Trustees of the Church Commissioners of Kenya; Registered Trustees v National Land Commission (NLC) & another (Constitutional Petition 1 of 2024) [2024] KEELC 6448 (KLR) (Environment and Land) (26 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6448 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ENVIRONMENT AND LAND

CONSTITUTIONAL PETITION 1 OF 2024

LL NAIKUNI, J

SEPTEMBER 26, 2024

JUDGMENT

IN THE MATTER OF: ARTICLES 22, 23, 40(6), 47, 48, 60, 62, 67 AND 165(3) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: GOVERNMENT LAND ACT CAP 280, THE LOCAL GOVERNMENT ACT CAAP 265 (REPEALED)

AND

IN THE MATTER OF: PART III OF THE LAND ACT NO. 6 OF 2012

AND

IN THE MATTER OF: THE REGISTRATION OF LAND ACT NO. 3 OF 2012, THE NATIONAL LAND COMMISSION ACT, CAP 5D LAWS OF KENYA

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION AC, 5D LAWS OF KENYA

AND

IN THE MATTER OF: VOI PART DEVELOPMENT PLAN NO. 49

BETWEEN

THE TRUSTEES OF THE CHURCH COMMISSIONERS OF KENYA; REGISTERED TRUSTEES ..... PETITIONER

AND

THE NATIONAL LAND COMMISSION (NLC) ..... 1ST RESPONDENT

TAITA TAVETA COUNTY GOVERNMENT ..... 2ND RESPONDENT

JUDGMENT

I. Preliminaries

1. The Judgment of this Court pertains the filed Constitution Petition dated 29th January, 2016 by, the Trustees of the Church Commissioners of Kenya; Registered Trustees, the Petitioner herein as against the National Land Commission and Taita Taveta County Government, respectively as the Respondents herein. *The Constitution* Petition was brought under the dint of the provisions of Articles 22, 23, 40(6), 47, 48, 60, 62, 67 and 165 (3) of *the Constitution* of Kenya 2010.

2. Upon service of the Petition, the 2nd Respondent entered their appearance through filing of a Memorandum of appearance dated 23rd March, 2016. By the time of penning down this Judgement, the Honourable Court took cognizance to the fact that, although the Respondents responded to the application that accompanied the Petition, they never filed any responses to the main Petition. That notwithstanding, the Honourable Court will proceed to render the Judgement on its own merit whatsoever.

II. The Petitioner's Case

3. The Petitioner sought for the following orders:-

    a. The Petitioner seeks for a Conservatory orders restraining the Respondents, their agents, servants and or employees from encroaching on the suit land until the matter is heard and determined by the court.

    b. An order of Judicial Review of certiorari to remove into this Honourable court the letters of Allotment issued by the Commissioner for Lands to the private individuals over part of VOI PART DEVELOPMENT PLAN NO. 49 dated 4th October 2010 and quash them.

    c. Declaration that the Petitioners as the current occupiers are entitled to all that piece of land comprised in VOI PART DEVELOPMENT PLAN NO. 49 of 4th October 1984 measuring approximately 1.69 hectares or thereabouts as it is public land and therefore it be registered in their favour.

    d. An order directed to the 2nd Respondent to immediately cause the survey of the suit land and proceed to issue a title deed to the Petitioner of the suit land.

    e. A permanent injunction to restrain the Respondent or any other party from interfering with the Petitioners ownership, occupation, use and interest over the suit land or otherwise from evicting or attempting to evict the Petitioners from the suit land or from issuing title deeds or in any other way alienating the suit land other than to the Petitioners.

    f. The costs of this Petition be awarded to the Petitioners.

III. Description of parties

4. The Petitioners were described as the Trustees of the Church Commissioners of Kenya; registered trustees which is the umbrella body of all churches in Kenya registered under the *Societies Act* CAP. 108 of the Laws of Kenya. They were suing on behalf of the Diocese of ACK Taita Ttaveta Mwakingali Parish of P. O Box 776 Voi. Its address of service for the purpose of this suit shall be care of Messrs.

Wasuna & Company Advocates, National Bank building, South Podium, 2nd floor, Harambee Avenue, P.O Box 34992 Nairobi.

5. The 1st Respondent was Described as the National Land Commission established UNDER the provision of Article 67 of *the Constitution* of Kenya, 2010 and its address of service for the purposes of this Petition is National Land Commission (NLC) Ardhi House, 12th Floor, room 1205 P.O Box 44417-00100 Nairobi.

6. The 2nd Respondent was described as Taita Taveta County Government as established under the provision of Article 176 of *the Constitution* of Kenya, 2010 and Section 2 of the County Government Act, Cap. 264 of 2012.

IV. The Brief Facts

7. The brief facts of the case were and still are that the Petitioner was the current occupier of land comprised in Voi Part Development Plan No. 49 of 4th October 1984 which was Public Land set aside by the said Part Development Plan for a school and a church. The Petitioner contended that the land in question was set aside as public land to set up public utilities being a church and a school by Voi Part Development Plan. 49 dated 4th October,1984 measuring 1.69 Ha in Mwakingali Voi (annexed and marked as "SAC - 1").

8. The Petitioner had been desirous of putting up the said public utilities and thus approached the now defunct MUNICIPAL COUNCIL OF VOI and the then Councilor as was the practice in those days. They allowed them to move into the land and build the church and the school.The Petitioner managed to set up a nursery school being for the benefit of the community St. Andrews Nursery School in the year 1999, which started enrolling students in the year 2000. In the year 1995 the government placed an advertisement in one of the local dailies being "The Standard" daily newspaper the edition and dated July 30th 2014 at Page 48 that it intended to make some allocations in Voi. Although Mwakingali "A" was one of the affected Areas, the said advertisement never included the suit property herein being Voi Part Development Plan. 49 (annexed and marked as "SAC - 2") was a copy of the said advertisement.

9. The Petitioner was the current occupier of the suit property was not informed of any changes done or to be done to Voi Part Development Plan No. 49 of 4th October 1984 neither was the opinion of the public sought with regards to the said changes which allowed the land to be sub - divided to private citizens. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands went ahead and allocated the said public land comprised in Voi Part Development Plan No. 49 of 4th October 1984 to private individuals which had been set aside as public land for the benefit of the community for the Petitioner to put up a church and a school.

10. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands acted irregularly, un-procedurally, illegally and fraudulently in purporting to give Letters of Allotment to individual/private developers over public land. The said sub - division and allotment of the public land to private individuals is a violation of the Petitioners Pre-emptive rights as the current occupiers of the suit property.

11. Members of the local community who had settled in the surrounding areas protested when some of these new owners who had been issued with Letters of Allotment started to put up structures on what they had always known to be public land, but the private developers procured the help of local law enforcement officers who provided them with security until the construction was complete.

12. Local Political leaders wrote to the Ministry of Lands vide letter dated 14th October, 1999 to inform them of the illegal evictions and land grabbing by Public Servants and the Commissioner vide letter

dated 24th November, 1999 copied to the District Commissioner and the Town Clerk responded by directing theDistrict Lands Officer to conduct a site inspection of the affected area annexed hereto and marked as "SAC – 3" was a copy of the letter from the Voi KANU Sub Branch and the response from the Commissioner for Lands.

13. Consequently, the already existing KEDU Informal Settlement Group enjoined the Squatters in the neighboring Plots of land into a project for the formalization to obtain documentation over the land they lived on.Letters of Allotment were issued to the citizens, and in doing so the Settlement Scheme respected the Boundaries as set up by Voi Part development Plan No. 49 dated 4th October 1984, and further did not disturb the occupation of the Petitioners on the suit property.

14. In the Year 2015, the Petitioners being desirous of putting up a church on the remaining part of the public land, submitted to the County Government its proposed Development/Building Plans for approval, but they received communication from the said county government that the said Plans could not be approved as part of the remaining land had also been allocated to a private individual who had since sold their letter of allotment to a third party.

15. The Petitioners had managed to unearth that the third party had also submitted building plans over part of the suit property which was public land, which had since been registered as L.R. No.1956/1820 dated 31st January1996 in favour of Francis Otieno (annexed and marked as"SAC- 4" and "SAC – 5" were copies of the Letter of Allocation over L.R. NO. 1956/1820 and a list of the other allotees over the said land).

16. The Petitioners engaged the Law firm of Messrs. Mwanyumba & Company Advocates who wrote letters to the Commissioner of Lands to enquire whether the Commissioner of Lands revoked the original Voi Part Development Plan No. 49 of 1984 and replaced the same with any other subsequent Plan/Plans, but to date received no response to the enquiry (annexed and marked as "SAC -6" was a copy of the said letter).

17. There had been various disputes to over the land, and sometimes in the year 2006, the Voi Town Administration referred the same to the Voi Municipal Physical Planning Liaison Committee, after it had emerged that the land including land where the Nursery school stood had been set aside for a Muslim cemetery (annexed and marked "SAC - 7" was a copy of the letter referring the dispute to the Liaison Committee).

18. On 30th July, 2014, a Notice of Application for a change of user from Residential to Religious purposes/use in the Standard Newspaper of the same date at page 48, to which the Petitioners lodged an objection vide letter dated 24th July, 2014 (annexed and marked as "SAC - 8" and "SAC - 9" were copies of the said Public Notice and the Petitioner's Objection).

19. Upon verbal inquiry from the County Secretary who confirmed that he was also the Chairman of the Physical Planning Committee; the Petitioners were informed that he was not aware of the Notice for Change of User yet he had been included in the said notice.

20. The Petitioners contended that the 1st Respondent had failed to perform its functions as prescribed by *the Constitution* of Kenya, 2010 and the *National Land Commission Act*, Cap. 5d Laws of Kenya. The suit property continued to be occupied contrary to the good title of the Government of the Republic of Kenya and the County Government of Taita – Tavetta.

21. Further, the suit property continued to be occupied and used in a manner inconsistent with the purposes for which the suit property was respectively dedicated or reserved under Voi Part Development Plan No. 49 dated 4th October 1984. It was clear from various correspondence between

the municipal council and the Lands Office at Voi that the local government was aware at the time of the irregular allocations that the land was occupied and that there was a school built and operational upon the suit land (annexed hereto and attached as "SAC -1"was the letters written in respect of the nursery school).

22. The Petitioners contended that the private developers on the suit lad have continued to put up structures rapidly despite efforts by the Petitioners to restrict them rendering this Petition. (annexed and attached as "SAC-11" were the set of photographs of the built structures on the suit land).

23. The Petitioners contended that the private developers continue to encroach on the public land putting at risk the education of children of the surrounding community who attended the Anglican Church of Kenya (ACK) nursery sponsored school. (annexed and attached as "SAC - 12" were a set of photographs of the built nursery school).

V. The Legal foundation of the Petition

24. The manner in which the suit land was sub - divided and allocated to private individuals was a contravention of *the Constitution* of Kenya 2010 in particular the provision of Articles 40, 60 and 62 of the said Constitution.

VI. The grounds to support the Petition

25. The advertisement issued for allocation of plots in Voi did not include the suit property yet the District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands went ahead and allocated the suit land which is public land to private individuals.

26. The Petitioner as the current occupier of the suit property was not informed of the change of Voi Part Development Plan No. 49 of 4th October 1984 neither was the opinion of the public sought with regards to the said changes.

27. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner of Lands acted irregularly, un-procedurally, illegally and fraudulently in purporting to letter of allotment to individual/private developers over public land.

28. The suit property was allocated to civil servants while there was a public utility existing thereon, being a nursery school, at the expense of the pupils in the nursery school and the locals who benefit from the school. The defunct Municipal Council of Voi now part of Taita – Taveta County Government failed in its duty as the trustees of public land as provided allocation of public land herein and protect public land from fraudulent allocation and further failed to discharge its functions as provided under the provision of Section 5 of the County Government Act.

29. The County Government failed to discharge its functions of County Planning and Surveying as spelt out under the 4th schedule of *the Constitution*, 2010. The County Land Management Boards established under the provision of Section 18 of the *National Land Commission Act*, Cap. 5D failed to discharge their functions of managing public land.

30. The National Land Commission failed in its mandate as the manager of the public land to cooperate with the County Government and administer public land in a proper manner as envisaged under the provision of Section 8 of the *National Land commission Act*, Cap. 5D. The manner in which the public land was administered was contrary to principles of Land Policy under the provision of Article 60 of *The Constitution* of Kenya, 2010. The National Land Commission ought to provide redress and address complaints especially matters of historical nature on land as empowered under Article 67(2) of *the Constitution* of Kenya, 2010.

31. The National Land Commission ought to provide redress and address complaints especially matters of historical nature on land as empowered under Article 67 (2) of *the Constitution* of Kenya, 2010. The suit property continued to be occupied contrary to the good title of the Government of the Republic of Kenya.Further, the suit property continued to be occupied and used in a respectively dedicated or reserved under Voi Part Development Plan No. dated 4th October 1984.

32. The Petitioners were apprehensive that the remaining portion of the suit property may be sold to other private individuals at the expense of the pupils in the nursery school and the locals who benefit from the school. The manner in which the suit land was sub - divided and allocated to private individuals is a contravention of *the Constitution* of Kenya, 2010 in particular the provision of Articles 40, 60 and 62 of the said Constitution.

33. The Petitioner contended that the Commission had failed to perform its function prescribed by *the Constitution* of Kenya, 2010 and the *National Land Commission Act*, Cap. 5D.

VII. The nature of injury

34. The illegal, irregular, un-procedural and fraudulent actions of the District Plot Allocation Committee (1995) acting at the behest of the Commissioner MWAKINGALI VOI the use of the public utilities if the suit land was not reclaimed. The said sub - division and allotment of the public land to private individuals was a violation of the Petitioners Pre - emptive rights as the current occupiers of the suit property.

35. The suit property continued to be occupied contrary to the good title of the Republic of Kenya and the County Government of Taita- Taveta. The suit property in a manner inconsistent with the purposes for which the suit property was respectively dedicated or reserved under Voi Part Development Plan no. 49 dated 4th October 1984.

36. The Petition was accompanied by a 4 paragraphed Verifying affidavit dated the same day sworn by Criswell Jonam Ringoma Mwachia, a Vicar of the Petitioner verifying the contents of the Petitioner.

VIII. The Court's direction before the hearing

37. Nonetheless, on 4th May, 2022, the Honourable Court fixed the matter hearing on 5th October, 2022 by adducing of for "Viva Voce". This was done as the Petitioners had fully complied on the Provisions of Order 11 of the Civil Procedure Rules 2010 on the Pre - trial conference. Despite of all this, the Respondents neither presented any witness nor did they interrogate the evidence adduced.

38. This matter proceeded on for hearing by way of adducing "viva voce" evidence with the Petitioner's witness (PW – 1) testifying in Court on 5th October, 2022. After which the Petitioner closed their case.

IX. The Petitioner's case

39. The Petitioner called its first and second witness (PW - 1 and PW - 2) who testified at 3 pm on 5th October, 2022 as follows:-

A. Examination in Chief of PW - 1 – by Mr. Amadi Advocate.

40. Petitioner Witness (PW – 1) no. 1, testified on oath in Kiswahili language. He identified himself as Mr. ZACHANUS SHAPHAT MARUMBA MAGANGA. He told the court that he was an entrepreneur. He recorded a witness statement on 22nd September, 2017 which he wished to have it adopted as his testimony in chief. He also filed and now produced a list of documents dated 29th

January, 2016 – of 12 documents. He further filed a list of documents dated 22nd September, 2017. It had 4 documents. Subsequently, he also filed a supplementary list of document dated 19th September, 2018 of 2 documents. These documents were marked for identification and marked as "MFI - 1 to 18". The land had PDP No. 49. It was stated the land for the public; intended for school children, church, low decants nursery and Voi Secondary School. They were allowed to construct in the year 1984. He never constructed a church.

41. According to PW - 1, the land was used for that purpose. It was never true that the Municipal Government could claim the land nor to sell. He had never seen another PDP. They had never received a notice nor called upto take it away. He urged Court to let the land remain as a public land and not for any other business but welfare and charity work. At the moment, they had the Nursery School and the Church which were under the Anglican Church of Kenya. The ACK was the sponsor of the church. The property measures 1.69 Hectares.

B. Examination in Chief of PW - 2 by Mr. Amadi Advocate

42. PW - 2 testified on oath in Kiswahili language. He identified himself as being REV. C JOHAM RINGOMA MWACHIA. He recorded his witness statement on 22nd September, 2017 which he adopted as his evidence in chief. According to him since the year 2014 when he reported at the St. Andrew's Mwankinza A.C.K. He was handed over the issue of the land dispute by his predecessor Reverend John Mwangoti. He began following up with the matter. He realized there had been some sub - division of the plot and which were done illegally. They reported the matter to the Governor and who advised them to institute a civil suit in Court.

43. PW - 2 stated that the allotment letters were issued to people yet the PDP was still intact. There was no advertisement. Sometimes back there had been an advertisement for change of user of the suit land but they objected the same. On that plot they had a nursery school. They were unable to build a primary school due to these challenges. His prayer was for the land to be returned to the public to enable them undertake development on it such as an educational facility and church as was shown in the PDP of the year 1984 which was handed over to him as he had sated. He was not aware of any advertisement of the PDP from the government from public to private land. There was no public auction. He produced all the documents filed by the Petitioner and had been marked for identification and marked as "Petitioner Exhibit Numbers - 1 to 18".

44. That was the close of the Petitioners case.

X. Submissions

45. The parties while all in court on the 24th January, 2024 consented to canvassing the Petition dated 29th January, 2016 by way of written submissions. By the time of penning down the Judgement, on 20th March, 2024 after the Honourable Court failed to access the submissions, it reserved a Judgment date being on 6th May, 2024 which was pushed to 18th July, 2024. However, due to unavoidable circumstances, it was finally delivered on 26th September, 2024 accordingly.

XI. Analysis and Determination

46. I have carefully considered all the filed pleadings pertaining to the Petition dated 22nd February, 2022, the Affidavits by the the Petitioner, the articulate written submissions by both the Petitioner and the Respondent, the cited authorities, the appropriate provisions of *the Constitution* of Kenya, 2010 and the statures.

47. For the Honorable Court to reach an informed, just, fair and reasonable decision, it has condensed the Subject matter into the following three (3) salient issues for its determination. These are:-

    a. Whether the Petition by the Petitioner meets the threshold for Constitution Petitions.

    b. Whether *the Constitution* Petition has any merit and, if affirmative, if the Petitioner is entitled to the reliefs sought?

    c. Who will bear the Cost of the Petitioner.

ISSUE No. a). Whether the Petition by the Petitioner meets the threshold for Constitution Petitions.

48. Under this Sub heading, for the Court to respond to this query, assessing certain aspects of the concept of Constitutional provision are inevitable. To begin with, under the provision of Article 2 (1) & (4) of Constitution of Kenya defines *the Constitution* as being the Supreme law of the Republic and it bids all persons and all States at all levels. Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency and any act or omission in in contravention of this Constitution is invalid.

49. Additionally, I dare say that a Constitution is a living tissue. Just like all other tissues, it has to be fed and watered. It breathes and has to be watered. Without oxygen and freshness it will die. I have learnt that these things are not just metaphorical. They are real. As a matter of course, *the Constitution* of Kenya under the provision of Article 259 (1) provides a guide on how it should be interpreted as such:-

    a. Promotes its purposes, values and principles;

    b. Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;

    c. Permits the development of the law; and

    d. Contributes to good governance....."

50. This Court must give a liberal interpretation and consideration to any provision of *the Constitution* and have regard to the language and wording of *the Constitution* and where there is no ambiguity attempt to depart from the straight texts of *the Constitution* must be avoided. It must always be interpreted and considered as a whole with all the provisions sustaining and coordinating each other and not destroying the other.

51. Based on the principles set out in the edit of the Court of appeal case of the "Mumo Matemu – Versus – Trusted Society of Human Rights Alliance & Another (2013) eKLR" provided the standards of proof in the Constitutional Petitions as founded in the case of "Anarita Karimi Njeru – Versus - Republic [1980] eKLR 154" where the court is satisfied that the Petitioner's claim were well pleaded and articulated with absolute particularity. It held:-

    " Constitutional violations must be pleaded with a reasonable degree of precision....."

    Further, in the "Thorp – Versus – Holdsworth (1886) 3 Ch. D 637 at 639, Jesse, MR said in the year 1876 and which hold true today:

    " The whole object of pleadings is to bring the parties to an issue and the meaning of the rule.....was to prevent the issue being enlarged which would prevent either party from knowing when the cause came on for trial what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues and

thereby diminish expense and delay especially as regards the amount of testimony required on either side at the hearing."

52. The provision of Article 23(3) of *the Constitution* empowers a court to grant appropriate reliefs in any proceedings brought under Article 22 where there has been violation or threat of a violation of a fundamental right or freedom. The relief may include a conservatory order.

53. Now turning to the issues under the instant Petition. The Petitioner seeks for a Conservatory orders restraining the Respondents, their agents, servants and or employees from encroaching on the suit land until the matter is heard and determined by the court, a prerogative order of Judicial Review in the nature of Certiorari to remove into this Honourable Court the Letters of Allotment issued by the Commissioner for Lands to the private individuals over part of Voi Part Development Plan No. 49 dated 4th October 2010 and quash them. The Court has considered all the documents filed and the evidence adduced by the witnesses seeking for a declaration that the Petitioners as the current occupiers are entitled to all that piece of land comprised in Voi Part Development Plan No. 49 of 4th October 1984 measuring approximately 1.69 hectares or thereabouts as it is public land and therefore it be registered in their favour, anorder directed to the 2nd Respondent to immediately cause the survey of the suit land and proceed to issue a title deed to the Petitioner of the suit land and a permanent injunction to restrain the Respondent or any other party from interfering with the Petitioners ownership, occupation, use and interest over the suit land or otherwise from evicting or attempting to evict the Petitioners from the suit land or from issuing title deeds or in any other way alienating the suit land other than to the Petitioners.

54. While adjudicating this matter, this Honorable Court must establish the constitutional basis of the Petition which is founded under the averments made out under Paragraph *2* item 2.25 to wit:-

> " The manner in which the suit land was sub - divided and allocated to private individuals is a contravention of *the Constitution* of Kenya 2010 in particular Articles 40, 60 and 62 of the said Constitution.

55. The advertisement issued for allocation of plots in Voi did not include the suit property yet the District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands went ahead and allocated the suit land which is public land to private individuals.

56. The Petitioner as the current occupier of the suit property was not informed of the change of Voi Part Development Plan No. 49 of 4th October 1984 neither was the opinion of the public sought with regards to the said changes.

57. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner of Lands acted irregularly, un-procedurally, illegally and fraudulently in purporting to letter of allotment to individual/private developers over public land.

58. The suit property was allocated to civil servants while there was a public utility existing thereon, being a nursery school, at the expense of the pupils in the nursery school and the locals who benefit from the school. The defunct Municipal Council of Voi now part of Taita – Taveta County Government failed in its duty as the trustees of public land as provided allocation of public land herein and protect public land from fraudulent allocation and further failed to discharge its functions as provided under the provision of Section 5 of the County Government Act.

59. The County Government failed to discharge its functions of County Planning and Surveying as spelt out under the 4th schedule of *the Constitution*, 2010. The County Land Management Boards

established under the provision of Section 18 of the *National Land Commission Act*, Cap. 5D failed to discharge their functions of managing public land.

60. Indeed, the National Land Commission failed in its mandate as the manager of the public land to cooperate with the County Government and administer public land in a proper manner as envisaged under the provision of Section of the *National Land Commission Act*, Cap. 5D. The manner in which the public land was administered was contrary to principles of Land Policy under Article 60 of *The Constitution* of Kenya, 2010. The National Land Commission ought to provide redress and address complaints especially matters of historical nature on land as empowered under Article 67 (2) of *the Constitution* of Kenya, 2010.

61. The National Land Commission ought to provide redress and address complaints especially matters of historical nature on land as empowered under Article 67 (2) of *the Constitution* of Kenya, 2010. The suit property continued to be occupied contrary to the good title of the Government of the Republic of Kenya.Further, the suit property continued to be occupied and used in a respectively dedicated or reserved under Voi Part Development Plan No. 49 dated 4th October 1984.

62. The Petitioners were apprehensive that the remaining portion of the suit property may be sold to other private individuals at the expense of the pupils in the nursery school and the locals who benefit from the school. The manner in which the suit land was subdivided and allocated to private individuals is a contravention of *the Constitution* of Kenya, 2010 in particular the provision of Articles 40, 60 and 62 of the said Constitution.

63. The Petitioner contended that the Commission has failed to perform its function prescribed by *the Constitution* of Kenya, 2010 and the National Land Commission, CAP.5D

64. Thus, the backdrop of all said and done, and while making an application of these set out legal principles for filing a Constitutional Petition, the Honorable Court is fully satisfied that the Petitioner herein has dutifully complied and met the threshold of reasonable precision in pleadings for instituting this Petition against the Respondents herein and pleading for the prayers sought.

ISSUE No. b). Whether the Constitutional Petition has any merit and, if affirmative, if the Petitioner is entitled to the reliefs sought?

65. From the filed pleadings and the evidence adduced by the witnesses summoned by the Petitioner, the Honorable Court has noted that the Petitioner was the current occupier of land comprised in Voi Part Development Plan No. 49 of 4th October 1984. Undoubtedly, this parcel of land is Public Land set aside by the said Part Development Plan for purposes of developing and operating a school and a church. The Petitioner contended that the land in question was set aside as public land to set up public utilities being a church and a school by Voi Part Development Plan. No. 49 dated 4th October,1984 measuring 1.69 Ha in Mwakingali Voi (annexed and marked as "SAC-1").

66. The Petitioner was desirous of putting up the said public utilities, approached the now defunct MUNICIPAL COUNCIL OF VOI and the then Councilor as was the practice in those days, who allowed them to move into the land and build the church and the school.The Petitioner managed to set up a nursery school being for the benefit of the community St. Andrews Nursery School in the year 1999, which started enrolling students in the year 2000. In the year 1995 government placed an advertisement in local dailies of "the Standard" daily Newspaper dated 30th July, 2014 at Page 48 that it intended to make some allocations in Voi. Although Mwakingali "A" was one of the affected Areas, the said advertisement did not include the suit property herein being Voi Part Development Plan No. 49 (annexed and marked as "SAC - 2") is the said advertisement.

67. The Petitioner was the current occupier of the suit property was not informed of any changes done or to be done to Voi Part Development Plan No 49 of 4th October 1984 neither was the opinion of the public sought with regards to the said changes which allowed the land to be subdivided to private citizens. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands went ahead and allocated the said public land comprised in Voi Part Development Plan No. 49 of 4th October 1984 to private individuals which had been set aside as public land for the benefit of the community for the Petitioner to put up a church and a school.

68. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands acted irregularly, un-procedurally, illegally and fraudulently in purporting to give Letters of Allotment to individual/private developers over public land. The said subdivision and allotment of the public land to private individuals is a violation of the Petitioners Pre-emptive rights as the current occupiers of the suit property.

69. Members of the local community who had settled in the surrounding areas protested when some of these new owners who had been issued with Letters of Allotment started to put up structures on what they had always known to be public land, but the private developers procured the help of local law enforcement officers who provided them with security until the construction was complete.

70. Local Political leaders wrote to the Ministry of Lands vide letter dated 14th October, 1999 to inform them of the illegal evictions and land grabbing by Public Servants and the Commissioner vide letter dated 24th November, 1999 copied to the District Commissioner and the Town Clerk responded by directing theDistrict Lands Officer to conduct a site inspection of the affected area annexed hereto and marked as "SAC – 3" is the letter from the Voi KANU Sub Branch and the response from the Commissioner for Lands.

71. Consequently, the already existing KEDU Informal Settlement Group enjoined the Squatters in the neighboring Plots of land into a project for the formalization to obtain documentation over the land they lived on.Letters of Allotment were issued to the citizens, and in doing so the Settlement Scheme respected the Boundaries as set up by Voi Part Development Plan No. 49 dated 4th October 1984, and further did not disturb the occupation of the Petitioners on the suit property.

72. In the Year 2015, the Petitioners being desirous of putting up a church on the remaining part of the public land, submitted to the County Government its proposed Development/Building Plans for approval, but they received communication from the said county government that the said Plans could not be approved as part of the remaining land had also been allocated to a private individual who had since sold their letter of allotment to a third party.

73. The Petitioners have managed to unearth that the third party had also submitted building plans over part of the suit property which is public land, which has since been registered as L.R. No.1956/1820 dated 31st January1996 in favour of Francis Otieno (annexed and marked as"SAC- 4" and "SAC – 5" were copies of the Letter of Allocation over L.R. NO. 1956/1820 and a list of the other allotees over the said land). The Petitioners engaged the Law firm of Messrs. Mwanyumba & Company Advocates who wrote letters to the Commissioner of Lands to enquire whether the Commissioner of Lands revoked the original Voi Part Development Plan No. 49 of 1984 and replaced the same with any other subsequent Plan/Plans, but to date received no response to the enquiry (annexed and marked as "SAC -6" is a copy of the letter).

74. There had been various disputes to over the land, and sometimes in the year 2006, the Voi Town Administration referred the same to the Voi Municipal Physical Planning Liaison Committee, after it had emerged that the land including land where the Nursery school stood had been set aside for a

Muslim cemetery (annexed and marked as "SAC - 7" is a copy of the letter referring the dispute to the Liaison Committee).

75. On 30th July, 2014, a Notice of Application for a change of user from Residential to Religious in the Standard Newspaper of the same date at page 48, to which the Petitioners lodged an objection vide letter dated 24th July, 2014 (annexed and marked as "SAC - 8" and "SAC - 9" were copies of the said Public Notice and the Petitioner's Objection). Upon verbal inquiry from the County Secretary who confirmed that he was also the Chairman of the Physical Planning Committee; the Petitioners were informed that he was not aware of the Notice for Change of User yet he had been included in the said notice.

76. The Petitioners contended that the 1st Respondent had failed to perform its functions as prescribed by *the Constitution* of Kenya, 2010 and the *National Land Commission Act* Cap. 5D of the Laws of Kenya. The suit property continued to be occupied contrary to the good title of the Government of the Republic of Kenya and the County Government of Taita – Taveta.

77. Further, the suit property continued to be occupied and used in a manner inconsistent with the purposes for which the suit property was respectively dedicated or reserved under Voi Part Development Plan No. 49 dated 4th October 1984. It was clear from various correspondence between the municipal council and the Lands Office at Voi that the local government was aware at the time of the irregular allocations that the land was occupied and that there was a school built and operational upon the suit land (annexed hereto and marked as "SAC -1"is copy of the letters written in respect of the nursery school).

78. The Petitioners contended that the private developers on the suit lad have continued to put up structures rapidly despite efforts by the Petitioners to restrict them rendering this Petition. (annexed and marked as "SAC - 11" are the set of photographs of the built structures on the suit land). The Petitioner contended that the private developers continue to encroach on the public land putting at risk the education of children of the surrounding community who attended the ACK nursery sponsored school. (annexed and marked as "SAC - 12" are set of photographs of the built nursery school)

79. The provision of Article 40(1), (2), (3), and (4) of *the Constitution* provides that:-

> " 1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-(a) of any description; and (b) in any part of Kenya. (2) Parliament shall not enact a law that permits the State or any person- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4). (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
>
> i. requires prompt payment in full, of just compensation to the person: and
>
> ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land."

a. Further Article 47 of *the Constitution* states as follows:

"(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall-

(a) Provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

(b) Promote efficient administration.'

80. From all the evidence placed before the Court, there is no doubt the land belongs to the Petitioner. This evidence was never challenged nor controverted by the Respondents herein. The property is well safeguarded under the provisions of Article 40 (1) and (2) of *the Constitution* of Kenya, 2010. According to the Petitioner, the advertisement issued for allocation of plots in Voi did not include the suit property yet the District Plot Allocation Committee (1995) acting at the behest of the Commissioner for Lands went ahead and allocated the suit land which is public land to private individuals. The Petitioner being the current occupier of the suit property was not informed of the change of Voi Part Development Plan no. 49 of 4th October 1984 neither was the opinion of the public sought with regards to the said changes.

81. The District Plot Allocation Committee (1995) acting at the behest of the Commissioner of Lands acted irregularly, un-procedurally, illegally and fraudulently in purporting to letter of allotment to individual/ private developers over public land. The suit property was allocated to civil servants while there was a public utility existing thereon, being a nursery school, at the expense of the pupils in the nursery school and the locals who benefit from the school. The defunct Municipal Council of Voi now part of Taita – Taveta County Government failed in its duty as the trustees of public land as provided allocation of public land herein and protect public land from fraudulent allocation and further failed to discharge its functions as provided under Section 5 of the County Government Act.

82. The provision of Section 2 of the *Land Act*, No. 6 of 2012 defines "allocation of land" means the legal process of granting rights to public land.The provision of Article 67 of *the Constitution* that establishes the National Land Commission gives it power to, inter alia, manage public land on behalf of the national and county governments. The suit land is public land as defined under the provision of Article 62(1) (a) of *the Constitution* and therefore vests in and is held by the County Government of Lamu in trust for the people resident in the County. The provision of Article 62 (2) of *the Constitution* provides that the land shall be administered on behalf of the County residents by the National Land Commission. Likewise, the provision of Section 5 (1)(a) of the *National Land Commission Act* is also explicit that one of the functions of the National Land Commission is to manage public land on

behalf of the national and county governments. Under the provision of Section 5(2) of the Act the Commission may:-

> " on behalf of, and with the consent of the national and county governments, alienate public land."

83. The provision of Section 12 of the *Land Act*, No. 6 of 2012 grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.

84. At least thirty days prior to the allocation the Commission should send a notice to the governor in whose county the public land proposed for allocation is located and to the head of the governing body of any administrative subdivision having development control, among others. The notice should then be published in the Kenya Gazette and at least once a week for a period of three weeks and thereafter published in a newspaper of general circulation in the general vicinity of the land being proposed to be offered for allocation.

85. It is therefore clear beyond any peradventure that it is the role of the Commission, and not a County Government, to allocate public land. The allocation must however comply with the laid down constitutional and statutory procedure as stated above.

86. In taking this legal position, I seek refugee from the Supreme Court of Kenya case of:- "Dina Management Limited – Versus - County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment)" aptly set out the procedure for the allocation of unalienated land. They cited the case of "Nelson Kazungu Chai & 9 others – Versus - Pwani University [2014] eKLR" whereby it held as follows:

> " .....It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allotees.
>
> It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW - 3. The process was also reinstated in the case of African Line Transport Co. Limited – Versus - Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: "Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.
>
> A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed..."

87. In the present case, it has been held the umpteenth times that the suit property continued to be occupied and used in a manner inconsistent with the purposes for which the suit property was

respectively dedicated or reserved under Voi Part Development Plan No. 49 dated 4th October 1984. It was clear from various correspondence between the municipal council and the Lands Office at Voi that the local government was aware at the time of the irregular allocations that the land was occupied and that there was a school built and operational upon the suit land (annexed hereto and attached as "SAC -10"the letters written in respect of the nursery school).

88. The Petitioners contended that the private developers on the suit lad have continued to put up structures rapidly despite efforts by the Petitioners to restrict them rendering this Petition. (annexed and marked as "SAC - 11" were the set photographs of the built structures on the suit land).

89. The Petitioners contended that the private developers continue to encroach on the public land putting at risk the education of children of the surrounding community who attended the ACK nursery sponsored school. (annexed and marked as "SAC - 12" are a set of photographs of the built nursery school).

90. The provision of Section 14 of the *National Land Commission Act* and Article 68 of *the Constitution* espouse that in the exercise of its functions under the law, the National Land Commission must adhere to the principles of natural justice and one such cardinal principle is that one cannot be a judge in their own cause. There no evidence adduced by the Respondents contradicting the testimony and aversions of the Petitioner's witnesses. No evidence was adduced as to even demonstrate an iota of allocation that took place from the Settlement Fund Trustee. A look at the second entry in the green card suggest that the plot was allocated to it. Without any evidence to explain that it complied with the process, this court cannot purport to find that the process was lawful.What can be confirmed is that the process was unprocedural and unlawful; creating a ripple effect on the subsequent entries made on the title deed. I therefore conclude that the said allocations to private owners where there was a valid PDP in place and where the current occupants and utilizers of the Part Development Plan were not informed of the alleged allocation was illegal and irregular and therefore null and void.

91. From the facts of this case, in my humble view, the National Land Commission was acting arbitrarily and abusing its powers under the law. The court acknowledges that the National Land Commission is an independent commission under *the Constitution* but the powers and functions vested in it under several statutes including the *National Land Commission Act* and Article 68 of *the Constitution* are not absolute powers. Those powers must be exercised within the confines of the law.

92. The provision of Section 13 (5) of this court's Act empowers me to make any order and grant any relief as the court deems fit and just. I note that the Respondents have neither contended the fact the allocation was illegal. Thus, I proceed to examine the prayers by the Petitioner.

93. The Petitioner sought for the following orders:-

    a. The Petitioner seeks for a Conservatory orders restraining the Respondents, their agents, servants and or employees from encroaching on the suit land until the matter is heard and determined by the court.

    b. An order of Judicial Review of certiorari to remove into this Honourable court the letters of Allotment issued by the Commissioner for Lands to the private individuals over part of VOI PART DEVELOPMENT PLAN NO. 49 dated 4th October 2010 and quash them.

    c. Declaration that the Petitioners as the current occupiers are entitled to all that piece of land comprised in VOI PART DEVELOPMENT PLAN NO. 49 of 4th October 1984 measuring approximately 1.69 hectares or thereabouts as it is public land and therefore it be registered in their favour.

d. An order directed to the 2nd Respondent to immediately cause the survey of the suit land and proceed to issue a title deed to the Petitioner of the suit land.

e. A permanent injunction to restrain the Respondent or any other party from interfering with the Petitioners ownership, occupation, use and interest over the suit land or otherwise from evicting or attempting to evict the Petitioners from the suit land or from issuing title deeds or in any other way alienating the suit land other than to the Petitioners.

f. The costs of this Petition be awarded to the Petitioners

94. A court of law exercising Judicial Review jurisdiction is not an appellate approach. Mativo J in "JR 12/2016 Isaac Abdirahman Hussein – Versus - Registrar Academic Affairs Dedan Kimathi University of Technology [2016] eKLR" put it more succinctly and more relevantly, that Judicial Review:

> " is the review by a judge of the High Court of the decision, proposed decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction –reflecting to the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised."
>
> Judicial Review is a means to hold those who exercise public power accountable for the manner of its exercise, especially when decisions lie outside the effective control of the political process. The primary role of the courts is to uphold the fundamental and enduring values that constitute the rule of law. As with any other form of governmental authority, discretionary exercise of public power is subject to the courts' supervision in order to ensure the paramountcy of the law."

95. Clearly, Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. And as long as the processes followed by the decision is within the confines of the law, a court will not interfere. In "Republic - Versus - Attorney General & 4 others Exparte Diamond Hashim Lalji and Ahmed Hasham [2014] eKLR" the court observed that:

> "Judicial Review application does not deal with the merits of the case but only with the process. In other words Judicial Review only determines
>
> i. Whether the decision makers had the jurisdiction.
>
> ii. Whether the persons affected by the decision were heard before it was made and whether in making the decision maker took into account relevant matters or did take into account irrelevant matters."

96. It follows that where an applicant brings Judicial Review proceedings with a view to determining contested matters of facts and in effect urges the court to determine the merits of two or more different versions presented by the parties the court would not have jurisdiction in a Judicial Review proceedings to determine such matters and will leave the parties to resort to the normal forums where such matters ought to be resolved. Therefore, Judicial Review proceedings are not the proper forum in which the innocence or otherwise of the applicant is to be determined and a party ought not to institute Judicial Review proceedings with a view to having the court determine his innocence or otherwise. To do so in my view amounts to abuse of the judicial process. The court in Judicial Review proceedings in mainly concerned with the question of fairness to the applicant.

97. Despite of this legal position, still the Petitioner sought for the following judicial review orders:-

a) The Petitioner seeks for a Conservatory orders restraining the Respondents, their agents, servants and or employees from encroaching on the suit land until the matter is heard and determined by the court.

b) An order of Judicial Review of certiorari to remove into this Honourable court the letters of Allotment issued by the Commissioner for Lands to the private individuals over part of VOI PART DEVELOPMENT PLAN NO. 49 dated 4th October 2010 and quash them.

98. In the case of:- "Republic – Versus - Inland Revenue Commissioner exparte National Federation of Self Employed and Small Business [1982] AC 617", it was observed that the court has discretion to examine all the circumstances of the case and satisfy itself that the substantive grounds or review are serious enough.

99. The case of "Pastoli – Versus - Kabale District Local Government Council & Others [2008] 2 EA 300" sets out the test to be applied for Judicial Review proceedings to succeed namely:

> " In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with.....illegality - is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality.
>
> Irrationality- is when there is such gross: unreasonableness in the decision taken or act done; that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision, such a decision is usually a defiance of logic and acceptable moral standards ...procedural impropriety is when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice ...it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument."

100. I have also found that the National Land Commission had no power to revoke titles. Clearly, the provision of Article 68 of *the Constitution* and Section 14 of the *National Land Commission Act* limits the National Land Commission's power to carrying out an inquiry and determining the legality or propriety of a title or disposition in public land after which it can recommend to the Registrar for revocation.The NLC acted exceedingly and excessively ultra vires the law. The doctrine of ultra vires is one of the pillars in which Judicial Review was founded. It would be a serious abdication of jurisdiction and powers of this court if it were to shy away from issuing orders of certiorari when there is clear evidence of the National Land Commission blatantly exercising powers which is expressly following procedure is completely unlawful and illegally.

101. In the case "Nairobi Petition No 16 of 2011, Centre for Rights Education and Awareness (CREAW) & 7 Others – Versus - Attorney General (2011) eKLR" where it was held that –

> " ... a party seeking conservatory orders must demonstrate that he has prima-facie case with a likelihood of success and that if a court does not grant it its likely to suffer prejudice as a result."

102. Be that as it may and taking that the Petition was unopposed. the Honourable Court has satisfied itself that not granting the said prayers will be detrimental to the Petitioner's constitutional rights. For these reasons, the Petition succeeds as sought in its prayers.

ISSUE No. c). Who will bear the Costs of the Petition

103. It is now well established that the issue of Costs is the discretion of Courts. According to the Black Law Dictionary, "Cost" is defined to mean, "the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other". The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. By the events, it means the results or outcome of any legal action or proceedings thereafter. The case before Court being a Constitutional Petition, Rule 26 (1) and (2) of *the Constitution* of Kenya (Protection of Rights and fundamental Freedoms practice and Procedure Rules 2013) provides :-

> "(1) The award of costs is at the discretion of the Court.
>
> (2) In exercising its discretion to award costs, the Court shall take appropriate measures to ensure that every person has access to the Court to determine their rights and fundamental freedoms."

104. In the case of "Reids Heweet & Company – Versus - Joseph AIR 1918 cal. 717" and "Myres – Versus - Defries (1880) 5 Ex. D. 180", the House of the Lords noted:-

> " The expression "Costs shall follow the events" means that the party who, on the whole succeeds in the action gets the general costs of the action, but where the action involves separate issues, whether arising under different causes of action or under one cause of action, the word 'event' should be read distributive and the costs of any particular issue should go to the party who succeeds upon it....."

105. Further, these legal principles were upheld in the Supreme Court case of "Jasbir Rai Singh – Versus – Tarchalans Singh, (2014) eKLR" and the Court of Appeal cases of "Cecilia Karuru Ngayu – Versus – Barclays Bank of Kenya & Ano. (2016) eKLR" the Courts held:-

> "…….the basic rule on attribution of costs is that costs follow the event.....it is well recognized that the principles costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in presenting or defending the case".

106. Therefore, the events in the instant case is that the Petitioner herein has succeeded in establishing its case on preponderance of probabilities. For that very fundamental reason, therefore, the costs of this suit will be made to the Petitioner to be borne by the by the 1st and 2nd Respondents herein.

XII. Conclusion and Disposition

107. Consequently, having intensively and thoroughly deliberated on all the framed issues herein, this Honorable Court arrives at the finding that the Petitioner herein has succeeded in all the prayers sought from its filed Petition. For avoidance of doubt, I allow the Petition dated 22nd February, 2022 specifically under the following terms:-

a. THAT Judgement be and is hereby entered in favour of the Petitioner as per the Petition dated 29th January, 2016 in its entirety.

b. THAT a Conservatory order be and is hereby issued restraining the Respondents, their agents, servants and or employees from encroaching on the suit land until the matter is heard and determined by the court.

c. THAT an order of Judicial Review of Certiorari to remove into this Honourable court the letters of Allotment issued by the Commissioner for Lands to the private individuals over part of VOI PART DEVELOPMENT PLAN NO. 49 dated 4th October 2010 and quash them.

d. THAT an order directed to the 2nd Respondent be and is hereby issued to immediately cause the survey of the suit land and proceed to issue a title deed to the Petitioner of the suit land.

e. THAT a permanent injunction be and is hereby issued restraining the Respondent or any other party from interfering with the Petitioners ownership, occupation, use and interest over the suit land or otherwise from evicting or attempting to evict the Petitioners from the suit land or from issuing title deeds or in any other way alienating the suit land other than to the Petitioners.

f. THAT the costs and interest of the Petition dated 29th January, 2016 to be awarded to the Petitioner and be borne by the Respondents Jointly and severally.

It is so ordered accordingly.

JUDGMENT DELIVERED THROUGH THE MISCROFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 26TH DAY OF SEPTEMBER 2024.

.....

HON. MR. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT MOMBASA

Judgement delivered in the presence of:-

a. M/s. Firdaus Mbula – the Court Assistant.

b. No appearance for the Petitioner.

c. No appearance for the 1st and 2nd Respondents.