



**Ndeti v County Land Registrar Machakos & another (Environment & Land
Petition E005 of 2021) [2023] KEELC 139 (KLR) (18 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 139 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND PETITION E005 OF 2021
A NYUKURI, J
JANUARY 18, 2023
IN THE MATTER OF: ARTICLES 22(1), 40, 47, 159, 258 AND 162
(2)(B) OF THE CONSTITUTION OF KENYA
IN THE MATTER OF: ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS ENshrined IN THE
CONSTITUTION OF KENYA, 2010
IN THE MATTER OF: ENVIRONMENT AND LAND COURT ACT
SECTION 13 (7) (B), (C) & (D)
IN THE MATTER OF: CONTRAVENTION OF RIGHTS TO
PROPERTIES IN RESPECT OF TITLE
NUMBER KALAMA/MUUMANDU/1059
IN THE MATTER OF: THE DOCTRINE OF LEGITIMATE
EXPECTATION
BETWEEN

BETWEEN

MUMBUA NDETI PETITIONER
AND
COUNTY LAND REGISTRAR MACHAKOS 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT



JUDGMENT

Introduction:-

1. By a Petition dated 6th April 2021 and filed on 14th April 2021, Mumbua Ndeti, the Petitioner in this matter sought the following orders against the County Land Registrar Machakos and the Attorney General;
 - a. A declaration that where two tenants in common hold a title in defined proportions and one of the tenants in common dies, it is not necessary for the surviving tenant to commence succession proceedings with respect to his share of the title.
 - b. An order of Mandamus to issue to compel the 1st Respondent to invoke the provisions of Section 94(2) (a) of the *Land Registration Act* with a view to issue your petition with her one half (½) portion of title number KALAMA/MUUMANDU/1059.
 - c. Costs of this Petition.
2. The Petition is supported by the supporting affidavit sworn by the Petitioner on 6th April 2021. It was the Petitioner's case that he was the registered proprietor of one half share of title number KALAMA/MUUMANDU/1059 (suit property) while the other one half share of the said title was registered in the name of Nthambi Ndeti who died on 30th May 2001; the said title having been registered in the two names as tenants in common equal undivided shares on 7th July 2006.
3. The Petitioner averred that pursuant to Section 94(2) (a) of the *Land Registration Act*, he applied to the 1st Respondent for partition of the title so as to vest half share of it to the Petitioner. That however, the 1st Respondent declined to effect the partition and directed that it was necessary to pursue succession.
4. It was the Petitioner's contention that the 1st Respondent's position is not lawful as the Petitioner owns a defined portion of the title and as she is alive, succession was not necessary, as she was entitled to the suit property being partitioned to give her, her half share of the same. The Petitioner's position was that the 1st Respondent's refusal to partition the suit property showed high handedness, malice, ill will, spite, oppression and other improper motive. She argued that the 1st Respondent refused to invoke appropriate administrative action, contrary to Article 47 of *the Constitution*.
5. The Petitioner asserted that the 1st Respondent denied her legitimate expectation in respect to her rights over the suit property.
6. The Petition was opposed. The Respondents' counsel filed grounds of opposition dated 9th December 2021. It was the Respondents' averment that the Petitioner did not disclose the manner in which her Constitutional rights were violated by the Respondents. They further averred that the Petitioner provided little or no particulars as to the allegations and the manner of the alleged infringements under *the Constitution* and that the Petitioner had conveniently not sued the party who is in possession of the suit property and lastly that the suit was frivolous, vexatious and a waste of Judicial time.
7. Although on 9th May 2022, parties were directed to file submissions in 14 days, none complied.

Analysis and Determination

8. I have carefully considered the Petition, the affidavit in support thereof and the grounds of opposition. The issues that emerge for determination are;



- a. Whether an order for partition of land held by tenants in common may be granted without giving an opportunity to be heard to all the tenants involved, and where any of them is deceased to the personal representatives of their estate.
 - b. Whether the Petitioner is entitled to orders of Mandamus as sought against the 1st Respondent.
9. The Black's Law Dictionary 11th Edition defines tenancy in common as follows;
- “A tenancy by two or more persons in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. – Also termed common tenancy; estate in common of joint tenancy.
- “If there be a doubt when an estate was, at its creation, a joint tenancy or a tenancy in common; or if, conceding the estate to have been a joint – tenancy at its creation, there be a doubt whether there had not been a subsequent severance of the jointure – in all such cases, equity will resolve the doubt in favour of tenancy in common. A. C. freeman, co-tenancy and partition 67(2d ed 1886)
- “The central characteristic of a tenancy in common is simply that each tenant is deemed to own by himself, with most of the attributes of independent ownership, a physical undivided part of the entire parcel. Thomas F. Bergin & Parne. G. Haskell preface to Estates in land and future interests.
10. Tenancy in common should be differentiated from Joint tenancy, as the latter is a situation where two or more persons own property together and or jointly with equal rights, and if one tenant dies their share passes on to the other, surviving tenants automatically, so that the heirs of the deceased tenant have no right to inherit such property. The Black's Law Dictionary defines joint tenancy as follows;
- “A tenancy with two or more co-owners who are not spouses on the date of acquisition and have identical interests in a property with the same right of possession. A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share (in some states this right must be clearly expressed in the conveyance – otherwise the tenancy will be presumed to be a tenancy in common).
11. Section 91 of the [Land Registration Act](#) No. 3 of 2012 provides for co tenancy as follows;
1. In this Act, co tenancy means the ownership of land by two or more persons and includes joint tenancy or tenancy in common.
 2. Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there is a presumption that they hold the interests as tenants in common in equal shares.
 3. An instrument made in favour of two or more persons and the registration giving effect to it shall show;
 - a. Whether those persons are joint tenants or tenants in common; and
 - b. The share of each tenant, if they are tenants in common
 4. If land is occupied jointly, no tenant is entitled to any separate share in the land, consequently;
 - a. Dispositions may be made only by all the joint tenants;



- b. On the death of a joint tenant, that tenants' interest shall vest in the surviving tenant or tenants jointly; and
 - c. Each joint tenant may transfer their interest inter vivo to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void.
- 5. If any land, lease or charge is owned in common, each tenant shall be entitled to an undivided share in the whole and on the death of a tenant, the deceased's share shall be treated as part of their estate.
 - 6. No tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the consent in writing, of the remaining tenants, but such consent shall not be unreasonably withheld.
 - 7. Joint tenants, not being trustees may execute an instrument in the prescribed form signifying that they agree to sever the joining ownership and the severance shall be complete by registration in the prescribed register of the joint tenants and tenants in common.
 - 8. The Registrar may upon receipt of adequate proof dispense with the consent under subsection (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably and the Registrar shall note on the register and on the instrument the reasons for dispensing with the consent.
 - 9. A person who is aggrieved by the decision of the registrar may apply to the court for the necessary orders.
12. The process of partition of land owned in common, is a process within the jurisdiction of the Land Registrar and is provided for in Section 94 of the *Land Registration Act* as follows;
- 94(1) Any of the tenants in common may, with the consent of all the tenants in common, make an application, in the prescribed form, to the Registrar for the partition of land occupied in common and subject to the provisions of this Act and of any other written law applying to or requiring consent to a subdivision of land and of any covenants or conditions in a certificate of title or certificate of lease, the Registrar shall effect the partition of the land in accordance with the agreement of the tenants in common.
- (2) An application may be made to the Registrar, in the prescribed form, for an order for the partition of land owned in common by;
- a. Any one or more of the tenants in common without the consent of all the tenants in common; or
 - b. Any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree.
13. Before making an order for partition of any land owned in common, where there is no consent of the common tenants, the Land Registrar ought to hear the Applicant seeking partition and any of the other tenants in common, must be given opportunity to be heard. And in determining whether or not to make an order for partition as well as the manner of the partition, the Land Registrar must take



into account the factors laid down in Section 94 (3) of the [Land Registration Act](#) No. 3 of 2012 which provides as follows;

“94(3) The Registrar may after hearing the applicant and any of the other tenants in common who wish to appear and be heard, make an order for the partition of land having regard to;

- a. Whether the provisions of this Act, any other written law regulating the subdivision of land and covenants and conditions in a land have been or will be complied with if the partition is effected;
- b. The nature and location of the land;
- c. The number of tenants in common and the extent of their respective shares particularly, the extent of the share of any tenant in common by whom or on whose behalf the application has been made;
- d. The value of any contribution made by any tenant in common to the cost of improvements to or the maintenance of the land or buildings occupied in common;
- e. Where the tenants in common are spouses or the tenants in common who do not agree on the partition are dependants of or related to the tenants in common, whether the interests of those tenants in common who have not agreed to the partition have been or will be adequately provided for as a consequence of or after the partition is effected, and particularly, a spouse or dependants of the tenant in common who is applying for the partition will not be rendered homeless by the partition;
- f. In respect of an application made by a person referred to in Subsection 2(b), whether the interests of the spouse or any dependants of the tenant in common whose share is to be sold in execution of a judgment or decree, will be adequately catered for and particularly, any spouse or dependants will not be rendered homeless by the sale;
- g. If the tenants in common are pastoralists, whether the tenants in common who have not agreed to the partition will, after the partition, still retain grazing rights, including grazing rights created by an easement in the partitioned land, to sufficient land of the qualify and nature and in the location customarily used by those pastoralists;
- h. The proper development and use of the land and whether it may be adversely affected by the partition applied for;
- i. The hardship that would be caused to the applicant or applicants by the refusal to an order in comparison with the hardship that would be caused to any other person by making the order; and
- j. Any other matters that the Registrar considers relevant.

14. Essentially therefore, any one or more tenants in common, with consent of the other tenants in common may apply to the Land Registrar for partition of land held in common. However, lack of consent from the other co-tenants is not a bar to an order of partition.



15. Partition is not merely a mathematical subdivision exercise on the part of the Land Registrar. It is a quasi-judicial process. In an application for partition where there is no consent between the common tenants, the Land Registrar must consider several matters including; whether the partition will be in compliance with any written law; the nature and location of the land; the number of tenants in common and the extent of their respective shares; any contribution made by any of the tenants in improving the land; whether the interests of the tenants in common will adequately be provided for in respect of situations where the tenants in common are spouses or are dependants of tenants in common and especially where the partition may render a spouse or dependant of a tenant in common homeless; where execution of a judgment by sale of a tenant's share will leave their dependants homeless; in the case of tenants that are pastoralists, where the grazing rights of any of the tenants shall be adversely affected; the proper development and use of land; the hardship that may be suffered by refusal to order partition as compared to the hardship to be suffered if the order for partition is granted and any other relevant matter.
16. It is therefore upon the applicant who has not secured consent of the other co-tenants to avail sufficient material before the Land Registrar, to enable the Land Registrar to make a decision on whether to partition or not in compliance of, and alive to the parameters set out in Section 94(3) of the [Land Registration Act](#). On the other hand, the Registrar must avail the right to be heard to all the tenants in common who have not given consent to the partition.
17. The right to be heard before the Land Registrar is a fundamental Constitutional right which has been given prominence in the [Land Registration Act](#). Section 87 of the said Act gives the meaning of the "opportunity of being heard" as follows;
 1. If this Act requires that a person be given an opportunity to be heard before a particular thing is to be, or may be done, that person shall be deemed to have been given such an opportunity –
 - a. If the person attends before the Registrar personally or by an advocate or other agent, and is given such an opportunity; or
 - b. If the person intimates, personally or by an advocate or other agent that the person does not wish to be heard; or
 - c. If the person has been served with a notice in writing specifying the nature of the thing to be done and appointing a day and time not less than seven days after service of the notice at which, if the person attends before the Registrar, the person may be heard.
 2. If a person or an advocate or other agent on the persons behalf attends before the Registrar concerning a matter or which the person is entitled to be heard, or fails to attend pursuant to such a notice, the Registrar may, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, hear that person at any time.
18. In the instant suit, the Petitioner argues that having been tenants in common with one Nthambi Ndeti she sought to have the 1st Respondent partition the suit property, to vest one half share thereof to her. Her contention is that because her co-tenant Nthambi Ndeti is deceased, the suit property ought to be partitioned by the Land Registrar as provided for in Section 94(2) of the [Land Registration Act](#). She believes that the refusal by the Land Registrar to partition the suit property as sought amounts to high handedness, unlawfulness, malice, ill will, spite, oppression and other improper motive and that the same is contrary to Article 47 of [the Constitution](#) of Kenya 2010.



19. On the other hand, the Respondents believe that the Petitioner has conveniently not sued the persons in possession of the suit property and that there are no specific particulars of actions on the part of the Respondents that amount to infringements of Constitutional rights.
20. The rights of co-tenants in a common tenancy are severable. That is why there is no survivorship and where one of the tenants in common dies, their interest in land owned in common passes to their heirs and or legal representatives. Section 61 of the [Land Registration Act](#) No. 3 of 2012 provides for transmission on death of a proprietor in common as follows;
 1. If a sole proprietor or a proprietor in common dies, the proprietor's personal representative shall, on application to the Registrar in the prescribed form and on the production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative's name of the words "as executor of the will of.....(deceased)" or as administrator of the estate of(deceased)" as the case may be.
21. The Petitioner herein stated that her advocate wrote a letter to the Land Registrar, dated 18th January 2021 seeking for Partition but that the Land Registrar declined his request on grounds that she ought to pursue succession. The Petitioner argues that it is wrong for the Land Registrar to require her to commence succession proceedings in respect of her share while she is still alive. I have considered the annexures filed by the Petitioner. MN-1 is a search certificate showing that the suit property was registered in the names of Nthambi Ndeti and Mumbua Ndeti on 7th July 2006 which was ownership in common, each having half undivided share. The land measures 3.83 Ha. Annexure MN-2 is a certificate of death for Esther Nthambi Ndeti, which shows that Nthambi Ndeti died on 30th May 2001, which is five years before the registration of the suit property in her name. Annexure MN-3 is a copy of a demand letter to the Land Registrar Machakos, by counsel for the Petitioner, wherein the Petitioner sought to have the suit property partitioned and stated that the original title deed is in the custody of one Daniel Matheka Ndeti a son of the deceased co-owner who was allegedly unwilling to avail the same. On the said letter, the Land Registrar stated as follows;

“ - We are unable to partition vide this letter.
- Kindly pursue succession and further take measure to obtain title.”
22. It is these inscription by the Land Registrar directing the Petitioner to pursue succession that the Petitioner argues that she cannot file succession in respect of her share when she is still alive.
23. It is not in dispute that the co-owner of the suit property Nthambi Ndeti is deceased. The procedure for obtaining an order for a partition is specifically spelt out in Section 94 of the [Land Registration Act](#) as earlier stated. The beginning point is for the applicant to obtain consent from the co owners in common. Where the consent is denied or cannot be obtained or where the partition is sought in execution of an order for sale of one owner's share, the application for partition ought to be heard by the Land Registrar, in which process the other tenants in common must be availed an opportunity to be heard.
24. It therefore follows that as tenancy in common does not confer a right of survivorship, where one of the tenants in common dies, their share in the property passes to their personal representatives as provided for in Section 87 of the [Land Registration Act](#) No. 3 of 2012. The Petitioner is aware that Nthambi Ndeti is deceased, she therefore ought to have sought for consent to partition from the personal representative of the estate of the late Nthambi Ndeti. Where there is no personal representative of the deceased tenant in common, the [Law of Succession Act](#) permits the Petitioner to



- cite any of the dependants of the deceased for purposes of compelling them to take out grant of letters of administration. (See Rule 22 of the Probate and Administration Rules).
25. The above procedure ought to be taken because where there is no consent, a hearing must be conducted by the Land Registrar, before the Land Registrar can determine whether or not to order a partition. Just because one of the tenants in common is deceased, that cannot be reason enough to deny their estate a right to be heard. It was therefore upon the Petitioner to serve the personal representative of the estate of the late Nthambi Ndeti with the application to partition filed before the Land Registrar. This would assist the Land Registrar to take into account the matters and parameters set out in Section 94(3) of the *Land Registration Act*.
 26. In this case, the Petitioner has not disclosed whether there is a personal representative to the estate of the late Nthambi Ndeti, in addition, no disclosure by the Petitioner has been made as to the circumstances leading to the registration of the suit property in common; the relationship between her and the late Nthambi Ndeti; the nature and location of the suit property; if there is any contribution in value by any of tenants in common, that may have improved the suit property; whether there are dependants of the late Nthambi Ndeti on the suit property who may be rendered homeless by the partition; whether the tenants in common are pastoralists or any other relevant matters in respect to the suit property.
 27. The Respondents have faulted the Petitioner for excluding the persons in occupation of the suit property. It is my view that just as the Petitioner's property rights are protected under Article 40 of *the Constitution*, so are the rights of the estate of the late Nthambi Ndeti protected. Unless her personal representative is given an opportunity to be heard, then an order for partition cannot lawfully issue since the deceased's estate ought first to be given opportunity to clarify the matters mentioned in Section 94(3) of the *Land Registration Act*.
 28. As the Petitioner has not involved the personal representative of the estate of the late Nthambi Ndeti, or her dependants, in the application for partition before the Land Registrar, the Land Registrar in requiring that succession be pursued, cannot be said to have acted with high handedness, malice, ill will, spite, oppression, with other improper motive or unlawfully, as argued by the Petitioner. Allowing the estate of the late Nthambi Ndeti to be succeeded and involving the personal representative of the said estate in the partition proceedings is the proper process to be taken in the circumstances of this case, but which was not done.
 29. The Petitioner in framing her prayers sought for a declaration that since she is still alive and her co-tenant is deceased, it is not necessary to require her to commence succession proceedings in respect to her share of the title. That cannot be a reasonable interpretation of the Land Registrar's response. The Petitioner in applying for partition, informed the Registrar that her co-tenant was deceased and she attached a copy of the death certificate to that effect. It is a matter of common knowledge that succession is only done in respect of deceased persons and not in respect of the living. It is therefore clear that the succession referred to by the Land Registrar was in respect of the person whose death certificate was served on the Land Registrar and not the Petitioner who is alive. I therefore do not think that the framing of prayer A of the Petition had anything to do with the issues arising in this Petition. The same was merely meant to distort the issues as the question is not whether succession of Mumbua Ndeti (the applicant) ought to be done before partition proceedings are undertaken, but rather whether the succession of the late Nthambi Ndeti ought to be done before partition is undertaken.
 30. As the Petitioner has not involved the personal representative of the estate of the late Nthambi Ndeti in the application for partition before the Land Registrar Machakos, the latter was lawfully entitled to direct the Petitioner to ensure succession is done so that the deceased's estate is properly given an opportunity to be heard as provided for in Section 61 of the *Land Registration Act*.



31. I therefore find and hold that as the suit property herein is held in common and one of the tenants in common is deceased, an order for partition of the suit property cannot lawfully issue without giving the personal representative of the estate of the deceased herein an opportunity to be heard.
32. I now turn to the question of whether an order of mandamus should issue as against the 1st Respondent. Under Article 23 of *the Constitution* of Kenya, an order of Judicial Review is one of the orders that may be granted by this court in any proceedings brought under Article 22 of *the Constitution*. Mandamus, being one of the Judicial Review orders can therefore be lawfully issued by invoking Article 23 of *the Constitution*. The Judicial Review powers that were previously governed by the common law, for purposes of controlling exercise of public power are now governed by *the Constitution*. This court has a constitutional supervisory power over persons, bodies or authorities exercising quasi-judicial or administrative functions that affects individual rights.
33. Therefore Judicial Review power is no longer premised on the rigid common law principles that limited the length and breadth of the remedies of public power by restricting it to the vertical obligations (between the state or public agencies and citizens) of public power. The current Constitution has enlarged the scope of Judicial Review beyond public power by embracing horizontal power (between private individuals or bodies) where any body including private persons, institutions and bodies exercising quasi-judicial or administrative functions that affect constitutional rights of individuals, as Article 20 of *the constitution* provides that the bill of rights applies to all law and binds all state organs and all persons.
34. I agree with the reasoning in the case of Republic vs Principal Secretary Ministry of Internal Security & Another Exparte Schon Noorani & Another [2018] eKLR paragraph 16, where the court held that;
- “The concept of judicial review under *the Constitution* of Kenya is similar to that under *the Constitution* of South Africa where it was held in Pharmaceutical Manufacturers Association of South Africa in re Exparte President of the Republic of South African & Others 2000(4) SA 674 (CC) that the common law principles that previously provided the grounds for judicial review of public power have been subsumed under *the constitution* and, inso far as they might continue to be relevant to judicial review, they gain their force from *the Constitution*. In the judicial review of public power, the two are intertwined and do not constitute separate concepts. The court went further to say that there are not two systems of law, each dealing with the same subject matter, each having similar requirements, each operating in its own filed with its own highest court.
- Rather there was only one system of law shaped by *the Constitution* which is the supreme law, and all law, including the common law, derives its force from *the Constitution* and is subject to Constitutional control.”
35. An order of mandamus is issued to compel the performance of a ministerial duty where the same is refused. Such order is discreatory and may be refused even when there are grounds to grant the same. The test that ought to be applied by the court is whether the remedy of mandamus is the most effective remedy in the circumstances of the case.
36. In the case of Dragan vs Canada (Minister of Citizenship and Immigration the court set out ought factors to warrant grant of mandamus namely that;
- i. There must be a public legal duty to act;
 - ii. The duty must be owed to the Applicants;



- iii. There must be a clear right to the performance of that duty meaning that
 - a. The applicants have satisfied all the conditions precedent; and
 - b. There must have been;
 - I. A prior demand for performance;
 - II. A reasonable time to comply with the demand, unless there was outright refusal; and
 - III. An express refusal or an implied refusal through unreasonable delay.
 - iv. No other adequate remedy is available to the Applicants;
 - v. The order sought must be of some practical value or effects
 - vi. There is no equitable bar to the relief sought
 - vii. On a balance of convenience, mandamus should lie.
37. In the instant suit, the Petitioner sought an order of mandamus to compel the Land Registrar Machakos to invoke Section 94(2) (a) of the *Land Registration Act* with a new to issue the petitioner with one half portion of title number KALAMA/MUUMANDU/1059. Is there a duty by the 1st Respondent to issue the Applicant with title under Section 94(2) (a). I don't think so. Section 94 (2) as provides as follows;
- 94(2) An application may be made to the Registrar, in the prescribed form, for an order for the partition of land owed in common by –
- a. Any one or more of the tenants in common without the consent of all the tenants; or
 - b.
38. My understanding of Section 94(1) (2) and (3) is that where there is agreement to partition by all the tenants in common, the Land Registrar's obligation is to effect a partition in accordance with the agreement of the tenants in common as long as the same is not in contravention of any law or against the proper development and use of the land. However, where there is no consent or where a partition is sought for purposes of executing a judgment in respect of an order for sale of undivided share in the land, the obligation of the Land Registrar is to avail to all the tenants in common, an opportunity to be heard, and proceed to make an order to allow or decline the partition depending on the factors stated in Section 94(3) (a) to (j) of the *Land Registration Act*. And therefore the Land Registrar does not owe any tenant in common a duty to partition the suit property. I find that the Petitioner is therefore undeserving of the order of mandamus, as sought.
39. The Petitioner has argued that she had a legitimate expectation that the suit property should be partitioned by the 1st Respondent. For a claimant to rely on the doctrine of legitimate expectation, they must show that their expectation is legitimate and lawful for the administrator to perform; and it must be premised on a promise by the public body. In the South African case of *Public Prosecution vs Philips* 2002(4) SA 60, W, the court held that for there to be a legitimate expectation, the applicant must demonstrate;
- a. That there is a representation which is clear, and devoid of any qualification,



- b. That the expectation must be reasonable in that a reasonable person would act on it;
 - c. That the expectation must have been induced by the decision maker and
 - d. That it must have been lawful for the decision maker to have made such representation.
40. In the instant case, I have considered the pleadings and I do not find any promise made by the Land Registrar that he would partition the suit property. In addition, where the estate of deceased co-tenant is not involved in such partition, then there would be no legitimacy or legality in the same. As the Petitioner herein did not involve the estate of the late Nthambi Ndeti in the proceedings before the Land Registrar and in these proceedings, there can be no legitimacy or legality in the same. In the premises, the Petitioner has not shown this court any legitimate expectation to have the suit property partitioned by the 1st Respondent.
41. The upshot of the above is that the Petitioner has failed to prove her case on the required standard and the same is dismissed with costs to the Respondents.
42. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 18TH DAY OF JANUARY 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

A. NYUKURI

JUDGE

In the presence of;

No appearance for the Petitioner

No appearance for the Respondent

Josephine – Court Assistant

