



REPUBLIC OF KENYA



Ntujusoi v Cabinet Secretary for Ministry of Lands, Public Works, Housing & Urban Development & 5 others; Nkendienye & 3 others (Interested Parties) (Environment & Land Petition E004 of 2022) [2024] KEELC 4898 (KLR) (19 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4898 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KILGORIS

ENVIRONMENT & LAND PETITION E004 OF 2022

EM WASHE, J

JUNE 19, 2024

IN THE MATTER OF NKARARO ADJUDICATION SECTION

-AND-

**IN THE MATTER OF ALL THAT PIECE OF LAND
KNOWN AS TRANSMARA/NKARARO/212**

-AND-

**IN THE MATTER OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER
ARTICLES 10,40,43,47 & 48 OF THE CONSTITUTION OF KENYA, 2010**

-AND-

**IN THE MATTER OF LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA,
THE LAND REGISTRATION ACT, NO.3 OF 2012 & LAND ACT, NO.6 OF 2012**

-AND-

**IN THE MATTER OF OBJECTION NO. 24 OF 1990: NKEDIENYE
OLE KIPENO AGAINST JOHN SAKAJA NTIKUSOI**

-AND-

**IN THE MATTER OF AN APPEAL TO THE MINISTER
OF LANDS IN APPEAL CASE NO. 139 OF 1998 UNDER**

**SECTION 29 OF THE LAND ADJUDICATION
ACT & ARTICLE 159 OF THE COSTITUTION**

-AND-

**IN THE MATTER OF ENFORCEMENT OF THE FINDINGS OF THE TRANSMARA WEST
DISTRICT COMMISSIONER IN EXERCISE OF DELEGATED POWERS UNDER SECTION
29 OF THE LAND ADJUDICATION ACT & ARTICLE 159 OF THE CONSTITUTION**

-AND-

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015



BETWEEN

JOHN SAKAJA NTUJUSOI PETITIONER

AND

**CABINET SECRETARY FOR MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING & URBAN DEVELOPMENT 1ST RESPONDENT**

DISTRICT COMMISSIONER, TRANSMARA 2ND RESPONDENT

DISTRICT LAND REGISTRAR, TRANSMARA 3RD RESPONDENT

**LAND ADJUDICATION OFFICER & SETTLEMENT OFFICER TRANSMARA
WEST, EAST & SOUTH SUB-COUNTY 4TH RESPONDENT**

THE ATTORNEY GENERAL 5TH RESPONDENT

NKEDIENYE OLE KIPENO 6TH RESPONDENT

AND

LETUTUI NKENDIENYE INTERESTED PARTY

CHARLES NKENDIENYE INTERESTED PARTY

MOSES KIPENO INTERESTED PARTY

FRANCIS KIPENO INTERESTED PARTY

JUDGMENT

1. The Petitioner herein filed a Petition dated 02.12.2022 (hereinafter referred to as “The present Petition”) against the 1st to 6th Respondent seeking for the following reliefs; -
 - a. A declaration that the Minister’s Appeal in Land Case No. 139 of 1998 was filed out of time and it offends Section 29 (1) of the *Land Adjudication Act*.
 - b. A declaration that the 2nd Respondent’s decision of 30th March 2004 in Minister’s Appeal No. 139 of 1998 is oppressive, unlawful, null and void.
 - c. A declaration that the 4th Respondent’s decision in Objection No. 139 of 1990 and delivered on the 08.08.1991 is valid and uncontested.
 - d. An Order of Certiorari be issued to remove to this Court and quashing the decision of the 2nd Respondent dated 30.04.2004 in the Minister’s Appeal no. 139 of 1998.
 - e. An Order of prohibition, prohibiting the 3rd Respondent from registering the disputed portion of land to wit; 212 to the 6th Respondent herein.
 - f. A declaration that the 2nd Respondent has no powers in law to entertain an Appeal that was lodged beyond the statutory period as prescribed under Section 29 of the *Land Adjudication Act*.



- g. A declaration that the Petitioner is entitled to be registered exclusively as the legitimate and beneficial owner of his ancestral land of parcel No. 212 within Nkararo Adjudication Section.
 - h. An Order compelling the Respondents herein and specifically the 3rd Respondent to register the Petitioner as the beneficial and legitimate owner of the subject ancestral land parcel No. 212 within Nkararo Adjudication Section.
 - i. Costs of the Petition.
 - j. Any other reliefs that the Honourable Court may deem fit and expedient to grant.
2. The Petitioner through his Affidavit of Support dated 02.12.2022 outlined following the grounds in support of the prayers:-
- a. The Petitioner claimed to be the bona fide allottee of the property known as Plot.no.212 within Nkarara Adjudication Section.
 - b. On the other hand, the 6th Respondent was allotted the properties known as Plot.no.213 & Plot.no.968 within Nkararo Adjudication Section.
 - c. At the end of the Adjudication exercise of Nkararo Adjudication Section, the Adjudication Register was declared complete and the general public invited to inspect the same.
 - d. Based on the Inspection of the Adjudication Register of Nkararo Adjudication Section, the 6th Respondent filed an Objection against the Adjudication Record of the Petitioner allocating him Plot.no.212 within Nkararo Adjudication Section.
 - e. The Objection filed by the 6th Respondent against the Adjudication Record of the Petitioner relating to Plot.no.212 within Nkararo Adjudication Section was duly recorded as Objection No. 24 of 1990.
 - f. On or about 08.08.1991, the 4th Respondent pursuant to his statutory mandate proceeded to hear the Objection No.24 OF 1990 and rendered his Ruling to the effect that the 6th Respondent's objection was not merited.
 - g. The Petitioner was also given a 60 days period from the date of determination of the said Objection by the 4th Respondent to file any Appeal to the Minister if need be as provided for under Section 29 of the [Land Adjudication Act](#), Cap 284.
 - h. The 6th Respondent unfortunately did not file any Appeal before the 1st Respondent within the proscribed period of 60 days from the date of determination of the Objection proceedings which was 08.08.1991.
 - i. As a result of the 6th Respondent's failure to file any Objection against the determination of the 4th Respondent pronounced on the 08.08.1991, the Petitioner proceeded to subdivide the property known as Plot.no.212 within Nkararo Adjudication Section to his various dependants thereof.
 - j. However, later on, the Petitioner came to learn that the 6th Respondent had filed an Appeal in the year 1998 which was 7 years from the date of the determination by the 4th Respondent which was assigned Land Case Appeal No. 139 of 1998 by the 1st Respondent.
 - k. The Petitioner further pleaded that the 1st Respondent proceeded to hear and determine the Land Case Appeal No. 139 Of 1998 without notice to him and an Ex-parte Ruling issued on the 30.03.2004.



- l. According to the Petitioner, the 1st Respondent in his Ruling decided that the property known as Plot.no.212 within Nkararo Adjudication Section was to be registered in the name of the 6th Respondent and not the Petitioner.
 - m. In essence, the Petitioner pleaded that the 1st Respondent's actions of admitting, entertaining and thereafter deciding on the ownership of the property known as Plot.no.212 within Nkararo Adjudication Section after the prescribed time of 60 days as provided under Section 29 of the [Land Adjudication Act](#), Cap 284 infringed on his Constitutional rights as provided under Article 40 of the Kenyan Constitution, 2010.
 - n. The Petitioner therefore sought the prayers outlined hereinabove to prevent the 1st to 4th Respondents herein from implementing the decision of the 1st Respondent pronounced on the 30.04.2004 and/or the 6th Respondent sub-dividing the said property and alienating it to third parties.
3. The present Petition was served on the 1st to 6th Respondents who opposed the same.
 4. The 1st to 5th Respondents filed a Replying Affidavit sworn on the 26.04.2023 by the 4th Respondent stating the following facts; -
 - a. Indeed, the property known as Plot.no.212 within Nkararo Adjudication Section was recorded to the Petitioner herein as contained in the Adjudication Register of Nkararo Adjudication Section published on the 30.10.1990.
 - b. Based on the Adjudication Record issued to the Petitioner as the beneficial owner of Plot.no.212 within Nkararo Adjudication Section, the 6th Respondent filed an Objection before the 4th Respondent challenging the Petitioner's ownership.
 - c. The Objection filed by the 6th Respondent before the 4th Respondent was assigned Objection No. 24 OF 1990.
 - d. The Objection No. 24 Of 1990 was heard in the presence of both the Petitioner and the 6th Respondent and the 4th Respondent pronounced his determination on the 08.08.1991 dismissing the 6th Respondent's Objection.
 - e. The 6th Respondent being aggrieved by the 4th Respondent's determination of Objection No. 24 Of 1990 on the 08.08.1991 proceeded to file an Appeal to the 1st Respondent on the 19.08.1991.
 - f. The 4th Respondent produced a Copy of the Memorandum of Appeal dated 19.08.1991 filed by the 6th Respondent as well as the Receipt for the payment of the Appeal fees amounting to KShs 135.
 - g. In other words, the 4th Respondent confirmed that the 6th Respondent's Appeal against the determination of the Objection proceedings pronounced on 08.08.1991 was filed just 11 days after and within the 60 days period prescribed by Section 29 of the [Land Adjudication Act](#), Cap 284.
 - h. However, the 4th Respondent informed the Court that the processing and registration of the Appeals before the 1st Respondent were delayed due to various reasons and the 6th Respondent's Appeal was forwarded to the 1st Respondent's offices in the year 1998 through a letter dated 10.07.1998.



- i. It is for this reason that the 6th Respondent's Appeal to the 1st Respondent was assigned the number Land Case Appeal No. 139 Of 1998.
 - j. The 4th Respondent further emphasized that in their records, the 6th Respondent actually filed the Appeal to the 1st Respondent within the prescribed time of 60 days as provided under Section 29 of the Land Adjudication Act, Cap 284 and the recording of the Appeal as Land Case Appeal No. 139 Of 1998 was occasioned by administrative delays and does not mean that the 6th Respondent's Appeal was filed in the year 1998.
 - k. Further to the above, the 4th Respondent disputed the Petitioner's allegation that he was not aware of the determination relating to the Land Case Appeal No. 139 OF 1998 until the year 2021.
 - l. According to the 4th Respondent, the Petitioner on the 06.07.2007 wrote a letter to the 1st Respondent complaining about the determination pronounced on the 30.04.2004.
 - m. Similarly, the 4th Respondent informed the Court that the Petitioner sought for leave to institute legal proceedings regarding the property known as Plot.no.212 within Nkararo Adjudication Section in the year 2007 which leave was denied through the letter dated 18.12.2007 by the 4th Respondent.
 - n. In conclusion therefore, the Petitioner was well aware of the Land Case Appeal No.139 Of 1998 but did not file any Appeal of the decision pronounced on the 30.04.2004 as provided for under Section 30 of the Land Adjudication Act, Cap 284.
 - o. The 4th Respondent pleaded that the actions of the 1st to 5th Respondents were done in compliance with the Constitution and/or Statutory provisions and the allegations that the Appellant's rights were infringed is baseless.
 - p. The 4th Respondent informed the Court that the decision of the 1st Respondent in any Appeal proceedings is final and conclusive as envisaged under Section 29 of the Land Adjudication Act, Cap 284 and what the Petitioner was attempting is to set aside and/or appeal against the said determination contrary to law.
 - q. In conclusion thereof, the 4th Respondent sought this Court to dismiss the Petition with costs.
5. The 1st to 4th Interested Parties also opposed the present Petition by filing a Replying Affidavit dated 28.08.2023 which stated as follows;-
- a. The Interested Parties admitted that the property known as PLOT.NO.212 within Nkararo Adjudication Section measuring approximately 60.14 Hectares was recorded in the name of the Appellant during the Adjudication process.
 - b. The 6th Respondent then filed an Objection which was recorded as Objection No. 24 OF 1990.
 - c. The 6th Respondent's Objection NO.24 OF 1990 was duly heard with the participation of the Appellant and the determination pronounced on the 08.08.1991 dismissing the same.
 - d. The 6th Respondent being aggrieved with the determination of the 4th Respondent in the Objection No. 24 of 1990 proceeded to file an Appeal before the 1st Respondent which was assigned MINISTER'S APPEAL NO. 139 OF 1998.
 - e. The MINISTER'S APPEAL NO. 139 OF 1998 was duly heard with the participation of the Appellant and a determination pronounced on the 30.04.2004 in favour of the 6th Respondent.



- f. The 1st to 4th Interested Parties pleaded the Appellant duly participated in both proceedings known as OBJECTION NO. 24 OF 1990 and MINISTER'S APPEAL NO. 139 OF 1998 and therefore none of his constitutional rights have been violated by the Respondents herein.
 - g. In addition to the foregoing, the 1st to 4th Interested Parties stated that this present Petition is not the first litigation the Petitioner has filed relating to the property known as PLOT.NO.212 within NKARARO ADJUDICATION SECTION.
 - h. The 1st to 4th Interested Parties informed the Court that in the year 2016, the Appellant filed legal proceedings relating to the property known as PLOT.NO.212 within NKARARO ADJUDICATION SECTION before the KISII LAW COURT which case was assigned KISII ELC CASE NO. 82 OF 2016 and later transferred to KILGORIS LAW COURT and assigned KILGORIS SPM ELC CASE NO. 13 OF 2018.
 - i. In the proceedings known as KILGORIS SPM ELC CASE NO.13 OF 2018, the 6th Respondent and the 1st to 4th Interested Parties raised a Preliminary Objection on the issue of jurisdiction which was subsequently dismissed on the 24.09.2019.
 - j. The 6th Respondent and the 1st to 4th Interested Parties being aggrieved with the Ruling of 24.09.2019 filed an Appeal known as KILGORIS ELCA NO.16 OF 2021.
 - k. The Appeal known as KILGORIS ELCA NO.16 OF 2021 was heard and determined on the 20.08.2022 with an Order that the Preliminary Objection raised by the 6th Respondent and the 1st to 4th Interested Parties was merited hence the Appellant's proceedings known as KILGORIS SPM ELC NO. 13 OF 2018 were dismissed altogether.
 - l. Dispute the Petitioner being aware of all these proceedings, he tactfully failed to disclose them in this Petition with a view of misleading the Court.
 - m. Be as it may, the 1st to 4th Interested Parties pleaded that the present Petition was Res Judicata as it purports to bring back issues of the property known as PLOT.NO.212 within NKARARO ADJUDICATION SECTION which issues had already been dealt with in the earlier proceedings.
 - n. In addition to the above, the 1st to 4th Interested Parties also stated that the present Petition is an effort to Appeal against the 1st Respondent's lawful determination made on the 30.04.2004 which under the Land Adjudication Act, Cap 284 was final.
 - o. In conclusion therefore, the 1st to 4th Interested Parties pleaded that the issues relating to the property known as PLOT.NO.212 within NKARARO ADJUDICATION SECTION had been lawfully and procedurally handled by the 1st to 4th Respondent and there is no constitutional right that was infringed as alleged by the Petitioner.
6. The Court directed that the present Petition be canvassed by way of written submissions.
 7. The Petitioner filed his submissions on the 15.01.2024 and the 1st to 4th Interested Parties filed their submissions on the 12.01.2024 while the 1st to 5th Respondents relied on their Replying Affidavit only.
 8. The Court has perused the present Petition in details, the Replying Affidavits of the Respondents and the Interested Parties as well as the submissions filed by all the parties.
 9. The issues for determination in the present Petition can be outlined as follows; -



Issue No. 1- Was The Minister's Appeal No. 139 Of 1998 Filed Out Of Time By The 6th Respondent Or Not Thereby Infringing On The Petitioner's Right Under Article 40 Of The Kenyan Constitution?

Issue No. 2- Was The Petitioner Granted A Hearing In The Proceedings Known As Minister's Appeal No. 139 Of 1998 As Enshrined Under Article 47 & 50 Of The Kenyan Constitution, 2010?

Issue No. 3- Is The Petitioner Entitled To The Prayers Sought In The Present Petition?

Issue No.4- Who Should Bear The Costs Of The Present Petition?

10. The issues for determination having been duly outlined hereinabove, the same will now be discussed hereinbelow.

Issue No. 1- Was The Minister's Appeal No. 139 Of 1998 Filed Out Of Time By The 6th Respondent Or Not Thereby Infringing On The Petitioner's Right Under Article 40 Of The Kenyan Constitution,2010?

11. The first issue for determination is the legality of the proceedings known as the Minister's Appeal No.139 of 1998.
12. The Petitioner pleaded that the 6th Respondent after the determination of the proceedings known as Objection No.24 Of 1990 on the 08.08.1991 filed an Appeal to the 1st Respondent way after the prescribed period of 60 days as provided for under Section 29 of the *Land Adjudication Act*, Cap 284.
13. According to the Petitioner's pleadings and submissions, the Appeal to the 1st Respondent by the 6th Respondent known as Minister's Appeal No. 139 Of 1998 was filed in the year 1998 which was over 7 years after the determination of the Objection No. 24 Of 1990.
14. In essence, the 1st Respondent did not have powers and/or jurisdiction to admit, entertain and/or determine the 6th Respondent's Appeal known as Minister's Appeal No. 139 Of 1998 and any pronouncement emanating from the said Appeal infringed his Constitutional Rights to own property as enshrined under Article 40 of the Kenyan Constitution, 2010.
15. The 1st to 4th Respondents on the other hand disputed the Petitioner's allegations that the Minister's Appeal No.139 Of 1998 was filed out of time.
16. The 1st to 4th Respondents in their Replying Affidavit pleaded that indeed, the 4th Respondent made a Ruling on the 08.08.1991 relating to Objection No.24 Of 1990 filed by the 6th Respondent.
17. The 6th Respondent being aggrieved by the Ruling of the 4th Respondent regarding the proceedings known as Objection No. 24 Of 1990 filed an Appeal to the 1st Respondent on the 19.08.1991 and paid the statutory fees of KShs 135/- thereof.
18. The 4th Respondent produced the 6th Respondent's Grounds of Appeal dated 19.08.1991 together with the relevant Receipt of the Statutory Fees amounting to KShs 135/-.
19. The Petitioner was duly served with the 1st to 4th Respondents Replying Affidavit which also contained the 6th Respondent's Grounds of Appeal dated 19.08.1991 as well as the receipt of the Statutory payment of KShs 135/- but did not file any Further Affidavit to challenge the genuineness of these documents.
20. The 1st to 4th Respondents explained that although the 6th Respondent filed his Grounds of Appeal on the 19.08.1991, it took long for their offices to process and ensure all the relevant documents were procured before the same could be sent to Nairobi for assigning of Appeal numbers and thereafter heard on merit.



21. The 1st to 4th Respondents provided evidence through a letter dated 10.07.1998 which was marked as MRO 4 showing that indeed, the 6th Respondent's Grounds of Appeal were forwarded to the 1st Respondent in the year 1998 and that is why the Minister's Appeal was assigned a number with the year 1998.
22. The 1st to 4th Respondents therefore confirmed to the Court that the correct date of which the 6th Respondent filed his Appeal was 19.08.1991 and not the year 1998 as alleged by the Petitioner.
23. Be as it may, the 6th Respondent's Grounds of Appeal dated 19.08.1991 as well as the Receipt of KShs 135/- attached thereon are certified copies of the 4th Respondent's official records.
24. Section 83 of the Evidence Act, Cap 80 provides as follows;-
 - “(1) The Court shall presume to be genuine every document purporting to a certificate, certified copy or any other document which is;-
 - a. Declared by law to be admissible as evidence of any particular fact; and
 - b. Substantially in the form, and purporting to be executed in the manner, directed by law in that behalf; and
 - c. Purporting to be duly certified by a public officer.
 - “(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such document.”
25. The 6th Respondent's Ground of Appeal which are produced as a Certified Copy of the record being held by the 4th Respondent clearly shows that the same was dated and filed on the 19.08.1991.
26. Based on the provisions of Section 83 (1 C) of the Evidence Act, Cap 80, this Court hereby makes a finding that the 6th Respondent's Appeal against the 4th Respondent's determination pronounced on the 08.08.1991 in the Objection proceedings was filed on the 19.08.1991.
27. The period between 08.08.1991 when the Objection proceedings were determined and the 19.08.1991 when the Grounds of Appeal were filed, received and paid for was a period of 11 days.
28. In essence, the period of 60 days within which a party can Appeal against a decision of the 4th Respondent as provided for under Section 29 of the Land Adjudication Act, Cap 284 had not lapsed and/or expired by the time the 6th Respondent filed his Appeal before the 1st Respondent.
29. It is therefore this Court's finding that the 6th Respondent's appeal known as MINISTER'S APPEAL NO. 139 OF 1998 was filed within the prescribed time of 60 days from the date of pronouncement of the Objection Ruling dated 08.08.1991.
30. The Court having arrived at the finding that the 6th Respondent's Appeal known as MINISTER'S APPEAL NO.139 OF 1998 was filed within time, then the 1st Respondent's actions of admitting, entertaining and/or determining the same were in line with the statutory provisions of the Land Adjudication Act, Cap 284 and did not infringe on the Petitioner's right to own property as envisaged under Article 40 of the Kenyan Constitution, 2010.



Issue No. 2- Was The Petitioner Granted A Hearing In The Proceedings Known As Minister's Appeal No. 139 Of 1998 As Enshrined Under Article 47 & 50 Of The Kenyan Constitution, 2010?

31. The second issue for determination is whether or not the Petitioner was accorded an opportunity to be heard in the MINISTER'S APPEAL NO. 139 OF 1998 before the 1st Respondent pronounced his/her determination on the 30.08.2004.
32. The Petitioner in his pleadings and submissions stated that he was never served and/or notified with the 6th Respondent's appeal known as the MINISTER'S APPEAL NO. 139 OF 1998 until the year 2021.
33. In essence, the Petitioner stated that the proceedings known as the MINISTER'S APPEAL NO. 139 OF 1998 filed by the 6th Respondents were undertaken in secrecy and without his participation thereby denying him the right to be heard as enshrined under Article 47 and 50 of the Kenyan Constitution, 2010.
34. The 1st to 4th Respondents through their Replying Affidavit denied that Petitioner's allegation of being not accorded an opportunity to be heard.
35. The 1st to 4th Respondent placed before this Court two letter dated 05.07.2007 and 18.12.2007.
36. In the first letter dated 05.07.2007, the Appellant was writing to the Minister of Land and Settlement complaining about the decision of the District Commissioner, Transmara being unfair to him hence the implementation of the decision should be stopped as he felt his case had not been considered.
37. What is most important in this letter dated 05.07.2007 by the Petitioner was the second last sentence that says as follows; -

“ Here attached the case proceedings of both cases and I do feel they are not as per my casing”
38. The simple and clear understanding on the above sentence was that the Petitioner had both the proceedings of the OBJECTION NO 24 OF 1990 before the 4th Respondent as well as the MINISTER'S APPEAL NO. 139 OF 1998 undertaken before the District Commissioner, Transmara on delegated powers from the 1st Respondent.
39. This is in the Court's view a clear admission that the Petitioner was well aware of the proceedings and/or determination of the MINISTER'S APPEAL NO. 139 OF 1998 at least since the year 2007 and not 2021 as alleged.
40. In the Second letter produced by the 1st to 4th Respondent dated 18.12.2007, the 4th Respondent was responding to the Petitioner's letter dated 04.12.2007 through his advocates Messrs S.M.SAGWE & COMPANY,ADVOCATES.
41. In this letter dated 18.12.2007, the 4th Respondent was responding to a request for Consent to institute legal proceedings over the property known as PLOT.NO.212 within NKARARO ADJUDICATION SECTION for the reason that the District Commissioner, Transmara had taken long to determine the MINISTER'S APPEAL NO. 139 OF 1998.
42. In this letter dated 18.12.2007, the Petitioner did not raise any allegation that he was not accorded an opportunity to be heard as provided for under Article 47 or 50 of the Kenyan Constitution, 2010.
43. What the Petitioner was complaining about in both letters was that the District Commissioner, Transmara in his view had taken a long time to make his determination thereof.



44. The Petitioner himself produced a Certified Copy of the proceedings relating to the MINISTER'S APPEAL NO. 139 OF 1998 in his AFFIDAVIT IN SUPPORT OF THE PETITION dated 02.12.2022.
45. In the AFFIDAVIT IN SUPPORT OF THE PETITION dated 02.12.2022, the Petitioner describes the copy produced before the Court as a true copy of the 4th Respondent's Ruling dated 30.04.2004.
46. Clearly therefore, the Petitioner on his own accord confirms that the proceedings relating to the MINISTER'S APPEAL NO. 139 OF 1998 reflect the correct and genuine records of what happened before the 4th Respondent.
47. Be as it may, the Court reminds itself of the provisions of Section 83 of the *Evidence Act*, Cap 80 which has already been highlighted above.
48. Unless these proceedings relating to the MINISTER'S APPEAL NO.139 OF 1998 are quashed by a Court of competent Jurisdiction, the same are taken to be the genuine and correct account of what transpired before the District Commissioner, Transmara while exercising his/her delegated powers from the 1st Respondent.
49. The Certified Copy of the proceedings relating to the MINISTER'S APPEAL NO. 139 OF 1998 confirms that the Petitioner who was the Respondent was aware of the said proceedings and fully participated in the same by not only testifying on his own behalf but also called two witnesses in support of his case.
50. The Certified proceedings of the MINISTER'S APPEAL NO. 139 OF 1998 confirm that the Petitioner was notified of the 6th Respondent's Appeal and further accorded a hearing before the determination of the same by the District Commissioner, Transmara on the 30.03.2004.
51. In other words, the Petitioner was accorded an opportunity to be heard as provided under Article 47 and 50 of the Kenyan Constitution, 2010 and there was no infringement of these provisions was occasioned by the 1st Respondent.
52. In conclusion therefore, this Court hereby makes a finding that the 1st to 4th Respondents observed and did not infringe on the Petitioner's rights as provided under Article 47 and 50 of the Kenyan Constitution, 2010.

Issue No. 3- Is The Petitioner Entitled To The Prayers Sought In The Present Petition?

53. The third issue is whether or not the Petitioner is entitled to the prayers in the present Petition.
54. Based on the determinations of Issues No. 1 & 2, this Court is of the considered finding that the Petitioner's rights under Articles 10,40,43,47 & 48 of the Kenyan Constitution, 2010 have not been violated as alleged and is therefore not deserving of the prayers sought in the present Petition.

Issue No.4- Who Should Bear The Costs Of The Present Petition?

55. The last issue is who should bear the costs of this Petition.
56. Costs usually follow the events and the Petitioner having not succeeded in his prayers before this Court, then he is condemned to pay the costs.

Conclusion

57. In conclusion, the Court hereby makes the following Orders as regards the Petition dated 02.12.2022; -



A. The petition dated 02.12.2022 be and is hereby dismissed.

B. The petitioner is ordered to pay costs of the petition herein.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 19TH OF JUNE 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr Ngeno

Advocate For The Petitioner: Mr. Kamwaro

Advocate For The Respondents: N/a

Advocate For Interested Parties: Mr. Mulisa

