



**Muyuma v Kaveva & another (Environment and Land Case Civil Suit 7 of 2021) [2023] KEELC 16427 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16427 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 7 OF 2021  
LG KIMANI, J  
MARCH 16, 2023**

**BETWEEN**

**MBATHA MUYUMA ..... PLAINTIFF**

**AND**

**GEORGE MUKOVA KAVEVA ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. This suit was filed by way of a plaint dated 17<sup>th</sup> January 2017 where the Plaintiff claims land parcel numbers Nzalae/Mutonguni/1037 and 1400, situate in Matinyani Sub County of Kitui County in the Republic of Kenya registered in the name of the 1<sup>st</sup> Defendant George Mukova Kaveva. The Plaintiff avers that the two parcels were excised out of Land parcel number Nzalae/Mutonguni/17 originally registered in the names of his father Muyuma Ileli (Deceased) who passed on 13<sup>th</sup> November 1982.
2. According to the Plaintiff, on or about 11<sup>th</sup> March 2005, the Minister for Lands purported to hear the land dispute filed against the deceased Muyuma Ileli by the 1<sup>st</sup> defendant in this case a in minister's appeal cases no. 129 and 130 of 1989 in respect of land parcel no. Nzalae/Mutonguni/17. The dispute is said to have been filed when the registered proprietor Muyuma Ileli (Deceased) had passed on. It is averred that the Minister created new portions of land in favour of the 1<sup>st</sup> defendant which later were excised by the Kitui District Land Surveyor and the Kitui District land registrar and given numbers Nzalae/Mutonguni/1037 and 1400 respectively.
3. It is the Plaintiff's contention that at the time the minister made this decision there was no legal representative to the estate of the deceased Muyuma Ileli as no grant of representation had been granted to anyone in accordance with the Law of Succession Act Chapter 160 Laws of Kenya. That the said acts were illegal, unlawful, null and void and amounted to intermeddling with the deceased estate.



4. Further, the Plaintiff contends that the Minister for lands in his decision did not indicate the sizes or the extent of land parcel numbers 1037 and 1400 created from the deceased's land parcel no. Nzalae/Mutonguni/17 and the land surveyor and land registrar gave themselves the mandate to hive as much land from the deceased's land as they wished, a process that was unlawful and arbitrary and amounted to alienation of private property without the due process being followed. The Plaintiff claims against the defendants for: -
  1. A declaration that the appeal filed against Muyuma Ileli – deceased and the decision of the Minister for lands dated 11<sup>th</sup> March 2005 in Minister's Appeal case no. 129 and 130 of 1989 concerning land parcel no. Nzalae/Mutonguni/17 and the subsequent implementation thereafter by the Kitui District Surveyor and Kitui District Land Registrar were illegal, unlawful, null and void.
  2. Cancellation to title numbers Nzalae/Mutonguni/1037 and 1400 respectively registered in the names of the 1<sup>st</sup> defendant and excised from land parcel no. Nzalae/Mutonguni/17 belonging to the deceased Muyuma Ileli and the said parcels of land do revert to and be part of the original parcel of land, Nzalae/Mutonguni/17.
  3. Costs of this suit to be awarded to the plaintiff
  4. Any other just relief.
5. The 1<sup>st</sup> Defendant filed a defence dated 20<sup>th</sup> March 2017 and amended on 4<sup>th</sup> November 2020 in which he denied the allegations in the plaint apart from the fact that the two parcels of land Nzalae/Mutonguni/1037 and 1400 are registered in his name.
6. The 1<sup>st</sup> defendant avers that the Minister for Lands heard the land dispute against the deceased Muyuma Ileli in the Minister's appeal case No. 129 and 130 of 1989 because the family of the deceased had nominated the plaintiff herein to represent them in the appeal. He claimed that the disputes were ongoing from the period land adjudication was declared and that during the proceedings before the committee, arbitration and objection, the plaintiff was conducting the cases on behalf of his father who was by then aged and subsequently after his death he was nominated by the family to represent them in all matters related to the land in dispute. He stated that it was not his responsibility to apply for Letters of Administration to the estate of the plaintiff's father but the plaintiff's responsibility.
7. Further, the 1<sup>st</sup> defendant states that there is an objection filed in court by Nicholas Munya Makau in respect of Succession Cause No. 194 of 2015 pending in court which relates to Land Parcel Number Mutonguni/Nzalae/17 and the succession has not been finalized.
8. According to the 1<sup>st</sup> defendant, land Parcel Number Nzalae/Mutonguni/1037 has already been adjudicated as his property by a court of competent jurisdiction as against the plaintiff and his brothers. The instant case is therefore bad in law under the doctrine of res judicata, besides being an abuse of the court process.
9. The 2<sup>nd</sup> Defendant also filed a statement of defence denying the allegations in the plaint apart from the registration of the suit property in the 1<sup>st</sup> Defendant's name. The 2<sup>nd</sup> defendant stated that Title No. Nzalae Mutonguni/17 was closed on sub-division pursuant to the Chief Land Registrar's letter dated 12<sup>th</sup> June 2011 to create Nzalae/Mutonguni/1399 registered in the name of Muyuma Ileli and Nzalae/Mutonguni/1400 in the name of George Mukova Kaveva, the 1<sup>st</sup> Respondent herein.
10. According to the 2<sup>nd</sup> Defendant, the Minister's appeal proceeded in the presence of the Plaintiff who participated in the proceeding as a representative of the deceased and did not object to the same.



Further, that the 2<sup>nd</sup> Defendant registered the suit land in the 1<sup>st</sup> Defendant's name in compliance and enforcement of the Minister's decision and order. Further, the 2<sup>nd</sup> Defendant states that the letter from the Chief Land Registrar dated 12<sup>th</sup> June 2014 indicated the sizes of the lands in question.

11. The 2<sup>nd</sup> Defendant denies that this court has jurisdiction and states that the orders sought can only be given in a judicial review court and prays for the suit to be dismissed with costs.

### **Evidence at the Trial Court**

12. During the hearing, PW 1, Mbatha Muyuma, the Plaintiff adopted his witness statement as his evidence in chief where he reiterated the contents of the plaint as summarized herein. He stated that he sued the 1<sup>st</sup> Defendant because he sub-divided land Parcel number Nzalae/Mutonguni/17 registered in the names of Muyuma Ileli, who was his father and created two parcels being land parcel Nos. Nzalae/Mutonguni/1037 and 1400 respectively. This excision and registration were as a result of orders made by the minister of lands and housing on 11<sup>th</sup> March 2005 after hearing of the Minister's appeal numbers 129 and 130 of 1989. The plaintiff complained that the Minister proceeded with the appeal even when his father was deceased.
13. The plaintiff also contended that the judgment of the Minister did not show what size comprised of parcel number 1037 and 1400 and that the land surveyor and the Land Registrar came up with sizes that were not stated by the Minister. The Land Registrar gave the sizes as follows: - land parcel No. 1400 – 34.51 Ha; Land parcel No. 1037 – 29.02 Ha which sizes do not appear as part of the judgment of the Minister and there was no map.
14. The Plaintiff confirmed that the reason he brought the suit was that he was not satisfied with the Minister's decision.
15. DW 1, George Mukova Kaveva, the 1<sup>st</sup> Defendant adopted his witness statement as evidence in chief where he reiterated the contents of the defence as summarized above and produced a bundle of documents dated 14<sup>th</sup> October 2021 as exhibits before the court. In his witness statement, he stated that during the land adjudication process in Nzalae Adjudication area, the father of the plaintiff, the late Muyuma Ileli illegally caused two of his land portions to be adjudicated as part of his land which was then allocated land parcel number 17. He challenged this action before the Land Adjudication Committee and lost the case but at the objection stage, he was awarded the portion where he was farming and the portion was assigned land parcel number 1037.
16. However, the 1<sup>st</sup> Defendant was not fully satisfied with the decision of the said objection and he appealed to the Minister for recovery of the other portion where he used to graze his livestock, through Minister's appeal number 129 of 1989. The plaintiff on behalf of his late father appealed to the Minister in appeal number 130 of 1989 against the award of the home and farmland which had been allocated number 1037. Both appeals were consolidated for hearing, wherein the plaintiff and 1<sup>st</sup> defendant testified in their respective appeals and the verdict was delivered dismissing the plaintiff's appeal Number 130 of 1989 and partly allowing appeal number 129 of 1989. The 2<sup>nd</sup> portion was allocated land parcel number Nzalae/Mutonguni/1400 after land title number 17 was subdivided into 1399 and 1400 pursuant to the directions of the Chief Land Registrar. The 1<sup>st</sup> Defendant now has two title deeds for land titles Nzalae/Mutonguni/1037 and Nzalae/Mutonguni/1400 respectively while the plaintiff's family retained their portion Nzalae/Mutonguni/1399.
17. According to the 1<sup>st</sup> Defendant, since his parcel of land number Nzalae/Mutonguni/1037 borders that of the plaintiff number Nzalae/Mutonguni/1399, the plaintiff and his sons encroached into his land title Number Nzalae/Mutonguni/1037 and he sued them in Kitui Chief Magistrate's Court in Civil



Case Number 73 of 2006, whereby the court entered judgment in his favour and the defendants were eventually evicted.

18. The 1<sup>st</sup> Defendant contends that his process of acquiring land titles number 1037 and 1400 was lawful and in accordance with the law, and neither the plaintiff nor any other member of his father's family challenged the said process, and as such, the case is not only an aforethought, but gross abuse of the court process.
19. The 1<sup>st</sup> Defendant confirmed that when they were conducting the adjudication case, the extent of the land in dispute was known throughout the process from the committee stage to the Minister's appeal and that survey was done by government surveyors
20. The 2<sup>nd</sup> Defendant did not call any witness.

#### **Plaintiff's written submissions.**

21. Counsel for the Plaintiff submitted that since the 2<sup>nd</sup> Defendant did not call any evidence, the case against them is uncontroverted and therefore unchallenged. Counsel relied on the holding in the case of *Linus Ng'ang'a Kiongo & 3 others vs Town Council of Kikuyu* (2012) eKLR.
22. It is the Plaintiff's submission that the case before the Minister proceeded on 18<sup>th</sup> August 2004 when the owner of the land had passed on and the Plaintiff herein was not the legal representative of the estate at the time since his grant of representation was given in 2016. The counsel quoted from the decision in *Robert Muli Matolo-vs-Director of Land Adjudication & 2 others* (2014) eKLR where the court held that the rules of civil procedure have application in regard to parties before the Minister and the case of *Republic vs District Commissioner Makueni & 2 others ex parte Cyrus Muli Kula* (2017) eKLR where the court held that the District Commissioner had no authority to appoint a personal representative of the deceased.
23. It is therefore the Plaintiff's submission that the Minister proceeded with hearing a party who had no locus standi thus the proceedings before the Minister were illegal, unlawful and null and void.
24. Secondly, the Plaintiff submitted that the District Commissioner did not indicate the sizes of the land to be excised from the mother title and this was prone to abuse because the surveyor created imaginary boundaries that had no basis and was arbitrary and caused a miscarriage of justice. It is their submission that the area in dispute ought to have been established, a map drawn and delineated on the ground.

#### **The 1<sup>st</sup> Defendant's submissions.**

25. Counsel for the 1<sup>st</sup> Defendant submitted that the process that the 1<sup>st</sup> Defendant eventually acquired title was lawful in accordance with the *Land Adjudication Act* CAP 284. He relied on section 29(3) of the Act which states that the register becomes final after the Minister's appeal and cannot be reopened. They relied on this court's decision in the case of *Jumaa Mukuma vs Musembi Mutunga & Another* (2022) eKLR.
26. The 1<sup>st</sup> Defendant also submitted that the technicalities of legal representatives do not apply in quasi-judicial tribunals like appeals to the Minister. They also submitted that the Plaintiff lawfully prosecuted the appeals before the Minister on behalf of his father through a process permitted under the *Land Adjudication Act*, and cannot turn around and accuse the Minister for Lands of having committed irregularities or illegalities and prayed that the Plaintiffs suit against the 1<sup>st</sup> Defendant be dismissed with costs.



## Analysis and Determination

27. I have considered the claim by the Plaintiff, the defences filed, the evidence adduced at the trial and the documents relied upon. In my view the issues that arise for determination are as hereunder;
- A. Whether the proceedings in Ministers Appeal cases 129 and 130 of 1989 without substitution of the deceased Muyuma Ileli by the legal representative of his estate were unlawful.
  - B. Whether the decision of the Minister in Ministers Appeal cases 129 and 130 of 1989 and its implementation can be challenged by way of this suit.
  - C. Whether the acreage allocated to the land Parcel Nos. Nzalae/Mutonguni/1037 and Nzalae/Mutonguni/1400 being excision out of Land Parcel No. Nzalae/Mutonguni/17 while implementing the decision of the minister's appeal by the Kitui District Surveyor and District Land Registrar was lawful.
28. The Plaintiff and the 1<sup>st</sup> defendant filed what they considered to be issues for determination. Some of the said issues are, in my considered view, facts that are not denied by any of the parties. It is admitted that the suit land parcel No. Nzalae/Mutonguni/1037 and Nzalae/Mutonguni/1400 are registered in the name of the 1<sup>st</sup> defendant and the same were excised out of land parcel No. Nzalae/Mutonguni/17 which was registered in the name of the deceased Muyuma Ileli. It is also admitted that the two parcels of land were excised pursuant to adjudication proceedings culminating in the decision in Ministers Appeal cases 129 and 130 of 1989.

### **A. Whether the proceedings in Ministers Appeal cases 129 and 130 of 1989 without substitution of the deceased Muyuma Ileli by the legal representative of his estate were lawful.**

29. The Plaintiff claims that his father Muyuma Ileli died on 13<sup>th</sup> November 1982 and that when or about 11<sup>th</sup> March 2005 the Minister heard the appeals 129 and 130 of 1989 there had not been any substitution of the deceased by the legal representative of his estate. The Plaintiff states that he was granted letters of administration on 16<sup>th</sup> March 2016 and thus he had no locus standi to be heard in the appeal as a representative of the deceased Muyuma Ileli. He claims that on that basis the proceedings were illegal, in contravention of the provisions of the Law of Succession Act and amounted to intermeddling with the estate of a deceased person.
30. The 1<sup>st</sup> defendant on his part states that the dispute herein was commenced when Muyuma Ileli was alive and the Plaintiff was the person who accompanied his father during the land adjudication proceedings since his father was aged and ailing. The 1<sup>st</sup> defendant further stated that after his father's death the plaintiff was nominated by the family to represent them in the dispute and he continued to do so even during the Ministers appeal hearing. The fact that the plaintiff represented his deceased father is confirmed by the proceedings in Appeal No. 129 and 130 of 1989 when the plaintiff gave evidence and is recorded as representing his father.
31. The Plaintiff relies on the cases of *Robert Muli Matolo-vs-Director of Land Adjudication & 2 others* (2014) eKLR and *Republic vs District Commissioner Makueni & 2 others ex parte Cyrus Muli Kula* (2017) eKLR for the submission that rules of civil procedure have application in regard to parties before the Minister in land adjudication disputes and for the submission that a deceased party must be substituted by the legal representative of his estate.
32. In my view the above cited authorities determined the issues before the particular courts and the said decisions are not binding on this court. I have considered decisions of the court of appeal when determining similar issues as the ones under consideration in the present case. The Court of Appeal in



the case of *Timotheo Makenge v Manunga Ngochi* [1979] eKLR found that the Minister while hearing an appeal under the *Land Adjudication Act* is not bound to follow the Civil Procedure Rules. The court stated as follows;

“As regards res judicata, section 12(1) of the Act imposes on the adjudication officer a duty, when hearing an objection, “so far as is practicable” to follow the procedure directed to be observed in the hearing of civil suits. Section 7 of the *Civil Procedure Act* precludes any Court from trying an issue which has been heard and finally decided by another Court. Order XX, rule 4, of the Civil Procedure Rules lays down that a judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

But no such duty to follow the procedure laid down for the hearing of civil suits is prescribed in respect of the Minister. He is not bound to follow the prescribed procedure. His duty, by section 29 of the Act, is to, “determine the appeal and make such order thereon as he thinks just.” That is exactly what the Minister did in this case. He had in mind the previous litigation, but gave no effect to it. In my view, he was justified in doing so. The “final decision” of the court of review, whilst upholding the respondent’s claim to “land at Raimurithi”, spoke of constant “encroachments”. The exact area was not precisely defined, presumably because it could not be precisely defined. The Minister also noted that boundaries had been crossed, and that claims to the land had been changed. This lack of precision as to the extent of claims leads me to believe that res judicata could not have applied to the proceedings before the Minister, and I do not think that any breach of natural justice resulted from the Minister’s refusal to give effect to decisions in earlier litigation. It is also arguable that the principles of res judicata have no bearing on disputes under the Act, except to the extent of showing whether a claimant has a bona fide claim or not. Section 18 of the Act makes it clear that existing boundaries can be altered and adjusted. This would not be possible if the rules of res judicata were strictly applied. In my view, interests in land within an adjudication area previously recognised by Courts are not binding in land adjudication proceedings, and are only relevant as a factor to be taken into account.”

33. Substitution of a deceased party to a pending suit by the legal representative of his estate is provided for under Order 24 of the *Civil Procedure Rules*. The Court of Appeal in the case of *Dominic Musei Ikombo v Kyule Makau* [2019] eKLR had this to say on substitution of parties by legal representatives during the adjudication process.

“Our view is that proceedings conducted under the *Land Adjudication Act* are not strictly speaking akin to proceedings under the *Civil Procedure Act*. The District commissioner acting on behalf of the Minister has wide latitude to conduct the proceedings in a manner that meets the substantive ends of justice. Section 13 of the *Land Adjudication Act* talks of “guardian” or “representative according to African Customary Law”. It does not refer to legal representatives. The strict rules of civil litigation as relates to capacity to sue and be sued do not apply to proceedings before the committee or the minister. It is not therefore necessary for a person appearing on behalf of a family or clan where the head of the family or clan has died to possess letters of administration in respect of a deceased claimant. The parties therefore had locus standi to appear before the adjudication committee, lack of letters of administration notwithstanding.

Further, the Act allows every person who considers that he has an interest in the land in question to lodge a claim to the recording officer. In this case, the parties did not



need to obtain letters of administration to protect their interest in the land in question. Furthermore, the two qualified as representatives of the deceased under customary law to represent their respective families in the adjudication proceedings.”

34. This court is bound by the decision of the Court of Appeal above being a superior court. Therefore, the impugned proceedings before the District Commissioner were not a nullity due to the fact that the Plaintiff had not taken out letters of administration to his father’s estate. I do find that he was a valid and competent party to the proceedings and a representative of the family of the deceased Muyuma Ileli.
35. Further, regarding the question of a legal representative of the estate of Muyuma Ileli (Deceased), Section 13(5) provides that:

“Where several persons claim separately as successors of a deceased person, and one or more of those persons attends, his or their attendance shall be taken to be the attendance of all the successors, unless the adjudication officer otherwise directs.”

**B. Whether the decision of the Minister in Ministers Appeal cases 129 and 130 of 1989 and its implementation can be challenged by way of this suit.**

36. The plaintiff contended that he was not satisfied with the decision in the Minister’s appeal in adjudication of the suit property and that is the reason he challenged it by way of this suit. Section 29 of the *Land Adjudication Act* provides that the Minister’s decision is final. Courts have on various occasions dealt with finality of the Ministers decision and in my view arrived at the conclusion that there is no provision for an Appeal from the Minister’s decision and the role of the court over land adjudication proceedings is supervisory. This was well elaborated by Okongo J in *Tobias Achola Osidi & 13 Others vs. Cyprianus Otieno Ogalo & 6 others* (2013) eKLR where the court held as follows;

“It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interest in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act. It is for this reason that, there is injunction under section 30 of the Act to any civil suit being instituted over an interest in land in an adjudication area save with leave of the Land Adjudication Officer. The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. (Emphasize added). As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the residents of the area concerned. I am fully in agreement with the submission by the advocates for the defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the Court. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. (Emphasize added). The court cannot however usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land”.

37. From the foregoing it is clear that the courts role is limited to supervision & enforcement of the decisions of adjudication bodies. The courts also ensure that the process of adjudication is undertaken in accordance with the law. I agree with the position taken that the court can only interfere with the decision of the bodies established under the Act by way of Judicial Review proceedings or where a



new cause of action is introduced after the proceedings of the Minister have closed. This position was upheld in the case of *Dume Deri Mumbo & 19 others vs. Cabinet Secretary of Lands, Housing & Urban Development & 6 Others* [2016] eKLR, where the court held as follows:

“The issues that are being raised in the current suit as to which clan owns the suit property were conclusively dealt with by the various bodies, including the Minister, pursuant to the provisions of the *Land Adjudication Act*. Considering that the suit herein is wholly challenging the decision of the Minister to allocate the 7<sup>th</sup> Defendant’s clan 2/3 of the suit property, and in view of the provisions of Section 29(1)(b) of the *Land Adjudication Act* which provides that the decision of the Minister shall be final, the Plaintiff cannot appeal against the said decision in the manner that he has done. I say so because the mechanism to resolve disputes within an adjudication area have been set out in the Act. Consequently, the court can only interfere with the decision of the bodies established under the Act by way of Judicial Review proceedings or where a new cause of action is introduced after the proceedings of the Minister have closed. Then, and only then can the court interfere by way of an ordinary suit or Judicial Review Proceedings. As was stated by the Court of Appeal in the Nicholas Njeru case (supra), during the various proceedings, the issues in the current “appeal” were thrashed to the pulp and the issues as to which clan owned the suit property was determined in the year 2012. This court cannot re-open that issue as claimed by the Plaintiff by way of an ordinary suit, without disclosing the new cause of action that has arisen.”

38. In the present case the Plaintiff has not shown that any new cause of action has arisen after the decision of the Minister to cause him to file this suit in court.

**C. Whether the acreage allocated to the land Parcel Nos. Nzalae/Mutonguni/1037 and Nzalae/Mutonguni/1400 being excision out of Land Parcel No. Nzalae/Mutonguni/17 while implementing the decision of the minister’s appeal by the Kitui District Surveyor and District Land Registrar was lawful.**

39. In my view the boundaries and sizes of land claimed by the parties herein was determined from as early as the time the adjudication process began. Section 5 (2) (d) and 13 of the *Land Adjudication Act* gives a right to every person who considers that he has an interest in land within an adjudication section to make a claim to the recording officer, and point out his boundaries to the demarcation officer. From the inception of the adjudication process a party shows boundaries to the land he claims. The initial suit land parcel No. 17 was initially granted to the deceased Muyuma Ileli but the 1<sup>st</sup> defendant challenged the award before the land adjudication committee.
40. One of the duties of the Demarcation Officer under Section 15 of the Act is to demarcate or cause to be demarcated the boundaries of each separate piece of land, whether claimed by an individual or by a group. Under Section 15 (b) the Demarcation Officer is to submit to the committee any boundary dispute which he is unable to resolve.
41. The Survey Officer is empowered to carry out survey work to prepare a demarcation map of the adjudication section, showing every parcel of land identified by a distinguishing number. In my view the demarcation map already shows the sizes and boundaries of the land whose claims have been lodged under the Act. After claims have been made, the recording officer is empowered under section 19 of the Act to consider all the claims made in pursuance of the notice published for establishment of adjudication sections under section 5 of the Act. After investigation the recording officer prepares in



duplicate, in accordance with section 23 of the Act, a form in respect of every parcel shown on the demarcation map.

42. Section 19 (2) of the Act provides for the commencement of the dispute resolution process and states that;

“If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he shall submit the dispute to the committee to decide.”

43. Under Section 21 if a committee is unable to reach a decision on a matter before it, it refers the matter to the arbitration board for decision. The recording officer then rectifies the forms referred to in Section 19(1) in accordance with any decision which the adjudication officer, the committee or the board may make. The said forms prepared by the recording officer under section 19 comprise the adjudication record. Section 23 (3) of the Act gives the particulars of what is contained in the adjudication record and states that;

Each of the forms which comprise the adjudication record shall contain the following information—

- a. the number of the parcel as shown on the demarcation map and its approximate area;
- b. a record of—
  - i. the name and description of the owner, with particulars of any restriction on his power of dealing with it;

44. The demarcation map referred to under Section 19 and the adjudication record referred to under Section 23 is collectively known as the adjudication register and they are the ones that are subject to objection under section 26 of the Act. The adjudication officer is empowered from time to time to alter the adjudication register to conform to any determinations of objections under section 26 of the Act.

45. Indeed after the objection proceedings before the Land Adjudication Officer have been determined registration of the parcels is done in accordance with Section 28 of the [Land Adjudication Act](#) which provides that:

“Upon receiving the adjudication register under section 27 of this Act, the Chief Land Registrar shall cause registrations to be effected in accordance with the adjudication register: Provided that, where the land is affected by an appeal under section 29 of this Act, a restriction shall be made and registered in respect of that land expressed to endure until the determination of the appeal, and on such determination the register shall if necessary be altered in accordance with the determination.”

46. I have deliberately set out the entire adjudication process and in particular the dispute resolution process to show that the records and the maps made during the are amended and changed in accordance with the results of the proceedings before the different bodies. The size of land parcel 17 awarded to the deceased was known when he claimed the same. From the evidence on record the 1<sup>st</sup> defendant was awarded parcel number 1037 after objection proceedings under section 26 of the Act. At the time of registration under section 28 of the Act the size of the said land was obviously already known.



47. Appeals to the Minister are provided for under Section 29 of the *Land Adjudication Act* which states as follows: -

- “(1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
- (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and
  - (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
- (2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
- (3) When the appeals have been determined, the Director of Land Adjudication shall—
- (a) alter the duplicate adjudication register to conform with the determinations; and
  - (b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.”

48. The evidence on record shows that the dispute herein was taken through the above elaborate process of adjudication and the dispute resolution mechanism. The determination of the sizes of the land claimed by the Plaintiffs father Muyuma Ileli and the land claimed by the defendant herein was well known from the inception of the process. The Ministers decision only confirmed the person who owned the specific portions in dispute but did not determine the sizes of the land. The said decision stated;

“Appeal case No. 130/1989 for parcel No. 1037 is dismissed. Name George Mukova Kaveve to remain as per the objection Board ruling. Appeal Case No.129/1989 Parcel No.17 is (part) allowed.”

49. Further interpretation of the provisions of Section 29 of the Act shows that the plaintiff had access to the adjudication map since he is the one who lodged Ministers appeal number 130/1989. Under The Land Adjudication Regulations, 1970 Regulation 4 on Appeals to Minister against determination of objection it is provided that;

“Any person submitting an appeal to the Minister under section 29 of the Act shall attach to his appeal a tracing from the demarcation map of the boundaries of the holdings in dispute.”

49. The implementation of the decision of the Minister shows a series of communication commencing with the letter dated 17<sup>th</sup> May 2007 from the Director of Land Adjudication and Settlement to the District Surveyor, instructing the District Surveyor to implement the decision on the ground and for it to reflect on the Registry Index Map and that a new adjudication record would be prepared for the resultant new number. Further, a letter dated 12<sup>th</sup> June 2014 from the Chief Land Registrar to the



District Land Registrar and copied to the office of Land Adjudication and Settlement, stating that the decision in the Minister's Appeal was that:

“Appeal partly allowed. Restriction to be removed. Parcel No.17 sub-divided to create parcel no.1399 measuring 204.44 ha for Muyuma Ileli and parcel no.1400 measuring 34.51 ha for George Mukova Kaveva.”

49. The letter from the District Land Adjudication Officer to the Director of Land Adjudication and Settlement on the implementation of the Ministers decision shows that the area awarded for land parcel No. 1037, remained the same i.e. 29.02 Ha. This means that the said area was determined before the decision of the Minister. The Minister's decision in the two appeals was implemented, and the resultant titles were: land title number Nzalae/Mutonguni/1399 measuring 204.44 hectares (Muyuma Ileli (Deceased), Land Title Number Nzalae/Mutonguni/1037 measuring 29.02 hectares (George Mukova Kaveva) and land title number Nzalae/Mutonguni/1400 measuring 34.51 hectares (George Mukova Kaveva).
50. In conclusion, this suit lacks merit for the reason that the Plaintiff was a proper successor to the claimant Muyuma Ileli within the meaning of Section 13(5) of the Land Adjudication Act CAP 284 and he was therefore a proper party in the adjudication proceedings. Further, the size to be excised from land parcel number Nzalae/Mutonguni/17 was established during the process of land adjudication and was not determined during the hearing of the appeal to the Minister. The court also finds that the suit herein amounts to an attempt by the plaintiff to re-litigate the issues heard and determined in the course of the land adjudication process culminating with the decision of the Minister in contravention of the provisions of Section 29 of the Land Adjudication Act.
51. The upshot of this is that the suit herein is dismissed with costs to the 1<sup>st</sup> defendant.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 16<sup>TH</sup> DAY OF MARCH 2023.**

**L. G. KIMANI**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITUI**

**Judgement read in open court in the presence of:**

C/A Musyoki

K. Mbuvi holding brief for Kalili for the Plaintiff

M/S Ngala holding brief for Mwalimu for the 1<sup>st</sup> Defendant

No attendance for the 2<sup>nd</sup> Defendant

