



Angata Baragoi farmers Cooperative Society Limited & 243 others v National Land Commission & 2 others; Chief Land Registrar & 3 others (Interested Parties) (Environment & Land Petition 6 of 2021) [2025] KEELC 1245 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEELC 1245 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND PETITION 6 OF 2021
EM WASHE, J
FEBRUARY 27, 2025
FORMERLY NAROK ELC CONSTITUTIONAL PETITION NO. 11
OF 2019
(AS CONSOLIDATED WITH PETITION NOS. 2, 3, & 4 OF 2021
- KILGORIS)
IN THE MATTER OF ARTICLES 10, 20, 21(1), 40(3), 40(4),
47, 50, 60, 64, 67, 232(1), 232(2) OF THE CONSTITUTION
OF THE REPUBLIC OF KENYA
AND
IN THE MATTER OF SECTION 14 AND 15(2)(D) & (3)(E) OF
THE NATIONAL LAND COMMISSION ACT, 2012
AND
IN THE MATTER OF SECTIONS 27(A) AND 28(A) OF THE
REGISTERED LAND ACT (REPEALED)
AND
IN THE MATTER OF SECTION 4 OF THE FAIR
ADMINISTRATIVE ACTIONS ACT, 2015

BETWEEN

ANGATA BARAGOI FARMERS COOPERATIVE SOCIETY LIMITED & 243
OTHERS PETITIONER

AND



NATIONAL LAND COMMISSION 1ST RESPONDENT
TENDE COMMUNITY WELFARE ASSOCIATION 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT

AND

THE CHIEF LAND REGISTRAR INTERESTED PARTY
MINISTRY OF LANDS INTERESTED PARTY
THE DIRECTOR OF LAND ADJUDICATION AND
SETTLEMENT INTERESTED PARTY
MUNYONGE HANA HAKI INTERESTED PARTY

JUDGMENT

1. The Judgement herein seeks to determine 4 Petitions that were consolidated on the bases that they all arose from the determination of the 1st Respondent pronounced on 07.02.2019 and the Gazettement of the said determination through a Gazette Notice. No. 1550 Dated 01.03.2019.
2. The first Petition was Petition No. 2 of 2019 which the Petitioners commenced the same vide a Petition dated 23rd April, 2019 seeking the following Orders; -
 - a. A Declaration declaring that the actions by the 1st Respondent contravened Articles 10, 20, 21(1), 40(1), 40(3), 40(4), 47, 50, 60, 64, 68, 232(1) and 232(2) of the Constitution, 2010, Sections 14 and 15 of the National Land Commission Act and Section 4 of the Fair Administrative Action Act.
 - b. An Order of Certiorari to remove into this Honourable Court for purposes of quashing the decision and/or order of the 1st Respondent as contained in the Gazette Notice dated 1st March, 2019 recommending and/or ordering for the revocation of the titles in regards to Moyoi and Section C Adjudication Section in Narok County.
 - c. A Prohibitory Order do issue prohibiting the 1st and 2nd Interested Parties, its employees and/or servants, county officers or whoever from enforcing the decision/order of the 1st Respondent published in the Kenya Gazette dated 1st March, 2019 in toto and in particular the revocation of the titles in Moyoi and Section C Adjudication Section in Narok County.
 - d. Conservatory Orders do issue and be directed at the 1st Respondent, the 1st and 2nd Interested Parties, their agents or anyone authorized by them respectively or acting under their instructions, staying the implementation of the 1st Respondent's decision contained in the Kenya Gazette Notice dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to Moyoi and Section C Adjudication section within Narok County.
 - e. A Prohibitory Order do issue prohibiting the 1st Respondent from hearing and determining any complaint with respect to Moyoi and Section C Adjudication Section in Narok County.
 - f. An Order prohibiting the Respondents and Interested Parties from in any way interfering with the Petitioners' Titles.



3. The grounds upon which the above prayers are sought are outlined in the Supporting Affidavit sworn on the 23.04.2019 and can be summarised as follows; -
 - a. The Petitioners therein are beneficiaries of land allocated to them through Adjudication which was declared way back in 1986 and were issued with Title Deeds thereby affirming their ownership rights which are enshrined in the Kenyan Constitution of 2010.
 - b. The 2nd Respondent who was the purported Complainant before the 1st Respondent, never challenged the declaration of the Adjudication Sections that were sub-divided to the Petitioners herein and/or raised any Objection during the adjudication process undertaken by the Land Adjudication Department and thereafter titles issued by the 1st Interested Party.
 - c. Consequently, the determination by the 1st Respondent to recommend a cancellation and/or revocation of the Petitioners title deed made on the 07.02.2019 and thereafter published in the Gazette No. 1550 dated 01.03.2019 came as a shocker.
 - d. The Petitioners pleaded that the 1st Respondent and/or the 2nd Respondent never served them with the purported Claim against them and all proceedings that were undertaken by the 1st Respondent did not abide by the provisions of the Constitution of Kenya, 2010 and the Fair Administrative Actions Act and subsequently, the Petitioners were denied their rights to a fair hearing as provided under Article 50 of the Constitution of Kenya, 2010.
 - e. They further contend that they were not aware of any complaint or claim before the 1st respondent and maintained that they were neither issued with a notice nor accorded an opportunity to be heard and as a result, the averments made by the 2nd respondent remained unchallenged to their detriment.
 - f. In essence, the Petitioners were of the view that the 1st Respondent failed in both its Constitutional and Statutory mandate in handling the purported Claim filed by the 2nd Respondent thereby arriving at a determination which was tainted with illegality, irrationality and procedural impropriety.
4. Petition No. 2 was thereafter served on the 1st to 3rd Respondents as well as the 1st to 3rd Interested Parties therein.
5. The 1st Respondent opposed Petition No. 2 of 2019 by filing a Replying Affidavit dated 09.07.2019 sworn by one Okenyi Samuel Odari.
6. In the Replying Affidavit dated 09.07.2019, the 1st Respondent opposed Petition No. 2 of 2019 on the following grounds; -
 - a. The 1st Respondent is an independent Commission established under Article 67(1) of the Constitution and is operationalized by the National Land Commission Act.
 - b. Based on the mandate donated to the 1st Respondent by the Constitution of Kenya, 2010, the 1st Respondent has powers to initiate investigations, on its own initiative or on complaint; into the present historical land injustices and consequently recommend appropriate redress.
 - c. The 1st Respondent proceeded to plead that in exercise of its mandate, it received a Complaint and/or Claim of Historical Land Injustice from the 2nd Respondent which was duly registered as Historical Land Injustice Ref No. NLC/HLI/019/2017.
 - d. The basis of the 2nd Respondent's Complaint and/or claim was that in the year 1946, members of the Kuria community purchased a portion of land from the Siria Maasai who



were their neighbours, through an exchange of livestock and thereafter, a boundary was clearly demarcated to define the portions of land belonging to the Siria Maasai and the Kuria Community.

- e. However, in the 1980's, the Government of the day proceeded to declare various adjudication by sections, which included the portions of land that had been reserved for the use of the Siria Maasai and the Kuria Community and in the process of adjudication brought in other communities who were then allocated huge parcels of land.
 - f. Upon this adjudication by the Government of the day, the Kuria community which includes the 2nd Respondent were forcefully evicted from their ancestral homes due to the inequitable adjudication process which was marred with irregularity and illegality hence resulting to the Historical Injustice against the Kuria Community.
 - g. The 1st Respondent upon receipt of the 2nd Respondent's Claim and/or Complaint admitted the same Pursuant to Section 15 of the [National Land Commission Act](#).
 - h. According to the 1st Respondent, the Petitioners herein were duly notified of the Claim and/or Complaint filed by the 2nd Respondent and thereafter invited for hearings which were held on the 10.05.2018 and 24.09.2018 at their registered offices in Nairobi County Government of Nandi officers respectively.
 - i. Further to the above hearings, the 1st Respondent proceeded to undertake investigative hearings on the 16.04.2018 and 04.09.2018 in which all the relevant notices were issued to enable all the affected parties to participate.
 - j. It was upon undertaking the appropriate hearings and doing thorough investigations that the 1st Respondent was satisfied that a Historical Injustice had indeed been perpetuated against the 2nd Respondent and made the determination dated 07.02.2019 which was further published in the Kenya Gazette through Notice of 1550 dated 01.03.2019.
 - k. The 1st Respondent admitted that indeed the Petitioners herein hold valid ownership documents but stated that their Right to own property under Article 40 of the Kenyan Constitution, 2010 was not absolute if the said property had been acquired irregular, illegally and/or constitutes historical injustice.
 - l. In concluding the 1st Respondent's opposition to Petition No. 2 of 2019, the 1st Respondent denied violating and/or infringing any of the Petitioners' rights in the manner it handled the 2nd Respondent's Claim and/or Complaint and its determination pronounced on the 07.02.2019 and sought the said Petition to be dismissed with costs.
7. The 2nd Respondent also opposed Petition No. 2 of 2019 by filing a Replying Affidavit dated 27.03.2024 sworn by one Paul Magutu Chacha.
 8. In the 2nd Respondent's Replying Affidavit, the Petition No. 2 of 2019 was opposed on the following grounds;-
 - a. The 2nd Respondent pleaded that the original inhabitants of the portion of land known as Section C Adjudication Section and Angata Barigoi Adjudication Sections were the Tende people who were a Clan within the Kuria Community.
 - b. The 2nd Respondent further pleaded that if the Petitioners were registered as the beneficial owners of any portions of land within these two Adjudication Sections, then such registration



was obtained fraudulently and did not follow the required Land Policy hence causing a Historical Injustice to the Tende people.

- c. The 2nd Respondent reiterated that the 1st Respondent therefore had the Constitutional and Statutory mandate to investigate such Historical Injustices and arrived at the appropriate determination which should be implemented by the Interested parties herein.
 - d. According to the 2nd Respondent, the 1st Respondent upon receipt of its Claim and/or Complaint proceeded to conduct various hearing and investigation forums which enabled it to gather the relevant information, both through testimonies and documentary evidence as required by law and thereby lawfully arriving at a valid determination on the 07.02.2019.
 - e. In essence, the 2nd Respondent supported the manner in which the 1st Respondent had received the Claim and/or Complaint filed by the 2nd Respondent and similarly pleaded that the said claim and/or Complaint was processed, heard and determined in line with the procedures and provisions of the National Land Commission Act and the Kenyan Constitution, 2010 hence the determination pronounced on the 07.02.2019 was lawful, legitimate and binding.
 - f. The 2nd Respondent's view was that Petition No. 2 of 2019 had been brought in bad faith and should be dismissed with costs.
9. The 3rd Respondent, on his own behalf and on behalf of the 1st to 3rd Interested Parties, filed Grounds of Opposition dated 08.05.2019 and in addition a Replying Affidavit sworn by one Michael Irungu Kagwe who represented the 2nd Interested Party herein.
10. The 2nd Interested Party in the Replying Affidavit dated 16.07.2019 stated as follows; -
- a. The 2nd Interested Party acknowledged receipt of the determination of the 1st Respondent made on the 07.02.2019 and the Gazette Notice No. 1995 published on the 01.03.2019 recommending the revocation and/or cancellation of the Title Deeds issued to Moyoi Adjudication Section and Angata Barigoi Adjudication Section.
 - b. The 2nd Interested Party pleaded that it did not take part in any of the proceedings before the 1st Respondent regarding the 2nd Respondent's Claim and/or Complaint and therefore the role of the 2nd Interested Party was simply to implement the said determination dated 07.02.2019 and the Gazette Notice No. 1550 published on the 01.03.2019.
 - c. The 2nd Interested Party nevertheless proceeded to state that Moyoi Adjudication Section was declared an Adjudication Section ready for adjudication on the 11.08.1976 and a notice of boundary description duly indicated in the Gazette Notice.
 - d. Based on the Declaration of Moyoi Adjudication Section on the 11.08.1976, the sub-division and recording of interests was duly undertaken and final Adjudication Register was published for inspection on the 11.11.1977.
 - e. The Adjudication Register was made available for inspection at the offices of the Lolgorian Chief and any person who wanted to inspection the said Register was granted a 60 days period to do so.
 - f. The Adjudication Register was finally issued with a Certificate of Finality on the 18.09.1996 by the 2nd Interested Party and the 1st Interested Party proceeded to issue the relevant Title Deeds to the lawful beneficiaries thereof.



- g. As regards Angata Bargoi Adjudication Section, the same was declared an Adjudication Section on the 31.10.1986 with the description of its boundaries included in the said Gazette Notice.
 - h. The ownership rights of the occupants were duly recorded and the Adjudication Register was completed and published for inspection on the 03.09.1996.
 - i. Thereafter, the Adjudication Register was placed at the Lolgorian Chief's Office for inspection within a period of 60 days and upon determination of all objections and appeals, a Certificate of Finality was issued on the 15.10.2002 by the 2nd Interested Party.
 - j. Based on the Certificate of Finality issued on 15.10.2002 in relation to Angata Bargoi Adjudication Section, the 1st Interested Party proceeded to issue the relevant Certificate of titles.
 - k. The 2nd Interested party's view was that if indeed the 2nd Respondents had any claim to any portion of land within Moyoi Adjudication Section and Angata Barigoi Adjudication Section, then they should have objected to its adjudication in line with the provisions and procedures provided under the [Land Adjudication Act](#), Cap 284.
 - l. Unfortunately, the 2nd Respondents failed to make any claims and/or challenge the Declarations that established Moyoi Adjudication Section and Angata Bargoi Adjudication Section and further failed to register their interests during the inspection of the Adjudication Registers and therefore, it is their claim that the Petitioners herein hold valid, legal and legitimate ownership documents to their portions of land.
 - m. In conclusion, the 2nd Interested Party pleaded that it does not have any legal powers to revoke and/or cancel the Petitioners ownership documents because the same had been issued in compliance with the provisions of the [Land Adjudication Act](#), Cap 284.
11. The second Petition was Petition No. 3 of 2019 instituted by a Petition dated 04.04.2019 in which the Petitioners sought the following Orders; -
- a. A declaration that the 1st Respondent violated the provisions of the [National Land Commission Act](#) Section 14 and 15; the Fair Administrative Actions Act Section 4; and the [Constitution](#) of Kenya Articles 10, 20, 21(1), 40(1), 40(3), 40(4), 47, 50, 60, 64, 68, 232(1) and 232(2);
 - b. An order of Certiorari to remove into this Honourable Court to quash the recommendation/ decision/order of the 1st Respondent's Gazette Notice in the Kenya Gazette dated 1st March, 2019 recommending and or ordering for revocation of the titles in regards to Angata Baragoi and Section C Adjudication Section in Narok County.
 - c. An order of Prohibition to prohibit the 2nd Respondent, employees and or servants, county officers or whoever from enforcing the decision/order of the 1st Respondent published in the Kenya Gazette dated 1st March, 2019 in toto and in particular, the revocation of the titles in Angata Baragoi and Section C Adjudication Section in Narok County.
 - d. An order of Prohibition prohibiting the 1st Respondent from hearing and determining any other complaint with respect to Angata Barigoi and Section C Adjudication Section in Narok County.



- e. An order of Prohibition prohibiting the 1st, 2nd and 3rd Interested Parties from acting on the directive of the 1st Respondent published in the Kenya Gazette of 1st March, 2019 or in any other way interfere with the Petitioners' titles;
 - f. Conservatory Orders maintaining the status quo as prayed in the Notice of Motion of even date.
 - g. Costs.
12. The prayers sought hereinabove are premised on the grounds contained in the Supporting Affidavit sworn by the 1st, 2nd and 8th Petitioners and can be summarised as follows; -
- a. The Petitioners described themselves as members of the Kalenjin Community that had been in occupation of various portions of land within the Masaai Community from way back in 1905 and had been assimilated in their areas of occupation.
 - b. Subsequently, the Government of the day declared various Adjudication Sections which were then duly sub-divided and all the Petitioners issued with their ownership and registration documents.
 - c. The Petitioners pleaded that the 2nd Respondents never challenged the declaration of the Adjudication Sections and/or raised any objection to the recording of their interest over their portions of land as required by the law.
 - d. Consequently, it was absolutely shocking to them when they learnt that the 1st Respondent had decided on the 07.02.2019 that their ownership documents and/or title deeds be cancelled which decision was published as Gazette Notice. 1550 on the 01.03.2019.
 - e. Further to that, the 1st Respondent had directed the 2nd Interested Party to re-adjudicate the land within the two Adjudication Sections known as Moyoi Adjudication Section and Angata Barigoi Adjudication Section and include members of the 2nd Respondent therein.
 - f. The Petitioners pleaded that they were aggrieved by the 1st Respondent's determination dated 07.02.2019 because there was no Claim and/or Complaint served on them and further to that, no notice of any hearing was issued in line with the law to enable them be aware of the 2nd Respondents' claim and/or Complaint.
 - g. Due to this omission on the part of the 1st and 2nd Respondents, it is the Petitioners claim that the said Claim and/or Complaint was heard and determined without their knowledge and/or participate contrary to the rules of natural justice, fair hearing and/or procedural fairness.
 - h. It is the Petitioners' case that the decision by the 1st Respondent in particular contravenes Article 47 of the *Constitution* on the right to an efficient, fair, lawful, expeditious, reasonable and procedurally fair administrative action, and Article 47(2) on the right to be given reasons for an action that adversely affects them. In addition, that it contravenes Section 14 and 15 of the *National Land Commission Act*, Section 4 of the Fair Administrative Actions Act, Article 10 and Article 40 of the *Constitution*.
13. The Petition No. 3 of 2019 was served on the 1st to 3rd Respondents and the 1st to 3rd Interested Parties therein.
14. The 1st Respondent opposed Petition No. 3 of 2019 by filing a Replying Affidavit dated 09.07.2019 by one Okenyi Samuel Odari.



15. The grounds in opposition of Petition No. 3 of 2019 contained in the Replying Affidavit dated 09.07.2019 were as follows; -
- a. The 1st Respondent stated that the 2nd Respondents had filed a Claim and/or Complaint touching of Historical Injustice which was received and recorded as a Historical Land Injustice Ref No: NLC/HLI/019/2017.
 - b. According to the 1st Respondent, the 2nd Respondent's claim of Historical Land Injustice emanated from an Agreement for Sale executed between the Siria Masaai and the 2nd Respondents in the year 1946 wherein the consideration was an exchange of cattle.
 - c. In the year 1955, a dispute arose regarding the area occupied by the Siria Maasai and the 2nd Respondents which was mediated by the Colonial Administration and the boundary demarcating the portion of land occupied by the Siria Maasai and the 2nd Respondents clearly established.
 - d. However, in the 1980's the Government of the day proceeded to create two adjudication sections which included the 2nd Respondent's portion of land and adjudicated the same to outsiders thereby displacing over 13,000 households.
 - e. The 1st Respondent was of the view that the 2nd Respondent's claim and/or complaint based on the above facts fulfilled the provisions of Section 15 of the [National Land Commission Act](#) and was therefore admitted and processed.
 - f. The 1st Respondent upon admitting the 2nd Respondents Claim and/or Complaint proceeded to invite the affected parties for a hearing in their offices on the 10.05.2018 as well as an Investigative hearing on the 24.09.2018 before the Narok County Government Land CEC office in Narok Town.
 - g. The 1st Respondent insisted that all the relevant invitations for the hearing of 10.05.2018 and the Investigative Meeting of 24.09.2018 were duly served and published in accordance to the law and provisions of the [National Land Commission Act](#).
 - h. The 1st Respondent confirmed that it was only after the proper and lawful hearings were done and independent investigations carried out that the determination dated 07.02.2019 was made and the Gazette Notice No. 1550 of 01.03.2019 published.
 - i. In conclusion therefore, the 1st Respondent reiterated that he had complied with all provisions of the law and that in instances when the allocation and creation of a title is not in compliance with the law, then Article 60 of the Kenyan Constitution, 2010 mandates it to revoke such titles including those that occasion Historical Land Injustice.
16. The 2nd Respondent also opposed Petition No. 3 of 2019 by filing a Replying Affidavit dated 15.05.2019 sworn by one Paul Chacha and Joel Gisude Mwita.
17. The 2nd Respondent stated as follows in their Replying Affidavit dated 15.05.2019; -
- a. The 2nd Respondents claimed to be the beneficial owners of the portions of land Adjudicated as Angata Bargo Adjudication Section and Section C Adjudication Section (now Moyoi Adjudication Section).
 - b. On or about the year 2018, the 2nd Respondents filed a Claim and/or Complaint raising issues of Historical Land Injustice before the 1st Respondent which was duly served on the Petitioners who refused, neglected and failed to respond to the same.



- c. The 1st Respondent having duly notified and invited the Petitioners of the 2nd Respondent's Claim and/or Complaint but refused, neglected and/or failed to respond, proceeded to hear the same in their absence and made its determination dated 07.02.2019 which was published on the Kenya Gazette as Notice No. 1550 dated 01.03.2019.
 - d. The 2nd Respondents claimed that the Government of the day in the year 1989, used state agencies including the Police to evict them from their portions of land including setting ablaze their homes which exercise was supervised by the then Provincial Commissioner, Rift Valley hence resulting in the displacement of the 2nd Respondents from their lawful portions of land and occasioning Historical Land Injustice.
18. The 3rd Interested Party also opposed Petition No. 3 of 2019 by filing a Replying Affidavit dated 02.12.2021 sworn by one Hon.Benson Kahera.
19. The 3rd Interested Party pleaded as follows in the Replying Affidavit dated 02.12.2021; -
- a. The 1st Interested Party herein purchased a total of 20,000 acres from the Siria Maasai in the year 1946 through the exchange of cattle between the two communities.
 - b. However in the year 1955, a dispute arose between the Siria Maasai and the 2nd Respondent as to the extent of their portion of land which dispute was mediated through the offices of the Colonial Government and on 09.05.1955, the issue was resolved through a letter dated 09.05.1955 and thereafter reversed around 1963.
 - c. Around 1980, the Government of the day proceeded to declare two adjudication sections namely Angata Barigoi Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section) which included the portion purchased and occupied by the 2nd Respondent.
 - d. These two Adjudication Sections were indeed Adjudicated and land allocated to other persons who were not residents of the area hence a forceful displacement of the 2nd Respondent through use of state agencies including the Kenyan Para-military.
 - e. The 3rd Interested Parties being aggrieved by these actions undertaken by the Government of the day proceeded to lodge a Claim and/or Complaint of historical injustice with the 1st Respondent which was registered as NLC/HLI/019/2017.
 - f. Unfortunately, immediately thereafter, the Chairman of the 3rd Interested Party was called to be with the Lord and the Chair of the 2nd Respondent then hijacked the said process at the 1st Respondent's offices.
 - g. The 3rd Interested Parties pleaded that the Chairman of the 2nd Respondent caused the Claim and/or Complaint to be deemed as one filed by them and proceeded for hearing without the participation of the actual people that had lodged by the same being the 3rd Interested parties.
 - h. The 3rd Interested Parties concluded their Replying Affidavit by stating that although they did not have a problem with the determination of the 1st Respondent made on 07.02.2019 and the Gazette No. 1550 of 01.03.2019, their request is that they should be considered in the re-adjudication of the two Adjudication Sections known as Angata Barigoi Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section.)
20. The third Petition is Petition No. 4 of 2021 whose prayers are contained in the Further Amended Petition dated 29.07.2022 and seeking the following Orders;-



- a. A Declaration that the actions of the 1st respondent as set hereinabove are unconstitutional and it is in violation of the rights and freedoms of the petitioner's members under Articles 27, 40, 47, 48 and 50 of the Constitution of Kenya.
 - b. An Order of Certiorari to bring to this court and quash recommendation (b) of the 1st respondent made in regard to the matter of historical injustice referenced NLC/HLI/019/2017 to the effect that the claimants (Tende Welfare Association be restituted).
 - c. An order of mandatory injunction compelling the 1st respondent to invite and hear the Petitioners on their Petition lodged on the 11/11/2016 for purposes of recommending that is all inclusive and therefore including the petitioners.
 - d. An Order of Prohibition prohibiting the 2nd and 3rd respondents from acting and/or implementing the directives of the 1st respondent dated 7th February, 2019 and published in the Gazette Notice of 1st March, 2019.
 - e. The petitioners be paid costs of this petition.
21. The Supporting Affidavit has been sworn by one Hon. Benson Kohera who pleaded as follows in support of the prayers above; -
- a. The Petitioners herein purchased a total of 20,000 acres from the Siria Maasai in the year 1946 through the exchange of cattle between the two communities.
 - b. However, in the year 1955, a dispute arose between the Siria Maasai and the 2nd Respondent as to the extent of their portion of land which dispute was mediated through the offices of the Colonial Government and on 09.05.1955, the issue was resolved through a letter dated 09.05.1955 and thereafter reversed around 1963.
 - c. Around 1980, the Government of the day proceeded to declare two adjudication sections namely Angata Bargo Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section) which included the portion purchased and occupied by the 2nd Respondent.
 - d. These two Adjudication Sections were indeed Adjudicated and land allocated to other persons who were not residents of the area hence a forceful displacement of the Petitioners through use of state agencies including the Kenyan Para-military.
 - e. The 3rd Interested Parties being aggrieved by these actions undertaken by the Government of the day proceeded to lodge a Claim and/or Complaint of historical injustice with the 1st Respondent which was registered as NLC/HLI/019/2017.
 - f. Unfortunately, immediately thereafter, the Chairman of the 3rd Interested Party was called to be with the Lord and the Chair of the 2nd Respondent then hijacked the said process at the 1st Respondent's offices.
 - g. The 3rd Interested Parties pleaded that the Chairman of the 2nd Respondent caused the Claim and/or Complaint to be deemed as one filed by them and proceeded for hearing without the participation of the actual people that had lodged by the same being the 3rd Interested parties.
22. The Petitioners in Petition No. 4 of 2021 proceed to serve the same on the 1st to 3rd Respondents as well as the 1st to 3rd Interested Party.



23. The 1st Respondent opposed the Petition No. 4 of 2021 by filing a Replying Affidavit dated 21.03.2019 sworn by one Edmond Gichuru who stated as follows; -
- a. The 1st Respondent is an independent Commission established under Article 67(1) of the Constitution and is operationalized by the National Land Commission Act.
 - b. Based on the mandate donated to the 1st Respondent by the Constitution of Kenya, 2010, the 1st Respondent has powers to initiate investigations, on its own initiative or on complaint; into the present historical land injustices and consequently recommend appropriate redress.
 - c. The 1st Respondent proceeded to plead that in exercise of its mandate, it received a Complaint and/or Claim of Historical Injustice of the 2nd Respondent which was duly registered as Historical Land Injustice Ref No. NLC/HLI/019/2017.
 - d. The basis of the 2nd Respondent's Complaint and/or claim was that in the year 1946, members of the Kuria community purchased a portion of land from the Siria Maasai who were their neighbours through an exchange of livestock and thereafter, a boundary was clearly demarcated to define the portions of land belonging to the Siria Maasai and the Kuria Community.
 - e. However, in the 1980's, the Government of the day proceeded to declare various adjudication sections, which included the portions of land that had been reserved for the use of the Siria Maasai and the Kuria Community and in the process of adjudication brought in other communities who were then allocated huge parcels of land.
 - f. Upon this adjudication by the Government of the day, the Kuria community which includes the 2nd Respondent were forcefully evicted from their ancestral homes due to the inequitable adjudication process which was marred with irregularity and illegality hence resulting to the Historical Injustice against the Kuria Community.
 - g. The 1st Respondent upon receipt of the 2nd Respondent's Claim and/or Complaint admitted the same based on Section 15 of the National Land Commission Act.
 - h. According to the 1st Respondent, the Petitioners herein were duly notified of the Claim and/or Complaint filed by the 2nd Respondent and thereafter invited for hearings which were held on the 10.05.2018 and 24.09.2018 at their registered offices in Nairobi.
 - i. Further to the above hearings, the 1st Respondent proceeded to undertake investigative hearings on the 16.04.2018 and 04.09.2018 in which all the relevant notices were issued to enable all the affected parties to participate.
 - j. It was upon undertaking the appropriate hearings and doing thorough investigations that the 1st Respondent was satisfied that a Historical Injustice had indeed been perpetuated against the 2nd Respondent and made the determination dated 07.02.2019 which was further published in the Kenya Gazette through Notice of 1550 dated 01.02.2019.
 - k. The 1st Respondent admitted that indeed the Petitioners herein have valid ownership documents but stated that their Right to own property under Article 40 of the Kenyan Constitution, 2010 was not absolute if the said property had been acquired irregular, illegally and/or constitutes historical injustice.
 - l. In concluding the 1st Respondent's opposition to Petition No. 4 of 2021, the 1st Respondent denied violating and/or infringing any of the Petitioners' rights in the manner it handled the 2nd



Respondent's Claim and/or Complaint and its determination pronounced on the 07.02.2019 and sought the said Petition to be dismissed with costs.

24. The Interested Party in Petition no. 4 of 2021 also filed a Replying Affidavit dated 20.06.2019 sworn by one Paul Magutu Chacha and stated as follows; -
- a. The Kuria Community as a whole compromise of about 5 Clans.
 - b. The Interested Party however pleaded that it was the members of the Interested Party, Tende Community, that actually occupied the portion of land that was subsequently adjudicated by the Government and not the Petitioners herein.
 - c. The Interested Party dismissed the claims by the Petitioners that they were the ones in occupation of the portion of land now adjudicated as Angata Barigoi and indicated that if anyone from the Petitioners clan was issued with a title deed, then such a title deed was fraudulent and irregular.
 - d. In concluding the Replying Affidavit, the Interested Party reiterated that the 1st Respondent received a lawful and valid Claim and/or Complaint from the Interested Party which was proceeded and determined in line with the provisions of the National Land Commission Act and the Constitution of Kenya, 2010 and the Petition should therefore be dismissed with costs.
25. The last Petition is Petition No. 6 of 2021 which was filed through the Petition dated 02.04.2019.
26. The Petitioners in Petition 6 of 2021 sought the following Orders against the 1st to 3rd Respondents as well as the 1st to 4th Interested Parties; -
- a. A declaration that the 1st Respondent violated the provisions of the National Land Commission Act Sections 14 and 15; the Fair Administrative Actions Act Section 4; and the Constitution of Kenya Articles 10, 20, 21(1), 40(1), 40(3), 40(4), 47, 50, 60, 64, 68, 232(1) and 232(2).
 - b. An order of Certiorari to bring into this Court and quash the decision of the 1st Respondent published in the Kenya Gazette of 1st March 2019 with respect to the suit area;
 - c. An order of Prohibition prohibiting the 1st Respondent from hearing and determining any other complaint with respect to the suit area;
 - d. An order of Prohibition prohibiting the 1st, 2nd and 3rd Interested Parties from acting on the directive of the 1st Respondent published in the Kenya Gazette of 1st March, 2019 or in any way interfere with the Petitioner's title;
 - e. An order of Prohibition prohibiting the 2nd Respondent from lodging, publishing or in any way commenting on the Petitioners' ownership of various parcels of land situate in the suit area; and
 - f. Costs.
27. The prayers hereinabove are supported by grounds contained in the Affidavit of David Rempu Ole Moisite and Francis Oloitoyaye Sinoni who were the Chairman and Vice Chairman of Moyoi Group Ranch sworn on the 02.04.2019 which deponed the follows; -
- a. According to the Petitioners herein, Moyoi Group Ranch were the recorded as owners of the original properties known as LR. No. Transmara/Moyoi/1526 & LR. No. Transmara/Moyoi/2.



- b. Thereafter, some members of Moyoi Group Ranch separated and incorporated the Petitioner herein.
 - c. The Petitioners were duly recorded as owners of their portion of land and subsequently issued with the relevant ownership documents.
 - d. The Petitioner emphasized that during the adjudication of their portion of land, the interests of all the residents were recognized and approximately 55 families that were from the Kuria Community were allocated land hence no objections remained unresolved before issuance of titles.
 - e. The Petitioners pleaded that it was a complete surprise to learn that the 1st Respondent had made the determination dated 07.02.2019 and even published the same in the Kenya Gazette Notice No. 1550 of 2019 recommending the revocation and/or cancellation of all ownership documents within Angata Barigoi Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section.)
 - f. The Petitioners insisted that the 1st Respondent and/or the 2nd Respondent did not notify them of the alleged Claim and/or Complaint against them and they were never accorded any hearing as enshrined in both the Constitution and Statutory provisions in the National Land Commission Act.
 - g. The Petitioners specifically denied the allegation that there were mass forceful evictions undertaken by the former Provincial Commissioner of Rift Valley and went further to indicate that in fact the said former Provincial Commissioner of rift Valley was cleared of any wrong doing by the TJRC Commission.
 - h. In conclusion thereof, the Petitioners sought this Court to quash the determination of the 1st Respondent pronounced on the 07.02.2019 as well as the Gazette Notice No. 1550 dated 01.03.2019 that recommended the revocation and/or cancellation of the ownership documents to the two Adjudication Sections and a fresh adjudication to be undertaken.
28. The 1st Respondent filed a Replying Affidavit dated 09.07.2019 sworn by one Okenyi Samuel Odari upon which he stated as follows; -
- a. The 1st Respondent is an independent Commission established under Article 67(1) of the Constitution and is operationalized by the National Land Commission Act.
 - b. Based on the mandate donated to the 1st Respondent by the Constitution of Kenya, 2010, the 1st Respondent has powers to initiate investigations, on its own initiative or on complaint; into the present historical land injustices and consequently recommend appropriate redress.
 - c. The 1st Respondent proceeded to plead that in exercise of its mandate, it received a Complaint and/or Claim of Historical Injustice of the 2nd Respondent which was duly registered as Historical Land Injustice Ref No. NLC/HLI/019/2017.
 - d. The basis of the 2nd Respondent's Complaint and/or claim was that in the year 1946, members of the Kuria community purchased a portion of land from the Siria Maasai who were their neighbours through an exchange of livestock and thereafter, a boundary was clearly demarcated to define the portions of land belonging to the Siria Maasai and the Kuria Community.



- e. However, in the 1980's, the Government of the day proceeded to declare various adjudication sections, which included the portions of land that had been reserved for the use of the Siria Maasai and the Kuria Community and in the process of adjudication, brought in other communities who were then allocated huge parcels of land.
 - f. Upon this adjudication by the Government of the day, the Kuria community which includes the 2nd Respondent were forcefully evicted from their ancestral homes due to the inequitable adjudication process which was marred with irregularity and illegality hence resulting to the Historical Injustice against the Kuria Community.
 - g. The 1st Respondent upon receipt of the 2nd Respondent's Claim and/or Complaint admitted the same based on Section 15 of the [National Land Commission Act](#).
 - h. According to the 1st Respondent, the Petitioners herein were duly notified of the Claim and/or Complaint filed by the 2nd Respondent and thereafter invited for hearings which were held on the 10.05.2018 and 24.09.2018 at their registered offices in Nairobi.
 - i. Further to the above hearings, the 1st Respondent proceeded to undertake investigative hearings on the 16.04.2018 and 04.09.2018 in which all the relevant notices were issued to enable all the affected parties to participate.
 - j. It was upon undertaking the appropriate hearings and doing thorough investigations that the 1st Respondent was satisfied that a Historical Injustice had indeed been perpetuated against the 2nd Respondent and made the determination dated 07.02.2019 which was further published in the Kenya Gazette through Notice of 1550 dated 01.02.2019.
 - k. The 1st Respondent admitted that indeed the Petitioners herein valid ownership documents but stated that their Right to own property under Article 40 of the Kenyan Constitution, 2010 was not absolute if the said property had been acquired irregular, illegally and/or constitutes historical injustice.
 - l. The 1st Respondent nevertheless admitted that at the time of the hearings and investigations of the 2nd Respondents' Claim and/or Complaint, the 1st Respondent was not aware of judgement and/or Decree issued in the proceedings known as Nairobi Judicial Review Miscellaneous Application No. 1680 of 1999.
29. The 2nd Respondent supported the Replying Affidavit filed by the 1st Respondent and proceeded to file a Supplementary Affidavit dated 20.06.2019 sworn by one Paul Magutu Chacha to which the following facts were pleaded; -
- a. The 2nd Respondent insisted that the portions of land now Adjudicated as Angata Bargoji Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section) were primarily occupied by members of the 2nd Respondent.
 - b. Consequently, if the Petitioners obtained any ownership documents over the said portions of land then such registration was fraudulent and irregular and therefore should be cancelled and/or revoked.
 - c. The 2nd Respondent further averred that the determination made on the 07.02.2019 by the 1st Respondent was arrived at with the consultation of the National Government and the devolved Government which is Narok County Government.



30. The 4th Interested Party also filed a response to the present Petition by way of a Replying Affidavit sworn on the 02.12.2021 by one Hon. Benson Kohera to which it stated as follows; -
- a. The 1st Respondents herein purchased a total of 20,000 acres from the Siria Maasai in the year 1946 through the exchange of cattle between the two communities.
 - b. However, in the year 1955, a dispute arose between the Siria Maasai and the 2nd Respondent as to the extent of their portion of land which dispute was mediated through the offices of the Colonial Government and on 09.05.1955, the issue was resolved through a letter dated 09.05.1955 and thereafter reversed around 1963.
 - c. Around 1980, the Government of the day proceeded to declare two adjudication sections namely Angata Bargo Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section) which included the portion purchased and occupied by the 2nd Respondent.
 - d. These two Adjudication Sections were indeed Adjudicated and land allocated to other persons who were not residents of the area hence a forceful displacement of the 2nd Respondent through use of state agencies including the Kenyan Para-military.
 - e. The 4th Interested Parties being aggrieved by these actions undertaken by the Government of the day proceeded to lodge a Claim and/or Complaint of historical injustice with the 1st Respondent which was registered as NLC/HLI/019/2017.
 - f. Unfortunately, immediately thereafter, the Chairman of the 4th Interested Party was called to be with the Lord and the Chair of the 2nd Respondent then hijacked the said process at the 1st Respondent's offices.
 - g. The 4th Interested Parties pleaded that the Chairman of the 2nd Respondent caused the Claim and/or Complaint to be deemed as one filed by them and proceeded for hearing without the participation of the actual people that had lodged by the same being the 3rd Interested parties.
31. The parties after filing the above documents closed their pleadings and the Court directed that the matter be heard in open Court so that parties can ventilate the long outstanding issues in these four Petitions.

Petitioners Testimonies & Documentary Evidence.

Petition 6 of 2021.

32. The first witness to testify in these Petitions was Samuel Panyako Ole Sakaja who was marked as PW 1.
33. PW 1 informed the court that he had prepared a witness statement dated 07.02.2022 of which he adopted the same as his evidence in chief.
34. In support of the evidence in chief, PW 1 further produced the following documents in support of Petition No. 6 of 2021; -
- PW 1 Exhibit 1- A copy of the letter of Authority to Depone on behalf of the Petitioners in Petition 6 of 2021.
- PW 1 Exhibit 2- A copy of the Declaration of Moyoi Adjudication Section dated 11.08.1976.
- PW 1 Exhibit 3- Copy of the Appointment Letter of the Adjudication Committee of Moyoi Adjudication Section dated 11.08.1976.



- PW 1 Exhibit 4- A Copy of the Certificate of Completion issued by the District Land Adjudication Officer in charge of Moyoi Adjudication Section dated 11.11.1977.
- PW 1 Exhibit 5- A copy of the Certificate of Finality of Moyoi Adjudication Section dated 18.09.1996.
- PW 1 Exhibit 6- Copies of various Titles demonstrating the ownership of the Petitioners in Petition 6 of 2021.
- PW 1 Exhibit 7- A copy of the Decree dated 15.08.2000 emanating from the proceedings known as Miscellaneous/Application No. 1680 of 1999.
- PW 1 Exhibit 8- Copies of the 1st Respondent's determination dated 07.02.2019 and the Kenya Gazette Notice no. 1550 of 2019.
35. PW 1 informed the Court after the Declaration of Moyoi Adjudication Section, the land was subdivided into three main parts which were as follows; -
- a. Parcel No. 1 was allocated to those persons who were members of Moyoi Group Ranch.
 - b. Parcel No. 2 was allocated to the members of the Angata Barigoi Farmers' Co-operative Society Limited.
 - c. Parcel No. 11 was allocated to about 55 families belonging to the Kuria Community that had been living with the Maasai Community.
36. PW1 who was among the Land Adjudication Committee members of Moyoi Adjudication Section stated the process of recording the interests of the persons who were residents of the area was lawfully undertaken and the relevant objections filed resolved.
37. According to PW 1, the Adjudication Register of Moyoi Adjudication Section was duly published on 14.11.1977 upon which people were invited to inspect the same and lodge their Objections if they were not satisfied with the information therein within 60 days thereafter.
38. The Certificate of Finality was subsequently issued on the 18.09.1996 Completing the Adjudication exercise.
39. However, for unknown reasons, the 1st Interested Party took so long to issue out the ownership documents thereby necessitating the filing of the proceedings known as Judicial Review Miscellaneous Application No. 1680 of 1999 wherein the Court made an Order that all beneficiaries should be issued with the relevant ownership documents in line with the Adjudication Register.
40. Indeed, the 1st Interested Party complied with the Orders made in the proceedings known as Judicial Review Miscellaneous Application No. 1680 of 1999 and the Members of the Petitioner in Petition No. 6 of 2021 got their lawful and legitimate ownership documents.
41. However, in the year 2019, the Petitioners learnt that the 1st Respondent had without notification and/or any hearing recommended the cancellation of all the ownership documents within Moyoi Adjudication Section through a Determination dated 07.02.2019 and Gazetted the said recommendation through the Kenya Gazette Notice No. 1550 published on the 01.03.2019.
42. PW 1 concluded his evidence in chief by stating that the 1st Respondent's actions violated the Petitioners right to fair hearing as guaranteed under Article 47 and 50 and unilaterally interfered with their right to own property as provided under Article 40 of the *Constitution* of Kenya, 2010.
43. The 1st Respondent despite having filed their pleadings did not attend the hearing and therefore there was no cross-examination by the 1st Respondent.



44. On cross-examination by the 2nd Respondent, PW 1 stated that they had filed Petition No. 6 of 2021 to defend their lawful titles from unlawfully being cancelled on the recommendation of the 1st Respondent.
45. PW 1 reiterated that the Petitioners have never been aware of any claim of Historical Land Injustice that had been filed by the Tende Community before the 1st Respondent until after the determination dated 07.02.2019 was made by the 1st Respondent.
46. PW 1 testified that the reason that the 2nd Respondents were forcefully displaced from the area known as Angata Barigoi Adjudication Section was misleading and false and therefore the 1st Respondents determination dated 07.02.2019 on the basis of this reason was erroneous thereby necessitating the present Petition to reverse the said recommendation for cancellation of their Titles.
47. PW 1 informed the Court that during Adjudication, all communities residing with Angata Barigoi Adjudication Section which are the Maasai, Kalenjin and Kuria were involved in the exercise.
48. PW 1 expressed disappointment that the 1st Respondent proceeded to hear an alleged Claim and/or Complaint from the 2nd Respondents regarding their land without notifying them of such a claim and thereafter making a decision that affected their lawful ownership rights without giving them a fair hearing.
49. In concluding the 2nd Respondents cross-examination, PW 1 admitted that the 2nd Respondent comprised of members who belong to the Kuria Community and all members of the Kuria Community who were resident in Angata Barigoi Adjudication Section were lawfully allocated land and issued with their ownership documents.
50. On further cross-examination by the 3rd Respondent, PW 1 reiterated that he had been one of the Adjudication Committee Member of Moyoi Adjudication Section.
51. According to PW 1, the total acreage of Moyoi Adjudication Section was approximately 30,000 acres.
52. Within this portion of 30,000 acres that comprised of Moyoi Adjudication Section, the Kuria Community was allocated about 1,704 acres which was to accommodate about 55 families from the Kuria Community that were resident within the Adjudication Section.
53. PW 1 confirmed that those members of the Kuria Community that had been allocated land within Angata Barigoi Adjudication Section were not part of the 2nd Respondent.
54. Be as it may, PW 1 insisted that the 1st Respondent did not notify the Petitioners of any Claim and/or Complaint of Historical Land Injustice lodged by the 2nd Respondent and never notified them of the hearing thereby denied them an opportunity to be heard.
55. PW 1 disputed the 1st Respondent's reason for recommending the cancellation of their ownership documents on the basis that the 2nd Respondents were forcefully evicted from the Adjudication Section.
56. PW 1 confirmed that the Petitioners were issued with their ownership documents after a lawful adjudication process was done and the Court in the proceedings Judicial Review Miscellaneous Application No. 1680 of 1999 verified the process and directed the 1st Interested Party to issue the relevant ownership documents which was indeed done.
57. PW1 was also cross-examined by the 4th Interested Party.



58. PW 1 confirmed that he was a Maasai from the Siria Clan and had in fact been born within Angata Barigoi Adjudication Section.
59. PW 1 informed the Court that he did not know the members of the 2nd Respondent and/or the 4th Interested Party but was aware that there were a number of Kuria Community members that resided within Angata Barigoi Adjudication Section.
60. According to PW 1, all members of the Kuria Community that were living within Angata Barigoi Adjudication Section were duly recognized and recorded as the owners of Parcel No. 11 within Angata Barigoi Adjudication Section through a Group Ranch known as Osinoni Group Ranch.
61. PW 1 therefore denied the allegation by the 2nd Respondent that there had been any forceful eviction of the Kuria Community undertaken by the Government of the day and if such an exercise ever happened, then it must have been necessitated by forceful entry of strangers into portions of land that had lawful owners.
62. On re-examination, PW1 testified that they had no issue on the adjudication of the register.
63. At the end of this Re-examination, the Petitioners in Petition No.6 of 2021 closed their case.
64. The second witness to take the stand was one David Rempe Ole MoSITE who was marked as PW 2 and represented the Petitioners in Petition No. 3 of 2021.
65. PW 2 confirmed to the Court that he had prepared a detailed witness Statement dated 02.04.2019 of which he adopted the same as his evidence in chief.
66. PW 2 stated that all the Petitioners herein were duly registered members of the defunct Moyoi Group Ranch which was recorded as the owner of Parcel No. 1 within Section C Adjudication Section.
67. PW 2 further stated that Parcel No. 1 was subsequently sub-divided and after making an Application to Sub-divide the same and the same being issued, the Legal Representatives of Moyoi Group Ranch transferred all the sub-divisions to their lawful owners who were about 570 in number.
68. PW 2 then produced the following documents in support of his evidence in chief; -
PW 2 Exhibit 9- A copy of the Registered Members of Moyoi Group Ranch.
PW 2 Exhibit 10- A copy of the Certificate of Incorporation and Legal Representatives of the defunct Moyoi Group Ranch.
PW 2 Exhibit 11- Copies of the Application to Sub-Divide Parcel No. 1 recorded in the name of the defunct Moyoi Group Ranch and the subsequent Consent issued by the Land Control Board.
69. In the year 2007, the members of the defunct Moyoi Group Ranch were finally issued with their ownership documents which they hold up to date.
70. Unfortunately, on or about 07.02.2019 the 1st Respondent recommended the cancellation and/or revocation of all title within Moyoi Group Ranch and thereafter a re-adjudication to be undertaken which recommendation was published in the Kenya Gazette No. 1550 of 2019.
71. PW 2 contention with the 1st Respondent's recommendation was that the Petitioners in Petition No. 3 of 2021 were never notified of the Claim and/or Complaint of Historical Land Injustice lodged by the 2nd Respondent and similarly, they were never notified of any hearings thereby denying them a fair hearing as enshrined under Articles 47 and 50 of the Constitution of Kenya hence interfering with their ownership rights protected under Article 40 of the Constitution of Kenya, 2010.



72. On cross-examination by the 2nd Respondent in Petition No. 3 of 2021, PW 2 reiterated that he was a Maasai from the Siria Clan and had been elected as Chairman of the defunct Moyoi Group Ranch in the year 2007.
73. PW 2 stated that the 1st Respondent and/or the 2nd Respondents never notified them of any Claim and/or Complaint relating to any Historical Land Injustice regarding the land adjudicated by Moyoi Group Ranch and as a result of this omission and/or commission, the Petitioners never got a chance to participate and/or respond to the said Claim and/or Complaint before the determination was pronounced on the 07.02.2019 and/or published in the Kenya Gazette Notice No. 1550 dated 01.03.2019.
74. PW 2 clarified to the Court that he had sued the 2nd Respondents in this Petition No. 3 of 2021 because these were the persons who had made the Claim and/or Complaint to the 1st Respondent yet they were strangers to the Petitioners.
75. PW 2 reiterated that during the demarcation of Section C Adjudication Section, the Kuria Community that was residing with this Adjudication Section were allocated and recorded as owners of Parcel No. 11 and were subsequently issued with their individual ownership documents.
76. PW 2 clarified that the Kuria Community that was living amongst the Maasai had been welcomed by their forefathers and assimilated into the Maasai Community.
77. On further cross-examination by the 4th Interested Party, PW 2 informed the Court that Parcel No. 1 was recorded in the name of Moyoi Group Ranch in the year 2006.
78. Thereafter, PW 2 was elected the Chairman of Moyoi Group Ranch and oversaw the sub-division of Parcel No. 1 to the 570 members subsequently, issuance of the ownership documents to the individual members in the year 2011.
79. PW 2 averred that the general membership of Moyoi Group Ranch incorporated people from the Maasai, Kalenjjin and Kuria Communities that lived within Parcel No. 1.
80. PW 2 testified that he was about 60 years old and had never been aware any Agreement for Sale between the Maasai and the Kuria as alleged by the 2nd Respondents.
81. PW2 recollected that sometime in the year 1989, some members of the Kuria Community invaded private land which had been adjudicated and recorded in the names of individual owners through the Adjudication undertaken in the year 1977 and this is why there was an exercise to remove them of private land by the Government of the day.
82. On re-examination, PW 2 confirmed that the portion of land recorded in the name of the defunct Moyoi Group Ranch was Parcel No. 1 and therefore, his testimony was directly in relation to this portion of land and not the other parcels of land.
83. The third witness was one Francis Oloitoyaye Sinoni who was marked as PW 3.
84. PW 3 introduced himself as a resident of Angata Bargo Adjudication Section who was the Vice Chairman of Angata Bargo Farmers' Co-operative Society Limited.
85. PW 3 confirmed to the Court that he had prepared, executed and filed a witness statement dated 02.04.2019 to which he adopted the same as his evidence in chief.
86. PW 3 then went ahead to produce the following Exhibit in support of his evidence in chief;-
PW 3 -Exhibit 12- Copies of the Public Hearing Scripts and the TJRC Public Report.



87. According to PW 3 who was also the area Chief from the year 1979, the demarcation of Angata Barigoi Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section) began in the year 1976.
88. PW3 testified that upon demarcation, the land was subdivided into 4 portions which were allocated to the Group Ranch, Angata Baragoi Co-op, the 55 Kuria families and some to the 192 individuals.
89. PW 3 confirmed that Parcel No. 2 was recorded in the name of Angata Baragoi Co-operative Society Limited.
90. However, at the time of Adjudication, the 2nd Respondent was unknown to the area save for various Kuria Families which were allocated Parcel 11.
91. PW 3 only came to learn about the 2nd Respondents after the 1st Respondent had pronounced its determination on the 07.02.2019 and published the recommendation to cancel and/or revoke their titles on the 01.03.2019.
92. Nevertheless, PW 3 informed the Court that on or about 1988, a number of Kuria people from the neighbouring Country of Tanzania which borders Angata Bargoi Adjudication Section invaded portions of land that had been already allocated and that he why the Government of the day came in and forcefully removed these trespassers from private land.
93. In concluding his evidence in chief, PW 3 could not confirm whether or not the former Provincial Commissioner of Rift Valley had been summoned by TRJC.
94. On cross-examination by 2nd Respondent, PW 3 stated that he only knew about the Tende Community but not members of the 2nd Respondent.
95. According to PW3, all members of the Kuria Community that were assimilated into the area were allocated Parcel No. 11 and issued with the appropriate ownership documents.
96. Unfortunately, in the year 1988, some other members of the Kuria Community residing in the neighbouring Country of Tanzania invaded land which had been allocated and this forced the Government of the day to forcefully return them to their Country.
97. PW 3 admitted that in the Adjudication Committee, there was person that represented the Kuria Community.
98. As to the proceedings before the 1st Respondent dealing with the 2nd Respondent's Claim and/or Complaint of Historical Land Injustice, PW 3 reiterated that the Petitioners were never notified of the said Claim and/or Complaint and consequently therefore, the Petitioners were never given an opportunity and/or fair hearing before the determination was made on the 07.02.2019.
99. Based on this arbitral proceeding, the 1st Respondent proceeded to recommend the cancellation of their lawful ownership documents thereby affecting their ownership rights protected under Article 40 of the Constitution of Kenya, 2010.
100. PW 3 informed the Court that he was the area Chief between the year 1979 to 2003 when he retired and during all this time, he never heard any member of the Tende Community that were Kuria complaining.
101. On cross-examination by Counsel for the Interested Parties, PW 3 averred that he was recorded as owner of Plot No.61 within Moyoi Adjudication Section although he lived somewhere else before moving to the said portion of land.



102. PW 3 stated that it is true the Kuria Community had a number of families living amongst the Siria Maasai and the Kalenjin by virtue of being welcomed by their forefathers but all these families were duly recognised and allocated land during the adjudication process.
103. Consequently, the people that were forcefully evicted by the Government of the day were the Kuria people that had forcefully occupied private properties and did not have any ownership documents of the portion of land that they occupied.
104. He reiterated that the Maasai complained, the PC gave them Notice to vacate and they complied. He did not see houses being burnt or people being beaten.
105. At the end of this cross-examination, there was no re-examination and PW 3 was discharged from the witness box.

Petition No. 2 of 2021

106. The fourth witness was one Simeon Kerina Mungai who was marked as PW 4.
107. PW 4 appeared in support of Petition No. 2 of 2021 and confirmed to have prepared and filed a witness statement dated 26.01.2022, which he adopted as his evidence in chief.
108. PW 4 informed the Court that he was recorded owner of Plot No. 252 and 263 within Moyoi Adjudication Section which he acquired through a commercial purchase.
109. PW 4 stated that on or about 1986, a group of 32 people came together and purchased the two parcels of land measuring about 500 acres from one Emmanuel Torongei by contributing about KShs 32,000/- each.
110. After the purchase of the two properties known as Plot No.252 and Plot No.263 within Moyoi Adjudication Section, they were issued with their ownership documents to LR. No. Transmara/Moyoi/252 on the 10.02.2015 while LR. No. Transmara/Moyoi/263 was on 29.10.2010.
111. However, in the year 2003, the area around Moyoi experienced a lot of tribal clashes which then made it difficult to continue occupying the said properties.
112. PW 4 informed the Court that they were all surprised in the year 2019 that the 1st Respondent decided to recommend the revocation and/or cancellation of their two parcels of land without notifying them of any claim against their title and/or according them a hearing before making such an adverse recommendation against them.
113. PW 4 in support of the above evidence produced the following documents; -
 - PW 4 Exhibit 1- Copies of the Title Deed over LR. No. Transmara/Moyoi/252 & 263 in the name of the Plaintiff PW4.
 - PW 4 Exhibit 2- A copy of the Declaration of Moyoi Adjudication Section dated 11.10.1996.
 - PW 4 Exhibit 3- A Copy of the Kenya Gazette Notice No. 1550 dated 01.03.2019 published by the 1st Respondent together with the determination dated 07.02.2019.
 - PW 4 Exhibit 4- Copy of an Extract from the Minutes of Narok County Security Committee
114. On cross-examination by Counsel for the 2nd Respondent, PW 4 reiterated that they purchased the two parcels of land from one Emmanuel Torongei who is now deceased.



115. PW 4 informed the Court that all the transfer documentation to transfer the two parcels of land to him were done before the purchaser Emmanuel Torongei died and then the titles were issued, the land was sub-divided to those that contributed and further ownership documents passed to the individual owners.
116. However, PW 4 did not have the Agreement For Sale and Consent to Sale from the person known as Emmanuel Torongei to show they purchased the same.
117. On further cross-examination by the 3rd Respondent, PW 4 stated that he fled from the two parcels of land in the year 2004 and up to now, the said parcels were vacant although he was afraid to go back and occupy the same.
118. Lastly, PW 4 was cross-examined by Counsel for the Interested Parties.
119. PW 4 stated that he currently resides in Kisii because after he took possession of the two parcels of land, there was so much insecurity within the Moyoi area and he could not permanently stay on the said parcels of land.
120. PW 4 explained that the group of 32 members that contributed to the purchase of the large portion of land was known as Tongoni although it was not legally registered as this was just a vehicle to pull resources and purchase the land.
121. PW 4 insisted that all the purchase and sub-division documents were with their officials and he was not one of the persons that attended the Land Control Board to process the purchase and/or sub-division consents.
122. PW 4 concluded the cross-examination by stating that in 1984 when they purchased the large portion of land, the area was peaceful and they even managed to visit the ground.
123. PW 4 stated that the person who sold to them the large portion of land had lawfully been adjudicated the land.
124. On re-examination, PW 4 reiterated that he purchased the two portions of land in the year 1986 and was in occupation until 2004 which was a period of about 18 years.
125. During all this time, there was no claim from anyone until after the 1st Respondent recommended that the ownership documents be cancelled and/or revoked.
126. At the end of this re-examination, PW 4 was discharged from the witness box.
127. The fifth witness, one Edward Obino Oguta who was marked as PW 5, testified in support of Petition No. 2 of 2021.
128. PW 5 introduced himself as a resident of Kisii County and confirmed that he had prepared and filed his witness statement dated 26.01.2022, which he adopted as his evidence in chief.
129. PW 5 stated that he was a member of a group known as Tongoni which had purchased a portion of land from one Emmanuel Torongei.
130. After the purchase of the large portion of land from Emmanuel Torongei, the land was sub-divided and he was registered as the lawful owner of two properties known as LR. No. Transmara/Moyoi/247 and LR. No. Transmara/Moyoi/398 thereby acquiring their titles in the year 2001.
131. PW 5 informed the Court that he took possession of both parcels of land in the year 1994 but had to leave in the year 1997 due to cattle rustling and tribal clashes.



132. However, in 2019, PW 5 was notified that the 1st Respondent had recommended that their ownership documents should be cancelled and/or revoked yet they had never been notified of any claim and/or Complaint by any person.
133. PW 5 therefore testified that the actions by the 1st Respondent was not procedural and interfered with his ownership rights over the two portions of land.
134. PW 5 then produced the following documents in support of his evidence in chief;-
PW 5- Exhibit 5- Copy of the Title Deed to LR. No. Transmara/Moyoi/378
PW 5- Exhibit 6 – Copy of the Title Deed to LR. No. Transmara/Moyoi/247
135. On cross-examination by Counsel for the 2nd Respondent, PW 5 stated that these two properties were not his ancestral land but he purchased the same in the year 1986.
136. At the time of the purchase there was no conflict between the Maasai and the Kuria communities.
137. PW 5 further stated that after Adjudication of Moyoi, a dispute arose on the manner and procedure in which adjudication had been done and the Court directed that people should be issued with titles as it was procedurally adjudicated hence the titles can not now be declared irregular.
138. The other Counsel who cross-examined PW 5 was Counsel for the Interested Parties.
139. PW 5 averred that he never participated in the adjudication of Moyoi Adjudication Section save that he came later to purchase his two portions of land in the year 1986.
140. PW 5 insisted that the dispute which had arisen during the adjudication process was resolved and everyone got their titles.
141. According to PW 5, the original Vendor did not live on the portion of land purchased by the group members and therefore it was vacant.
142. On re-examination, PW 5 insisted that all due diligence was undertaken before the original land was acquired and the Vendor had a valid ownership document.
143. The sixth witness was one Penual Ombuki Akuma who was marked as PW 6.
144. PW 6 also testified in support of Petition No. 2 of 2021.
145. PW 6 introduced herself as a resident of Kisii County and informed the Court that he had prepared a witness statement dated 26.01.2022 which he adopted as his evidence in chief.
146. PW 6 stated that he was registered owner of LR. No. Transmara/Moyoi/126 to which he was issued with an ownership document.
147. PW 6 testified that he purchased his property from one James Birongo Makori in the year 1993 and took possession of the same until the year 1998.
148. During his period of occupation, PW 6 planted Maize, Tobacco and at times rented the same out to commercial farmers.
149. However, in the year 2019, he learnt that the 1st Respondent had recommended that all ownership documents within Moyoi Adjudication Section should be cancelled and fresh adjudication to be done.



150. PW 6 position was that the 1st Respondent's recommendation to cancel all ownership documents within Moyoi Adjudication Section infringed his ownership rights as he was never notified of any Claim and/or Complaint against his titles to warrant such an adverse determination.
151. On cross-examination by Counsel for the 2nd Respondent, PW 6 confirmed that LR. No. Transmara/Moyoi/126 was within Moyoi Adjudication Section.
152. PW 6 stated that the Vendor who sold him the property was a Kisii and not a Maasai.
153. PW 6 testified that he had not experienced any disputes between the Maasai and the Kuria.
154. After this cross-examination, there was no further cross-examination and/or re-examination.
155. The Petitioners in Petition 2 Of 2021 then closed their case.

Petition No. 3 of 2021

156. The seventh witness was one Alexander Kibet Kosgei who was marked as PW 7.
157. PW 7 introduced himself as one of the Petitioners in Petition 3 of 2021 and resides in Angata Barigoi area.
158. PW 7 informed the Court that he moved to Angata Barigoi in the year 1954 and found the Siria Maasai who were occupying the area around Logorian while the Angata Barigoi side was vacant and not occupied.
159. The area around Angata Barigoi was then Declared an Adjudication Section in 1986 and the process concluded in the year 1996.
160. When the Adjudication Register of Angata Barigoi Adjudication Section was published for inspection, many people lodged objections and appeals which took a long time to determine hence the ownership documents were finally issued in the year 2002 and thereafter.
161. PW 7 informed the Court that later on, the Tende Community that comprised of Kuria people claimed that they had been left out of the Adjudication within Angata Barigoi.
162. It was after these claims that PW 7 came to learn that the 1st Respondent herein had made a recommendation to cancel all ownership documents within Angata Barigoi Adjudication Section and Section C Adjudication Section (now known as Moyoi Adjudication Section.)
163. PW 7 was of the considered view that the 1st Respondent failed to notify him of the Claim and/or Complaint from the 2nd Respondent and/or allow him to participate in the hearings before any adverse orders would be made against his ownership documents.
164. PW 7 testified that in Angata Barigoi, the neighbours are members of the Kuria Community who reside in South Nyanza and Tanzania and there has never been any boundary dispute over land.
165. On cross-examination by Counsel for Petitioners in Petition No. 2 of 2021, PW 7 reiterated that he had been living in Angata Barigoi for the last 60 years and was issued with his ownership documents in the year 2002.
166. PW 7 was therefore of the considered view that the 1st Respondent did not follow proper procedure in recommending the cancellation of the ownership documents within Angata Barigoi Adjudication Section.



167. On cross-examination by Counsel for Petitioners in Petition No. 4 of 2021, PW 7 stated that he came to learn about the 2nd Respondent in the year 2019 but did not know the actual members of the said association.
168. PW 7 went further to testify that the Nyabasi Clan of the Kuria people live in Kehancha within Migori County and therefore were not allocated any land within Angata Barigoi Adjudication Section and they were not residents there.
169. On cross-examination by the 2nd Respondent, PW 7 reiterated that he is a Kipsigis but had been living in the area known as Angata Barigoi since 1954 when they were relocated by the Colonial Government.
170. PW 7 confirmed that when the Kipsigis arrived in Angata Barigoi, the area was vacant and the Siria Maasai welcomed them.
171. The people that were neighbouring Angata Barigoi were the Kuria although he did not know the sub-clans.
172. PW 7 confirmed to the Court that he was issued with the ownership documents of the portion of land he resides on but could not remember the actual acreage.
173. PW 7 denied the allegations that members of the 2nd Respondents were ever evicted from Angata Barigoi by the Government of the day in the year 1989.
174. PW 7 concluded the cross-examination that the 1st Respondent never notified them of the Claim and/or Complaint filed by the 2nd Respondent or call them for any hearings before the decision was made on the 07.02.2019.
175. On re-examination, PW 7 confirmed that the Kipsigis Community has been living in Angata Barigoi for a long time and their neighbours are the Kuria Community.
176. According to PW 7, for the period of 60 years that he has been living in Angata Bargoi, there has never been a forceful eviction from the area because it was vacant in the year 1954 when they arrived there.
177. The eighth witness was Samuel Kipkoross Cheruiyot who was marked as PW 8.
178. PW 8 introduced himself as a teacher of a school dated Oldonyo Orok Secondary School and resides in Angata Barigoi area.
179. PW 8 informed the Court that he would rely and adopt the averments contained in the Supporting Affidavit dated 04.04.2019 as his evidence in chief.
180. PW 8 stated that he was in Court because of the Kenya Gazette Notice No. 1550 dated 01.03.2019 published by the 1st Respondent.
181. PW 8 testified that according to the Gazette Notice published by the 1st Respondent on 01.03.2019, all ownership documents issued in Angata Barigoi Adjudication Section had been recommended for cancellation and/or revocation and that a fresh adjudication should be undertaken.
182. However, the 1st Respondent had never notified them of any Claim and/or Complaint against their ownership documents and therefore did not participate in any hearings and/or investigation meetings before the recommendation by the 1st Respondent was made and published in the Kenya Gazette.
183. PW 8 averred that in the area known as Angata Barigoi, the 2nd Respondents have never been in occupation of any portion of land as alleged.



184. PW 8 therefore sought this Court to nullify the recommendation of the 1st Respondent made on the 07.02.2019 and the Kenya Gazette No. 1550 published on the 01.03.2019 and allow the people who have lawful ownership documents to continue with their peaceful occupation.
185. On cross-examination by Counsel for the Petitioners in Petition No. 2 of 2021, PW 8 reiterated that he resides in Angata Barigoi and was issued with his lawful ownership document.
186. PW 8 later came to learn that the 2nd Respondents had lodged a Claim and/or Complaint relating to Historical Land Injustice with the 1st Respondent but neither the 1st Respondent nor the 2nd Respondent notified them of the Claim and/or Complaint, and consequently, all proceedings thereafter were done without their knowledge and/or participation.
187. On cross-examination by Counsel for the Petitioners in Petition No. 4 of 2021, PW 8 admitted that he did not produce his ownership documents before the Court.
188. PW 8 further testified that based on information from their forefathers, the Kuria Community had never occupied the land where Angata Barigoi Adjudication Section was declared.
189. Consequently, the demarcation of Angata Barigoi Adjudication Section was on the basis of occupation and not by tribe.
190. PW 8 insisted that the 1st Respondent and/or the 2nd Respondents never notified them of any existing Claim and/or Complaint and thereby denying them the chance to participate and be heard before the recommendation pronounced on the 07.02.2019 was made and published on the 01.03.20219.
191. On cross-examination by Counsel for Petitioners in Petition No. 6 of 2019, PW 8 indicated that Angata Barigoi Adjudication Section was to the South while Moyoi Adjudication Section is to the North.
192. PW 8 further stated that in Angata Barigoi Adjudication Section, there were no members of the Kuria Community that were living there during demarcation and Adjudication.
193. However, in Moyoi Adjudication Section, there were about 100 families from the Kuria Community that were living in an area known as Machangwa within the Siria Maasai.
194. On cross-examination by Counsel for the 2nd Respondent, PW 8 clarified that he was born in Angata Barigoi in the year 1954 after his parents had been relocated to the said area by the Colonial Government.
195. PW 8 testified that indeed the relationship between the Kipsigis Community and the neighbouring Kuria Community had been hostile because of cattle rustling but not over land.
196. PW 8 reiterated that he is one of the land owners in Angata Barigoi and one of his properties was LR. No. Transmara/Angata Barigoi/696.
197. In concluding the cross-examination, PW 8 disputed the allegations that the 1st Respondent notified them of the Claim and/or Complaint by the 2nd Respondent and they never refused to participate any hearing save that they were never notified of the same.
198. On re-examination, PW 8 clarified that his issue was that the 1st Respondent never called the people with ownership documents over Angata Barigoi for any hearing before recommending the cancellation of the same.
199. PW 8 in fact testified that he did not know the members of the 2nd Respondent and at all times, the dispute between the Kipsigis Community and the Kuria Community has been cattle rustling and not ownership of land.



200. The ninth witness was one Johana Kipkorir Ruto who was marked as PW 9.
201. PW 9 introduced himself as a resident of Angata Barigoi who was born in the year 1968 and has since been living in this area.
202. According to PW 9, the Adjudication of Angata Barigoi started in the year 1986 and all persons living in the said area were issued with their ownership documents thereafter.
203. However, in the year 2019, it came to the attention of the land owners in Angata Barigoi that the 1st Respondent had recommended a cancellation of all ownership documents issued to them.
204. PW 9 stated that he was not familiar with the 2nd Respondent and had never seen its members in the area called Angata Barigoi.
205. PW 9 further testified that the people that neighbour Angata Barigoi were the Kuria from Kehancha in Migori County, Kuria from the neighbouring Tanzani, the Kuria from Mashangwa and the Maasai from Moyoi.
206. In essence, PW 9 denied the existence of any land disputes between the Kipsigis Community in Angata Barigoi and the Kuria community.
207. On cross-examination by Counsel for Petitioners in Petition 4 of 2021, PW 9 insisted that the area known as Angata Barigoi has never been occupied by the Kuria Community.
208. PW 9 testified that the area known as Angata Barigoi is pre-dominantly occupied by the Kipsigis Community that was relocated to this area by the Colonial Government in the year 1954 and subsequently the area was declared for adjudication in the year 1986 to enable the people who lived there to get ownership documents.
209. PW 9 stated that the 1st Respondent did not notify them of any Claim and/or complaint lodged by the 2nd Respondent and/or accord the owners within Angata Barigoi Adjudication Section a hearing before the recommendation for cancellation of the ownership documents was made on the 07.02.2019 and published on the 01.03.2019.
210. On re-examination, PW 9 averred that Masangwa area is within Moyoi Adjudication Section and not Angata Barigoi Adjudication Section.
211. At the end of this Re-examination, the Petitioners in Petition No. 3 of 2021 closed the Petitioners case.

Petition No. 4 Of 2021

212. The tenth witness was one Hon. Benson Nyahiri Kohera who was marked as PW 10.
213. PW 10 introduced himself a farmer and resident of Orumangucha Village Nyabasi North Location of Migori County.
214. PW 10 further stated that he had prepared and executed a witness statement dated 02.11.2021 which he adopted as his evidence in chief.
215. PW 10 in support of his evidence in chief produced the following documents;-
 - PW 10 Exhibit 1- A copy of the Certificate of Registration of the Petitioners in Petition No. 4 of 2021.
 - PW 10 Exhibit 2- A copy of a Letter dated 13.03.1946
 - PW 10 Exhibit 3- A copy of a letter dated 29.06.1955



- PW 10 Exhibit 4- A copy of a letter dated 09.05.1995
- PW 10 Exhibit 5- A copy of a letter dated 14.05.1985
- PW 10 Exhibit 6- List of Villages demolished in 1989.
- PW 10 Exhibit 7- Copy of a Letter dated 29.07.2014 to the 1st Respondent.
- PW 10 Exhibit 8- Copy of a letter dated 11.11.2016 to the 1st Respondent.
- PW 10 Exhibit 9- Copy of an acknowledgement Form from the 1st Respondent to the Petitioners dated 09.06.2017.
- PW 10 Exhibit 10- Copy of the Determination by the 1st Respondent and the Gazette Notice No. 1550 published on 01.03.2019.
216. PW 10 informed the Court that the document produced as PW 10 Exhibit 3 was a letter from the District Commissioner Narok confirming that indeed there was an exchange of cattle between the Kuria Community and Maasai Community for a parcel of land.
217. PW 10 referred to PW 10 Exhibit 5 which was a letter that objected to the manner in which the adjudication exercise was being carried out without the involvement of the Kuria Community.
218. According to PW 10, the Adjudication exercise that was being referred to was Moyoi Adjudication Section.
219. PW 10 testified that the Objection by the Kuria Community started way back in 1978.
220. The Petitioner's claim was that they should also be demarcated land and their ownership rights recognized within Moyoi Adjudication Section as their forefathers lawfully purchased the land through exchange or cattle.
221. PW 10 referred to PW 10 Exhibit 7 which he stated was a letter written by the Petitioner's Chair which was a Memorandum complaining about the manner in which the Kuria Community had been evicted from their ancestral homes.
222. PW 10 testified that PW 10 Exhibit 9 was an acknowledgement from the 1st Respondent confirming receipt of the Memorandum presented to them.
223. Based on the Acknowledgement from the 1st Respondent produced as PW 10 Exhibit 9, their claim and/or Complaint was referenced as NLC/HLI/019/2017.
224. However, PW 10 informed the Court that the 1st Respondent never notified them of any hearing and/or investigation inquiries regarding their Claim and/or Complaint known as NLC/HLI/019/2017 save that in the year 2019, the Petitioners learnt that a determination had been made on the 07.02.2019 and published in the Kenya Gazette No. 1550 dated 01.03.2019.
225. According to PW10, the 1st Respondent proceeded to determine issues of the 2nd Respondent using their Claim and/or Complaint and failed to include them in the hearings and recommendations that were pronounced on the 07.02.2019 and published on the 01.03.2019.
226. Consequently, PW 10 was of the view that the recommendation of the 1st Respondent made on the 07.02.2019 and the Gazette Notice No. 1550 dated 01.03.2019 should be nullified and be heard afresh with the participation of the Petitioners herein.



227. On cross-examination by the Counsel for the 2nd Respondents, PW 10 confirmed that the determination by the 1st Respondent determined the issues raised by the 2nd Respondent but did not give an opportunity to the Petitioners who were also part of the Kuria Community.
228. According to PW 10, he was not present when the acquisition of land by the Kuria Community from the Maasai Community was done but they were given this information by their forefathers who had been in occupation of the land since the 1900.
229. PW 10 referred to PW 10 Exhibit 6 and stated that a lot of villages as outlined in the list therein had been burnt, demolished on various dates thereby forcefully evicting the Kuria Community.
230. PW 10 could not however confirm the type of information that was used to prepare and compile the number of villages that were allegedly burnt down.
231. PW 10 was of the view that the Government of the day acted unlawfully by allowing the Adjudication of an area which the Petitioners occupied yet they failed to record and acknowledge their ownership rights thereof.
232. On cross-examination by Counsel for the Petitioners in Petition No. 6 of 2021, PW 10 stated that the Petitioner's association was registered in the year 2003 as a social and development self-help Group.
233. However, PW 10 did not have any documentary evidence to confirm that he was an elected and authorized office of the Petitioners' Association capable of testifying before the Court.
234. PW 10 informed the Court that at the time of lodging their Claim and/or Complaint before the 1st Respondent, there was no list of the persons who were affected by the forceful eviction that was presented thereof.
235. Similarly, PW 10 admitted that the Claim and/or Complaint presented to the 1st Respondent and produced as PW 10 Exhibit 7 did not have any acknowledgement stamp on the face of it but PW 10 Exhibit 8 had the stamp of the 1st Respondent.
236. PW 10 testified that according to his knowledge, the 2nd Respondent did not file any Claim and/or Complaint before the 1st Respondent.
237. PW 10 however confirmed to the Court that indeed Moyoi Adjudication Section was adjudicated and the Certificate of Finality issued on the 12.09.1996 yet he was living within the said Adjudication Section.
238. PW 10 could not also have any evidence to confirm and collaborate the allegations that the Kuria Community were forcefully evicted from Moyoi Adjudication Section.
239. On cross-examination by Counsel for the Petitioner in Petition No. 2, PW 10 was of the view that there were two Claims and/or Complaints that were presented to the 1st Respondent which both dealt with the issues of the Kuria Community.
240. Nevertheless, PW 10 agreed with the determination of the 1st Respondent made on the 07.02.2019 and stated that it was arrived after proper investigations because the Kuria Community was entitled to about 20,000 acres within Moyoi Adjudication Section.
241. On cross-examination by Counsel for the Petitioners in Petition No. 3 of 2021, PW 10 reiterated that the Kuria Community was forcefully evicted from their area of occupation in the year 1989 and stated that there were various meetings held to find a solution to the problem thereof.



242. PW 10 stated that the Kuria Community did not have any claim in Angata Barigoi Adjudication Section as this was predominantly an adjudication for the Kalenjin Community.
243. PW 10 reiterated that their claim was purely on portions of land within Moyoi Adjudication Section although the determination by the 1st Respondent touched on both Angata Barigoi Adjudication Section and Moyoi Adjudication Section.
244. PW 10 informed the Court that the members of the Petitioner's association were predominantly the Nyabasi Clan while the 2nd Respondents were from the Bwirege Clan.
245. On re-examination, PW 10 admitted that he had not presented any Resolution and/or authority by the members of the Petitioners association to testify on their behalf but again no member had objected to his appearance and testifying on behalf of the association thereof.
246. PW 10 stated that the former Chair of the Petitioners association prepared a Petition for presentation before the 1st Respondent but he passed away before the same was presented.
247. Consequently, PW 10 presented the same on behalf of the Petitioner's association but has never been called for a hearing and was not sure if the same was ever heard.
248. At the end of this re-examination, the Petitioners in Petition No. 4 of 2021 closed their case.

1st Respondent's Case

249. The 1st Respondent despite filing their Replying Affidavits failed to turn up in court during the hearing of the four Petitions and the Court closed their case for none appearance.

2nd Respondent's Case

250. The 2nd Respondent's first witness was one Paul Magutu Chacha who was marked as RW 1.
251. RW 1 introduced himself as a resident of Itimaru within Kuria East Migori County who was engaged in farming activities for a living.
252. RW 1 informed the Court that he was in Court to testify on behalf of the 2nd Respondent and had been given a written Consent and/or Authority from the general membership dated 20.06.2019.
253. In addition to the written Consent/Authority issued by the general membership of the 2nd Respondent, RW1 also produced the Certificate of Registration of the 2nd Respondent dated 14.06.2016.
254. According to the testimony of RW 1, the members of the 2nd Respondent occupied the area now adjudicated as Angata Barigoi and Moyoi Adjudication Sections but were later forcefully evicted.
255. After the forceful evictions of the 2nd Respondent, the areas known as Angata Barigoi and Moyoi Adjudication Sections were demarcated and adjudicated to the Kipsigis Community, the Kisii Communities and the Maasai Communities and ownership documents issued accordingly.
256. Being aggrieved by these events, the 2nd Respondents proceeded to write various letters seeking redress including lodging a Claim and/or Complaint with the 1st Respondent on Historical Land Injustice.
257. The 1st Respondent being tasked with the mandate of looking at issues of Historical Land Injustice proceeded to hear the Claim and/or Complaint by the 2nd Respondent and thereafter recommended on the 07.02.2019 that the ownership documents issued to the general public in Angata Barigoi



- Adjudication Section and Moyoi Adjudication Section should be cancelled and/or revoked and the entire exercise re-done again.
258. RW 1 stated that during the hearing and/or investigation meetings held by the 1st Respondent, parties were duly invited and/or notified of the said hearings and/or investigation meetings.
259. RW 1 testified that the 2nd Respondent's Claim and/or Complaint before the 1st Respondent was one dated 20.04.2016 which was acknowledged by the 1st Respondent through their Acknowledgement Form dated 05.10.2017.
260. RW 1 further testified that the basis of their Claim and/or Complaint before the 1st Respondent was that members of the 2nd Respondent had been forcefully evicted from the areas known as Angata Barigoi and Moyoi Adjudication Sections in 1989 by the Government of the day.
261. RW 1 then produced a Newspaper Extract from the Daily Newspaper dated 11.07.2008 which highlighted the manner in which the 2nd Respondent's members were being evicted.
262. Thereafter, RW 1 produced another Newspaper Extract from the Daily Newspaper dated 01.07.2016 showing the issuance of ownership documents by the Governor of the County Government of Narok within the areas known as Angata Barigoi Adjudication Section and Moyoi Adjudication Section.
263. RW 1 in addition to the two Newspaper Extracts also produced another Newspaper Extract from the Daily Nation showing the manner in which the former Provincial Commissioner Rift Valley undertook the eviction of the 2nd Respondent's members.
264. Based on all this documentary evidence, RW 1 urged the Court to uphold the determination by the 1st Respondent pronounced on the 07.02.2019 as well as the Gazette Notice No. 1550 dated 01.03.2019.
265. RW 1 then produced the following documents in support of his evidence in chief; -
- RW 1 Exhibit 1- Copy of the Letter of Authority issued to RW 1 by the general membership of the 2nd Respondent dated 20.06.2019.
- RW 1 Exhibit 2- Certificate of Registration of the 2nd Respondent dated 14.06.2016.
- RW 1 Exhibit 3 – Copy of a letter dated 04.09.2018 from the 1st Respondent.
- RW 1 Exhibit 4- Copy of a letter of Claim and/or Complaint dated 20.04.2016.
- RW 1 Exhibit 5- Copy of the Acknowledgement Form from the 1st Respondent dated 05.10.2017.
- RW 1 Exhibit 6- Copy of Newspaper Extract from the Daily Nation dated 11.07.2008.
- RW 1 Exhibit 7- Copy of a Newspaper Extract from the Daily Nation dated 01.07.2016.
- RW 1 Exhibit 8- Copy of a Newspaper Extract from the Daily Nation showing the actions of the former Provincial Commissioner's against the 2nd Respondents.
266. On cross-examination by the Petitioners in Petition No. 6 of 2021, RW 1 admitted that the 2nd Respondent's entity was registered in the year 2016 although its members have been residents of the areas known as Angata Barigoi Adjudication Sections and Moyoi Adjudication Sections since time immemorial.
267. RW 1 informed the Court that the forceful eviction of the Tende Community started way back in 1964 when the forefathers faced the same fate.
268. On being referred to RW 1 Exhibit 6, RW 1 admitted that the Newspaper Extract talked about evictions in the year 2008 and not the year 1964 and/or 1989.



269. RW 1 reiterated that the 2nd Respondent's Claim and/or Complaint was presented to the 1st Respondent on the 20.04.2016.
270. RW 1 testified that in the 1st Respondent's determination dated 07.02.2019, the 2nd Respondent's Claim and/or Complaint had not been referred therein and similarly, the 1st Respondents had not presented to Court the 2nd Respondent's Claim and/or Complaint to the 1st Respondent.
271. On being referred to PW 10 Exhibit 8, RW 1 admitted that the Petitioners in Petition 4 of 2021 actually presented a Petition before the 1st Respondent but their issue was compensation of Cattle and not a Claim and/or Complaint of Historical Land Injustice.
272. Once again being referred to PW 10 Exhibit 9, RW 1 stated that the Acknowledgment Form from the 1st Respondent dated 09.06.2017 was referring to a Complaint dated 13.02.2017 which was not within his knowledge.
273. RW 1 further admitted that although the Petitioners in Petition No. 2 of 2021, Petition No. 3 of 2021 and Petition No. 6 of 2021 had ownership documents over various parcels of land in Angata Barigoi Adjudication Section and Moyoi Adjudication Section, they did not participate in the proceedings before the 1st Respondent.
274. RW 1 informed the Court that during the hearings and the Investigation meetings, only two witnesses from the 2nd Respondent testified before the 1st Respondent and thereafter the determination dated 07.02.2019 was pronounced.
275. RW 1 clarified that the Adjudication Section known as Oljonyali which was referred to by the 1st Respondent was different from Angata Barigoi Adjudication Section and Moyoi Adjudication Section although all these three Adjudication Sections were occupied by members of the 2nd Respondent.
276. On cross-examination by the Petitioners in Petition No. 2 of 2021, RW 1 admitted that various persons had ownership documents in the Angata Barigoi Adjudication Section and Moyoi Adjudication Section.
277. On being referred to RW1 Exhibit 3 & 4, RW 1 confirmed that the determination of the 1st Respondent would definitely affect the ownership rights of the people registered as owners of various parcels of land within Angata Barigoi Adjudication Section and Moyoi Adjudication Section.
278. RW 1 conceded that the 1st Respondent did not notify the registered owners of the various parcels of land within Angata Barigoi Adjudication Section and Moyoi Adjudication Section of the Claim and/or Complaint lodged by the 2nd Respondent and similarly, the proceedings before the 1st Respondent confirm that the said registered owners did not participate in the hearings and/or investigation meetings.
279. RW 1 concluded the cross-examination by the Petitioners In Petition No. 2 of 2021 by accepting that the determination by the 1st Respondent cancelled and/or revoked ownership documents of people that were not party to the proceedings before the 1st Respondent.
280. On cross-examination by Petitioners in Petition No. 3 of 2021, RW 1 reiterated that its members were evicted from Angata Barigoi Adjudication Section and Moyoi Adjudication Section but never challenged the Declaration of these two Adjudication Sections by the Government of the day.
281. On being referred to DW 1 Exhibit 7, RW 1 confirmed that the Title Deeds which were being issued by the Governor of County Government of Narok referred to Keiyian Adjudication Section and not Angata Barigoi Adjudication Section and/or Moyoi Adjudication Sections.



282. RW 1 stated that the Claim and/or Complaint by the 2nd Respondent was not against the land owners in Angata Barigoi Adjudication Section and/or Moyoi Adjudication Section but the Government of the day who forcefully evicted them from their land.
283. On cross-examination by Petitioners in Petition No. 4 of 2021, RW 1 was of the view that there is a difference between the Tende Community and the Kuria Community.
284. However, in the 1st Respondent's determination dated 07.02.2019, it was stated that the Tende Community was part of the Kuria Community.
285. RW 1 further informed the Court that during the Investigation Visit by the 1st Respondent, the Kuria Community was not present as they had not been affected by the forceful eviction which was the subject matter of the Claim and/or Complaint.
286. At the end of this cross-examination, the 2nd Respondent's Counsel did not have any questions for re-examination and RW 1 was discharged from the witness box.

1st, 2nd & 3rd Interested Parties Case.

287. The 1st to 3rd Interested Parties although duly aware of the hearing did not attend Court and/or present any witness to testify.
288. Consequently, the Court directed that the 1st to 3rd Interested Parties case be closed.
289. The Court directed all the parties to prepare, file and serve their final submissions which directions were duly complied with.
290. The Court has indeed perused the pleadings by the Petitioners, the Respondents, the Interested Parties and the submissions therein and hereby identified the following issues for determination; -
- Issue No. 1 - Whether the 1st respondent has the constitutional and/or statutory mandate to receive, hear and determine cases of historical land injustices.
- Issue No. 2 – Are there any valid historical land injustice claims presented and admitted to the 1st respondent by the petitioners in petition no. 4 of 2021 and/or the 2nd respondents capable of being heard and determined?
- Issue No. 3 – Did the 1st respondent comply with constitutional/statutory provisions relating to fair hearing
- Issue No. 4 – Did the determination by the 1st respondent unlawfully interfere with and/or affect the petitioners' constitutional rights as owners of the properties which were registered in angata barigoi adjudication section and moyoi adjudication section
- Issue No. 5 – Are the petitioners entitled to the prayers sought in the 4 petitions
- Issue No. 6 – Who bears the costs of the petitions

291. Having identified the above issues for determination, the court will proceed to discuss the same as hereunder;

Issue No. 1 - Whether the 1st respondent has the constitutional and/or statutory mandate to receive, hear and determine cases of historical land injustices.

292. The 1st issue is whether or not the 1st Respondent had the jurisdiction both Constitutionally and statutorily to hear and determine issues of historical land injustice.



293. Article 67 of the Constitution established the National Land Commission whose functions are specifically provided for under Article 67(2).
294. In particular, Article 67 (2) (e) provides as follows: -
- “to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress”
295. The National Land Commission was established through the National Land Commission Act No. 5 of 2012, which again, under section 15 gave it the statutory powers to handle historical land injustices and make recommendations on the appropriate redress.
296. It is therefore this court’s finding that indeed, the 1st Respondent has the Constitutional and Statutory powers to receive, hear and determine claims of historical land injustice that affect the citizens of this country.

Issue No. 2 – Are there any historical land injustice claims presented and admitted before the 1st respondent by the petitioners in petition no. 4 of 2021 and/or the 2nd Respondents?

297. The 4 petitions which are before court for determination were filed on the basis of a recommendation by the 1st Respondent dated 07.02.2019 and published in the Kenya Gazette Notice No. 1550 dated 01.03.2019 in the proceedings known as NLC/HLI/019/2019.
298. Looking at the determination by the 1st Respondent dated 07.02.2019 in the proceedings known as NLC/HLI/019/2019, the recommendation was based on a Claim and/or Complaint of Historical Land Injustice filed by the Tende Community who were represented by one Joel Gesuto and Paul Magutu Chacha and the Referenced as NLC/HLI/019/2017.
299. The 1st Respondent filed a total of 4 Replying Affidavits beginning with a Replying Affidavit dated 9/7/2019 in Petition No. 6 of 2021, a second Replying Affidavit dated 9/7/2019 in Petition No. 3 of 2021, a third Replying Affidavit dated 9/7/2019 in Petition No. 2 of 2021 and lastly, Replying Affidavit dated 21/6/2019 in Petition No. 4 of 2021.
300. In the Replying Affidavits by the 1st Respondent, the Reference Number allocated to the 2nd Respondent’s claim and/or complaint is NLC/HLI/019/2017.
301. The 1st Respondent did not present before the court the actual Claim and/or Complaint that had been lodged by the 2nd Respondent and later referenced as NLC/HLI/019/2017.
302. The 2nd Respondent, during the hearing produced RW1 – Exhibit 4, which was a letter dated 20/4/2016 as the claim and/or complaint that was served on the 1st Respondent.
303. According to the 2nd Respondent, the letter dated 20/4/2016 is what was acknowledged by the 1st Respondent through the Acknowledgment Letter dated 5/10/2017 which was produced as RW1 – Exhibit 5.
304. During cross-examination, the 2nd Respondent’s witness admitted that their letter dated 20/4/2016 was never received by the 1st Respondent.
305. The question that then arises is whether or not the 2nd Respondent actually lodged a Claim and/or Complaint of Historical Land Injustice before the 1st Respondent.
306. The answer to this question is found in the testimony of PW10 – Benson Kohera, who was a witness in Petition No. 4 of 2021.



307. According to the testimony of PW10, there was a Claim and/or Complainant to the 1st Respondent which had been presented on the 11.11.2016 by the Petitioners in Petition No. 4 of 2021.
308. At that particular time, the officials of the Petitioners in Petition No. 4 of 2021 were the late Joel Gisunte who was the Chairman, Daniel Maguto Chacha and PW10 who was the secretary and therefore the group Munyonge Ana Haki, represented the entire Kuria Community.
309. PW10 proceeded to state that after the demise of their chairman, Joel Gisunte, the Vice-chairman Daniel Maguto Chacha, proceeded to register the 2nd Respondent Association and then converted Claim and/or Complaint filed by the Petitioners in Petition No. 4 of 2021 as that of the 2nd Respondent to the exclusion of the other Clans within the Kuria Community.
310. The 2nd Respondents did not dispute these facts stated by PW10 during the hearing of these Petitions.
311. Turning to RW1–Exhibit 4 which was the letter dated 20/4/2016 presented by the 2nd Respondent as their Claim and/or Complainant, the court takes note that the same stated in part as follows: -
- “we are therefore forced to write to you directly so that you find a better way at which you can resolve our problem of resettling us back in our land that we were evicted out on 2nd February, 1989. We made many follow-ups but things are not bearing fruits.”
312. Looking at the contents of the letter dated 20.04.2016, can the same be deemed to be a lawful Claim and/or Complaint under the provisions of the *National Land Commission Act*, No. 5 of 2012 capable of being registered as Historical Land Injustice Claim and/or Complaint.
313. The *National Land Commission Act* No. 5 of 2012 in section 15(3) allows for claims to be presented dealing with historical land injustices.
314. To supplement and operationalize the Statutory provisions of Section 15 of the *National Land Commission Act*, No. 5 of 2012, there was the publication of the National Land Commission (Investigation of Historical Injustices) Regulations, 2017 through the Kenya Gazette Notice No. 258 of 2017 (hereinafter referred to as “Historical Land Injustice Regulations”).
315. Regulation 7 of the Historical Land Injustice Regulations provides that any person seeking to lodge a Claim and/or Complaint relating to Historical Land Injustice may do so through Form NLC/HLI/01.
316. The Form NLC/HLI/01 gives the particulars of the complainant, their manner of Identification, their contacts and the contact person. It also provides for the particulars of the property, the nature of the complaint, the proposed remedies and the Declarations being sought by the complainant.
317. Looking at the two Claims and/or Complaints filed by the Petitioners in Petition No. 4 of 2021 as well as the 2nd Respondent through their letter dated 20.04.2016, none of these two documents complied with Regulation 7 of the Historical Land Injustice Regulations.”
318. Secondly, Regulation 7 (5) of the Historical Land Injustice Regulations requires that the 1st Respondent must acknowledge each and every Claim and/or Complaint relating to Historical Land Injustice through issuance of Form NLC/HLI/02.
319. Once the 1st Respondent duly acknowledges the Claim and/or Claimant, Regulation 7(6) provides as follows in mandatory terms; -



- (6) Upon receiving a complaint, the Commission shall vet the claim, against the admissibility checklist in Form NLC/HLI/03 set out in the Schedule and on the confirmation that the complaint has been made in accordance with these Regulations the Commission may-
- (a) admit the claim;
 - (b) reject the claim stating the reasons for the rejection;
 - (c) refer claimants to other relevant institutions or mechanisms for the resolution of the claim; or
 - (d) consolidate the claim with other claims of similar nature
320. The court also takes note of the provisions under Regulation 7(5)-(8), which provides as follows: -
- (5) The Commission shall acknowledge every claim lodged in Form NLC/HLI/02 set out in the Schedule
 - (6) Upon receiving a complaint, the Commission shall vet the claim, against the admissibility checklist in Form NLC/HLI/03 set out in the Schedule and on the confirmation that the complaint has been made in accordance with these Regulations the Commission may—
 - a. admit the claim;
 - b. reject the claim stating the reasons for the rejection;
 - c. refer claimants to other relevant institutions or mechanisms for the resolution of the claim; or
 - d. consolidate the claim with other claims of similar nature.
 - (7) Upon vetting a claim, the Commission shall notify the complainant of its decision to reject the claim, refer the claim to relevant institutions or consolidate the claim, in writing stating, the reasons for the decision.
 - (8) Upon admission of a claim, the Commission shall, within ninety days, notify the claimant of the admission in Form NLC/HLI/04 set out in the Schedule and issue a notice to appear in Form NLC/HLI/05 set out in the Schedule to the claimant.”
321. It is therefore clear from the provisions outlined hereinabove that the 1st Respondent does not automatically admit any Claim and/or Complaint of Historical Land Injustice.
322. The understanding and interpretation of this court as regards the above regulations is that the 1st Respondent must conduct an internal review exercise of all Historical Land Injustice Claims and/or Complaints as provided for in the admissibility checklist in Form NLC/HLI/03 and thereafter decide as to whether the claim can be admitted, rejected, referred to other institutions for resolutions or consolidated with other pending petitions.
323. In the event the 1st Respondent admits a Claim and/or Complaint as a Historical Land Injustice Claim, then it must issue a Notice of Admission of Claim through Form NLC/HLI/04, and where the Claim and/or Complaint is rejected, the same Form shall state the grounds of such rejection.
324. The 1st Respondent in all the Replying Affidavits did not present before this Court any Notice of Admission as regards the Claim and/or Complaint dated 11.11.2016 by the Petitioners in Petition No.4 of 2021 or the Letter dated 20.04.2016 by the 2nd Respondent.



325. What the Petitioners in Petition No. 4 of 2021 and the 2nd Respondents have are two separate Acknowledgement Forms under Form NLC/HLI/02 dated 13.02.2017 and 05.10.2017 respectively both referred as NLC/HLI/019/2017.
326. The Acknowledgment Form issued under Regulation 5(2) the Historical Injustice Regulations only signifies the receipt of the alleged Claim and/or Complaint but does not proof that the Claim and/or Complaint is lawfully admitted.
327. What should follow after the issuance of the Acknowledgment Form is the 1st Respondent undertaking an internal evaluation of the Claim and/or Complaint using the prescribed Form NLC/HLI/03 which is provided under Regulation 7(3) of the Historical Land Injustice Regulations, and after the 1st Respondent is satisfied that indeed the Claim and/or Complaint meets all the requirements, it issues a Notice of Admission of the Claim as provided in Form NLC/HLI/04 under Regulation 7(8) of the Historical Land Injustice Regulations.
328. Based on the evidence placed before this Court by the 1st Respondent, the 2nd Respondent and the Petitioners in Petition No. 4 of 2021, there is no evidence that either the Claim and/or Complaint dated 11.11.2016 or the Letter dated 20.04.2016 were ever admitted as Claims of Historical Land Injustices by the 1st Respondent as provided Under Regulations 7 (8) of the Historical Land Injustice Regulations to now give jurisdiction and/or capacity for a hearing to be undertaken in accordance to the law.
329. In essence, this Court therefore makes a finding that there was no Claim and/or Complaint of Historical Land Injustice that was ever admitted by the 1st Respondent to facilitate any lawful hearing and determination as pronounced on the 07.02.2019 and published in the Kenya Gazette No. 1550 dated 01.03.2019.

Issue No. 3 – Did the 1st respondent comply with constitutional/statutory provisions relating to fair hearing

330. Notwithstanding the fact that there was no admitted Claim and/or Complaint of Historical Injustice by the 1st Respondent, there seems to have been proceedings undertaken on the basis of the two Acknowledgment Forms dated 13.02.2017 and 05.10.2017 issued to the Petitioners in Petition NO. 4 of 2021 and the 2nd Respondents respectively.
331. The 1st Respondent stated that it undertook hearings on the 16.05.2018 at their offices in Nairobi and an Investigative meeting on the 04.09.2018 at the County Government of Narok offices where the County Executive Member of Land is located.
332. The 2nd Respondent confirms that indeed these two hearings alleged by the 1st Respondent took place and constituted the proceedings that led to the determination pronounced on 7/2/2019.
333. On the other hand, the Petitioners in all the 4 petitions denied knowledge of the Historical Injustice claims and notification of any hearing undertaken by the 1st Respondent.
334. The Petitioners therefore are raising the issue of a fair hearing provided under Articles 47, 48 and 50 of the Constitution.
335. Similarly, the Petitioners are accusing the 1st Respondent of failing to adhere to the Values and Principles of Public Service which have been provided under Article 232.
336. Going back to the National Land Commission Act and the Regulations dealing with the Historical Land Injustices claims, the 1st Respondent was under a duty to notify all persons to be affected by any



- claim of historical land injustice to appear before it and defend their ownership documents as provided under Regulation 7(8) and 15(1) of the Historical Land Injustice Regulations.
337. In addition to the above, the 1st Respondent was under a duty to summon any person who had any evidence relating to the historical land injustice issue before it to come and give the necessary evidence as required in Regulation 14(4) of the Historical Land Injustice Regulations.
338. The 1st Respondent alleged that it notified all persons affected by the 2 claims of Historical Land Injustice filed by the Petitioners in Petition No. 4 of 2021 and the 2nd Respondents to a hearing at their offices in Nairobi and at the Narok County Government offices.
339. Unfortunately, the 1st Respondent did not present either the notices to appear as provided under Regulation 7(8) and 15(1) of the Historical Land Injustice Regulations or the Summons under Regulation 14(4) of the Historical Land Injustice Regulations.
340. If indeed the meeting of 16.05.2018 and 04.09.2018 happened, what was so difficult for the 1st Respondent to provide the minutes and/or proceedings that were undertaken on those two days that the hearings proceeded.
341. To cast further doubt that these meetings happened, the determination by the 1st Respondent pronounced on the 07.02.2019 did not even mention and/or consider the proceedings that took place on the said 16.05.2018 and 04.09.2018.
342. Clearly therefore, this court is of the considered view that there were no meetings or hearings that were undertaken by the 1st Respondent on the alleged two dates of 16.05.2018 and 04.09.2018.
343. If such proceedings did happen, which the court highly doubts, the Petitioners herein or the persons who would have been affected who are the lawful registered land owners of Angata Barigoi Adjudication Section and Moyoi Adjudication Section were never notified of any Claim and/or Complaint of Historical Land Injustice and they were never given an opportunity to be heard before the 1st Respondent made the recommendation to cancel and/or revoke their ownership documents.
344. It is therefore clear that the 1st Respondent violated the Petitioners constitutional rights under Articles 47, 48 and 50 of the *Constitution*.

Issue No. 4 – Did the determination by the 1st respondent unlawfully interfere and/or affect the petitioners’ constitutional rights as owners of the properties which were registered in Angata Barigoi adjudication section and Moyoi adjudication section.

345. In this issue, the court seeks to evaluate the implication of the 1st Respondent’s determination dated 07.02.2019 against the Petitioners’ rights as provided under Article 40 of the *Constitution*.
346. The Petitioners in Petition No. 6, 2 and 3 of 2021 instituted their Petitions on the basis that they are the lawfully registered owners of various parcels of land within both in Angata Barigoi Adjudication Section and Moyoi Adjudication Section.
347. This position was not challenged by either the 1st Respondent or the 2nd Respondent.
348. The Petitioners therefore are stating that under Article 40 of the *Constitution*, their ownership cannot be interfered with by the 1st Respondent without giving them an opportunity of understanding the Claim and/or Complaint against their properties and according them a fair hearing.



349. The Petitioners testified that the determination by the 1st Respondent made on the 07.02.2019 unlawfully recommended the termination of their constitutional rights in violation of Article 40 of the Constitution.
350. The 1st Respondent in their Replying Affidavits stated that the Petitioners rights under Article 40 are not absolute and can be subjected to scrutiny under the National Land Commission Act.
351. To begin with, it is settled law that although the rights provided under Article 40 are not absolute, the same can only be interfered with under the provisions of section 26 of the Land Registration Act No. 3 of 2012.
352. In these particular petitions, the situation is much worse because the 1st Respondent did not even have any admitted claim of historical land injustice as provided under Regulation 7(8) of the Historical Land Injustices Regulations.
353. It therefore goes without saying that the determination by the 1st Respondent made on the 07.02.2019 was arrived at without any lawful Claim and/or Complaint of Historical Land Injustice having been admitted and any proceedings undertaken thereafter were in contravention of Article 47, 48, 50 and 232 of the Constitution and could not therefore lawfully make a recommendation to affect the Petitioners ownership adversely.

Issue No. 5 – Are the petitioners entitled to the prayers sought in the 4 petitions

354. Based on the determinations of Issues Nos. 2,3 and 4 herein above, this court is satisfied that the 1st Respondent violated the Petitioners' rights, in particular, Petitions Nos. 6, 2 and 3 of 2021 and therefore the Petitions herein are merited.

Issue No. 6 – Who bears the costs of the Petitions

355. The cardinal rule on costs is that whoever loses meets the costs.
356. However, looking at the nature of these petitions, the court is of the view that they are of a public nature and makes a finding that each party will bear its own costs.

Conclusion

357. In conclusion, the court hereby makes the following orders in determination of all the Petitions: -
- A. Petitions Nos. 6,2 and 3 of 2021 are merited.
 - B. A Declaration be and is hereby made quashing the 1st Respondent's determination under the claim known as NLC/HLI/019/2017 pronounced on 07.02.2019 and published in the Kenya Gazette Notice No. 1550 dated 01.03.2019 recommending the 1st – 3rd Interested parties to cancel and/or revoke all ownership documents issued in Angata Barigoi Adjudication Sections and Moyoi Adjudication Sections.
 - C. A Permanent Injunction be and is hereby issued prohibiting the 1st – 3rd Interested Parties from implementing the quashed determination by the 1st Respondent in the proceedings referenced as NLC/HLI/019/2017 in regards to the Petitioners' ownership documents and generally all titles issued in Angata Barigoi Adjudication Sections and Moyoi Adjudication Sections.
 - D. The Petitioners in Petition No. 4 of 2021 only succeeds in terms of violations regarding fair hearing as provided under Articles 47, 48 and 50 of the Constitution.



E. Each party to bear its own costs.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON DAY THIS 27TH
FEBRUARY, 2025.**

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Mr.Brian

Advocates for the Petitioner:

Mr. Kere for Petitioners In Petition No.6 of 2021

Mr. Okiro for Petitioners In Petition No.4 of 2021

Mr. Kiprotich for Petitioners In Petition No.3 of 2021

Mr. Ochoki for Petitioners In Petition No. 2 of 2021

Advocates for the Respondents:

Mr. Watana holding brief for Mr. Odingo For 2nd Respondent.

