice.
19. With the concurrence of the parties, this petition was canvassed by way of written submissions. The petitioners relied on written submissions dated 30.11.2023, where they isolated seven issues for determination, namely:
  - a. Whether Section 30 (1) of the [Environment and Land Court Act](#) saved the jurisdiction of the Land Dispute Tribunal Act.
  - b. Whether a land dispute could be filed with the Land Dispute Tribunal post 30.8.2011.
  - c. Whether the subsequent filing, hearing and decision by the 1<sup>st</sup> respondent post 30.8.2011, was null and void.
  - d. Whether the filing of the decision of the 1<sup>st</sup> respondent with the 2<sup>nd</sup> respondent and the alleged adoption of the award was illegal, null, and void.
  - e. Whether the petitioner's right to property as per Article 40 of the [Constitution](#) was violated.
  - f. Whether orders of certiorari ought to be issued.
  - g. Whether the order of prohibition ought to be issued.
20. On issues (a), (b), (c), and (d), the petitioners submitted the words of section 30 (1) that the [Environment Land Court Act](#) did not save or transition the jurisdiction of the Land Dispute Tribunal Act No. 18 of 1990 as set out in Section 3 thereof. The petitioners submitted that Section 31 of the [ELC Act](#) completely repealed the Land Disputes Tribunal Act, and therefore, no dispute could be filed with the Tribunal after 30.8.2011. Reliance was placed on [Christopher Dennis Wilson v Registrar of Companies and others](#) (2019) eKLR citing with approval [S.K Macharia and another v KCB Ltd](#) (2012)



eKLR on retrospective effect or operation of statutes, *Co-operative Bank of (K) Ltd v Yator* (KECA) 95 (KLB) 22 October (2021) Judgment, on the effect of repealed statutes unless otherwise expressly stated; *Republic v. Chairman Uasin Gishu Land Disputes Tribunal & another exparte John Arusei Kipto & 13 others* (2014) eKLR that an award made after the repeal of the Act was not recognized in law; *Owners of Motor Vessel Lillian "S" v Caltex Oil (K) Ltd* (1989) eKLR, that jurisdiction must be acquired before judgment.

21. On whether the claim was time-barred, the petitioners submitted, guided by *Calvin Ouma Magare & others v Director Public Prosecution & 20 others* (2022) eKLR, that there was no question of limitation of time regarding the allegation of breach of human rights and fundamental freedom.
22. On knowledge of the outcome of the land dispute tribunal award and decree, the petitioners submitted the respondents, and the interested parties have not proved service of the Land Disputes Tribunal suit and other pleadings upon the 1<sup>st</sup> petitioner since the contents of paragraph 5 of the supporting affidavit had not been rebutted or contradicted, that he only came to know of the award after receiving the letter dated 8.6.2023.
23. On issue (e) the petitioners submitted that they have set in detail the particulars of violation with precision in paragraphs 27-31 of the petition and that the issue of jurisdiction of the 1<sup>st</sup> respondent jurisdiction flew from Article 162 (2) (b) of the *Constitution* and the *ELC Act* which came into operation on 30.8.2011. Therefore, the petitioners submitted that entertaining a dispute when the 1<sup>st</sup> respondent was non-existent was unconstitutional, and the 1<sup>st</sup> and 2<sup>nd</sup> respondents abrogated unto jurisdiction they did not possess, violating the petitioner's right to land under Article 40 of the *Constitution*. Reliance was placed on *Evelyn College of Design Ltd v Director of Children's Department and another* (2013) eKLR
24. On infringement of the right to land, the petitioners submitted their land was taken away and given to the interested parties without any basis in the *Constitution* or law since the 1<sup>st</sup> respondent was non-existent when it purported to deliver its decision on 5.10.2011. On issue numbers (f) and (g), the petitioners submitted Article 23 (3) (f) of the *Constitution*, provides that an order of judicial review is one of the remedies a court can issue in proceedings brought under Article 22 thereof. In this case, since the 1<sup>st</sup> respondent acted without jurisdiction, a prayer for certiorari and prohibition could be issued. Reliance was placed on the *Republic v Public Administration Review Board and another* (2020) eKLR, on the proposition that a decision tainted with illegality, irrationality, and procedural impropriety was amenable to judicial review.
25. The respondents by written submissions dated 6.12.2023 isolated four issues for the court's determination. If the petition meets the constitutional threshold, it was submitted there were no discernable constitutional issues to warrant its admission and adjudication before this court. Reliance was placed on *Republic v Paul Kihara Kariuki AG & 3 others Exparte Law Society of Kenya* (2020) eKLR for the petition related to the ownership and cancellation of title, which falls under a statute and not the *Constitution*, under the enforcement of the Bill of Rights.
26. The respondents submitted the petition herein was an attempt to appeal against the decision of the 2<sup>nd</sup> respondent by circumventing the existing tenets on appeals, which the petitioners should have appealed within the requisite timelines, hence contravening the principle that litigation must come to an end.
27. On jurisdiction, the respondents submitted by dint of Section 31 of the *ELC Act* the 1<sup>st</sup> respondent was a non-existing entity incapable of being sued, but without prejudice to the foregoing, it had jurisdiction then under Section 30 of the ELC Act. The respondents submitted that the award was made 13 days



past the commencement date of the ELC Act, and going by Section 3 of the Land Disputes Tribunal Act, a decision could not be made within 13 days, meaning that the claim was pending before the Land Disputes Tribunal, which was subject to Section 30 of the repealing Act. Reliance was placed on Christopher Wafula Mudoto's v Richard Lordia Lokero (2019) eKLR on the proposition that under Section 23 (3) of the Interpretation of and General Provision Act, the repeal of the Land Disputes Act did not affect its previous operations or anything done under it nor affect a right, privilege, obligation or liability acquired, accrued or incurred under it unless a country intention appeared and that the ELC Act did not convey a contrary intention.

28. On whether the 2<sup>nd</sup> respondent's decision was illegal, null, and void for want of jurisdiction, the respondents submitted that even after the repeal of the Land Disputes Tribunal Act, the 2<sup>nd</sup> respondent was seized of jurisdiction until the ELC's were operationalized after 5.11.2012 when the first batch of judges was sworn in as held in Republic v Cabriman Uasin Gishu (*supra*).
29. On whether the petitioners were entitled to the reliefs sought, the respondents submitted that the petitioners had come with unclean hands to be entitled to the reliefs sought. In the first instance, the 1<sup>st</sup> petitioner's allegations of a gift were unsustainable since his father had sued in the Land Dispute Tribunal Case and won; hence, this court should not be used to rubber stamp illegalities since the titles held by the petitioners were acquired illegally, unproperly and through irregular channels. Reliance was placed on Funzi Development Ltd & others v County Council of Kwale Mombasa Appeal No. 252 of 2005, (2014) eKLR and Sukhdev Singh Laly v. Philip Ojwang Kamau & others (2018) eKLR on the proposition that a title or lease was an end product of a process only legal property or regular if acquired in compliance with the law and where the root of the title is lacking it could not be passed to a third party for one cannot pass any better rights or interests than they possess.
30. Regarding delay, the respondents submitted that the petitioner had not bothered to explain the inordinate delay in pursuing the claim of 12 years in violation of Section 4 (4) of the Limitation of Actions Act. Reliance was placed on James Kanyitta Nderitu v Attorney General & another (2013) eKLR, where the court cited with approval Maurice Oketch Owiti v Attorney General (2016) eKLR, that the court should consider whether there has been inordinate delay in lodging the claim and whether justice will be served by permitting the respondent to be vexed by an otherwise state claim where he had a legitimate and reasonable expectation that such claim be prosecuted within a reasonable time.
31. The issues calling for the court's determination are:
  - a. If the petition meets the constitutional threshold.
  - b. If the 1<sup>st</sup> respondent had jurisdiction to entertain the dispute after the operative law was repealed.
  - c. If the 2<sup>nd</sup> respondent had jurisdiction to entertain an award, from a defunct entity under the repealed Land Dispute Tribunal Act.
  - d. If the jurisdiction of the 1<sup>st</sup> and 2<sup>nd</sup> respondents was saved and transitioned by Sections 30 & 31 of the ELC Act.
  - e. If the award or decree by the 1<sup>st</sup> & 2<sup>nd</sup> respondents dated 3<sup>rd</sup> or 5<sup>th</sup> October 2011 and 9.12.2011 could be executed after 12 years.
  - f. If the petitioners have proved that the execution of the decree infringed on their right to land ownership under Article 40 of the Constitution.



- g. If the petition is time-barred or brought after unreasonable delay.
  - h. If the petitioners are entitled to the relief sought.
  - i. What is the order as to costs?
32. A party seeking constitutional reliefs through a petition must comply with Articles 22, 23, 162(2) (b), 165, 258, and 260 of the *Constitution* as read together with Section 3(3) of the *Environment and Land Court Act* and the *Constitution of Kenya (Protection of Fundamental Rights and Freedoms) practice and procedure) Rules* 2013. The petition under Rules 4 and 10 thereof must disclose the particulars of the parties, the capacity the claim is brought, particulars of the alleged breach, threat or infringement of the rights, the specific right(s) or freedoms, infringement, manner, and nature of the threat, infringement or breach, loss or damage caused, previous or pending legal proceedings over the claim and the reliefs sought.
33. A party must, therefore, plead with precision and specificity on the exact constitutional rights and freedoms infringed, threatened or violated. It is not enough to cite the constitutional rights and freedoms violated, threatened with violation, or infringed. The petition must also raise constitutional issues or questions whose answers must be from the *Constitution* but not the statute. In *Communication Commission of Kenya & others v Royal Media Service Ltd & others* (2014) the Supreme Court of Kenya said a party must show the rights said to be infringed and the basis of his grievance.
34. In *Fredricks & others v MEC for Education and Training Eastern Cape and others* (2002) 23 ILJ 81 (CC), a constitutional matter was defined as one entailing interpretation, application, and upholding of the *Constitution*, interpretation of any legislation, or the development of common law allocation of power to various organs of the government. In *Turkana County and 20 others v. A.G. and 4 others* (2016), the court observed that claims of statutory violations cannot give rise to constitutional violations.
35. Looking at the petition before the court, I think it was pleaded with precision and specificity; otherwise, the respondents and the interested parties would not have responded to it as they did through explosive responses without seeking proper and better particulars.
36. The singular constitutional question or issue raised by the petitioners is whether, by entertaining the dispute determining it and rendering an award post-enactment of the *ELC Act* and adoption of the decree by the 2<sup>nd</sup> respondent, the petitioners' constitutional right to protection of property under Article 40 of the *Constitution* was violated.
37. Article 40 (2) of the *Constitution* provides that the state shall not enact a law that permits the state or any person to arbitrarily deprive a person of property or limits its enjoyment without a right of access to a court of law or its restriction without equality and freedom from discrimination.
38. The constitutionality of the repealed Land Disputes Tribunal Act and the repealing law, its application, and interference with the constitutional rights and freedoms of the petitioners is at issue in this petition. In *National Assembly of Kenya v Kina and another* (Civil Appeal) 166 of 2019 (2022) KECA 548 (KLR) (10 June 2022) (Judgment), the court said it was within the jurisdiction of the High Court under Article 165 (3) (b) of the *Constitution* to determine any questions raised regarding the infringement of the Bill of Rights, the interventions and constitutionality of law, decisions and the actions of parliament, and that the presumption of constitutionality was a legal principle used by courts during statutory interpretation. Therefore, the petition raises constitutional questions or issues that this court must answer by exercising its jurisdiction under Article 165 (3) of the *Constitution*.



39. The next issue is whether the 1<sup>st</sup> respondent existed in the eyes of the law when it admitted, heard, and determined the land dispute. The 1<sup>st</sup> respondent has not responded to the specific complaints against it by the petitioners regarding its legality, existence, and jurisdiction after the repeal of the Land Disputes Tribunal Act by Section 30 of the *ELC Act* 2011 on 30.8.2011. It is not disputed that the award was made on 5.10.2011 and adopted by the 2<sup>nd</sup> respondent on 9.12.2011. The petitioners have termed the 1<sup>st</sup> & 2<sup>nd</sup> respondents to have acted without jurisdiction and guided by *Christopher Dennis Wilson v Registrar of Companies & others* (*supra*) *Corporative Bank of Kenya Ltd v Yator* (*supra*), Republic v Chairman Uasin Gishu Land Disputes Tribunal & another *exparte* John Arusei Kiptoo & 13 others (*supra*), *Owners of Motor Vessel Lillian "S" v. Caltex Oil (K) Ltd* (*supra*), the court is asked to declare the award and the resultant decree as a nullity ab initio.
40. There is no dispute that the *Land Dispute Tribunal Act* became in operational with effect from 30.8.2011. Section 30 of the *Environment and Land Court Act* had a transitional clause that all proceedings relating to the environment or to the land use and occupation and title to land pending before any court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until Environment and Land Court came into operation or as may be decided by the Hon. Chief Justice and Chief Registrar of the judiciary. In accordance with Section 30 of the *Environment and Land Court Act*, the Hon. Chief Justice issued Gazette No.16268 and Practice Directions No. (6). All the proceedings that were pending before the magistrate's court were to be transferred thereto the defunct District Land Disputes Tribunal and were to be heard and determined by the said courts.
41. As per Section 23 (3) of the *Interpretation and General Provisions Act* Cap 2, repealing the Land Dispute Tribunal Act did not affect any rights, privileges, or obligations acquired, accrued, or incurred under it unless a contrary opinion was indicated. In *Christopher Wafula Mutoro v Richard Lordia Lokere* (*supra*), the court held that as per Sections 23 (3) of the Act, previous operations or anything done under the *Land Dispute Tribunal Act* were not affected.
42. What is distinguishable in the instant case is that the award in dispute was made after the law was repealed. There were no pending proceedings or awards relating to the suit land as of 30.8.2011 in favor of the interested parties or against the petitioners.
43. Under Section 23 (3) of the Act, the repeal of the *Land Dispute Tribunal Act* could not revive anything not in force or existing at the time the repeal took effect. Similarly, the repeal did not affect any legal proceedings or remedies concerning a right, privilege, obligation, liability, penalty, forfeiture, or punishment, over the interested parties. There was, therefore, no decision or award which had been made by the 1<sup>st</sup> respondent as of the operative date worthy of preserving or protecting under Section 23 (3) of the Cap (2) in favor of the interested parties.
44. In *Florence Nyaboke Machani v Mogere Amosi Ombui & others* (2014) eKLR, the court said a valid judgment of a court, unless overturned, remains a judgment of the court and is enforceable. In the instant case, the parties agreed that the initial land belonged to the late Mugambi M'Mburugu. The copy of the records produced shows the register was opened on 15.12.1966, and a title deed was issued on 18.10.1979, later on to the 1<sup>st</sup> petitioner on 9.7.2010. So, as of the making of the award on 3<sup>rd</sup> or 5<sup>th</sup> October 2011 and the adoption by the 2<sup>nd</sup> respondent on 9.12.2011, the land was already registered and a title held by the 1<sup>st</sup> petitioner.
45. The jurisdiction of the defunct Land Dispute Tribunal under Section 3 (1) of the Land Dispute Tribunal Act was specific to the division of or determination of boundaries, claims to work, occupation of land, or trespass to land. The Land Dispute Tribunal did not have jurisdiction over titled land and



matters of ownership. Any disputes on ownership, title, or possession of registered land under Section 159 of the Register Land Act (repealed) fell under the courts.

46. In Macfoy v United Africa Co. Ltd (1961) 3 ALLER, the court said if an act is void in law, it is a nullity, and proceedings founded on it are also flawed, for one cannot put something on nothing and expect it to stay there.
47. The 1<sup>st</sup> respondent arrogated itself jurisdiction it did not possess to hear and determine ownership disputes on titled land, fraud, or illegal acquisition by the 1<sup>st</sup> petitioner. See Aphaxard Njue Mucheke v Tyres Mbae Kiraithe (2015) eKLR, Mbugua Ihiga v Teresia Wangechi Macharia C.A No. 460, Jotham Amunavi v R. KSM C.A 256/2002, Republic v Chairman Lurambi LDT & others (2006) eKLR, Mateo Gitbua Ngurukie v Hon. Attorney General & others Nyeri High Court Civil No. 206 of 1999.
48. On that score, I find the 1<sup>st</sup> and 2<sup>nd</sup> respondents had no jurisdiction to hear, determine, make an award, and adopt it as a court's decree.
49. Concerning the validity of the award or decree and its execution and whether the petition is time-barred or caught by the doctrine of exhaustion, it is trite law that a decree expires by effluxion of 12 years from the date it was made. If there was a valid decree then, its lifetime would have expired after 12 years. The Limitation of Actions Act does not apply to constitutional petitions. The court in Safe Park Ltd v Henry Wambega & 11 others (2019) eKLR cited Wellington Nzioka Kioko v. Attorney General (2018) eKLR that said whereas there is no time limit, the delay must not be inordinate and must be sufficiently explained.
50. In Chief Land Registrar & others v Nathan Tirop Koech & others (2018), the court said observed time limits under Cap 22 were inapplicable to constitutional petitions, though each case must be decided on its own merits.
51. In this petition, the petitioners said they were not privy to the land dispute tribunal award until a letter dated 8.6.2023 was served upon them. The respondents have not denied the said assertions on oath. I find the petition not time-barred or filed, with unreasonable delay. A plausible explanation has been offered for the delay.
52. As to the doctrine of exhaustion, after 2010, a party may opt to follow the judicial review or constitutional petition route. The petitioners opted for the constitutional petition route. They should, therefore, not be penalized for it.
53. As to the reliefs, the purpose of judicial review is to ensure that inferior or quasi-judicial tribunals adhere to legality, procedural fairness, efficiency, and effectiveness in rendering administrative actions. The court has found that the 1<sup>st</sup> and 2<sup>nd</sup> respondents acted without jurisdiction. The reliefs sought by the petitioners are merited in the circumstances. The upshot is that I find the petitioners entitled to orders of certiorari to call and quash the proceedings' decision, award, and decree by the respondents and to prohibit its implementation.
54. Each party is to bear its own costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 24<sup>TH</sup> DAY OF JANUARY 2024**

**In presence of**

C.A Kananu/Mukami

Parties



Karanja for the Petitioner

Miss Mugo for Gichunge Muthuri for Interested Party

Miss Maina for the Respondents

**HON. CK NZILI**

**JUDGE**

