



**Mkupuo Network Awareness v Cabinet Secretary Ministry of Lands and Physical Planning & 4 others (Environment & Land Petition 43 of 2020) [2023] KEELC 354 (KLR) (27 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 354 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND PETITION 43 OF 2020**

**AE DENA, J  
JANUARY 27, 2023**

**BETWEEN**

**MKUPUO NETWORK AWARENESS ..... APPLICANT**

**AND**

**CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT KWALE ..... 2<sup>ND</sup> RESPONDENT**

**KWALE INTERNATIONAL SUGAR COMPANY LTD ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This petition is said to have been precipitated by the 3<sup>rd</sup> respondent, Kwale International Sugar Company Ltd who is alleged to have trespassed into Ramisi Phase 1 Block 5056. Ramisi Phase 1 Block 5056((herein referred to as the suit property)) is said to have been allocated to members of the petitioner through letters of allotment whose terms they complied with. However, the petitioner claims that its members legitimate expectations of being allocated the same have been breached as no titles have been issued. That through the aforesaid trespass they were displaced and their properties were destroyed without compensation and resettlement.

**The Parties**

2. The petition was commenced by the petitioner on behalf of its members alleged to be residing in the Ramisi Phase 1 Block 5056. Mkupuo Network Awareness is described as a non-partisan Community



Based Organization engaged in inter-alia promoting human rights and access to justice for residents of Kwale faced with the human rights violation.

3. The 1<sup>st</sup> respondent the Cabinet Secretary Ministry of Lands and Physical Planning is sued inter alia as the policy formulation entity and setting of standards on land in Kenya. The 2<sup>nd</sup> respondent is The Director of Land Adjudication and Settlement Kwale. The 4<sup>th</sup> and 5<sup>th</sup> respondents as sued as entities charged with advising the 1<sup>st</sup> respondent on matters surrounding land allocation and settlement schemes. The 3<sup>rd</sup> responded is sued as the entity that has unlawfully trespassed onto the Ramisi Phase 1 Block 5056 as explained earlier in the introduction to this judgment.

### **The Petitioners Case**

4. The petitioner's members case is as set out in the petition dated 4<sup>th</sup> December 2020 filed in court the same date. The Petitioners plead that the respondents have violated the petitioner's rights under articles 10(1) as it relates to national values; article 27(1-8) equality and freedom from discrimination, the right to human dignity under article 28, freedom and security of person article 29(d&f), right to privacy under article 31(a), right to property article 40 and right to fair administrative action under article 47(2) of the Constitution of Kenya 2010. The petitioner seeks the following prayers; -
  - a) A declaration that members of the petitioner are the lawful legitimate owners of the property known as Ramisi Phase 1 Block 5056 having been issued with allotment letters/letters of offer by the 1<sup>st</sup> Respondent and complying with the terms of the said letters of offer.
  - b) An order restraining the 3<sup>rd</sup> Respondent from trespassing, subdividing, selling, transferring, mortgaging, occupying, wasting, charging and/or dealing with the suit land in any manner whatsoever.
  - c) In the alternative and without prejudice to prayer (b), that the court issues a mandatory injunction against the 3<sup>rd</sup> Respondent from trespassing, subdividing, selling, transferring, mortgaging, occupying, wasting, charging and/or dealing with the suit land in any manner whatsoever.
  - d) This Honourable Court issues a declaration that the acts of the 3<sup>rd</sup> Respondent of unlawfully attempting to deprive the Petitioners the parcel of land Ramisi Phase 1 Block 5056 in light of the above was without any legal basis, an act of illegality and unconstitutional and are liable to the Petitioners in compensation and/or damages for losses, for loss of use of land and for breach of their constitutional rights on such compensation as shall be assessed by the court.
  - e) The Petitioners seek damages as against the 3<sup>rd</sup> Respondent for breach and/or violation of their constitutional rights to the properties and protection of the same.
  - f) This Honourable Court issues an order directing the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents within 90 days of the court's judgment to perform their constitutional duties and forthwith issue certificates of title to members of the petitioner who reside in Ramisi Phase 1 Block 5056 for them to resettle.
  - g) This Honourable Court be pleased to issue such further or other order(s) as it may deem just and expedient for the ends of justice.



## The Case of The Parties

### The Petitioners Case

5. The petition is supported by the affidavits sworn on 4<sup>th</sup> December 2020 in support of the petition by Bakari Halifani Munge a member of the petitioner. In his affidavit Bakari deponed that he had consent and authority to institute the proceedings on behalf of the members and annexed copies of signatures 'BHM2'. He averred that sometime in the year 2008 the 1<sup>st</sup> and 2<sup>nd</sup> Respondent carried out registration of the squatters who occupied Ramisi Phase 1 Block 5056 with a view to settling them by processing and later issuing certificates of title. They were then issued with Allotment Letters of the properties they occupied within the suit property which after compliance with the terms therein were to be issued with certificates of title. It is averred that members paid the fees as stipulated, made payments to the 1<sup>st</sup> Respondent and receipts issued and attached 'BMH3a and b' offer letters and receipts. He stated that to date no certificates of title have been issued instead trespassers like the 3<sup>rd</sup> respondents assisted by the government officials had taken advantage of the delay and were attempting to unlawfully acquire the suit property, he annexed photos of the status of the suit property 'BMH4'). It is stated that whenever the 3<sup>rd</sup> Respondent trespassed on the suit property they would destroy houses, farms, trees and livelihood without any form of compensation. That anytime they tried to seek justice they were intimidated and threatened with arrest.
6. It was further deponed that in 2019 the 4<sup>th</sup> respondent undertook a valuation for purposes of compensation for the losses. To date no compensation has been made and annexed copies of compensation forms issued BMH5. It is further stated that even if the petitioners were not rightfully entitled to the property they were entitled to notice to vacate from the 3<sup>rd</sup> Respondent and government agencies. It is averred that in 2019 the 4<sup>th</sup> Respondent undertook a valuation for purposes of compensation for the losses. To date no compensation has been made. Moreover, the 3<sup>rd</sup> Respondent was now planting sugar cane on the suit property destroying anything belonging to the petitioners in the process. Further that the 3<sup>rd</sup> respondents' actions had resulted into fear and tensions among the petitioners who have occupied the suit property over a long period of time including their forefathers and or ancestors.
7. The said Bakari Halifani Munge also swore a supplementary affidavit dated 15<sup>th</sup> April filed on 16<sup>th</sup> April 2021 in response to the 3<sup>rd</sup> respondents replying affidavit. He averred that the lease held by the 3<sup>rd</sup> respondent was illegally excised from the suit property. That LR 5056 formed part of the land that had already been set aside for settlement of the squatters and letters of offers issued through the 1<sup>st</sup> and 2<sup>nd</sup> respondents. That prior attempts by the 3<sup>rd</sup> respondent to acquire the land were stopped by the Cabinet Secretary Ministry of Interior. He explained that they did not have all the letters of offer for the entire scheme since most of them were still being held by the 2<sup>nd</sup> Respondent's office and annexed additional offer letters BHM1'. It is averred that options given in the 4<sup>th</sup> respondents letter dated 14<sup>th</sup> July 2017 on the resettlement of the squatters were ignored. To date there has been no official communication of the stoppage thus the continued legitimate expectations.
8. It was further deponed that blocks 5056/6, 5,4,3,2 and 1 were excised from block 5056 making them one and the same with the suit property. That the valuation report was misleading in showing compensation of KShs.170 million and which was never received.
9. Apart from the supporting affidavit evidence the matter proceeded viva voce on 4<sup>th</sup> May 2022, 5<sup>th</sup> May 2022 and 25<sup>th</sup> May 2022.



10. PW1 was Bakari Halifani Munga a member of the petitioner and 60 years old. He testified that he together with his grandparents were born in the suit property which he was also familiar with and had lived in since then. That all the residents lived therein before independence. That he came to know of the 3<sup>rd</sup> respondent in 2008, during the laying of the foundation stone by the then late President Mwai Kibaki when he announced that those in plot 5056 would be allocated the land to benefit from it. His testimony was that in 2008 survey commenced where they were to be allocated 5 acres each, 3 acres for sugarcane as out growers, 2 acres for subsistence farming and half acre for homesteads though not included in the 5 acres. After sometime they were issued with letters of offer which they paid for, issued with receipts with instructions to await the titles. That some members delayed in payment within the stipulated 90 days period as some letters were received late. He told the court they did not have all the copies of the letters of offer because members were being tossed around between Kwale and the chief.
11. That later in the year 2018 the Chairman of the 4<sup>th</sup> respondent informed them at a meeting of the revocation of the offers instead the land was allocated to the 3<sup>rd</sup> respondent who required 8000 additional acres for sugar cane growing and promised members would be compensated including for their trees. PW1 told the court that a valuation was later undertaken by the 3<sup>rd</sup> respondent but the compensation was never paid instead the 3<sup>rd</sup> respondent in June 2019 destroyed houses and trees on 200 acres. No assistance was forthcoming from the local administration until they sought help from Hon Raila Odinga who intervened through Fred Matiangi the CS Interior and the demolitions stopped. That in May 2020 the 3<sup>rd</sup> respondent entered the land again accompanied by the police and upon seeking help from the leadership they were advised to commence court action. He urged the court to give them titles like any other Kenyans as well as compensation for everything lost.
12. Cross examined by Mr. Omamo counsel for the 3<sup>rd</sup> respondent he stated he lived in Nikapu village since 1997. He admitted he was away for 19 years (1978 – 1997) but was aware of the happenings there. That the list presented was made of both residents and nonresidents of Nikapu. Some had died and some had not signed the list because of illiteracy including unavailability of ink for thumbprinting. He admitted he had no documentation to prove his grandfather lived in Ramisi and his only proof was the crops. He also did not have a letter of offer being among the people who were being tossed around but did not make a formal complaint. He confirmed there was a designated committee representing the five villages who would give feedback but without minutes. That they didn't write to complain about the delay in issue of titles. That he was not affected by the 2019 invasion since it was in kiranje and not Nikapu but he was affected in the 2<sup>nd</sup> raid. Those in Kiranje lived in tents rebuilt their houses with difficulty to date are surrounded by sugarcane plantations including himself. He admitted he had no medical reports for the injured and those who suffered heart conditions as a result of the invasion.
13. Upon cross examination by Mrs Njau state counsel he admitted his name wasn't in the list (BM1), the consent did not specify the reason for which it was being given, the list was not dated and denied it was the same list used in other cases. That the petitioner represents about 10,000 but the list had 261 names. Upon names being called out randomly only the individual listed in No.24 was present in court. He admitted he had no death certificates for his deceased grandfather who he testified was buried in Nikapu ,no letters of administration and no photos for the graves. He conceded he had no written proof of the recalling of the balance of the letters of offer that were not produced but reiterated the receipts produced sufficed for their acceptance of the offers made and were a good sample size. He confirmed his valuation form wasn't part of the bundle and had no OB before court which he believed was with their lawyer.
14. Reexamined he reiterated the valuation was undertaken physically, signed whereupon a copy was provided to the residents who were asked to await the compensation funds which have never been paid.



15. PW2 was Bakaro Mwakarumo a resident of Nikapu whose testimony was that he was born in Nikapu where he found his grandfather and buried his parents in Nikapu. He informed the court that he knew the 3<sup>rd</sup> respondent as the people who entered his land destroyed crops, trees, cashewnuts, mangoes without compensation rendering him very poor. That the demolition was without notice, they were threatened by police at gun point and had no information that the land belonged to the government. He prayed for a title and compensation and stated he was not ready to relocate.
16. Cross examined by Mr. Omamo he stated he was 80 years old and confirmed they were not offered any land including the said 5 acres. He stated his house was never torched and lived therein to date (Nikapu). He testified his ID was issued at pongwe mzizima. He confirmed he had brought no documentation to court but his main issue was hunger and school fees for his children. That he would have no problem relocating as long as he is compensated. He stated he was never given a letter of offer and reiterated he did not remember any offer for 5 acres.
17. PW3 was Ginorah Mwai Kinyasi a retired KPLC employee resident of Ramisi for 10 years. She testified she came to block 5056 in the year 2012 and bought 33 acres from the indigenous people who passed on to her their letters of allotment. The 3<sup>rd</sup> respondent invaded her land in Nkapu in 2021 destroying 3584 eucalyptus trees, 100 coconut trees, 100 modern cashewnut trees. She confirmed her name and particulars in No. 49 in the list. That she had a 3-year contract for Kshs. 107,520,00/= with KOMAZA for eucalyptus. She was to harvest in 2023 and earn Kshs. 35 million. That the rate was between Kshs 10-15000 for a fully-grown eucalyptus.
18. Upon cross examination by Mr. Omamo for the 3<sup>rd</sup> respondent she testified that she bought the land from 4 people on the strength of their allotments which had been fully paid for totaling 31.5 acres. She admitted she did not undertake due diligence before purchase but relied on relatives who knew the history of the land before 2012 though they didn't inform her the land was government land. She confirmed she wasn't present during demarcation but found beacons. She admitted three of her letters had not been paid for, one was half paid and that she was aware of the deadline. That according to her the land was community land as there was no government land under the constitution. She was not aware of the excision. She confirmed she had three houses one unfinished and were all intact. She admitted she had no valuation of the trees and photos thereof but knew the values through teachings by KOMAZA. She confirmed PW2 and PW1 were from Nikaphu. That the 5 villages were far apart but were all represented by the petitioner. That she tried to regularise her ownership but was told to wait by the adjudication office but had no proof of the follow up. She admitted that only titles proved ownership.
19. Cross examined by state counsel she conceded she had not presented certificate of postal search, power of attorney and letters from vendors to the land adjudication office authorizing her registration in lieu thereof. She didn't present her 33 acre outlay because she had not undertaken private survey. She didn't produce the agreement with Komaza and had no document to confirm the compensation, no county approvals for the houses because she didn't have title as had no utility bills.
20. With the above the petitioners closed their case.

## **Responses By The Respondents**

### **3<sup>rd</sup> Respondent Response**

21. The 3<sup>rd</sup> respondent opposed the petition through the affidavit of its Head of Legal Services & Board Affairs Mr. Benson Nzuka sworn on 4<sup>th</sup> February 2021 and filed on 8<sup>th</sup> February 2021. This affidavit was relied upon as his evidence in chief.



22. DW1 was the said Benson Nzuka Musili who in addition highlighted the history of sugar cane growing in Kwale since 1920. He testified that initially the crown allocated Kenya Sugar Limited parcels LR 5048,5056,12335, 5031,5009 and 12336 which they charged to Standard Bank Limited for various banking facilities to support operations. That upon default in 1960 and receivership the operations were taken over by Associated Sugar Co. Limited who subsequently also charged the properties with Bank of India and also defaulted culminating into the bank exercising its statutory power of sale in 1990. That the 3<sup>rd</sup> respondents' promoters entered into an agreement with the bank and deposited USD 7 Million to acquire the parcels and retain control of the raw material but upon seeking Presidential consent as then required by law the government decided to intervene based on the 3<sup>rd</sup> respondent's business proposal as well as public interest opted to compulsorily acquire the land. He told the court that Notice of intention to acquire was published on 15/12/06 vide Gazette Notice no. 10327 inviting objections but none was raised. Parcels 5048, 12336 and 5009 were then consolidated to form LR 27742 measuring 6080 Ha. which was vested in the Permanent Secretary National Treasury and allocated to the 3<sup>rd</sup> respondent and the balance of the land remained vested in the treasury.
23. DW1 further testified sometime upon accessing the land in August 2008 the 3<sup>rd</sup> respondent faced challenges of encroachment by residents who claimed ancestral ownership and also overlap with lease to Base Titanium consuming 3000 acres of the allocated 6080 Ha and which could not suffice for purposes of the 3<sup>rd</sup> respondent's business proposal. The financiers raised concerns and upon approaching the government the 3<sup>rd</sup> respondent was allocated alternative parcels namely LR 5004/56 and LR 12335/4 measuring 3000 Ha to progress the project. However, vide a letter dated 14/7/2017 the Commissioner of lands directed that the said two parcels be surrendered which the 3<sup>rd</sup> respondent complied with and were left with the initial 3000Ha. He added upon consultations with the 4<sup>th</sup> respondent for compensation of the land that was surrendered and there being no objection by National Treasury the 3<sup>rd</sup> respondent was issued with a letter of allotment for LR 5056 measuring 1906 Ha and paid all the requisite fees. The same was leased from 99 years effective 1/06/2007. That after this the 3<sup>rd</sup> respondents agreed with the 4<sup>th</sup> Respondent to excise from LR 5056, 200Ha and later a further 350 Ha. That upon excision the parcels were redistributed as per the villages and 3<sup>rd</sup> respondent issued with the title LR. 5056/6. Therefore, LR.5056 ceased to exist upon the said subdivision. He told the court that the settlement of the people on the ground was undertaken by the 4<sup>th</sup> respondent. That as per the search (see BN8) parcels 5056/1-5 comprise the villages. That by dint of section 26 of the [Land Registration Act](#) the registration of the 3<sup>rd</sup> respondent as proprietor of LR 5056/6 was prima facie and conclusive evidence of proprietorship to the land. That the 3<sup>rd</sup> respondent had a right to deal with the land in any way it wishes. That the petitioners did not have any proprietary interest since they did not have title to the same. That only 3 letters of allotment were supplied against 1000 claimants and out of which none had complied with outright purchase requirements and the same expired with their interests.
24. DW1 further told the court that the 3<sup>rd</sup> respondent has maintained peace in accessing its property without destruction to property or injury to residents and had not been subject to civil or criminal proceedings. That the land has been registered all along in other enterprises and was never ancestral land. That the 3<sup>rd</sup> respondent policy offered priority to local population in employment before the larger Kwale county. That the company had invested over USD 300 million and wisdom dictates peaceful existence with the local community. He pointed that the current occupation status of plot 5056/6 was 1200Ha accessed for sugar cane comprising 500 ha of fully matured crop ready for harvest, 500 Ha is cleared for planting and the petitioners were scattered in the remaining 300 Ha against the total 1554 Ha. He prayed that the petitioner's claims be dismissed with costs.



25. Cross examined by state counsel he told the court the squatters are scattered in 5056 including the excised portions and there were areas the 3<sup>rd</sup> respondent cannot occupy because of them. He confirmed availability of title for one excised portion pointing the rest could be held in trust by the National treasury. That similar issues were raised previous case where Justice Sila Munyao found in favor of the 3<sup>rd</sup> respondent. On being referred to paragraph 10 in the affidavit of Purity Mwangi filed on 4/5/22 he reiterated that as at the time of filing the petition plot 5056 did not exist since it was excised and became 5056/6.
26. Cross examined by Mr. Matende for the petitioners he testified the 3<sup>rd</sup> respondent acquired lease for 5056 in September 2017 which he clarified in reexamination that the lease for 5056 dated 11/11/2017 was annexed in the affidavit of Purity Mwangi. Though he conceded there was backdating of the lease to 2007 he stated the date of registration is not necessarily the commencement date. He admitted that while the term was for 99 years from 1/6/20 the seal is affixed on 26/8/2019. He confirmed the excision exercise took about 10 days to complete. Referring to the valuation report dated 8/3/2019 (pg 88) prepared by the 3<sup>rd</sup> respondent he conceded it confirmed there were people in the land who must have participated in the valuation process.
27. Reexamined he stated that the lease 27742 was dated 1/6/2007 and the dates had to correspond with that of 5056/6 adding to the 99 years at the end of the lease. That it took a period of 6 years before the 3<sup>rd</sup> respondent was issued with LR 5056. That the excision took longer than the 10 days because of the excision of the 200 Ha considering notification of ground mapping was 9 months (BN3) and that title was issued in August 2019. He pointed that the duty to compensate lay with the government since the 3<sup>rd</sup> respondent was a private entity. That they consented to excision of extra land to protect the interests of the squatters. That the deed plan gives the size of the land as 1519 Ha a difference of 35 Ha representing public roads curved out of the acreage.
28. With the above the 3<sup>rd</sup> respondent closed its case.

### **1, 2, and 5<sup>th</sup> Respondnet Case**

29. The 1<sup>st</sup> 2<sup>nd</sup> and 5<sup>th</sup> respondents opposed the petition vide the affidavit sworn by Purity Wanjiru Mwangi on 29<sup>th</sup> April 2022 and filed on 5/5/2022. The affidavit set out in paragraph 4- 9 the process of creation of a settlement scheme under the regime of the repealed [Land Adjudication Act](#) cap 284 and [Agriculture Act](#) 318(for purposes of setting apart) culminating into issue of letters of offer by the Director of settlement to the beneficiaries with conditions which upon being satisfied end up with issuance of title by the land registrar. She avers that the petitioners did not communicate any acceptance of the offer, no proof of submission of application for allocation of the alleged suit property to the NLC as envisaged under Sec. 12 of the [Land Act](#) and attendant 2017 regulations.
30. She deponed that the suit was anchored on a nonexistent property Kwale Ramisi Phase 1 BLK 5056 therefore null and void abinitio. That plot LR 5056/6 is government land lawfully leased to the 3<sup>rd</sup> respondent by the 1<sup>st</sup> respondent and always occupied by them operating the sugar factory. The lease was to protect the land from being acquired should KISCOL default on a loan currently standing at Kshs.230.7 million since it supports over 10,000 residents including the petitioners who benefit directly and indirectly. That the petitioners were not entitled to the reliefs sought since the offers issued on 16/06/2008 lapsed by dint of effluxion of time after 90 days that is on 15/08/2008. She further averred that KISCOL agreed with National Treasury to lease 6072 Ha for sugar cane farming but 1000Ha leased to them was claimed by Base Titanium and 2355 was covered by squatters. That subsequently they were compensated with LR 5004/86 (957 Ha), LR. 12335/4 (2063.3 Ha) which were again found to be heavily infested with squatters and they were asked to surrender them back



which they did. It is after this that they were compensated with LR.No. 5056(1916.18Ha) vide letter of allotment ref. 31518/11/149 dated 18/8/2016 culminating to a lease dated 11/9/2017 upon payment of requisite fees. The lease was less Kanana shopping center (100 Ha). That though the letters of offer were issued in 16/6/2008, the settlement scheme was found to have overlapped on the KISCOL land (5056).

31. It is additionally deponed that similar issues were raised in Mombasa HCC No. 65 of 2011 involving LR. No. 50004/30/R, LR.No. 12336, 277742 occupied by KISCOL where the court dismissed the petitioners claims therein that they were the indigenous owners of the parcels.
32. DW 2 was the said Purity Wanjiru Mwangi Assistant Director of Land Adjudication & Settlement who testified on behalf of the 1<sup>st</sup> 2<sup>nd</sup> and 5<sup>th</sup> respondents and adopted the contents of her affidavit as her evidence in chief. In her oral testimony she in addition told the court that the scheme was suspended when it was discovered that there were 4000 squatters on the ground pending re-survey, re-planning and reverification. At this point 800 letters of offer had issued including those at Base titanium (nguluku and maumba). That the offerees paid to SFT but there were no letters of acceptance. That there was no individual parcellation because by the time they were to undertake the same the numbers had ballooned and the scheme stalled. She told the court that a letter of offer was only an offer until title was issued. She proposed that future settlement should be undertaken elsewhere and not in the suit property. She produced the bundle of documents in PN1 as her exhibits.
33. Upon cross examination by Mr. Matende she stated they relied on the committee on the ground to get the squatter numbers and did not undertake actual census. She stated that there was no formal communication to the squatters informing them of the suspension of the program and collections did not stop because there was intention to settle them elsewhere. That the decision to cancel the program was made in 2014 but with intent to resurvey, re-plan and that there was available 3 blocks the squatters can be settled. Cross examined by Prof Ojienda for 3<sup>rd</sup> respondent she stated she was not aware of any letters of offer issued after the lease to 3<sup>rd</sup> respondent. She reaffirmed that letters of offer were not allotment letters. Parcels 5056/1-5 did not belong to KISCOL. She reiterated that the GoK still had plans to resettle the squatters on other parcels.
34. With the above the 1<sup>st</sup> 2<sup>nd</sup> and 5<sup>th</sup> respondents closed their case.

#### **Response 4<sup>th</sup> Respondents**

35. The 4<sup>th</sup> respondent opposed the petition through the replying affidavit sworn by Samuel Odari its Director Land Rights Monitoring filed on 24/02/2022. He deponed that the letters of offer were issued before the Commission was operationalized and could not have undertaken any advisory role on settlement of squatters then. That squatters can be resettled anywhere in Kenya by the Settlement Fund Board (see section 134-5 of [Land Act](#) 2012) within the discretion of the government and not necessarily Ramisi Phase 1 BLK 5056. That under Section 30 of the [Land Registration Act](#) the issuance of titles is within the mandate of the Ministry of Lands and not the Commission.
36. DW3 was the said Samuel Odari who informed the court he was land Adjudication & Settlement Officer employed by the 4<sup>th</sup> respondent since 2014. He adopted the replying affidavit as his evidence in chief. On cross examination he testified interalia that since GOK was the one acquiring the land for settlement of squatters it was the one to compensate. He conceded that the letter dated 14/7/2017 was signed by Ms. Njamweya whom he worked under. He reaffirmed that an offer is not an allotment and could be accepted or rejected and could still be recalled for other strategic uses. Only the Board of trustees could commit the GoK and not letter by NLC (14/7/2017). He asserted his vast experience.



### **Submissions Of The Parties**

37. The parties filed final written submissions in support of their cases. The petitioners filed theirs on 6/09/2022 and the 3<sup>rd</sup> respondents on 23/09/22. Parties were given an opportunity for oral submissions when the petitioners fully relied on their written submissions while the 3<sup>rd</sup> respondent highlighted orally. The rest of the parties did not file submissions.

### **Petitioners Submissions**

38. The petitioners submitted that the actions of the 1<sup>st</sup> Respondent of issuing letters of offer and accepting payments for the said parcels of land it intended to settle the petitioners in created a legitimate expectation and that the 1<sup>st</sup> Respondent violated their right to legitimate expectation. That the petitioners were denied fair administrative action when the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents decided not to complete the settlement scheme they had embarked on in the year 2008. The Petitioners are of the opinion that the lease held by the 3<sup>rd</sup> Respondent was acquired illegally, unprocedurally or through a corrupt scheme including its unexplained backdating. That the destruction and forceful eviction of the Petitioners from their ancestral land was and is an illegal act in the absence of a court order directing that the Petitioners be evicted. The Petitioners claim that Article 40 of the Constitution was violated. This court was invited to exercise its jurisdiction by rectifying the records held by the 3<sup>rd</sup> Respondent as per Section 80 of the [Land Registration Act](#), 2012 the same having been acquired illegally.

### **3<sup>rd</sup> Respondents Submissions**

39. The 3<sup>rd</sup> respondent submissions were that the merit of the petition is fully diminished for want of subject matter since the property Ramisi Phase 1 Block 5056 ceased to exist after the excision process that was meant to create land for resettlement of squatters. That this being the case there cannot be trespass. That the petitioners had no proprietary interest in the suit property having failed to produce ownership documents as against the title issued to the 3<sup>rd</sup> respondent and who by dint of section 26 of the [Land Registration Act](#) held the same as absolute owner except where fraud is proved in its acquisition and which was not. That letters of allotment were not proof of ownership. It was urged that the 3<sup>rd</sup> respondents as private owners of land have no mandate of resettlement of squatters the role being solely on the Ministry of Land and Physical Planning and the National Land Commission. That the petitioners failed to prove that they have a constitutional right which was violated capable of being compensated.

### **Analysis And Determination**

40. Before I embark on identifying the issues, DW1 testified during cross examination that similar issues were canvassed in Constitutional Petition No. 18(sic) of 2019 where Justice Sila Munyao found in favor of the 3<sup>rd</sup> respondent. DW2 also alluded to the same but in a suit that she stated was filed sometime in the year 2011 though. Mr Matende doesn't appear to have taken up the issue in his submissions, neither did the 3<sup>rd</sup> respondent. Let me observe that this was not pleaded ab initio but since it emerged I find it necessary to render myself on the same as a preliminary issue. My search on the Kenya Law Reports portal yielded Constitutional Petition No.8 of 2019 which was formerly Mombasa High Court Constitutional Petition No. 65 of 2011 which clarifies the 2011 citation given by DW2. The petitioners were Said Omar Mwitw & 5 Others (Suing on their own behalf and on behalf of 610 residents of Mabatani, Nyumba Sita, Vidziani, Gonjora, Fahamuni, and Kigwede area – Msambweni – Kwale County) against Kwale International Sugar Co. Limited, County Council Of Kwale, District Land Registrar – Kwale, The Senior Registrar Of Titles, The Commissioner Of Lands And The



Permanent Secretary To The Treasury Of Kenya. I have read the judgement rendered by my brother in January 2022. Bearing in mind the criteria stipulated in section 7 of the Civil Procedure Rules and related case precedents and without getting into much detail I formed the opinion that the present suit is not resjudicata the previous petition for the reasons that the present petition largely touched on Nikapu village, there were now letters of offer that were the substratum of the claim including the issue of legitimate expectation attached to them and other new emerging developments that required to be considered for the ends of justice to be met. This therefore settles this issue.

41. I have considered the petition and the documents in support thereto, the responses in opposition to the petition, the oral testimonies led in court and the rival submissions filed. The following issues stand out for determination; -
- 1) Whether the petitioners are entitled to the property known as Ramisi Phase 1 Block 5056
  - 2) Whether the 3<sup>rd</sup> respondents title should be impugned on grounds of fraud or misrepresentation
  - 3) Whether the petitioners suffered loss and damage arising out of the respondent's actions
  - 4) Whether the Petitioner is entitled to the prayers sought in the petition
  - 5) Who should bear the costs of this petition.

#### **Whether the petitioners are entitled to the property known as Ramisi Phase 1 Block 5056**

42. The petitioner's lay claim over the suit property from two perspectives. Firstly, that the suit property Ramisi Phase 1 5056 was ancestral land where their forefathers lived and where they were born and bred by their fathers. Secondly on the basis of letters of allotment/offer which were issued, paid for but which never culminated into the issuance of titles to them. I will first deal with the latter which seems to form the predominant ground upon which the petitioners claim the suit property.
43. PW1 evidence that the letters of offer were issued following the former president Kibaki visit and promise to allocate 5 acres each to the residents. This was the 1<sup>st</sup> time he came to know about KISCOL, the 3<sup>rd</sup> Respondent. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent then carried out squatter registration in Ramisi Phase 1 Block 5056. In his bundle i counted at least 14 samples of the offers all dated 16/06/2008 signed by B.O. Okungo Director of Land Adjudication and Settlement They were then issued with the offers herein but despite payment no titles were issued. (see 'BMH3a & b and BMH1) I saw four receipts for plots 127, 367 and 302 to the vote of SFT. From my review of the evidence adduced and oral testimonies it is evident that the letter offers were issued which was confirmed by DW3 Samuel Odari who testified in cross-examination that before employment by the 4<sup>th</sup> respondent he worked in Kwale between 2002-2008 and he was the adjudication officer during the issuance of the letters of offer and confirmed there was a record of the allottees' totaling around 900 except that the record encompassed all the blocks not just plot 5056. This was also repeated by DW2 save for a figure of 800 letters of offer.
44. It is the petitioner's case that they had a legitimate expectation after the payments they made that they would be issued with titles but this never came to fruition. It is indeed confirmed through the testimony of two respondents' witnesses that the scheme was suspended in 2014 mainly for the reasons that the numbers of squatters ballooned necessitating resurvey and re- planning. There is therefore no doubt that a scheme was established, letters of offer issued but no titles were issued.
45. The petitioner on behalf of its members now crave a declaration that its members are the lawful legitimate owners of the property known as Ramisi Phase 1 Block 5056 having been issued with the said allotment letters/letters of offer by the 1<sup>st</sup> Respondent and complying with the terms of the said



letters of offer. Going by the way this prayer is drafted I was inclined to address the legal implications of the letters of offer issued. DW2 Purity Wanjiru Mwangi explained in her replying affidavit the process of creation of a settlement scheme and according to her the petitioners did not meet the conditions by accepting the offers or even completing payments. But PW1 in cross examination reiterated that the payments sufficed for acceptance and expiration does not arise because some were received post the 90 days given in the letter of offer, paid for and the fees accepted. My reading of the said letter of offer herein clearly state it was an offer by the government through the Settlement Fund Trustee and gives a requirement to the offeree to visit the District Land Adjudication & Settlement officer Kwale District to interalia be issued with a letter confirming this before documentation. It was incumbent upon the petitioners to prove compliance to the conditions set. I have already analyzed what was placed before the court. Only three payment receipts were presented and some did not depict the full payment. Counsel for the petitioners referred this court to the case of Nancy Wanjiru Kunyihya v Samuel Njoroge Kamau [2018] where the court found in favour of the plaintiff for the estate of her husband who had been issued with letters of allotment and fully complied but title was issued to the defendant. I read the entire judgement of my brother Munyao J and to me the facts of the said case can be distinguished with the present suit for reason that the government officials who are said to have issued the title and documents to the defendant denied ever issuing the same. The facts are not applicable to the present petition.

46. The court of appeal in the case of *Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others* [1997] eKLR stated thus; -

‘.....Mr. Otieno-Kajwang who appeared for the applicant argued that the approval by H.E. the President amounted to his client obtaining the title to the suit property. This argument, of course, cannot stand. It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.

The above dictum is applicable in my view to the present case. It is also not in dispute that titles were not issued as the scheme was not concluded. It is therefore my finding that the letters of offer did not confer ownership or proprietorship to the offerees.

47. Before I get into the petitioners claim over the suit property by dint of legitimate expectation I find it necessary to exhaust the petitioners claim

that the is suit ancestral land. PW1 and PW2 both testified that their grandfathers lived on the land and they too were born on the land. From the evidence adduced by these witnesses nothing significant or any cogent evidence was placed before this court to demonstrate the connection of the suit land with their ancestors and or forefathers. The photos displayed were admitted during cross-examination to have meant or shown nothing in terms of ancestry. Even PW2 had nothing to present to court about his grandfather’s roots to the property infact he stated during cross examination that to him all land belonged to the government and he would have no problem relocating as long as he is given a piece of land and compensation. The evidence of Mr. Benson Nzuki was not controverted giving the history of sugar cane farming spanning since 1920 by Kenya Sugar Limited who were allocated several parcels by the crown among which was LR 5056 the parcel in dispute herein. It is noteworthy from the supporting affidavit of PW1 the narrative starts in 2008 when he states the 1<sup>st</sup> respondent undertook a squatter verification exercise. It does not start with ancestry. Further according to the evidence of Mr Benson Nzuki on behalf of the 3<sup>rd</sup> respondent, as early as 1990 before the letters of offer were issued and when the bank of India was to exercise the statutory power of sale the 3<sup>rd</sup> respondents’ promoters were already in situ negotiating with the bank of India. In any event the petitioners refer to themselves



as squatters in their pleadings and which is also confirmed by the respondents and all the government agencies documents produced herein as evidence including the very letters of offer presented by the petitioners. As per the copies of Letters of Offer presented in court I note that the Ramisi Phase 1 Scheme was created for purposes of settlement of squatters under the Settlement Fund Trustees it cannot therefore have been trust land to settle natives. The land was according to the history given by Mr. Nzuki land previously leased to private entities since 1920 which the government compulsorily acquired sometime in 1990. Infact this history was narrated, elaborated and supported with documents by Mr. the same witness Mr. Nzuki and accepted by the Court in Constitutional Petition No.8 of 2019. It is no wonder that the term squatters has been used with acquiescence of the petitioners and this further emboldens the failure by the petitioners to prove that the land was ancestral land. To me the ancestral claims were just but an afterthought and which have not been proved to the required threshold.

48. Let me further state that even if the petitioners presented evidence to show occupation by their forefathers this did not grant them proprietary interest in the suit property. Many court decided cases in our jurisdiction have taken this trend see Henry Wambega & 733 Others v Attorney General & 9 Others [2020] eKLR, Robinson Nalengeyo Ole Torome & 7 Others v Kedong Ranch Limited & 3 Others [2021] Federation of Women Lawyers (FIDA Kenya) & 4 Others v The Attorney General & 2 Others [2016] eKLR and Charo Kazungu Matsere & 273 Others v Kencent Holdings Limited & Another [2012]eKLR.
49. Up to this point therefore the petitioners in view of the foregoing have not demonstrated any right over the suit property which can be protected. They are in occupation of the suit property as squatters. The Court of Appeal in the case of Nelson Kazungu Chai & 9 Others v Pwani University [2017] eKLR quoting from Blacks Law Dictionary, 9<sup>th</sup> Edition defined a squatter as ‘a person who settles on property without any legal claim or title’. It is trite that for the petitioner to claim a breach of fundamental rights they must establish the right of ownership over the suit property and having failed to so demonstrate then article 40 was not available for their protection.
50. The above then takes me to the limb of legitimate expectation and upon which a lot of emphasis has been placed by the petitioners and a key ground upon which this petition is anchored. The petitioners submitted that the actions of the 1<sup>st</sup> Respondent of issuing letters of offer and accepting payments for the said parcels of land it intended to settle the petitioners created a legitimate expectation which right was violated. I hear the petitioners to be stating that the government cannot be seen to renege on the offers given which signified the intention to settle the squatters. It is the petitioner’s case that indeed this created a legitimate expectation which must be met. I’m aware of the attributes of a legitimate expectation as discussed and set out at length in the cases of Republic v Principle Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO [2019] eKLR and Fanikiwa Limited v Sirikwa Squatters Group & 17 others (Civil Appeal 45 & 44 of 2017 (Consolidated)) [2022] KECA 1286 [KLR] (18 November 2022) (Judgment) Neutral citation: [2022] KECA 1286 [KLR] and Communication Commission of Kenya & 5 Others v Royal Media Services & 5 Others. Also see Nelson Kazungu Chai & 9 Others v Pwani University [2017] eKLR. I identified several principles namely Whether the administrator’s actions created a reasonable expectation in the mind of the aggrieved party. This has both an objective and a subjective dimension; The representation itself must be precise, clear and specific and importantly, lawful; There cannot be legitimate expectation against the clear provisions of a statute. It must have been lawful for the decision-maker to make such representation; Whether that expectation is legitimate and capable of enforcement? Whether there are any public interest considerations which outweigh the individual’s expectation and finally if the decision being challenged was illegal, irrational, or un-procedural to warrant disturbance by the court.



51. Applying some of the above principles to the current case I also cautioned myself that every case must be decided on its merits and there can be no one jacket fits all. I note that the decision that is being impugned is the decision to stop the scheme and to allocate the land to the 3<sup>rd</sup> respondent. What is clear in the entire proceedings is the government recognition of the presence of KISCOL within suit the property by dint of having taken over the initial sugar cane operations from the previous entity. The government resolve to ensure the 3<sup>rd</sup> respondent activities did not close but continued for the sake of the public and investments made is also evident. Reasons were stated by DW2 Purity Mwangi of realization of overlaps of the intended titles with the land that was meant to progress the 3<sup>rd</sup> respondents' operations. I posed the question whether it was irrational to suspend or stop the settlement scheme because of an overlap considering it is trite law there cannot be two titles over the same piece of land. Again would it be deemed irrational to suspend or stop the settlement for purposes of going back to the drawing board for re-survey and planning. Again would a decision be deemed irrational for a government to support a project with over USD 300 million investment deployed which project would be of more benefit if left to flourish for both the immediate local community and the benefit for the wider county of Kwale and the public interest. My answer would be to find nothing wrong with the decision reached.
52. In addition from my review of the material placed before me, I noted there were ongoing engagements between the 3<sup>rd</sup> Respondents and government agencies on the allocation of alternative land for compensation for land they had to surrender earlier to M/s Base Titanium. At the same time there were also engagements on the issue of squatter resettlement between the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents. I note that vide a letter dated 14/07/2017 the 4<sup>th</sup> Respondent recognizes the need to address the various squatter issues affecting smooth running of the land under cane and was negotiating with the representatives of the squatters on some proposed three options and this is rightly so as per their mandate. Evidence was placed before this court by the 3<sup>rd</sup> respondent of how they were asked to surrender their title culminating to the excision of land for resettlement of squatters, see Letter dated 11/7/2019 from Kwale Sugar International Sugar Company Limited to PS Ministry of Lands - consent to excise, Letter dated 18/07/2019 to walker Kontos by Ministry of Lands on excision of 351.03 Ha undertaking only to excise the 351.03 and title for the remainder to reissue to Kwale Sugar International Sugar Company Limited. Evidence was led of how the excision was planned into 5 villages where it was shown that indeed LR 5056/6 doesn't comprise the 351 Ha that was excised for squatter settlement. Infact Nikapu village is allocated 100 acres for this purpose.
53. The above therefore shows that the resettlement agenda has been active or under discussions notwithstanding the failure to progress the titles under the letters of offer. It is also clear that in the intervening period even the squatters were engaging through their representatives for resettlement. A look at the letter dated 14/07/2017 states 'The National Land Commission has identified LR 5056-1917.06 ha (4737 acres) as alternative land to pieces surrendered by your company as part of Ramisi II and III Settlement schemes.'. It would appear to me then the petitioner's representatives had entered into negotiations willingly for alternative settlement other than what was given in the letters of offer. This is further confirmed through the evidence of PW1 who informed this court of a meeting convened in the year 2018 by the then Chairman of the National Land Commission when they were informed that the scheme had been stopped but they would be compensated. Again the report and valuation for ex-gratia compensation (BN8 pages 88-89) reveals that the report covered all the villages including Nikapu and the people on the ground were involved. This is again confirmed at paragraph 7 of PW1 supplementary affidavit where he refers to the letter dated 14/7/2017 about the options given to the 3<sup>rd</sup> respondent which he alleges to have been ignored. In view of this can the members of the petitioners come almost 12 years later and claim what was offered in the year 2008 under the guise of legitimate



expectation? In my view no, they are estopped. What the members of the petitioners should focus on is the negotiations that had begun spearheaded by the 4<sup>th</sup> Respondent and rightly so which I will expound later in this judgement

54. I will at this point lay to rest the petitioners contention that the allocation of the LR 5056/6 is fraudulent and whether it should be impeached. The 3<sup>rd</sup> respondents' case is that they are the ones who have proprietary interest in the land as they hold title. DW1 Benson Nzuki gave the history of the property to the 1990 when the government had to step in to compulsorily acquire the land based on the 3<sup>rd</sup> respondents' business proposal as well as public interest. The court was told that indeed that Notice of intention to acquire was published on 15/12/06 vide Gazette Notice no. 10327 inviting objections but none was raised. This evidence was not controverted. As proof the 3<sup>rd</sup> respondent exhibited Letter of allotment dated 18/8/2016 – BN1; Lease and certificate of title issued to 3<sup>rd</sup> respondents – BN1, letter 14/7/2017 from NLC to 3<sup>rd</sup> respondent excision of 200Ha - BN2; letter by 3<sup>rd</sup> respondent dated 18/07/19 giving 351Ha – BN23; Correspondence between 3<sup>rd</sup> respondent and relevant GoK authorities; Certificate of title issued on 29/08/2019 to 3<sup>rd</sup> respondent for 5056/6-BN5. Purity Mwangi also corroborated the ownership. Her evidence was that plot LR 5056/6 is government land lawfully leased to the 3<sup>rd</sup> respondent by the 1<sup>st</sup> respondent and always occupied by them operating the sugar factory. She produced as exhibits Certificate of Postal /search as on 17/5/2019, Letter of Allotment LR.No.5056 North of Shimoni Kwale County dated 18/08/2016, Lease for LR.No.5056 to Kwale International Sugar Company Limited dated 11/09/2017, Letter dated 11/7/2019 from Kwale Sugar International Sugar Company Limited to PS Ministry of Lands - consent to excise and Letter dated 18/07/2019 to walker Kontos by Ministry of Lands on excision of 351.03 Ha undertaking only to excise the 351.03 and title for remainder to reissue to Kwale Sugar International Sugar Company Limited. She also produced the certificate of lease in favor of KISCOL.
55. Indeed this court is aware that once a title is impugned then it is incumbent upon the registered proprietor to explain how they came to own the property and which in my view was well articulated by DW1 Benson Nzuki during his evidence and documents produced to support the narrative above. The fact that the land had been earmarked for settlement perse does not infer fraud. A lot of emphasis was put on the issue of the backdating of the lease during the cross examination of DW1 Mr. Nzuki by Mr. Matende counsel for the petitioners with a view to buttress that the same connoted fraud or irregularity. The backdating was explained by Mr. Nzuki during reexamination when he referred the court to the affidavit sworn by Purity Mwangi which annexed the lease for 5056 dated 11/11/2017. That the lease 27742 was dated 1/6/2007 and the dates had to correspond with that of 5056/6 adding to the 99 years at the end of the lease. This made sense since the government intention to allocate land to the 3<sup>rd</sup> respondent for sugar cane production existed from the time when they stepped to compulsory acquire in 1990 when the bank wanted to exercise the statutory power of sale. Additionally, the government could only allocate after the gazette notice which was published in December 2006 which had to run for the designated statutory period. This perfectly resonates with the backdating of the lease and I do not see that there was any intended mischief in backdating the lease. My argument also finds credence in the leases that were excised for example the lease for Kanana was presented on 18/9/19 and backdated to 1/6/2007 (see lease bundle BN4 pg 19). This shows the good will and good faith on the part of the government otherwise Kanana's lease would have commenced in 2019 if at all there was fraud or bad intention. It is my finding that the petitioners have not discharged the burden proof as the petition only raised allegations without providing evidence of fraud, illegality or corruption in the acquisition of property by the 3<sup>rd</sup> respondent and I see no basis for impeaching the title.



## Whether the Petitioners suffered Loss and Damage arising out of the Respondent's Actions

56. I will be very brief on this issue. The petitioners allege that its members suffered damages when their crops were destroyed by the 3<sup>rd</sup> respondents. There was no evidence adduced to support this claim. Pictures were produced of bulldozers in the farms but there was nothing specific attaching these bulldozers to anyone's crops or houses and what was specifically destroyed. This goes for PW4 whose evidence was that she lost eucalyptus trees valued at Kshs. 35 million for which she did not produce any expert report on how these values were arrived at. I find that this limb was not proved to the required standard.
57. I now revisit the issue of the engagements that have been ongoing with regard to the resettlement of squatters. DW2 Purity Mwangi told the court there was still an intention to settle the people and there was available some blocks to resettle the squatters and that this was the reason that the government never stopped collecting the fees on the offers and that there was still available three blocks to settle the squatters. The 3<sup>rd</sup> respondents demonstrated how the excision was undertaken for settlement of squatters under five villages Nikapu included. As recently as March 2021 in the report dated 26/3/2021 titled NDTIC Brief on the Site Visit undertaken on 21/3/21 at page 11 thereof the report proposes as an intervention 'compensation and relocation of population from the land parcel to the excised portions.' It is also noted that the brief was for a fact finding mission on the challenges of land issues facing the 3<sup>rd</sup> Respondents and discussions with the government on workable solutions. Also see letter dated 14/07/2021 addressed to the 4<sup>th</sup> respondent by the 3<sup>rd</sup> respondent (see BM6) which makes a follow up on resettlement issues. I was able to see one title for 5056/1 and also have no reason to doubt about the existence of the rest of the excisions because the 3<sup>rd</sup> respondent is no longer interested in those portions having agreed to the same being excised. In any event I note from the documents presented LR 5056/6 doesn't comprise the 351 Ha that was given for purposes of settlement of squatters.
58. The bigger issue that plays out in this petition is largely a resettlement issue and the solution to the resettlement issues herein lie in the letter dated 14/07/2017. I have a feeling that had this letter which has been cited extensively by the petitioners been implemented to its conclusion we would not be where we are today. I note that the valuation (see page 88 Report and Valuation for Ex-gratia compensation on LR 5056) was assessed at Kshs.170 million. The valuation from my review of the report is specific to Nikapu Village. To me this assessment seems to have been the impediment since the 3<sup>rd</sup> respondent during these proceedings took the position that this is not their obligation because it is the government that is acquiring the land and lists it as a pending issue in the NDTIC report. Section 134 of the Land Act 2012 provides for Settlement Programmes as follows; -
- (1) The National Government shall implement settlement programmes to provide access to land for shelter and livelihood.
  - (2) Settlement programmes shall, for the purposes of this Act, include, but not be limited to provision of access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.
  - (3) The national government shall administer the settlement programmes in consultation with the Commission and the respective county governments.
- .....
59. My reading of the section puts the responsibility of resettlement on the National government in this case the 1<sup>st</sup> respondent and indeed the national government involvement has been manifested in these



entire proceedings as envisaged under subsection (3) above. Under Section 134(9) both the national government and the relevant county government are expected to provide funds for resettlement programmes and to shift this responsibility to the 3<sup>rd</sup> Respondent in my view would be wrong. As it is the 3<sup>rd</sup> Respondent has done its part by surrendering its title for excision and which was successfully undertaken and the land is available. Let the national government discharge its mandate as required by the law and pick up from where it left in consultation with the 4<sup>th</sup> Respondent the National Land Commission. It should not run away from its obligations because of funds. There is need for closure on the resettlement issues herein for the interests of all person who will be proved to be genuine squatters in accordance to the requirement and procedures set out under Part IX of the Land Act.

60. The upshot of the discussions and findings foregoing is that this court declines to issue the orders sought by the petitioners. To serve justice the following orders shall issue to dispose of this petition; -
- a) That an order shall and is hereby issued that the 1<sup>st</sup> Respondent shall in consultation with the 4<sup>th</sup> Respondent the National Land Commission and in accordance with the provisions of Part IX of the Land Act 2012 and other enabling provisions ensure the compensation and relocation of genuine squatters to the appropriate excised portions herein and or any other land as shall be further identified within a period of 12 months from the date of this judgement.
  - b) That due to the nature of the petition every party shall bear its costs.

It is so ordered.

**DELIVERED AND DATED AT MOMBASA THIS 27<sup>TH</sup> DAY OF JANUARY, 2023**

**A.E. DENA**

**JUDGE**

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Matende for Petitioners

Ms Wanine for the 4<sup>th</sup> Respondent

Mr. Kulecho for the 3<sup>rd</sup> Respondent

No appearance for the 1<sup>st</sup> & 2<sup>nd</sup> Respondent

Mr. Daniel Disii- Court Assistant.

