



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: KOOME, J. MOHAMMED & KANTAL, J.J.A)

CIV. APP. NO. 138 OF 2019 (ELD. NO. 42 OF 2019)

BETWEEN

COUNTY GOVERNMENT OF TURKANA.....APPELLANT

AND

NATIONAL LAND COMMISSION.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

JACKSON EKARU NAKUSA & 32 OTHERS.....3RD RESPONDENT

(Being an Appeal from the Ruling and Order of the High Court of Kenya at Kitale (Mwangi Njoroge, J.) dated 29th April, 2019 in ELC Petition No 2 of 2019 As consolidated with Petition No. 3 of 2019)

JUDGMENT OF THE COURT

1. This is an appeal from the Ruling by the Environment and Land Court (ELC) at Kitale (Mwangi Njoroge, J.). The **County Government of Turkana** (the appellant) and the 3rd respondent, **Jackson Ekaru Nakusa**, suing on behalf of 32 Others filed two suits by way of Constitutional Petitions being **ELC Petition No. 2 of 2019** (1st Petition) and **ELC Petition No. 3 of 2019** (2nd petition) respectively. They were challenging two Gazettes Notice dated **8/2/2019** and **15/2/2019** published by the 1st respondent, the **National Land Commission**, where notices were given on behalf of the National Government declaring an intention of the National Government to acquire land described in the said notices for development of Petroleum Oil and the LAPSET Corridor.

2. The two petitions were consolidated and heard together as the learned trial Judge was persuaded that both suits raised related issues of acquisition of land within Turkana County and a similar complaint that run through both suits that there was no public participation and or consultations between the National Government and County Governments on one hand and the inhabitants of Turkana County prior to the issuance of the said notices. After hearing the rival positions presented by the appellant and the respondents, the learned trial Judge held that the entire dispute boiled down to a dispute over land acquisition in Turkana County which matter was not ripe for litigation. Also, the learned Judge ruled against the appellant for failing to invoke the internal dispute resolution mechanism as provided under the **Inter-Governmental Relations Act** and **Article 189** of the Constitution which provides for alternative dispute resolution mechanism as a first step in disputes involving national and county governments or between counties before filing judicial proceedings.

3. This is the *ratio decidendi* of the said judgment that has provoked this appeal:-

“The denouement of this interlocutory battle is not all doom and gloom for the petitioners. Mr. Eredi has aptly submitted in favour of a stay of these proceedings, and decisions have been cited wherein the court merely stayed the proceedings rather than dismiss or strike them out, to enable the parties in default to access and exploit the alternative dispute resolution mechanisms under Article 189 and the Act. These are Isiolo County Assembly Board and Another vs. Principal Secretary Devolution Ministry of Devolution And Planning and Another 2016 eKLR and Council of County Governors vs. Cabinet Secretary Land, Housing & Urban Development & Another 2017 eKLR.

54. For the above reasons this court orders that this petition shall be stayed for a period of one (1) year. In that period the 1st petitioner shall initiate and pursue the alternative dispute resolution mechanism set out under the Inter-governmental

Relations Act and in any event in default on its part to initiate that mechanism within 90 days of this order, this petition shall stand automatically dismissed.”

4. Aggrieved by the above outcome, the appellant filed the instant appeal, and in the grounds raised in the memorandum of appeal, the appellant faulted the learned Judge for; failing to consider the substantive questions of law that were raised and required the Chief Justice to empanel an uneven number of Judges to determine the petitions; for holding that the claim was an inter-governmental dispute; failing to exercise unlimited jurisdiction conferred by **Article 40 (3) (b) (ii)** of the Constitution to determine a claim relating to violation of fundamental rights; holding that there were consultations between the 1st and 2nd respondents on the one hand and the appellant on the other and that a disagreement arose when the process for compulsory acquisition started with the issuance of the gazette notices; and failing to exercise his discretion and to consider the submissions and case law cited to support the petitions. Counsel for the appellant prayed that the appeal be allowed; the Ruling by the learned trial Judge be set aside and the petition be allowed in terms of prayers 3 and 4 with costs to the appellant.

5. The factual summary of the dispute before the learned trial Judge as can be gleaned from the allegations put forth by the appellant in the 1st petition was that; Turkana **County** comprises mostly of unadjudicated land which is occupied by predominately pastoralist Turkana community. The land therefore is community land within the meaning of **Article 63** of the Constitution of Kenya and the **Community Land Act No. 27 of 2016**; that the respondents were alleged to have disregarded the **Constitution**, the **Land Act No. 6 of 2012** and the **Community Land Act No. 27 of 2016** and failed to engage the appellant’s in the acquisition process. That a suit had been filed being **HCCC Nairobi Constitution petition No. 32 of 2017 Kelly Malenya vs. Attorney General & Others** that challenged the **Community Land Act No. 27 of 2016** on the basis that it took away critical roles of county governments in managing community land and that there is an order made in the said petition suspending **Sections 8, 9, 15, 21, 38 and 48** of that Act; that by the suspension of **Section 8** of the **Community Land Act** the procedure by which recognition and adjudication of community land, which includes *inter alia* a requirement of the Cabinet Secretary to consult with the County Government to ensure the process of documenting mapping and developing of the inventory of community land is transparent cost-effective and participatory, was suspended.

6. The appellant’s complained further that in view of the aforesaid decision, the initiation of the compulsory acquisition process without a legal framework to enable consultation with the county governments to ensure that the process of documenting, mapping and developing of the inventory of community land is transparent cost-effective and participatory was contrary to the provisions of **Section 107 (8)** of the **Land Act** which provides that all land to be compulsorily acquired should be geo-referenced and authenticated by the authority responsible for survey at both national and county government levels. It was therefore argued that the two petitions raised substantial questions of law requiring certification and referral to the Chief Justice for empanelment of a bench of an uneven number of judges to hear and determine it.

7. The petitions were opposed by the respondents on the grounds that they did not raise matters of public interest that would necessitate the grant of conservatory orders. They contended that the appellant was merely seeking to frustrate the mandate which is provided under **Article 40(3)** of the Constitution and **Part 3** of the **Land Act**. That the public purpose and the public body for which the said acquisition is being done was identified and the construction of petroleum infrastructure would serve the greater public interest; that the appellant was a direct beneficiary of the revenue that would be generated from the project; that the law governing revenue sharing generated from oil production has already been enacted thus necessitating early commencement of production of petroleum resources; and that the 1st respondent was satisfied prior to the gazette notices that the acquiring authority had complied with all provisions of the law up to the Gazette notice stage-including public participation and stakeholders’ sensitization.

8. Further, it was the respondents’ case that the LAPSET Corridor is one of the flagship Vision 2030 projects intended to spur economic development by creating new opportunities, unlocking both patent and latent economic potential in the larger hinterland of the northern, north-eastern and north-western parts of Kenya which traverse seven counties; that the LAPSET Corridor Development Authority was in the process of implementing the infrastructure components that constitute the LAPSET programme; that the various components of the programme were being developed in an integrated basis and they included oil fields, fields storage transportation through crude oil pipeline which were factored into what is referred to as the LAPSET Programme; that both the petroleum project and the LAPSET corridor land acquisition exercises were undertaken simultaneously by the 1st respondent and that the project is of great international significance especially to the landlocked states of Ethiopia and Southern Sudan.

9. The respondents also stated that consultation between the national government and the six County Governments involved in LAPSET were undertaken after identifying stakeholders, mapping and mobilization was done following consultation between the national and county governments; that the preliminary notice under **Section 107** of the **Land Act** is not an administrative decision and hence it is not subject to the supervisory jurisdiction of the High Court. They claimed that substantial loss of public funds were likely to be incurred if conservatory orders were issued; that the application should be declined as it sought to stop the respondents from exercising their statutory mandate conferred under **Part 8** of **Land Act** and other statutes and is pre-emptive and speculative as the alleged actions were yet to take place and that in any event the petitioner had failed to demonstrate any current threat of violation of any constitutional rights; that the preliminary notice under **Section 107** of the **Land Act** did not allow the issuance of conservatory orders as the reasons advanced would be resolved in subsequent stages of the acquisition process; that the notice merely brought the intended acquisition to public attention and invited affected parties to inspect the plans depicting the land for purposes of public scrutiny and public participation; and that a public inquiry under **Section 112** of the **Land Act** was to follow in order to ventilate issues relating to the propriety of the acquisition and claims for compensation.

10. According to the respondents, the petitions were premature, because if any of the concerns raised were to occur, there are inbuilt mechanisms to address them in the course of the implementation as they have so far adhered to the law on compulsory acquisition in the exercise. They also faulted the petitions on the grounds that it did not disclose any violation or threat to the constitution or fundamental rights or freedom of the petitioners. The jurisdiction of the High Court to determine the matter in view of the express provisions of **Article 6 (2)** and **189 (3)** and **(4)** of the Constitution and **Sections 30, 31, 32, 33, 34 and 35** of the **Intergovernmental Relations Act No. 12 of 2012** was also brought to question. It is further stated that the provisions of **Section 104** of **County Governments Act** are not meant to stop the national

government from undertaking compulsory acquisition. It is said that the 1st respondent has been engaged at all stages of the process and that the classification of land as community land cannot stop compulsory acquisition as long as it complies with the law. Further, it is also stated that the applications have not demonstrated any loss the petitioners are likely to suffer. Regarding the suspension of various statutory provisions in the High Court at **Nairobi Constitution Petition No. 32 of 2017 Kelly Malenya vs. Attorney General & Others** the respondents contended that the suspension was lifted on **23rd October, 2018** and that even if the suspension was still in place, nothing would stop compulsory acquisition as the same is provided for under **Section 22** of the **Community Land Act**.

11. That is the brief summary of the facts and law that informed the learned trial Judge in his considered ruling. During the plenary hearing of this appeal conducted virtually via **“Go to meetings platform”** in line with the prevailing Court of Appeal Practice Directions to mitigate the spread of the COVID 19 Pandemic, **Mr. Havi**, learned counsel for the appellant relied and adopted his written submissions and did not make any highlights and told us that **Mr. Bosek** for the 3rd respondent associated himself with the position taken by the appellant. **Ms. Njuguna** for the 1st respondent said that she would rely on her written submissions which she promised to file within 14 days. However as at the time of writing this judgment we have not seen any submissions and **Ms. Ali** for the 2nd respondent also said she would rely on the written submissions and did not make any oral highlights.

12. The appellant’s submissions faulted the learned Judge for declining to issue the conservatory orders sought as well as certification that the issues raised in the Petition were substantial questions of law for determination by an uneven number of judges; that instead, he considered and upheld the 2nd Respondent’s objection on jurisdiction. According to the appellant, the question of who between the National and County Government Co-ordinating Summit and the Court had jurisdiction to determine a dispute over compulsory acquisition of community land was a substantial question of law requiring certification and issuance of a conservatory order; that instead of considering whether or not it met the threshold for certification under **Article 165 (4)** of The Constitution of Kenya, the learned Judge erred by not following the case of **Okiya Omtatah Okiiti & Another vs. CS, Devolution and Planning & 2 Others [2017] eKLR**, where this Court reversed a decision of the Employment and Labour Relations Court (ELRC) declining certification of a petition as raising a substantial question of law for determination by an uneven number of judges as the learned Judges held that there were fundamental issues on the interpretation of the Constitution and the legality of a proposed policy that was being challenged.

13. Counsel for the appellant also referred to the case of **Westlands Residential Resort Limited vs. Kawakanja Limited & 2 Others [2013] eKLR** where this Court held as follows:

“These matters did not receive due consideration by the learned judge. We think these are all matters that are worthy of ventilation at a trial and the appellant was deprived of the opportunity to fully canvass them when the suit was in our view, prematurely struck out by the learned judge. We are in the circumstances satisfied that the learned judge did not in the circumstances properly exercise his discretion in striking out the suit in that he failed to consider those considerations into account”.

Counsel for the appellant therefore urged us to find that the petition raised a substantial question of law that justified an empanelment of an uneven number of judges and conserving the subject matter pending the determination of that question.

14. Moving on to the question of compulsory acquisition of community land, the learned Judge was criticized for categorizing the dispute of compulsory acquisition of land as one for determination under the **Intergovernmental Relations Act** and the Constitution as the peremptory mechanism provided to resolve the dispute, whereas it was a violation of rights under the Bill of Rights. It is the High Court and/or in this case the ELC only which have jurisdiction on the same. Counsel referred to the provisions of **Article 63(3)** of the Constitution which vests community land in county governments. **Article 63(4)** prescribes the following:

“Community land shall not be disposed of or otherwise used except in terms of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.”

Under **Article 40(3) (b) (ii)** of the Constitution, any deprivation of land for public purpose or in the public interest must be subject to the right of access to a court of law. Also, the **Community Land Act No 27 of 2016** acknowledges at **PART VIII** methods of dispute resolution. They include mediation, arbitration and judicial proceedings. Moreover, in the case of **Commissioner of Lands & Another vs. Coastal Acquaculture Limited [1997] eKLR** this Court was emphatic that a court of law has jurisdiction to inquire on the legality of compulsory acquisition and prohibit the same if it was a violation of the rights of the land owners in occupation

15. On Inter-governmental dispute consultations and resolutions, counsel for the appellant submitted that what constitutes an inter-governmental dispute and whether such a classification disposes the High Court of jurisdiction is a matter that has not been settled by the High Court or by the Court of Appeal; and that a dispute on compulsory acquisition is not an intergovernmental dispute. Even if there was such a dispute and an intergovernmental one, it is doubtful if the ELRC could cede jurisdiction when the dispute was in the nature of violation of rights under the Bill of Rights. The alleged consultations on the same, which were not demonstrated, contrary to the learned Judge’s findings, would not in any event, elevate an otherwise violation of a constitutional right to an intergovernmental dispute. Finally, on the final orders dismissing the petition for want of jurisdiction counsel submitted that the learned Judge misapprehended the Constitution and urged us to allow the appeal by granting the conservatory order as prayed.

16. Counsel for the 1st and 2nd respondent did not file any submissions or list of authorities although they had filed submissions in opposition of an application by the appellant that sought interim orders under Rule 5 (2) (b) of this Court Rules. That notwithstanding, we still have a duty to determine whether the learned Judge erred in making the conclusions that he made that have resulted in the instant appeal. See the case of **Abok James Odera T/A A.J Odera & Associates vs. John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR**, in which this Court stated as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

17. That said we think the first question to answer is whether the learned Judge erred by holding that the jurisdiction of the court could not be invoked before the parties embraced the alternative dispute resolution mechanism propounded under **Articles 6 (2) and 189 (3) and (4)** of the Constitution and **Sections 30, 31, 32, 33, 34 and 35** of the **Inter-Governmental Relations Act No. 12 of 2012** and for dismissing the petition. We think it is also apt to reproduce the actual words as contained in the Gazette Notices beginning with the one of 8th February, 2019 which provoked this litigation so as to place our analysis of the issues and our determination in perspective. The said Gazette Notice was titled: -

“UPSTREAM DEVELOPMENT SOUTH LOKICHAH BASIN OIL PROJECT INTENTION TO ACQUIRE LAND

IN PURSUANCE of Section 107 (5) and 162 (2) of the Land Act, 2012 the National Land Commission on behalf of the Ministry of Petroleum and Mining, State Department of Petroleum gives notice that the government intends to acquire the land depicted as falling within the coordinates in Turkana County for upstream development, South Lokichar Oil Project”

18. Further, another gazette notice of 15th February, 2019 was titled: -

“The Land Act (No 6 of 2012),

CONSTRUCTION OF LAPSET CORRIDOR PROJECT AND ANCILLARY FACILITIES

ADDEDUNDUM

IN PURSUANCE of the Land Act No. 6 of 2012 Part V111 and Section 162 (2) of the same Act and further to Gazette Notice Number 8676 of 21st October, 2016, The National Land Commission on behalf of LAPSET Corridor Development Authority gives notices that the Government intends to acquire additional land depicted and falling within the following coordinates traversing Lamu County, Garrissa County, Turkana County and Marsabit County. The Corridor will be used to develop in the Lokichar- Lamu Crude Oil Pipeline.”

19. From the titling of the notices, it is crystal clear that these notices were issued by the National Government under the Land Act informing the affected parties and all, of its intention to compulsorily acquire land as stated in the notices. The gist of this appeal is that Turkana County comprises mostly of unadjudicated land and is occupied by the predominately indigenous pastoralist community, falling under the category of community land within the meaning of **Article 63** of the Constitution of Kenya and the **Community Land Act No. 27 of 2016**. The appellant alleged that the respondents disregarded the **Constitution**, the **Land Act No. 6 of 2012** and the **Community Land Act No. 27 of 2016** in failing to engage the appellant in the acquisition process. The respondents were also faulted for ignoring a previous Ruling in **Kelly Malenya vs. Attorney General & Others** (supra) that challenged certain provisions of the **Community Land Act No. 27 of 2016** on the basis that it undermined or took away critical roles of county governments in managing community land. Moreover, the acquisition and subsequent privatisation of land would interfere with pastoralist and traditional land use system of the Turkana people and there is possibility of exploitation of the local people by what they referred to as “*a huge multinational company*”; that the petition raised substantial questions of law requiring certification and referral to the Chief Justice for empanelment of a bench of an uneven number of judges to hear and determine it and of course the orders sought were to declare the two gazette Notices null and void.

20. As alluded to earlier in this judgment and also in the grounds of appeal, the substantive issues regarding land acquisition were not delved into as the matter was determined on a preliminary point. Also, the issue of whether the matter should have been referred to the Chief Justice for empanelment of a bench of uneven number of judges to hear it was not determined as the court found it lacked jurisdiction and downed its tools. The respondent’s preliminary objection was considered in *limine* as it was questioning the jurisdiction of the High Court to determine the matter in view of the express provisions of the Constitution and the Inter-governmental Relations Act. In view of this challenge and as the record shows, the learned Judge being aware of the guiding principles set out in the time-honored case of **Owners of the Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Limited [1989] KLR 1** warned himself that “*...jurisdiction is everything*” and proceeded to deal with that question before seizing any other issue raised in the petitions.

21. It is trite that jurisdiction is everything and we think thus far the learned Judge cannot be faulted for dealing with the preliminary objection before delving into the issue of whether to refer the matter to the Chief Justice. Where the “*rubber meets the road*” as the saying goes in this matter, is whether the learned Judge erred in holding that the court had no jurisdiction or put differently, the issues were not ripe for determination by the High Court in view of the provisions of **Article 6(2)** of the Constitution which provides that: -

“The governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

22. The **Inter-governmental Relations Act – Act No. 2 of 2015** whose objective is aptly described as: -

“AN ACT of Parliament to establish a framework for consultation and co-operation between the national and county governments and amongst county governments; to establish mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the Constitution, and for connected purposes”

The whole **Part V** of the above Act is dedicated to dispute resolution, when disputes occur between the National and County governments and between counties themselves. This is what **Section 31** provides;

“Measures for dispute resolution

31. The national and county governments shall take all reasonable measures to—

a. resolve disputes amicably; and

b. apply and exhaust the mechanisms for alternative dispute resolution provided under this Act or any other legislation before resorting to judicial proceedings as contemplated by Article 189(3) and (4) of the Constitution”.

23. It is common ground that the appellant did not embrace or invoke alternative dispute resolution process; according to their counsel, the issues raised in the petition concerned the interpretation of the Constitution and they were not suitable for alternative dispute resolution. On our part, we find the issues raised in the petitions were to do with an intention by the National Government to acquire land for development of the LAPSET and Petroleum Oil in Turkana County. Compulsory acquisition of land by the National or County Governments for public interest is provided for under the Land Act and also the Constitution. That is if the national or county governments is satisfied that it is necessary to acquire some particular land for public interest, the respective Cabinet Secretary or county executive committee member as the case may be, is required to submit a request to the **National Land Commission** who will issue the necessary notices. Under the law, if there was any dispute or disagreement between the national and county governments the law as stated above, required the aggrieved party to invoke the dispute resolution mechanism provided in the **Inter-governmental Relations Act**.

24. Furthermore, **Article 189** provides for co-operation between national and county governments. It requires the Government at either level in the performance of its functions to respect the functions and institutional integrity of the other and constitutional status and institutions of the Government at the other level, assist, support and consult as appropriate, implement the legislation of the other level of Government, liaise for purposes of exchanging information, coordinating policies and administration, and enhancing capacity; and co-operate in the performance of functions and exercise power of and for that purpose may set up joint committees and joint authorities. **Article 189(3)** requires both governments to make every reasonable effort to settle disputes between the governments and **Article 189(4)** provides for enactment of a national legislation to provide procedure for settling inter-governmental disputes.

25. It is at this notice stage that the appellant filed suit by way of a Constitutional Petition before the High Court before exhausting the dispute resolution mechanisms provided in the Act. This Court has stated in several decisions that where a Statute provides a procedure for redress, it must be the first position of call and there are many authorities to this effect. See **Speaker of the National Assembly vs. Karume [2008] 1KLR 425**.

“...Where there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or the Act of Parliament, that procedure should be strictly followed...”

Yet in another decision of this Court in the case of; - **Mutanga Tea & Coffee Company Ltd vs. Shikara Limited & Another [2015] eKLR**, this Court differently constituted reiterated the foregoing in these terms: -

“...This Court has in the past emphasized the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for resolution of particular disputes. Speaker of The National Assembly vs. Karume (supra), was a 5(2)(b) application for stay of execution of an order of the High Court issued in judicial review proceedings rather than in a petition as required by the Constitution. In granting the order, the Court made the often-quoted statement that:

“[W]here there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

See also **Kones vs. Republic & Another Ex Parte Kimani Wa Nyoike & 4 Others (2008) 3 KLR (ER) 296: -**

“It is readily apparent that in those cases the Court was speaking to issues of the correct *procedure* rather than of the correct *forum* for resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the Constitution or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court.

The basis for that view is first that Article 159 (2) (c) of the Constitution has expressly recognized alternative forms of dispute resolution, *including* reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The use of the word “*including*” leaves no doubt that Article (159)(2)(c) is not a closed catalogue. To the extent that the Constitution requires these forms of dispute resolution mechanisms to be promoted, usurpation of their jurisdiction by the High Court would not be promoting, but rather, undermining a clear constitutional objective. A holistic and purposive reading of the Constitution would therefore entail construing the unlimited original jurisdiction conferred on the High Court by Article 165(3)(a) of the Constitution in a way that will accommodate the alternative dispute resolution mechanisms.

Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a

more cost-effective manner....

...We are therefore satisfied that the learned judge did not err by striking out the appellant’s suit and application which sought to invoke the original jurisdiction of the High Court in circumstances whereas the relevant statutes prescribed alternative dispute resolution mechanisms and afforded the appellant the right to access the High Court by way of appeal, which mechanisms he had refused to invoke. To hold otherwise would, in the circumstances of this appeal, be to defeat the constitutional objective behind Article 159(2)(c) and the very *raison d’etre* of the mechanisms provided under the two Acts...”

26. We have carefully examined the **Constitution**, the relevant legislations namely the **Inter-Governmental Relations Act, the Land Act** and decided cases on the procedure to follow when there is a dispute between the two tiers of governments and we are not in the least persuaded by the arguments by counsel for the appellant that when a dispute involves interpretation of fundamental rights to land ownership, it is not suitable for resolution in those forums. The notices in the instant appeal were about land acquisition which in the first place largely involves a determination of facts such as the existence of the actual land and its ownership among others, once those preliminaries are established and are thrust by the said bodies, that is when the jurisdiction of the courts can be invoked by the aggrieved party. It is for this reason, we cannot second guess the intentions of the drafters of the legislations that provided for alternative dispute resolution mechanisms as a first stop measure before engaging in judicial litigation. The learned Judge was spot on by holding that the petitions were premature, and the intentions declared in the said notices ought to have been taken through the dispute resolution mechanism before crystallizing into a constitutional dispute to be determined by the High Court.

27. Accordingly, we find all the grounds of appeal lacking in merit as the learned Judge correctly addressed himself to the issue of jurisdiction first and arrived at a conclusion that is fully backed by the Constitution and other legislations. This appeal therefore fails. As the respondents did not file submissions and this being a dispute between the national and county government, we decline to award costs and order each party to bear its own costs.

Dated and delivered at Nairobi this 4th day of December, 2020.

M. K. KOOME

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

S. ole KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR