



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC PETITION CASE NO 02 OF 2017**

**IN THE MATTER OF CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF VIOLATION OF PROVISIONS OF THE BILL OF RIGHTS**

**AND**

**ENFORCEMENT OF THE SAME UNDER ARTICLE 23 (1) & (3), 258 (1) CONSTITUTION OF KENYA**

**AND**

**RULE 19 OF SIXTH SCHEDULE OF THE TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

**BETWEEN**

**KINYUA M'IBUA M'MURAKU.....PETITIONER**

**AND**

**THARAKA NITHI COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**DEPUTY COMMISSIONER, THARAKA NITHI.....2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT**

**OFFICER, THARAKA SOUTH/NORTH DISTRICTS...3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**THE MINISTER FOR LAND,**

**HOUSING & URBAN DEVELOPMENT.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. This Notice of preliminary objection is dated 2<sup>nd</sup> February, 2015 and states:

**TAKE NOTICE** that the 1<sup>st</sup> Respondent shall raise a preliminary objection to the petition on the following grounds:

1. The entire petition does not raise any constitutional issues for determination by the court.
2. A constitutional petition is not an alternative procedure to challenge a decision of the Land Adjudication Officer and the Minister for Lands made quasi-judicial in accordance with the provisions of the Land Adjudication Act.
3. The whole petition is a ploy intended to circumvent the statutory procedure set out for challenging the decisions of the minister in-charge of land matters, under the Land Adjudication Act.
4. That where statutes establish a dispute resolution procedure, then that procedure must be followed and this petition is therefore incompetent.

**REASONS** the 1<sup>st</sup> Respondent shall apply for the striking out of the entire petition with costs.

2. The first respondent filed its written submissions dated 7<sup>th</sup> March, 2017 on 9<sup>th</sup> March, 2017.
3. The petitioner filed his written submissions dated 10<sup>th</sup> July, 2017 on 11<sup>th</sup> July, 2017.
4. The Respondents associate themselves with the written submissions filed by the 1<sup>st</sup> Respondent.
5. I have carefully considered the submissions filed by the parties in support of their varied assertions.
6. It is my finding that the grounds proffered by the 1<sup>st</sup> Respondent invite arguments and their veracity can only be established after hearing evidence that supports the parties' diametrically opposed propositions. I, therefore, dismiss the Preliminary Objection.
7. I do note that the Preliminary Objection was filed on 2<sup>nd</sup> February, 2015 over two and a half years ago. If the parties elected to have this suit heard, it would be now have been heard and determined.
8. I find it necessary to have this suit heard and determined expeditiously. I note that the petition was filed way back in 2012. It is ordered as follows:
  1. The petitioner should file and exchange his written submissions within 14 days of the delivery of this ruling.
  2. The respondents should file and exchange their submissions within 14 days after receipt of the petitioner's written submissions.
  3. The parties will come to court for **directions on 21<sup>st</sup> November, 2017.**
9. Costs shall be in the cause.

Delivered in open court at Chuka this **2<sup>nd</sup> day of November, 2017** in the presence of:

CA: Ndegwa

Kinyua M'Ibua – present

Mwiti for the petitioner

**P.M. NJORGE,**

**JUDGE.**