



Mwiki Company Limited v National Land Commission & 6 others (Constitutional Petition E028 of 2022) [2023] KEELC 16118 (KLR) (23 February 2023) (Judgment)

Neutral citation: [2023] KEELC 16118 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CONSTITUTIONAL PETITION E028 OF 2022**

JA MOGENI, J

FEBRUARY 23, 2023

IN THE MATTER OF CHAPTER FOUR OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: ARTICLES 22 (3) D, 23, 27, 28, 35, 40, 47, 48, 50, 67, 68, 73 AND THE SIXTH SCHEDULE OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER ARTICLES 22(3) E, 23, 23, 27, 28, 35, 40, 47, 48, 50, 67, 68, 73 AND THE SIXTH SCHEDULE OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: CHAPTER 4 OF THE CONSTITUTION OF KENYA 2010

AND

SUPERVISORY JURISDICTION UNDER SECTION 13 (7) (B) AND 19 OF THE ENVIRONMENT AND LAND COURT ACT NO 19 OF 2011 AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL RULES

IN THE MATTER OF: ALLEGED DEPRIVATION OF PROPERTIES OF THE PETITIONER

BETWEEN

MWIKI COMPANY LIMITED PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

JAMES NGUGI SUED IN HIS CAPACITY AS OFFICIAL OF MWIKI WELFARE ASSOCIATION 2ND RESPONDENT

NAIROBI CITY COUNTY 3RD RESPONDENT



NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED	4TH RESPONDENT
CHIEF LAND REGISTRAR OF TITLES NAIROBI	5TH RESPONDENT
PRINCIPAL SECRETARY, MINISTRY OF FINANCE	6TH RESPONDENT
ATTORNEY GENERAL	7TH RESPONDENT

JUDGMENT

Brief Introduction:

1. The petition herein was filed by Mwiki Company and it is dated 5/07/2022.
2. The petition is filed against 7 Respondents. The 1st Respondent is an Independent Commission established by Article 67 of [the Constitution](#).
3. The 2nd Respondent is a society registered under the provisions of the [Societies Act](#) Cap 108 Laws of Kenya
4. The 3rd Respondent is a County Government established under [the Constitution](#) of Kenya and also a body corporate exercising its constitutional authority pursuant to the County Government Act of 2012
5. The 4th Respondent is a limited liability company registered under the [Companies Act](#) Cap 486.
6. The 5th Respondent is a public officer appointed under sections 12, 13, and 14 of the [Land Registration Act](#), 2012 by the Public Service Commission.
7. The 6th Respondent is a Constitutional Office and the Principal Legal Advisor of the Government of the Republic of Kenya. Public Officer in the Ministry of Finance.
8. The 7th Respondent is a Constitutional Office established under Article 156 of [the Constitution](#) of Kenya and the principal legal advisor to the government

The Petitioner's Claim

9. The Petitioner presents this petition under Articles 22 (3), d, 23, 27, 28, 35, 40, 47, 48, 50, 67, 68, 73 and The Sixth Schedule of [the Constitution](#). Chapter 4 of [the Constitution](#), and Sections 13(7) (b) and 19 of the ELC Act. The Petitioner claims that it is the registered owner and is entitled to absolute possession of the two (2) parcels of land amalgamated into one and assigned a new number Nairobi Block 164.
10. In the Petition dated 5/07/2022 the Petitioners averred that they purchased land parcels LR 8469/14 and LR 8469/4/7 from Mukinyi Enterprises Company Limited and was issued with certificates of lease. That the two properties were amalgamated and the title deeds surrendered to the Commissioner of Lands and a new title assigned as Nairobi Block 164.
11. That the Petitioner subdivided the amalgamated Nairobi Block 164 into 522 subplots after receiving approval and change of user. That two members of the welfare society, the 2nd Respondent herein sued the Petitioner seeking to have part of the subdivided land allotted as public utility. That in the matter instituted by the members of the 2nd Respondent herein, the Court in the matter ELC 1035 of 2013 determined that there was no merit and that the parcels claimed by the members of the 2nd



Respondent were not for public utilities. Thus the suit was dismissed on 16/05/2019 by Hon. Lady Justice Komingoi.

12. On 16/04/2014 when the suit number ELC 1035/2013 was ongoing the 2nd and 3rd Respondents wrote to National Land Commission the 1st Respondent together with the 4th Respondent claiming that the suit properties were public land meant for public utilities. Further that on 2/11/2015 the 1st Respondent ruled that parcel number LR 8469/4/7 was public land that had been illegally transferred to the Petitioner and it was allocated to the 6th Respondent to hold in trust for the primary school.
13. Further the 1st Respondent also allocated parcels Nos. 65, 69, 70, 121, 174, and 175 in LR 8469/14 as open space for use by the residents of Mwiki.
14. That parcel LR 8469/4/7 has never been marked as public property and neither have parcels numbers 65, 69, 70, 121, 174, and 175 in LR 8469/14 been ever surrendered to government as open spaces when the mutation was done. That the acts on the property are trespass and the Respondents are using force and abusing their offices to displace members of the petitioner out their properties.
15. The Petitioner itemized in 17 paragraphs the nature and Particulars of injuries caused by the Respondents in contravention of the constitution against guaranteed rights and freedoms of the petitioner.
16. The Petitioner contends that whereas the Judge dismissed the suit in ELC 1035 of 2013 for want of prosecution it is notable that while the parties were litigating CMCC E1285 of 2021 the 2nd Respondent instead of reinstating ELC 1035 of 2013 wrote to the National Land Commission without involving the Petitioner and a decision was made 2/11/2015 where the 1st Respondent ordered for the following with regard to LR 8469/14 and LR 8469/4/7:
 - i. The Amalgamation of the said plot with LR No. 8469/14 was cancelled.
 - ii. All allocation on LR NO. 8469/4/7 comprising plots 132 to 171 were cancelled.
 - iii. The land was reverted to the intended user of a primary school and allocated to the Principal Secretary to the Treasury to hold in trust for the school .
17. Further he sought for the following with regard to various open spaces
 - i. Allocation of plot nos. 175 and 175 from an open space was cancelled.
 - ii. All allocation of plot nos. 65, 69 and 70 from open space which was cancelled.
 - iii. Allocation of plot no. 121 from an open space was cancelled.
18. The 1st Respondent directed that the open spaces should be allocated to Nairobi City County, 3rd Respondent to hold in trust for Mwiki Residents.
19. The Petitioner states that the 4th Respondent has also encroached on the plots of the members belonging to the Petitioner and displaced them thus denying them quiet possession. Further that based on the ruling by the 1st Respondent, there is encroachment on parcel no. Nairobi Block 164/131 to Nairobi Block 164/171 on LR No. 8469/4/7, which belong to members of the Petitioner despite these plots not being open spaces or demarcated as public utilities.
20. The Petitioner contends that since the Environment and Land Court already made a finding that LR 8469/14 and LR 8469/4/7 having been found to be private land and the Petitioner being a bona fide purchaser then the members are to enjoy indefeasibility of title. Further that this should be the position



- applicable to Nairobi Block 164/131 to Nairobi Block 164/171. That the Petitioner was a bona fide purchaser for value without notice of any defects in title.
21. The Petitioner contends that the 2nd Respondent ordered cancellation of title LR 8469/4/7 and allocated plots nos. 65,69, 70, 121, 174 and 175 as open spaces thus failing to observe principles of natural justice in violation of Article 60 (a) and (d). Further that the 1st Respondent breached the right to fair administrative action. At paragraph 21 of the Petition the Petitioner has itemized particulars of breach of natural justice and the right to fair administrative action (a) to (e) .
22. The Petitioner therefore seeks the following reliefs against the Respondents jointly and severally:
- I. THAT the honorable court decrees that Section 14 of the *National Land Commission Act* neither empowered nor envisaged the National Land Commission as the entity to revoke and or to review grants and disposition of lands registered to private individuals prior to enactment of section 14 of the *National Land Commission Act*.
 - II. THAT the honorable court decrees that the Petitioners fundamental rights and freedoms more so as set out in Article 40 (Right to Property) has been violated and that any revocation of the title by the National Land Commission must be sanctioned by the court of law or a tribunal under Article 68 (c) (v) of *the Constitution* and the decision of the 1st Respondent dated 2nd November 2015 purporting to revoke the petitioner's title namely LR 8469/4/7 and allocation of plots nos. 65,69,70,121,174 and 175 on LR 8469/14 be quashed and declared null and void.
 - III. THAT the honorable court do decree to revoke the illegal decision for title namely LR No. 8469/4/7 and allocation to open spaces of plots nos. 65, 69, 70, 121, 174 and 175 on LR No. 8469/14 for being null and void ab initio and that the purported cancellation of Petitioners title and allocation to open space on 2nd November 2015 by the 1st Respondents to the 5th Respondent be declared as null and void.
 - IV. Costs of the petition.
23. The Petitioner enlisted further reliefs number (a) to (p) where he sought among others, a declaration that the Petitioners, Right to Fair Administrative Action under Article 47 and fair hearing under Article 50 has been violated, a declaration that right to human dignity as per Article 28 has been violated, setting aside of the revocation and cancellation of the Petitioner's Titles to the suit property, an order for vacant possession of the petitioner's members parcels known as plots nos. 65, 69, 70, 121, 172, 174 and 175 on LR 8469/14 and land know as IR 8469/4/7, a restraining order , compensation, general and exemplary damages.
24. According to the Petitioners, the 1st Respondent conducted a hearing in the present of Respondents but the Petitioner was not denied the right to be heard and the decision made by the 1st Respondent has never been officially communicated to the Petitioner.
25. The 1st Respondent despite being served did not file any response to the Petition.

2nd Respondent's Response to the Petition

26. In reply, the 2nd Respondent's Secretary James Ngugi deponed that the 2nd Respondent is a watchdog whose role is to safeguard public utilities within Mwiki Ward from possible grabbers. That according to the 2nd Respondent, the instant suit does not meet the threshold of a constitutional petition. He averred that the Petitioner has not pleaded precisely the particulars of the constitutional violations therefore the 2nd respondent opposes the petition.



27. He avers that the issues before court is about ownership of Nairobi Block 164/132 through to Nairobi Block 164/171 (being LR subdivision 8469/4/7 and parcels numbers 164/65, 164/69, 164/70, 164/121, 164/174, 164/175 (being subdivision 8469/14)
28. That Mukinyi Company sold parcel No. LR 8469/14 to the Petitioner measuring about 21.71 hectares about 50 acres. That from the map which he annexed and marked as Exhibit JN-2 it had provision for open spaces which were to serve as public utility.
29. Further that the public utility which lay between LR No. 8469/14 and LR No. 8469/13 had been allocated the number LR 846914/7.
30. That it was a condition precedent from the Department of Survey that the Petitioner had to provide at least 10% of the total acreage for public utility. This was done as per the subdivision shown on the survey map and there are 3 spaces provided as per Exhibit JN-3.
31. He averred that the Petitioner however amalgamated LR 8469/4/7 with LR 8469/14 and those were assigned a new number as Nairobi Block 164 and then subdivided into 522 plots. That upon amalgamation, the Petitioner subdivided the would be public utility land LR 8469/4/7 into 40 plots and also the 3 open spaces into 6 parcels.
32. He stated that the 2nd Respondent lodged a complaint at the 1st Respondent's herein, National Land Commission pursuant to Article 67(2) (e) of the Constitution as shown as per Exhibit JN-4 and also wrote to 3rd Respondent in an attempt to protect public land as shown in Exhibit JN-5.
33. That in response to the letter of complaint from the 2nd Respondent, the 3rd Respondent instructed the County Chief Officer and the Chief Valuer to ensure no rate and rent payments were received in respect of the instant suit properties as shown in Exhibit JN-8.
34. That vide a letter from the 3rd Respondent, the 2nd Respondent avers it confirmed that 46 parcels were carved out of public utility land which affect the primary school which was to be on plots Numbers 132, 133, 134 and 171. The open spaces were to be on parcels 174, 175, 121, 65, 69 and 70 – see Exhibit JN-9.
35. That according to the letter dated 2/11/2015 sent by the 1st Respondent to all the parties including the Petitioner, it was to communicate the cancellation of the amalgamation of LR 8469/4/7 with LR 8469/14 and cancellation of allocations in LR 8469/4/7 composing of Nairobi Block 164/132 and Nairobi 164/171 which were now to be held in trust for the school by the 6th Respondent as per the attached Exhibit – JN-12 which a copy of the Gazette Notice dated 22/01/2016 that communicated the decision.
36. Further Plot Nos. 165/65,69,70,121, 174 and 175 were also cancelled and opens spaces that were contained in LR 8469/14 were allocated to the 3rd Respondent to hold in trust for Mwiki Residents.
37. That whereas the Court dismissed the suit ELC 1035 of 2013 it was the injunctive application and not the ownership of the suit p property that was determined making the petitioner the bona fide purchaser.
38. It is his case that the Petition is devoid of merit and is defective, the petitioner has failed to show how it acquired LR 8469/4/7 so as to amalgamate, subdivide and transfer. Further that Mukinyi Enterprises the alleged transferor is not a party to these proceedings.



4th Respondent's Response to the Petition

39. The 4th Respondent filed a Replying Affidavit deponed to by Catherine David the Resident Engineering Technical Officer of the 4th Respondent in response to the Petition.
40. She averred that the Petition is time-barred having been brought after the lapse of the appeal timelines set against the decisions of the 1st Respondent.
41. That plots 174,175, 65, 69, 70 and 121 were vested in the 3rd Respondent who is holding in trust for the resident of Mwiki, while parcel No. 8469/4/7 is vested in the permanent secretary of the National Treasury in trust for the planned primary school.
42. Further that the subject property is designated as a public utility land intended for water utility for the benefit of the resident of the 3rd Respondent. That the 1st Respondent conducted its hearing and concluded and reverted the amalgamated properties to the intended user and the allocation of open spaces was cancelled and vested in the 3rd Respondent to hold in trust for Mwiki Residents and these findings of the 1st Respondent were published in the Kenya Gazette dated 22/01/2016.
43. He averred and refuted that the 4th Respondent is a trespasser and stated that activities on plot 65, 69 and 70 are in accordance with the determination of the 1st Respondent vesting the plots to the 3rd Respondent
44. That the 4th Respondent acted on the determination made by the 1st Respondent. Further that there is no change of user from the conditions set out in the original grant which had designated use of "water reticulation" and public utilities to private land.
45. Further that the allegations set out in the 40th paragraph of the Petition on violations is unsupported since there is no evidence presented showing that the 4th Respondent has evicted or interfered with quiet possession of the suit properties by members of the petitioner. That the infringement of rights on the petitioner's members is not attributable to the 4th Respondent
46. That public interest supersedes private and individual claims also the Petitioner cannot seek protection over land allocated for public use.
47. He finally concluded by stating that the petition does not disclose any cause nor warrant grant of any reliefs sought.

5th, 6th and 7th Respondent's Response to the Petition

48. The 5th, 6th and 7th Respondents in their response to the Petition filed Grounds of Opposition dated 8/09/2022 and termed the Petition as frivolous, vexatious and an abuse of the court process.
49. They started that the ELC 1035 of 2013 was dismissed for want of prosecution and was not determined on merits. Further that private interest cannot override public utility.
50. That the Petitioners need to comply with the requirement of the 10% rule of surrender of public utility plots as affirmed by the 1st Respondent's Ruling.
51. Further that the petition does not disclose a cause of action and should be dismissed with costs.



Analysis and Issues for Determination

52. I have carefully considered the Petitioner's case as well as the opposition thereto by the 2nd, 4th, 5th, 6th and 7th Respondents. I have also considered the submissions filed by the Petitioner, the 2nd, 4th, 5th, 6th and 7th Respondents. The issues which emerge for determination in this petition are:
- i. Whether the Petition is validly before this court.
 - ii. Whether the NLC had jurisdiction to undertake a review of the grant in respect of the suit properties.
 - iii. Whether the Constitutional Rights of the Petitioner were violated.
 - iv. Whether the decision by the NLC which culminated in the Gazette Notice Vol. CXVIII – No.6 of 22/01/2016 should be brought to this court for quashing.
 - v. Whether the 1st Petitioner's title is valid.
 - vi. Whether the Petitioner is entitled to declaratory orders
 - vii. Lastly what Orders should be made on costs
53. In order to respond to the above issues, it is important to provide a brief background on the facts of this dispute so as to put the questions in the proper context. The 1st Petitioner, Mwiki Company Limited, was incorporated on 29/03/1982. According to the documents annexed on the Petitioner's Affidavit, the Petitioner issued with a grant of the parcel Grant No. 119779/1 and measuring 21.71 hectares or thereabout Land Reference Number 8469/14 on 4/09/2009. Further the Petitioner was also with another parcel Grant No. 119778 IR Number 36766/16 Land Reference Number 8469/4/7 measuring 3.6 hectares or thereabout on 04/09/2009. The purchase/sale agreement is however not attached on the documents produced by the Petitioner.
54. The Petitioner has averred that after purchasing the two parcels and being issued with certificates of lease it amalgamated the two properties and surrendered the title deeds to Commissioner for Lands and the new parcel was assigned a new number Nairobi Block 164. That the new parcel was subdivided into 522 sub-plots and these were allotted to the Petitioner's members.
55. That two members of the 2nd Respondent's Welfare Society sued the Petitioner in Nairobi ELC 1035 OF 2013 which was dismissed. Further the 2nd and 3rd Respondents wrote to the 1st Respondent, National Land Commission stating that LR 8469/4/7 AND LR 8469/14 were open spaces and had been grabbed by the Petitioner. Further that the 3rd Respondent has encouraged and displaced the petitioner's members from the members' plots after starting development on the suit premises claiming the same as public utilities.
56. That the 1st Respondent through a letter dated 2/11/2015 ruled that parcel no. LR 8469/4/7 was public land and that it had been illegally transferred to the Petitioner and it was allotted to the 6th Respondent to hold in trust for the primary school. Further that through the same letter the 1st Respondent allocate parcels numbers 65,69, 70, 121, 174 and 175 in LR 8469/14 as open space for use by the residents of Mwiki. The Petitioner contest that LR 8469/4/7 has never been marked as public land nor parcels 65,69, 70, 121, 174 and 175 in LR 8469/14 surrender to government as open spaces when the mutation was done.
57. The Petitioner therefore alleges use of force by the Respondents, abuse of their offices and trespass on the Petitioner's members' properties.



58. On the other hand, the 4th Respondent is categorical that the following hearing proceedings by the 1st Respondent, the conclusion was that the amalgamation of LR 8469/14 and LR 8469/4/7 was to be cancelled and also the allocation of plots 132 to 171 was to be cancelled too.
59. Further even allocation for plots 174,175,65,69,70 and 121 were recommended for cancellation and the open spaces contained in the said plots were allocated to the 3rd Respondent to hold in trust for Mwiki Residents.
60. These decisions by the 1st Respondent were published in the Kenya Gazette dated 22/01/2016. As a result of the cancellation, the 3rd Respondent authorized construction of an ablution Block and Mwiki Ward Water Extension on plots numbers 65,69 and 70 and the 4th Respondent awarded the tender to a company that is undertaking the construction.
61. The 1st, and 3rd Respondents did not file any responses nor submissions. However, the 2nd, 5th, 6th and 7th Respondents filed replying affidavits and grounds of opposition and submissions to the Petitioner's claim. On the part of the 5th, 6th and 7th Respondents they raised five issues for consideration which are considered in the writing of this judgment. I will now turn to the issues I have identified in my judgment and tackle them one by one.

Whether the Petition is validly before the court

62. The 4th Respondent's advocate submitted that in arriving at its determination, the 1st Respondent was acting within its mandate of protecting public property. That in doing so the 1st Respondent was acting as a quasi-judicial body; that a Constitutional Petition cannot be brought against a quasi-judicial body alleging violation of rights and freedoms of a party before it and that the Petitioners should have either filed an Appeal or a Judicial Review Application. Counsel relied on the case of Republic vs National Land Commission & 2 Others Ex Parte Dakane Abdullahi Ali [2019] eKLR, Civil Appeal No. 8 of 2004 Kephma Maobe & 365 Others vs Benson I Mwangi and City Council of Nairobi.
63. Counsel submitted that what is before the court is not an appeal and if the court was to choose to treat it as an appeal then there are no proper grounds of appeal and also the reliefs sought which are 20 in number are untenable as they go against public interest and public policy.
64. One of the grievances of the Petitioners is the alleged act of the violation of their rights under Articles 40, 47, 50 and 73 among others of *the Constitution* by the 1st Respondent when it directed the 5th Respondent to revoke its title. Article 40 (1) of *the Constitution* provides as follows:

“Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property of any description and in any part of Kenya.”
65. On the other hand, Article 47 (1) of *the Constitution* stipulates that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, while Article 73 provides that authority assigned to state officers is a public trust to be exercised in a manner that is consistent with the purposes and objects of *the constitution* and vests in the state officer the responsibility to serve the people rather than the power to rule them among others.
66. Indeed, according to the Petitioner its right and that of its members to own property in any part of the country has been violated by the 1st Respondent's direction to have their titles cancelled and that having not been afforded a fair hearing, the 1st Respondent breached both Articles 50 and 47 of *the Constitution*. It is in that respect that the Petitioner is seeking for the issuance of an order of declaratory orders in relation to violation of their rights.



67. Article 27 of *the Constitution* provides for the right to Equality and Freedom from discrimination and Article 35 provides for the right to access to information. It is therefore the right of every person to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. The mode of instituting proceedings to enforce the Bill of Rights is by way of a Petition.
68. Once a Petition to enforce the Bill of Rights is filed, like in the instant case, Article 23(3) provides the remedies that are available to a Petitioner, which include: a declaration of rights; an injunction; a conservatory order; an order of compensation and an order of Judicial Review.
69. The *Environment and Land Court Act*, which establishes this court, grants this court the jurisdiction to issue prerogative orders; award damages; compensation; specific performance; restitution; declarations; and costs (see section 13 (7) of the ELC Act).
70. To the extent that the Petitioners have prayed for a declaration that their rights have been breached by the 1st Respondent, and for an order of mandamus, I find that the Petition is validly before this court.

Whether the Constitutional rights of the Petitioner were violated

71. The Petitioner alleges that its rights under Article 22 (3) e, 23, 25, 28, 29, 40 and 48, Sixth Schedule of *the Constitution*, Parts IX sections 134 and 135 of the *Land Act* 47 and 73 to fair administrative action have been violated. It alleges that its rights under Articles 40 on protection of right to property has been violated, its rights under Article 22 (3) e on right to institute court proceedings has been violated, its right under Article 25 on freedom from torture and freedom from slavery and servitude has been violated, among other Constitutional Articles listed above, Article 28 on right to have dignity and be respected has been violated, its right under Article 35 on right to access to information has been violated and its rights under Article 47 (1) and (2) of *the Constitution* were violated.
72. The NLC is a creature of *the Constitution* which is governed by the *National Land Commission Act* as well as the provisions of *the Constitution*. The NLC under the *Land Act* is the commission mandated to undertake compulsory acquisition on behalf of the requesting entities. When it was brought to its attention that the parcels of land mentioned in the instant suit which had amalgamated constituted public land and public utilities, it carried out an inquiry where it was found that the title to the suit property had been unlawfully allocated to the Petitioner. The NLC recommended that the name of the Petitioner be deleted from the Gazette notice and in place thereof that of the 3rd Respondent will hold in trust for the Mwiki Residents plots numbers 174, 175, 65, 69, 70 and 121 which were found to be open spaces provided for under LR 8469/4/7.
73. The reasons for this action are clearly captured in the determination by NLC dated 26/01/2016. The Petitioner cannot therefore argue that his rights were violated. The suit property was found to have been unlawfully acquired and amalgamated without considering that the provisions of the public utilities therein as already provided for. The public utility plots were already marked out as public utilities and so the Mukinyi Enterprises Limited sold public utility plots to the Petitioner. The Petitioner could not be saved by Section 14(7) which provides that no revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title. This is because, the NLC found that the Petitioner was aware of the public utility plots since these were clearly provided for in the original map of the area.



74. Article 47 (1) and (2) of *the Constitution* provides as follows:-

- “(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is *Constitution of Kenya, 2010* 33 likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

75. The Petitioner claims that his rights under Article 47 (1) and (2) were violated. The Petitioner claims that he was not involved in the proceedings which resulted in the deletion of his name from the Gazette which had published its name as the one whose titles were to be cancelled. Contrary to the Petitioner’s claim, the determination by NLC shows that he was addressed in the letter dated 2/11/2015 and the Commission states that the Petitioner made presentation at the NLC meetings held to discuss the issues pertaining to LR 8469/4/2, 8469/4/5 (LR No. 28395), 8469/4/7 and various open spaces within Mwiki Estate. This document is produced by the 2nd Respondent as JN-11 and the Petitioner has not denied its authenticity nor produced evidence to the contrary. There is therefore no basis upon which the Petitioner can claim that he was not subjected to a process which was fair. I therefore find that there was no violation of the Petitioner’s rights under Article 47 (1) and (2) of *the Constitution*.

76. A determination on ownership of the subject title can only be made upon a formal hearing of the matter by the court in an Appeal and not through a Constitutional Petition; that a Constitutional Petition can only be filed for purposes of curing injured rights and freedoms and that the Petitioners are yet to establish their proprietary interest in the suit land.

Whether the decision of the NLC which culminated in the Gazette Notice No. Vol. CXVIII – No.6 of 22/01/2016 should be quashed.

77. The Petitioner’s contention is that he was not involved in the process leading to the gazette notice of 22/01/2016. As has been demonstrated hereinabove, the Petitioner was involved in the process. There is no way he can therefore turn round and claim that he was not involved. The Petitioner was afforded a hearing. The decision which was arrived by the NLC was logical. The decision was never irrational as to call for its quashing. The Court in considering the issue being raised by the Petitioner is only concerned with the decision making process which in my view was fair. The decision was arrived at through logical reasoning. I therefore find that the decision by NLC to delete the name of the Petitioner and replacing it with that of the 3rd and 5th Respondents cannot be quashed.

Whether the Petitioner is entitled to the declaratory orders as prayed.

78. The Petitioner is seeking declaratory orders, a mandamus and compensation. It is clear from the analysis hereinabove that a finding has been made that the suit property had been unlawfully allocated to the Petitioner. The 3rd and 5th Respondents have been gazetted as holding the suit properties on behalf of the owners who are the intended Primary School and the open spaces for the Mwiki Residents. There is therefore no basis upon which the 5th Respondent can be compelled to register the Petitioner’s proprietary interest of ownership in the register and issue certificates of lease as prayed. It is clear from the verdict by NLC that the suit property was obtained by the vendors who sold it to the Petitioner in a fraudulent manner. There is no order of vacant possession that can obtain given the circumstances.



Disposal Orders

79. It is now clear from the above analysis that the Petitioner's petition has no merits. The same is hereby dismissed and given that it evinces strong veneers of Public Interest Litigation; parties will bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 23RD DAY OF FEBRUARY, 2023.

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MOGENI J

JUDGE

Judgment read in Virtual court in the presence of:

Mr Pamba for the 4th Respondent

Mr Wesonga holding brief for Mr Kiprop for the 3rd Respondent

Mr Chege holding brief for Mr Mageto for the Petitioner

Mr Motari for the 5th, 6th, and 7th Respondent

No appearance for the 2nd Respondent

Ms. Caroline Sagina: Court Assistant

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MOGENI J

JUDGE

