



**REPUBLIC OF KENYA**

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

**PETITION NO. 4 OF 2015**

**JOHN SEGUTON CHELIMO.....PETITIONER**

**VERSUS**

**LAND REGISTRAR KABARNET.....1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER OF LANDS.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**J U D G M E N T**

John Seguton Chelimo (*hereinafter referred to as the petitioner*) has brought this petition against the Land Registrar Kabarnet, The Commissioner of Lands and the Attorney General as the Respondents, whilst the County Government of Baringo and Musa Kipkurere Kibusia are the interested parties. The petitioner states that the he was duly allocated that entire plot known as **L.R.NO. KABARNET/MUNICIPALITY/174 (hereafter referred to as the suit property)** after duly applying for the same. That consequently, a letter of allotment was issued to the Petitioner jointly with Pius C. Ayabei by the Commissioner of Lands (*hereinafter referred to as the 2<sup>nd</sup> Respondent*) which required that the Petitioner makes a payment of Kshs. 25,890/= being stand premium among other charges. That the said property was allocated to the Petitioner with vacant possession for development and was subject to the special conditions which required the Petitioner to pay rates and outgoing that would be imposed upon the property by the Government and the Local Authority. The Petitioner has faithfully and promptly paid to the Government and the Local Authority the required charges or levies and is up to date.

The Petitioner sought to have the same registered into his name and under the now repealed Registered Land Act after utilizing the same for some time and has, on conducting a search at the Lands Registry discovered documents that purport to show that the same had now been registered in the name of the 2<sup>nd</sup> Interested Party. The Petitioner is not aware of any breach of the special conditions entitling the Respondents to revoke his allocation and he has never been given any notice of cancellation or revocation of the letter of allotment. The purported registration of the suit property in the names of the 2<sup>nd</sup> Interested Party according to the petitioner was arbitrary and denied the Petitioner fair administrative practices as guaranteed by the Constitution of Kenya. That the said actions on the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent are illegal and unlawful and meant to deny Petitioner a right to a fair process and the right to own and enjoy private property as guaranteed by the Constitution of Kenya 2010

The Petitioner pleads that the respondents have violated the constitution of Kenya 2010 by breaching the fundamental rights and freedoms to the extent that the Respondents have arbitrarily issued a certificate of lease to the Interested Party herein without giving any notice of cancellation or revocation of the letter of allotment to the property, and claims that Articles 27(4), (5) of the Constitution that guarantees the right

of equality and freedom from discrimination has been violated by the actions of the respondents. Conversely, Article 47 of the Constitution that guarantees the right to a fair administrative action by public bodies so that any decision adversely affecting an individual is supported by written reasons for the action has also been violated. The petitioner further states that the respondents have violated his rights to the extent that the Respondents have declined to reverse the arbitrary action of issuing a certificate of lease to the Interested Party thereby denying the Petitioner a right over the property, moreover that Article 40 (1) (a) (b) and 3 of the Constitution that guarantees the protection of right to property has also been violated.

The petitioner prays for a declaration that the decision of the Respondents to issue a certificate of Lease in the name of the Interested Party Over L.R. NO.KABARNET/MUNICIPALITY /174 was illegal, arbitrary, discriminatory and contravened the Petitioner's freedoms, and right to property and denied the Petitioner the right to fair administrative practices. The petitioner further prays for a writ of certiorari directed to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to remove into this Honourable Court the register of the lease and to quash or cancel any entry thereon of the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purporting to register the name of the Interested Party as owner of L.R. NO.KABARNET/ MUNICIPALITY/174. He further seeks an order restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves or by any servants or agents from howsoever preventing the Petitioner from accessing or entering upon or exiting from the property the wit LR. NO. KABARNET/MUNICIPALITY/174 and an order for payment of damages for violation of the Petitioner's fundamental constitution rights.

The petition is supported by the affidavit of **John Seguton Chelimo** who states that he is the allottee and in possession of all that parcel of land known as KABARNET/MUNICIPALITY/174, (the suit property) situated in Kabarnet Township having duly applied for the same and thereafter being issued with a letter of allotment dated 13<sup>th</sup> November 1996. That he had jointly with one Pius C. Ayabei (now deceased) made an application to the Municipal Council of Kabarnet on 19<sup>th</sup> May 1994 requesting that they be allocated a plot and the Planning markets, Works and Housing Committee recommended by minutes dated 15<sup>th</sup> July 1994 that they be allocated a commercial plot.

On 4<sup>th</sup> November 1995, the Commissioner of Lands wrote to the 2<sup>nd</sup> Defendant directing him to inspect the plots and give a ground report and also to have District Physical Planning Officer prepare a Part Development Plan for the area. That by a letter dated 11<sup>th</sup> December 1995 the Town Clerk of Municipal Council of Kabarnet wrote to the Commissioner of Lands notifying him that some individuals had directly made applications for plots to the Commissioner of Lands without involving the Council and advised him only to consider those that had been approved by the Council.

By a letter dated 5<sup>th</sup> January 1996, the District Surveyor wrote to the Commissioner of Lands and the Director of Physical Planning recommending and forwarding PDP No. R.B 328/95/45 and cancelling an earlier PDP.R. B 328/9/37 prepared by him and which had been earlier forwarded vide a letter dated 28<sup>th</sup> November 1995. That pursuant to the foregoing the Commissioner of Lands issued him with an allotment letter Ref.87/88/W addressed to him and Pius C. Ayabei by which they were required to tender their acceptance and a bankers cheque for the amount shown thereon within 30 days and they duly complied. By the letter of allotment, they were required to pay stand premium and other charges which they promptly did and they were given vacant possession for purposes of carrying out development subject to meeting special conditions such as payment of rates and outgoings that would be imposed upon the property by the Government and Local Authority.

On 24<sup>th</sup> November 1997 Pius C. Ayabei transferred his share of the plot to him and the same was communicated to the Commissioner of Lands by the Town Clerk vide a letter dated 22<sup>nd</sup> May 1998 and the minutes of the Council. That he was shown the plot and the District Surveyor placed beacons on the plot after which he was issued with a beacon certificate. He states that he had at all times paid rent and rates due to the Municipal Council of Kabarnet as confirmed by the letters dated 19<sup>th</sup> July 2006 and 19<sup>th</sup> September 2011 respectively and addressed to the District Surveyor and Commissioner of Lands and that he visited the Commissioner of Lands Office and was surprised to be informed that the plot now belonged

to someone else, the Interested Party having allegedly been allocated the same vide a letter of allotment purportedly dated 22<sup>nd</sup> August 1996. That he was advised by his Advocates, Messrs Geoffrey Otieno & Company Advocates which advise he verily believed to be true that the Respondents did not conform with the requirements of the law. That in light of the confirmation of ownership as per the records by the Town Clerk by the letter dated 19<sup>th</sup> July 2006, it is rather apparent that the issuance of a certificate of lease to the 1<sup>st</sup> Interested Party was in any event arbitrary and therefore illegal and null and void.

It is therefore clear that the 1<sup>st</sup> Respondent either on its own or with aid of other persons unknown to him engaged in fraudulent transaction with the intention of depriving him of the suit property. He was further advised by his Advocates on record Messrs Geoffrey Otieno & Company, which advise he verily believed to be true that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have no power or authority to revoke the Petitioner's letter of allotment in flagrant violation of Petitioner's constitutional right to own and enjoy the use of his property. That he was also advised by his Advocates aforesaid that the purported issuance of a certificate of lease to the 2<sup>nd</sup> Interested Party over his property was arbitrary illegal, null and void for the reasons that no letter of allotment was issued to the 2<sup>nd</sup> Interested Party with the approval of the Municipal Council of Kabarnet as by Law required and that the 2<sup>nd</sup> Interested Party had never paid rent or rates over the subject plot and all the dues arising therefrom were paid by him and that the part Development Plan purported to be relied upon in the process of registration by the Respondents had in fact been cancelled. That it is also therefore apparent that the registration of the 2<sup>nd</sup> Interested Party the Respondents is obviously irregular, and illegal and as such null and void. He verily believes based on the foregoing averments that there is an urgent need for this Court to move with speed as a custodian of the majesty of the Constitution and uphold the principle of Constitutionalism and the rule of law by halting any further blatant disregard of the law by the Respondents.

**Musa Kipkurere Kibusia**, the 2<sup>nd</sup> interested party swore a replying affidavit stating that he had read the petitioners application together with the supporting affidavit and the petition therein both dated the 16<sup>th</sup> March, 2015 and filed in court on the 18<sup>th</sup> March, 2015 and has had the same explained to him by his advocates on record. That at the outset it is clear that the petition and application as filed by the petitioners is frivolous vexatious and an abuse of this Honorable Courts process. That further to the foregoing he was advised by his advocates on record M/S Odhiambo & Odhiambo Advocates, advise which he verily believed to be true that the petition herein is res-judicata as the issues raised therein were conclusively dealt with in ***Nakuru CM.CC 2860/1998 LUKA C. CHESIRE VS CHRISTINE T. KANDIE & 8 OTHERS*** and the court had competent jurisdiction. That sometime in the year 1995 he applied to the commissioner of lands to allocate to him the suit property. That the then commissioner of lands upon receiving his application wrote to various departments to confirm the position the suit property and the same was confirmed to be vacant as per the letters for the District Lands Officer and the District Commissioner. That subsequently, the process of allocation begun by the respective authority and the approval was obtained from the Minister and a letter of allotment was issued thereafter. That on the 22<sup>nd</sup> August 1996, the then Commissioner of Lands duly issued a letter of allotment in his name in respect of title No. ***UNS. COMMERCIAL PLOT C KABARNET MUNICIPALITY***. That upon receiving the allotment, he duly paid the sums required an amount of Kshs.12, 700 where upon he was issue with a certificate of lease from the government of Kenya. That at the time of application of the allotment, they were three people namely LUKA C. CHESIRE, EVANS KIPTOP and him, hence the subdivision of the area into three portions as marked in the plan namely A, B AND C.

That after they received their allotment letters Evans Kiprop surrendered his plot No. B to him and LUKA to develop hence the same now was shared equally between them. That the original plot No. C and part of B now were registered under one title which is now the present title No. KABARNET /MUNICIPALITY/175 (the suit property). That sometime in October 1998, when he was making preparations on developing the land he discovered that some individuals (the petitioners herein) had encroached into his property (the suit parcel) and fenced it off. That he conducted some investigations and he was informed that the trespassers (now the petitioners) had also been given an allotment letter to the said parcel of land. That however the allotment letter was issued to the petitioners much later after his papers had been approved and he had already been issued with a title to the suit property. That he tried to

have the trespassers (now petitioners) to vacate his suit property but failed and that prompted him to institute a suit to have them permanently barred from encroaching on his land the suit property herein. That the trespassers (now petitioners) entered appearance and filed their replying affidavit to the application together with a defence and counter claim in opposition of their suit. That the suit went to full hearing and the Nakuru Chief Magistrate who had competent jurisdiction to handle the matter held that he was the legal proprietor of the parcel of land (the suit property herein) and further ordered that the defendants now the petitioners herein be permanently restrained from in any way interfering with suit property. That however, the defendants now (Petitioners) being dissatisfied with the decision of the Chief Magistrate preferred an appeal to the High Court vide a memorandum of appeal dated 2<sup>nd</sup> October, 2000. That however, the appellants now petitioners failed to prosecute their appeal and his advocates on record M/S Odhiambo & Odhiambo Advocates applied for the appeal to be dismissed for want of prosecution. That indeed the appeal was dismissed for want of prosecution on the 10<sup>th</sup> February, 2009. That from the foregoing it was therefore evident that the petitioners herein came to this Honourable Court with tainted hands guilty of material non-disclosure with the sole aim of abusing the court process. That also the cause of action and the whole Petition by the petitioners herein is *res-judicata* as it is evident that the prayers in the petition are a copy paste of their prayers in their counter claim that was filed in court on the 15<sup>th</sup> December, 1998. That the petitioners herein had brought in the Land Registrar Kabarnet, a defunct Commissioner of Lands office and the Attorney General to mischievously obscure real issues in the petition herein and to try and beat the issue of *res-judicata* since those three parties were not present in the earlier suits. That his averments in paragraph 24 *supra* can be buttressed by the fact that the petitioners had miserably failed to show any reasonable cause of action against all the respondents. That the only cause of action that the petitioners had was clearly against him the 2<sup>nd</sup> interested party, which cause of action was fully heard and determined by a court of competent jurisdiction and the same cannot be opened again save on an appeal.

That further if the petitioners herein really felt aggrieved by the decision of the Chief Magistrate, then they would have applied to the High Court for their appeal to be reinstated for it to be heard on merit rather than coming with a fresh suit under a constitution petition which if sustained by this Honourable court would be contrary to Public Policy. That from the foregoing it is evident that the respondents herein as State actors have not violated any rights of the petitioners as claimed in the petition as it is evident that a court of competent jurisdiction in Nakuru CM.CC.2860/1998 was the body which held that the suit property was legally registered in the names of the interested party and also permanently restrained the petitioners herein from in any way interfering with it. That from the foregoing it is evident that this suit had been brought to this honourable court *mala fide*, full of material non-disclosure and also being *res-judicata* and should be dismissed with costs.

The 1<sup>st</sup> Respondent filed a replying affidavit stating that Land Parcel No. Kabarnet/Municipality/174 was allotted to the 2<sup>nd</sup> Interested Party by the Municipal Council of Kabarnet. The Commissioner of Lands subsequently issued a certificate of lease dated 14.3.1998 to the 2<sup>nd</sup> Interested Party. The 2<sup>nd</sup> Interested Party states further that the suit is *res-judicata*.

The parties agreed to file and exchange submissions and so they did. The petitioner submits that on 24<sup>th</sup> November 1997, Pius C. Ayabei (deceased) transferred his share of the suit property to the Petitioner and the same was communicated to the Commissioner of Lands by the Town Clerk with a letter dated 22<sup>nd</sup> May 1998 and minutes of the Council. The Petitioner has always paid rent and rates due to the Municipal Council of Kabarnet (now County Government of Baringo) and was surprised when he visited the Commissioner of Lands Office where he learnt that the suit property had been registered in the name of the 2<sup>nd</sup> Interested Party vide an allotment letter purportedly dated 22<sup>nd</sup> August 1996 and a certificate of Lease subsequently dated 14<sup>th</sup> May 1998.

The Petitioner further submits that in light of the confirmation of ownership as per the records by the Town Clerk vide its letters dated 19<sup>th</sup> July 2006 and 19<sup>th</sup> September 2011, it is rather apparent that the allotment letter and certificate of Lease issued to the 2<sup>nd</sup> Interested Party was arbitrary, illegal, null and void and it is that development that made the Petitioner aggrieved and therefore filing of this petition.

The petitioner cites Article 27 (1) & (2) of The Constitution of Kenya 2010 that provides that every person is equal before the law and has the right to equal protection and equal benefits of the law and Article 40 which provides that every person has a right to acquire and own property and that right is subject to protection under the Constitution as having been violated. He further cites Article 47 (1) that provides that every person has a right to fair administrative action that is expeditious, efficient, lawful reasonable and procedurally fair. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. It is the Petitioner's contention that the issuance of a Certificate of Lease to the 2<sup>nd</sup> Interested Party was arbitrary, irregular and therefore infringed on his right to own property, having been issued with a letter of allotment dated 1<sup>st</sup> November 1996 and having complied with the set requirements. According to the petitioner It is evident from the records held by the 1<sup>st</sup> Interested Party (formerly known as Municipal Council of Kabarnet) that the Petitioner is the Proprietor of the suit property. Section 26 of the Land Registration Act, Act No.3 of 2012 provides as follows:

***“The Certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and condition contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except on the grounds of fraud or misrepresentation to which the person is proved to be a part: or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

The Petitioner further submits that the Certificate of Lease was issued to the 2<sup>nd</sup> Interested Party without the approval of the 1<sup>st</sup> Interested Party. The same is confirmed by letters dated 2<sup>nd</sup> May 1998, 19<sup>th</sup> July 2006 and 19<sup>th</sup> September 2011. As correctly observed by **Justice Sila Munyao** in ***Solomon K. Songok v Susan Chepkosgei (2014) eKLR***, leasehold titles were issued with the involvement of Municipal Councils which are now defunct and their functions have been taken over by County Governments. It is clear that the 1<sup>st</sup> Interested Party has no record of having allocated the 2<sup>nd</sup> Interested Party the suit property or having leased the same to him. The Petitioner submits that the Certificate of Lease purportedly issued by the 2<sup>nd</sup> Respondent to the 2<sup>nd</sup> Interested Party was acquired illegally, procedurally and through a corrupt scheme as the 1<sup>st</sup> Interested Party denies ever allocating the suit parcel to the 2<sup>nd</sup> Interested Party.

According to the petitioner, the issuance of a certificate of Lease in favour of the 2<sup>nd</sup> Interested Party by the Respondents offends the provisions of the rule of law and violates his dignity and rights as protected by Articles 40 and 47 of the Constitution of Kenya, 2010, are unconstitutional and therefore unlawful.

The Petitioner further submits that the actions of the 2<sup>nd</sup> Respondent in the said manner goes against the spirit of good governance as set out in the Constitution of Kenya, 2010, the Land Registration Act. Act No. 3 of 2012 sets a dangerous precedent eating at the very roots of constitutionalism and the rule of law that ought to be safeguarded by the constitution and all persons responsible as public officers.

The 1<sup>st</sup> – 3<sup>rd</sup> Respondents submit that the Petitioner has no title to the suit land and therefore his right to property has not been infringed. They argue that title to land property can only come into existence after issuance of a letter of allotment, meeting the conditions in such a letter and actual issuance thereafter of the title document pursuant to the provisions in the Act under which the property is held. According to the Attorney General, in the absence of certificate of lease, the Petitioner lacks the standing to institute or prosecute this petition. However, the Respondents argue that the Petitioner is seeking to enforce a private right and therefore should have proved his remedy by way of civil law and not a Constitutional Petition.

The 2<sup>nd</sup> Interested Party submits that the suit is res-judicata in view of CM.CC No.2860 of 1998 at Nakuru in which the Petitioner was the 1<sup>st</sup> Defendant and raised a counter claim in the suit. The issues were the same as issues herein and the matter was heard and determined in favour of the Plaintiff. The

defendant therein who is the Petitioner herein appealed to the High Court. The appeal was dismissed on 10.2.2009 for want of prosecution. According to the 1<sup>st</sup> Interested Party, no new cause of action has been brought. This is a classic case of abuse of court process. Moreover, the Interested Party argues that no violation of individual rights has been demonstrated as this is a clear case of double allocation.

The Interested Party further submits that the Judicial Review Order is sought more than six months after the decision was made. The Interested Party argues that due procedure was followed in allocation of both allotment letters and therefore Article 47 of the Constitution of Kenya 2010 does not apply.

I have considered the submission of counsel to the Petitioner and the rival submissions of the respondents and the Interested Party and do find the following issues ripe for determination.

**1. WHETHER THE PETITION IS RES-JUDICATA**

**2. WHETHER THE ALLOTMENT LETTER(S) OF WERE PROPERLY ISSUED**

**3. WHETHER THE PETITIONER'S RIGHTS UNDER THE CONSTITUTION OF KENYA 2010 HAVE BEEN VIOLATED'**

**WHETHER THE PETITION IS RES-JUDICATA**

The 1st issue for determination is whether the petition is *Res-Judicata* which is a preliminary point of law that should be determined first. In the case of *Mukisa Biscuits Manufacturing Company Ltd V West End Distributors Ltd*, Sir Charles Newbold stated that ***"a preliminary objection in nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion"***.

The principle of *res-judicata* is based on public policy to the effect that that litigation must come to an end and the said policy is enacted in section 7 of The Civil Procedure Act Cap 21 laws of Kenya which provides that no court shall try a suit or issue in which the matter directly and substantially in issue has been directly and substantially in a former suit between the same parties or between parties under whom they or any of the m claim, litigating under the same title, in a court of competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.

The import of this section is that for the principle of *res judicata* to apply the issue in the first suit should have been determined by a court of competent jurisdiction and that the dispute must be directly and substantially in issue between the same parties in both suits.

Related to this matter is a previous suit filed in the Chief Magistrate's Court in Nakuru being Civil Suit No.2860 of 1998 in respect of Kabarnet Municipality/174. The parties were Musa K. Kibusia as the Plaintiff and John K. Seguton as the 1<sup>st</sup> defendant with Pius C. Ayabei as the 2<sup>nd</sup> Defendant. In that matter, the plaintiff claimed that he was registered as the owner of the suit land after allocation by the Commissioner of Lands in 1996. On the other hand, the defendant claimed that they were properly allocated the piece of land by the Commissioner of Lands through the Kabarnet Municipal Council hence legally possessed and owned the suit premises as against the plaintiff. The matter was heard before the Chief Magistrate who made a determination in favour of the defendants. The petitioner herein was the defendant therein. He appealed but the same was dismissed for want of prosecution.

This court finds that the parties in the former suit and parties in the petition are the same save that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein were not defendants in the former suit, however, they ought to have been enjoined in the suit by the petitioner who was the plaintiff in the former suit and therefore failure to enjoin the respondents in the previous suit cannot be visited against the interested parties. The issues before the lower court in the former suit was the legality of the title obtained by the 2<sup>nd</sup> interested party as it is in

this case and that the issue before the former court. It is not argued that the lower court lacked jurisdiction and no evidence has been availed to demonstrate that the court lacked jurisdiction to deal with the matter as to how the second interested party obtained the title which is directly and substantively the issue before this in court in the petition. I have perused the plaint dated 1<sup>st</sup> December 1998 and filed on the same date and the defence and counterclaim dated 15<sup>th</sup> December 1998 and filed on the same date and do find that the issue revolved on mistake and illegality in the issuance of title to the 2<sup>nd</sup> interested party. This issue was determined by the lower court and an order was made that they be evicted from the suit property and a permanent injunction issued restraining the petitioner from interfering with the suit property. I do find that the 2<sup>nd</sup> Interested Party has demonstrated that this petition is res-judicata.

**WHETHER THE ALLOTMENT LETTER(S) OF WERE PROPERLY ISSUED**

This court finds that the petitioner and Pius C. Ayabei made an application for the allocation of a commercial plot on the 19th of May 1994 and were allocated plot no 174 in Kabarnet municipality which parcel of land came later to be known as Kabarnet /municipality/174situated in Kabarnet township. The allotment letter was issued on 13th November 1996. Before the allocation, the Kabarnet Town Planning Markets and Housing Committee held a meeting on the 19th July 1994 and recommended that the petitioner and Mr. Ayabei be allocated plots to be identified. The ministry of Lands department of physical planning prepared a part development plan for the plot to be allotted to the petitioner and Mr. Ayabei. Later, Mr Ayabei agreed to surrender the whole portion to the petitioner and therefore the commissioner of lands was requested to register the land in the names of the petitioner. The parcel of land was surveyed by the District Land Surveyor on the 21/1/1998. The Municipal Council of Kabarnet as it then was, confirmed that the petitioner had paid all the dues and that the records held indicated that the parcel of land belonged to the petitioner. However, the parcel of land came later to be registered in the names of the 2nd interested party. The 1st interested party has not annexed the allotment letter that was allegedly issued to him. The document purported to be the allotment letter is the lease that is signed by the commissioner of lands on behalf of the county council of Baringo that was registered on 14th May 1998 and a certificate of lease was issued on 14th May 1998. The application for the allocation of the parcel of land was for strange reasons not made to the county council of Baringo but to the minister for lands who appears to have approved without consulting the Municipal Council of Kabarnet. However, having found the petition res judicata, I do hold that the petitioner ought to have raised this issues in the former suit and should have pursued the appeal in the High Court.

**WHETHER THE PETITIONER'S RIGHTS UNDER THE CONSTITUTION OF KENYA 2010 HAVE BEEN VIOLATED**

The court finds that though the petitioner had a legitimate expectation that the property would be registered in his name after being issued with the allotment letter and beacons certificate by the commissioner of lands and the District Surveyor respectively he has litigated this matter in the lower court which had jurisdiction to try the issues revolving ownership of the parcel of land. Though every person has the right, either individually or in association with others, to acquire and own property of any description; and in any part of Kenya, the petitioner has already been afforded a fair hearing and the dispute determined.

Ultimately, I do find that this matter is camouflaged as a petition and yet is a re-litigation of a matter that has been determined and therefore being res-judicata and an abuse of the process of court is dismissed with costs.

**DATED AND DELIVERED AT ELDORET ON 17<sup>th</sup> DAY OF AUGUST, 2017.**

**ANTONY OMBWAYO**

**JUDGE**