



Chabari & 3 others (Suing on Public Interest and for their Abothuguchi Clan and Own Interest) v Attorney General & another (Environment & Land Petition E008 of 2022) [2024] KEELC 1097 (KLR) (28 February 2024) (Judgment)

Neutral citation: [2024] KEELC 1097 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E008 OF 2022
CK NZILI, J
FEBRUARY 28, 2024**

BETWEEN

**PATRICK CHABARI 1ST PETITIONER
ELIAS KITHINJI 2ND PETITIONER
EPHANTUS MAJAU 3RD PETITIONER
HENRY MUTWIRI 4TH PETITIONER
SUING ON PUBLIC INTEREST AND FOR THEIR ABOTHUGUCHI CLAN
AND OWN INTEREST**

AND

**HON. ATTORNEY GENERAL 1ST RESPONDENT
LAND ADJUDICATION OFFICER IMENTI SOUTH DISTRICT, MERU
COUNTY 2ND RESPONDENT**

JUDGMENT

1. The petitioners describe themselves as suing on their behalf and in the public interest of their Abothuguchi clan as public-spirited residents and stakeholders working and residing in Meru County.
2. The petitioners aver that parcels numbers 344, 1032, 317, 342, 343, and 874 Mweru III Adjudication Section Igoji East, belong to them lawfully as Abothuguchi clan, led by their elder M'Ibugu after the Ameru community dispensed from Mbwaa with other bantu groups.
3. The petitioners aver that they had peacefully occupied the land until it was declared an adjudication section for purposes of demarcation in 1991 and that at the time the demarcation was physically taking place they had extensively developed the suit premises.



4. It is averred that part of the parcel of the land was demarcated as Parcel No.344, measuring approximately 84 acres. However, the 2nd respondent reduced it by 50%, making them lodge a minister's appeal, which is still pending, but no reason has been given for the delay; as a result, the petitioners aver out of a restriction placed on the title documents for Parcel No. 344 cannot be processed. Further, the petitioners aver that the 2nd respondent has not acted reasonably, judiciously, justly and they seek Parcel No. 344, 1032, 317, 874, 342, and 343 Mweru III Adjudication Section to be consolidated and registered under their names.
5. In addition the petitioners aver that out of the unprocedural injunctions and unfair acts of the 2nd respondent who heard the dispute and made the decisions, they have lost some of the lands, some were split twice, the decisions were null and void, it caused them loss and damage to houses, crops, cereals and trees among other properties contrary to Articles 2 (1) (2) (4), 3(1), 4(2), 10(2), 19 (3) (c), 22 (1), 23, 40, 50, 60, 63, 67, 73, 75 and 258 of *the Constitution*.
6. The petitioners, therefore, pray for:
 - a. Declaration that the respondents have breached their right to land premises.
 - b. Mandatory injunction compelling the Cabinet Secretary Lands and Housing to deliver forthwith a decision of their appeal in respect of the suit premises.
 - c. A mandatory injunction compelling the respondents to do fresh adjudication in respect of parcels numbers 344, 1032, 317, 874, 342 and 343 Mweru II Adjudication Section.
 - d. General damage.
7. The petition was supported by a verifying affidavit of Patrick Chabari sworn on 30.11.2021. The 1st petitioner, on behalf of the petitioners aver that the respondents unlawfully, illegally, and without any reasonable cause have failed to perform their legal mandate to adjudicate on Parcels No's 344, 1032, 317, 342, 343 and 874 Mweru III Adjudication Section, lawfully belonging to the Abothuguchi clan since it was declared an Adjudication section in 1991, already occupied at the time by the petitioners.
8. The 1st petitioner avers that since the petitioners, together with their families gathered, took possession, utilized, lived and developed the suit premises, they were entitled to be registered as owners of the named parcels of land and that it was wrong for the respondents, despite reports made, to allow trespassers to encroach on their land out of which they lost houses, crops, cereals, trees and other properties. The 1st petitioner attached proceedings in Objection No's.283 and 317 for Case No. 152 of 2006, Board Case No. 408/1918, a letter dated 4.10.2001 to the District Commissioner Imenti South Minister's appeal and a letter for maintenance of status quo of June 2012 all marked as annexure P.C. "1".
9. The petition was opposed by the respondents through a replying affidavit of J.N Kithinji a Sub-county adjudication and Settlement Officer Imenti North/South/Central and Buuri, sworn on 16.10.2023. The respondents averred that as a duly appointed and empowered officer, the 2nd respondent acted in accordance with the laid down laws and procedures under the *Land Adjudication Act* (Cap 284) and in handling any proceedings at the objection stage and being guided by the rules of natural justice and due process of the law.
10. Further the respondents averred that the petition was premature since the petitions had not exhausted the internal mechanism set under Cap 284 by lodging a Minister's appeal within 60 days under Section 29 thereof and therefore having exercised their right by lodging an appeal that is still pending they should have awaited its determination.



11. The respondents averred that the petition was not pleaded with precision showing how their constitutional rights have been violated or are threatened by way of evidence as laid down in *Mumo Matemu vs Trusted Society of Human Rights Alliance* (2013) eKLR and *Anarita Karimi Njeru v Republic* [1979] eKLR.
12. Moreso, the respondents averred that no prima facie case has been demonstrated by the petitioners with a likelihood of success and neither have they shown any loss that they will suffer as a result of the alleged violation or threatened violation of their rights under *the Constitution*.
13. The respondents averred that conservatory orders should be issued unless there was inherent merit of the case, public interest, constitution values and proportionate magnitude of the case which in the instant case were lacking. Moreso the court lacks jurisdiction to entertain a premature petition contrary to non-exhaustion doctrine.
14. With leave of court parties opted to canvass the petition by way of written submissions. The petitioners through written submissions dated 6.12.2023 isolated seven issues for the court's determination.
15. It was submitted that the petitioners have locus standi based on Article 258 of *the Constitution* to invoke the jurisdiction of this court under Article 162 (2) (b) thereof on their behalf and the public interest of the Abothuguchi clan.
16. Further the petitioners submitted their cause of action as pleaded and disclosed was that they seek the upholding of the rule of law and *the Constitution* since the 2nd respondent has sat on their appeal after issuing two decisions, which acts have violated *the Constitution* and now urge the court to deal with the constitutional question as provided under Articles 3 (1) & 22 by answering the call on the obligation to respect uphold and defend *the Constitution*. Reliance was placed on *Communication Commission of Kenya & others v Royal Medial Services Ltd* [2014] eKLR.
17. The petitioners submitted that they have properly invoked the jurisdiction of this court as per *the Constitution* and the law. Reliance was placed on owners of Motor Vessel Lillian "S" v Caltex Oil (K) Ltd [1989] eKLR and *Samuel Kamau Macharia & another v KCB & 2 others* [2012] eKLR.
18. Additionally, the petitioners submitted that their constitutional rights as occupants of trust land at the time of the adjudication process were provided and protected under the retired Constitution under Sections 115 (1) and 116 thereof, out of which the powers of the Land Adjudication Officer are defined under Sections 10 of Cap 284, during the ascertainment and registration of individual interests on land.
19. Invoking Sections 2, 8 & 46 (1) & (2) of the *Community Land Act* which provides that any right, interest, title, power or obligations provisions acquired, accrued, established or exercisable before the commencement of the Act shall be deemed to have been acquired under this Act unless the contrary is specifically provided as the petitioners submitted the importance of the ascertainment and recording of rights in unregistered community land can be discerned from the fact that the *land Consolidation Act* and the *land Adjudication Act* Cap 283 & 284 provisions were in their favour. Even though the two statutes came into force in 1968, the petitioners submitted it was curious that fifty years down the line the process is yet to commence or finalize in Abothuguchi.
20. Regarding exhaustion of the internal dispute mechanism under the statute, the petitioners submitted that they were satisfied with the decision of the District Land Adjudication and Settlement Officer (DLASO) that their land is not idle for it has been under occupation by the community members since time immemorial with political, social and economic infrastructure in place and their legitimate expectation for decades was that they would get title deed.



21. In view of the inordinate delay, the petitioners submitted that the court has power to order the respondents to complete the adjudication process and allow them to enjoy their constitutional rights to ownership of land.
22. Similarly, the petitioners submitted that the respondents have failed in the obligations to uphold the rule of law and protect *the Constitution*, given the 2nd respondent issued two decisions that were neither reviewed nor appealed. Further, the petitioners submitted that the superior court has held that when someone is exercising jurisdiction from a statute or Constitution, he cannot review or revise existing decisions. This and the DLASO contravened the law by issuing a 2nd decision which was most likely to be an appeal from the 1st decision yet according to Cap 284, any person aggrieved with the decision of the Land Adjudication Officer should file an appeal to the Minister but in this case, it did not take place. Reliance was placed on Samuel Kamau Macharia & another v Kenya Commercial Bank (supra).
23. The petitioners submitted that the purported actions by the 2nd respondent to adjudicate their land more than what was required clearly shows that the respondents failed to uphold the rule of law and *the Constitution* and particularly Articles 2 (1), (2) (3) & (4), 10 (2), (2), (c), 19 (3), (c), 22 (1), (2) (c), 23, 40, 60, 63, 73, 75, 159, 161, 162 & 258.
24. In addition, the petitioners submitted that they are entitled to the reliefs since their claim is founded in law, is meritorious and the court under Articles 162 (2) and 165 of *the Constitution* has powers to grant the orders sought. was placed on Anarita Karimi Njeru vs Republic (supra) Mumo Matemu vs Trusted Society of Human Rights Alliance (supra) and Racheal Muthoni Wanyoike & another vs Mentor Sacco Society Ltd (2021) eKLR.
25. The petitioners submitted that in law costs follow the event and since the respondents failed to perform their statutory and constitutional obligations they should meet the costs of the petition. Reliance was placed on *the Constitution* of Kenya *Environment and Land Court Act*, *Land Adjudication Act*, *Community Land Act* and the *National Land Commission Act*.
26. The respondents on their part relied on written submissions dated 22.11.2023 and isolated four issues for the court's determination. They submitted that the dispute herein arises from the adjudication process over the parcel of land under the *Land Adjudication Act* Cap 284 whose method of resolving disputes arising out of the Land Adjudication process is set out under the Act culminating at the Minister's level if aggrieved under Sections 29 thereof.
27. To this end, the respondents submitted that the petitioners have admitted there was a pending Minister's appeal, which effectively ousts the jurisdiction of this court under Sections 29 (3) & 30 of the Act.
28. The respondents relied on the Owners of the Motor Vessel Lilian "vs Caltex (K) Ltd (supra), in the Matter of Advisory Opinions of the Court under Article 163 of *the Constitution* (Constitutional Application No. 2 of 2011), Tobias Achola Osidi & 13 others v Cyprianus Otieno Ogola & 6 others [2013] eKLR as cited with approval in Robert Kulinga Nyamu v Musembi Mutunga & another [2022] eKLR.
29. Similarly, the respondents submitted that the adjudication process was still on, and therefore, the orders sought by the petitioners ask this court to usurp the function of the 2nd respondent and other officers set up under the Act to ascertain the interests over the land. The respondent further submitted that in the absence of consent to sue, the court lacks jurisdiction to entertain the matter.
30. The respondents submitted that the orders sought herein seek to appeal to the merits of the decisions by the 2nd respondent and predetermine the decision of the Minister in the appeal, which was an



attempt to circumvent the laws in place with respect to the adjudication process. That in the public interest and in the interest of protecting the jurisdiction and the functions of bodies established under Cap 284 the court should decline jurisdiction. The respondents submitted that if the petitioners were aggrieved by the process adopted in the adjudication process, they should have invoked the supervisory jurisdiction of the court via the proper forum.

31. Moreso, the respondents submitted that the petitioners had not exhausted the statutory remedies available to them before invoking the court's jurisdiction. Reliance was placed on *Geoffrey Muthinja Kabiru & others v Samuel Munga Henry & others* [2015] eKLR, *Philomen Donny Opar v Orange Democratic Movement & others* [2013] eKLR, *Tobias Achola vs Cyprianus Ogola* (supra) and Article 159 of *the Constitution*
32. Regarding threshold, respondents submitted that the petition does not meet the threshold required of a constitutional petition as set out in *Mumo Matemu vs Trusted Society of Human Rights Alliance & others* (supra), for there was no demonstration with a degree of precision the complaint of how the alleged rights accrue, provision and manner of infringement, proof of registration or ownership of the land by way of documentation; otherwise, they acted within their mandate.
33. On the reliefs sought, the respondents submitted that the petitioners had not proved any legal or proprietary rights over the suit property and the alleged violation; under Section 16A (2) *Government Proceedings Act*, an injunction cannot be issued against them. Further, the respondents submitted that the petitioners ought to have joined the Minister in the suit to provide the status of the alleged appeal and to issue an order in the circumstances would be akin to condemning the minister unheard, preempting its decision on the pending appeal and undermining offices established by law to perform statutory mandate under Cap 284. The respondents further submitted that the petitioners were not entitled to the reliefs sought since the petition was moot, speculative, lacking merits, and bad in law.
34. The issues calling for my determination are:
 - i. If the petitioners have met the constitutional threshold of a petition.
 - ii. If the petitioners have pleaded and proved breach of any of their constitutional rights to be entitled to the reliefs sought.
 - iii. If the petitioners have exhausted the internal dispute mechanism under Cap 284.
 - iv. If the non-joinder of the Minister is fatal to the petitioner's claim.
 - v. What is the order as to costs?
35. A party seeking constitutional reliefs on an alleged breach of constitutional rights and freedom has to meet both procedural and substantive constitutional and statutory requirements under Articles 22, 23, 165 2 (b) (d) & 258 of *the Constitution* as read together with Section 13 of ELC Act and Rules 2, 3, 4, 5, 8, 9, 10, 11 & 14 of the constitutional of Kenya (Protection of Rights & Fundamental Freedoms Practice and Procedure Rules 2013, (hereinafter the Mutunga Rules). Additionally, a respondent to the petition has an equal duty to comply with Rules 15 & 16 of the Mutunga Rules.
36. Rule 10 thereof requires that a petition describes the name and address of the petitioners, facts relied upon, constitutional provision violated, injury caused, status of the petitioners, details regarding civil or criminal cases related to the matters in issue, signature and the reliefs sought. Further, Rule 10 (3) requires formal or informal documentation disclosing denial violation, infringement, or threat to a right or fundamental freedom. The petitioner is also at liberty to annex to an affidavit any documents to support his petition.



37. In *Anarita Karimi Njeru vs. Republic and Mumo Matemu vs Trusted Society of Human Rights Alliance* (supra), the court underscored the importance of pleadings in a constitutional petition with a degree of precision, clarity and certainty with a view of ensuring that the respondents are made aware of what the allegations are, the nature of the injury alleged manner of the alleged, violation and the reliefs sought.
38. In the petition before the court has substantially complied with the law. It has set out the parties facts relied upon, the nature of the injury, locus, jurisdiction, specific provisions infringed and the reliefs sought. The verifying affidavit has set out background information of the petition and annexed a bundle of proceedings, decisions, correspondence, and documents relating to the matter in issue.
39. The respondents were able to file an answer and response to the petition without calling for better particulars. They have defined the issues in litigation. In *Communication Commission of Kenya and others v Royal Media Services Ltd* (supra), the court said a petitioner must show the right said to be infringed as well as the basis of his grievance. Further in *Nasra Ibrahim Ibren v IEBC & others* [2018] eKLR, the court said a party is under a constitution forensic duty to clearly set out the particulars of the constitutional transgressions committed against him. The responses and written submissions by the respondents clearly show that the issues raised by the petitioners are known to them. The respondents did not object to the annexures attached to the supporting affidavit, which are proceedings, decisions and correspondences exchanged between the parties.
40. The next issue is whether the petition raises constitutional questions or issues. A constitutional question or issue is one whose answers only flow from *the Constitution* and not a statute requiring constitutional relief. In the *Hakizimana Abdoul Abdulkarim v Arrow Motors E.A Ltd & another* [2017] eKLR, Mativo J as he then was, cited *Fredricks & others v MEC for Education and Training, Eastern Cape & others CCT 27/01 [2001] 2ACC 6 2002 (2) BCLR 113 (4th December 2001)*, the court observed a constitutional question, matter in issue as one whose resolution requires the interpretation of a constitution rather than a state, whether any law or conduct was inconsistent with *the Constitution*. In *R.C. v KKR* [2021] eKLR, the court cited *Turkana County Government & others v Attorney General & others* [2016] eKLR that claims of statutory violation could not give rise to constitutional violations.
41. The court has considered the petition documents attached to the petition and the response by the respondents. The petitioners complain that title documents in respect of their adjudicated parcels of land in Mweru III Adjudication Section cannot be processed because of the restriction and pending appeal before the Minister who has not given reasons for the delayed decision, which acts infringe, violate and breach their right to property and fair hearing under *the Constitution*.
42. In my considered view, the issues raised are beyond the statute governing the land adjudication and registration process. The petitioners are calling upon the court to find the acts by the respondent to delay, derail, stall, and halt the processing of their titles to land for non-contested areas or parcels, hearing and delivery of the pending appeals, restrictions on titles issuance for uncontested and contested parcels of land, violation of their constitutional rights as to fair hearing and ownership of property.
43. The next attack to the petition by the respondents is that the petitioners should have awaited the outcome of the pending appeal, there is non-exhaustion of the statutory internal mechanism to address the issues and that the courts would be pre-empting the outcome of the appeal and or interfering with the internal dispute resolution mechanism instead of facilitating its work contrary to Article 159 of *the Constitution* if it heard and determined the same.



44. In the Speaker of the National Assembly v Njenga Karume [1992] KLR 21, the court observed that there was a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or statute; the procedure should be strictly followed. See also Mutanga Coffee Co. Ltd v Shikara Ltd & another [2015] eKLR. In William Odhiambo Ramogi & 3 others v Attorney General & others [2020] eKLR, the court held that there were exceptions to the exhaustion doctrine and a court must undertake an extensive analysis of the facts based on the regulatory scheme involved nature of interests involved, and the polycentric of the issues. See also Geoffrey Muthinja Kabira and others v Samuel Munge Henry & others (supra).
45. In Fleur Investments Ltd v Commissioner of Domestic Taxes & another [2018] eKLR, the court said it would not sit back and watch ADR vide roughshod on the rights of citizens, seeking constitutional refuge, especially where there was a clear case of abuse of discretion, by such bodies through arbitration, malice, caprice and disrespect of the rules of natural justice or to aid such bodies to outcome to disrespect constitutional rights.
46. The petitioners are questioning the delay in the issuance of title documents for them to enjoy the right to property ownership, and also the delay of over 12 years in the hearing and determination of the pending appeal. Further, the respondents have not told the court whether the petitioners had other alternatives under the statute to seek redress. The respondents have not told the court if such an alternative redress would be more efficacious and deliver justice to the petitioners. The respondents have not told the court why they are withholding or restricting the issuance of title deeds for the parcels that have no pending Minister's appeal.
47. Article 50 (2) (e) of *the Constitution* requires that a trial begin and conclude without unreasonable delay. Delay is a question of degree. Robert Muli Matolo v Director of Land Adjudication & another [2014] eKLR, the court said a party who files an appeal before the Minister has a legitimate expectation that the appeal would be prosecuted and determined expeditiously. My finding is that the petitioners are properly before the court.
48. Regarding locus standi, the petitioners have defined the capacity in which they have filed the petition. They have established their individual, clan and public interest in the matter. Evidence has not been tendered by the respondents that the petitioners are busybodies unrelated to the subject matter or that what they are raising is not justifiable.
49. The next issue is whether the petitioners have pleaded and proved a violation of their constitutional right to a fair hearing and right to ownership and protection of property.
50. The 1st petitioner has sworn the verifying affidavit on his behalf and that of the 2nd – 4th petitioners suing on persona, l public interest and for their Abothuguchi clan. The authority, consent to swear and plead was filed duly signed by the 2nd – 4th petitioners. Minutes have not been attached to show that the 1st – 4th petitioners are members or officials of the Abothuguchi clan.
51. Proceedings for Objections 283/10 over Parcel No. 317 show it was allowed against the 1st petitioner on 31.5.2012. Objection No. 210 of 2010 over Parcel No. 874 by the 1st respondent was dismissed on 17.7.2013.
52. A/R Board Case No. 152/2006 by the 1st petitioner over Parcel No. 874 was dismissed on 25.11.2008. Objection No. 408/98 over Parcel No. 344 the decision was made on 31.3.2005, to the effect that the whole land belonged to Mr. M'Ibari M'Raria. The 1st petitioner aver that they lodged a Minister's appeals, by a receipt dated 7.6.2012 over Parcels No.1032, 344, 342, 317-374 Mweru Adjudication Section.



53. The respondents have admitted that there is a pending Minister's appeal. They aver that the Minister should have been a party to this petition, ought to be left to execute its statutory powers and obligations independently, that the petitioner's matter is moot, premature, preemptive of the outcome of the appeal and that no constitutional reliefs should issue otherwise they would interfere with the respondent's statutory powers.
54. There is no dispute that the Minister's appeal was filed on 7.6.2012. The 2nd respondent has not refuted the inordinate delay. The 1st & 2nd respondents have not stated the current status of the appeals. In *Patrick Musimba vs National Land Commission & others* (2016) eKLR, the court said that where a statute is silent on what is to be done in the event of a disagreement, the jurisdiction of a court could be invoked if the Minister refuses to give direction or gives one which is grossly unfair or perverse, or refuses to discharge his statutory duty. In addition, the respondents have submitted the petition is null for lack of Land Adjudication Officer consent and the court lacks jurisdiction.
55. In *Mjomba v County Government of Taita Taveta & others* [2022] KEELC 2191 (KLR) (9th June 2022) (Judgment), cited *Republic v Runkes Musanka & others exparte Joseph Lesalol Lekitio & others* [2015] eKLR, the court held that a suit questioning the processes of adjudication rather than interests determining, was not one on interest on land hence required no consent to file it. See also *Domenica Kalotia Kalalu v Tigania East District Land & settlement Officers* [2019] eKLR. The court said that though Section 29 of the *Land Adjudication Act* lacks time frames for the determination of the Minister's appeal, it was prudent to hear it immediately so that the rights of the parties can be ascertained with finality, the Adjudication process marked as completed or else there be a risk of stalling at its tail end stage. The court cited Article 159(2)(b) of *the Constitution* that justice shall not be delayed which binds the Minister as well. The court observed that a four-year delay was inordinate and therefore, had impeded the petitioner's right to access justice within a reasonable time.
56. The court said it was unjust for the petitioner to be in court indefinitely with no information on when the appeal was likely to be heard. The court issued an order of mandamus compelling the Minister to hear the petition within six months since he had not explained the delay.
57. In *Simba & another v DLASO & others* [2022] KEELC 15050 (KLR) 23rd November (2022) (Judgment), the court cited *Republic vs Land Adjudication Officer Kitui exparte Sylvester Ndima Wambua & 5 others* (2014) eKLR, that whereas Section 29 of Cap 284 lacked timelines, under Article 47 of *the Constitution* an expeditious hearing was envisaged and the failure to do so amounted to an abuse of power as held in *Keroche Industries Ltd v Kenya Revenue Authority* [2007] KLR 240. The court cited Section 2 of the *Fair Administrative Action Act* that failure to act includes a refusal to take the decision and that under Section 7 thereof, the court has broad powers to make a finding that there was an abuse of discretion, unreasonable delay, or failure to act in the discharge of a duty imposed under any written law or violation of a legitimate expectation of a person to whom the decision relates or abuse of power. The court said section 29 of cap 284 must be read in line with Article 47(2)(b) and Section 7 of Schedule 6 of *the Constitution*.
58. There can be no legal right without a legal remedy. See Ronald Dworkin *Taking Rights Seriously* 26 *Cathu U.V Rev* (1977) 908 and *Kenya Hotels Properties Ltd v AG & 5 others* [2020] eKLR. In *Simba* (supra), the court observed that an eight-year delay in not hearing the appeals was inordinate and that the Minister had not only a statutory but a constitutional duty to hear and determine the appeals expeditiously, lawfully, reasonably, and in a fair manner. The court said that under Sections 6(4) of the *Fair Administrative Action Act*, there was a rebuttable presumption in law for no good reason if the administrator fails to furnish the applicant with the reasons for non-action.



59. The Chief Executive Officer of the Public Service Superannuation Fund Board of Trustees vs CPF Financial Services Ltd & 2 others KECA (982) (KLR) 9th September 2022), the court held a rogue officer could not hide behind the law and expected the court to sanitize injurious conduct inimical to the constitution values and principles.
60. In Nicholas Njeru vs Attorney General & others (2012) eKLR, an appeal had taken 19 years to be heard. The court said the Minister's decision could be challenged through a declaratory suit. See also Johana Buti vs Walter Omariba & others (2011) eKLR.
61. The Minister and by extension, the respondents fall under the supervisory jurisdiction of this court. See Kimwele Kithoka & 26 others v Deputy County Commissioner Kyuso Sub-County & 7 others [2022] eKLR and Republic v DCC Igembe Sub-county and 2 others ex parte Boniface Kangentu Kaberia JK & another (I.P.) [2022] eKLR.
62. Applying the preceding case law to the facts of this suit, I think the petitioners have discharged their burden of proof by showing that since 7.6.2012, their appeal remain unheard. The petitioners' rights to fair hearing, access to justice, fair administrative action and right to own property have been curtailed. The omission to act by the respondents is not justifiable in an open and democratic country. It amounts to an abuse of discretion.
63. An order of mandamus is hereby issued to the Minister through the respondents to hear and determine the minister's appeal within three months from the date hereof. Prayers No. (c) & (d) of the petition were not proved to the required standard. Costs of the petition shall be to the petitioners.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 28TH DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Nyaga for Kurauka for the petitioners

HON. CK NZILI

JUDGE

