



**M'Ringeera & 4 others v District Land and Adjudication Settlement Officer -Igembe & another  
(Environment & Land Petition 4 of 2017) [2022] KEELC 3484 (KLR) (18 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3484 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND PETITION 4 OF 2017**

**LN MBUGUA, J  
MAY 18, 2022**

**BETWEEN**

**GEOFFREY M'RINGEERA ..... 1<sup>ST</sup> PETITIONER  
SOLOMON MUNYUA MUTUAMWARI ..... 2<sup>ND</sup> PETITIONER  
JOSEPH MUNYUA KUBAI ..... 3<sup>RD</sup> PETITIONER  
AMBROSE MICHUBU MBURUGU ..... 4<sup>TH</sup> PETITIONER  
DAVID MUTURI MUTUNGE ..... 5<sup>TH</sup> PETITIONER**

**AND**

**THE DISTRICT LAND AND ADJUDICATION SETTLEMENT OFFICER -  
IGEMBE ..... 1<sup>ST</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**History and Pleading**

1. “Anything that can go wrong will go wrong”, so goes murphy’s law and the dispute herein is a classic example of the above satire. The dispute herein relates to what appears to be a botched adjudication exercise in the expansive area of Igembe South in Meru County. Having worked in Meru ELC Court, I take judicial notice that conflicts of great magnitude have thrived in the area only gaining momentum through the decades such that even lives have been lost. Mr. Mbogo, counsel for some of the petitioners while making a case for ADR (Alternative Dispute Resolution) to be applied once addressed this court as follows; “I was going to be the 7<sup>th</sup> person to die in this matter. I don’t wish anyone else to die” and indeed it had come to pass that the said counsel had been shot! Peace meetings were apparently carried out involving even the County security committee, ADR was relentlessly pursued. However, the Gordian knot proved too tight to be severed hence this judgment.



2. The petition was filed by the first five Petitioners who brought the action on their own behalf and on behalf of their families and clansmen claiming that they own, occupy utilize and have developed their land in Amungenti “d” Adjudication Section. They identify themselves as the elected chairmen of their respective clans as follows: 1st Petitioner - Antubaita clan 2nd Petitioner - Uringu Clan 3rd Petitioner - Akithigi Clan 4th Petitioner - Akachiu clan 5th Petitioner - Antubankuru clan
3. Vide the petition dated 29.3.2017, they sought the following orders:
  - i. That this honourable court do declare that the 1st Respondent’s decision of refusing to register genuine land owners to the adjudication register in Amungenti ‘D’ Adjudication Section is unconstitutional.
  - ii. That the honourable court do declare that the lands in Amungenti “D” Adjudication Section have never been legally and/or properly demarcated and the present and ongoing exercise is which shall establish the proprietary rights of the petitioners and their clansmen and other genuine land owners.
  - iii. That the honourable court do order that the 1<sup>st</sup> Respondent shall establish the land proprietary rights of all parcels of lands within Amungenti ‘D’ Adjudication Section by working in consultation within the elected and sworn-in land committee members.
  - iv. That this honourable court do order that it is the constitutional right of the petitioners and/or any other person to file a committee case against any registration and that such a committee case should be expeditiously adjudicated upon.
  - v. That this honourable court do declare that it is the right of the petitioners and/or anyone else to challenge any committee case decision before Arbitration Board.
  - vi. That the honourable court do make any other and/or further decrees, declarations and/or orders as shall promote the rule of law and serve justice to the residents and land owners of Amungenti “d” Adjudication section who include the petitioners and their clansmen.
  - vii. That this court do declare that the existence and recognition of registered numbers by the 1st Respondent which are not backed by existence of any grounds and/or proprietary rights is irregular, illegal and unconstitutional.
  - viii. That costs of this petition be provided for.
4. Through an application dated 5.6.2017, 227 Applicants sought leave to be joined in these proceedings as Petitioners alongside the initial 5 Petitioners. Still on the same date, another application was made by 8 Applicants who sought to be joined in these proceedings as Interested Parties alongside 160 others. Both applications were allowed by consent of all parties on 26.9.2017.
5. Some Interested parties then filed a Replying Affidavit with a cross petition on 28.10.2019 contending that they are the lawful residents of Amungenti “D” settlement scheme pursuant to an adjudication process which was carried out and concluded and they were only awaiting issuance of Title deeds. These new parties therefore sought the following orders:
  - i. That the Petition herein be dismissed with costs
  - ii. That this honourable court be pleased to grant the following orders on the cross petition herein that:



- a. There be a declaration that the Interested Parties are the lawful allottees of the land within the Amungeti D adjudication section.
  - b. There be an order of certiorari quashing the purported demarcation of the Amungeti D section carried out by the Petitioners and the Respondents between March 2018 and March 2019.
  - c. There be an order of Mandamus directing the Respondents to finalize the adjudication process undertaken over the Amungeti adjudication Section and which resulted into the allocation of plot numbers to the interested parties being the original, real and actual residents of the said area.
  - d. There be a conservatory order restraining the Petitioners and the Respondents from removing and/or in any way interfering with the Interested Parties occupation and use of the subject area being Amungeti adjudication section.
  - e. That costs be provided.
6. At this juncture, I must point out that the persons who filed the Replying Affidavit and Cross Petition are not the ones who had been joined in these proceedings on 26.9.2017 through the application dated 5.6.2017 of the intended interested parties!
7. I did not see any pleadings filed in response to the Petition or Cross Petition by the Respondents. Instead, the Respondent filed a Notice of Preliminary Objection dated 10.11.2017 where they raised the following grounds:
- i. That the petitioners herein lack the requisite locus in terms of Article 23 of *the Constitution*.
  - ii. That there is no identifiable right in terms of Article 40 of *the constitution* capable of being enforced.
  - iii. That in the absence of the required locus and any identifiable right, Article 23,165(2)(b) and 258 have not been properly invoked.
  - iv. The jurisdiction of the Honourable court is limited/ousted by the *land Adjudication Act* Chapter 284 Laws of Kenya.
  - v. The Responsibilities of the 1st Respondent are exhaustively set out in the *Land Adjudication Act*, Cap 284 Laws of Kenya
  - vi. The Notice of Motion dated 29/3/2017 and the Petition dated 29/3/2017 are premature, are not well grounded and are an abuse of court process.
  - vii. Article 67(2)(e) of *the Constitution* created the proper forum for ventilating the petitioners grievances.
8. For the better part of the lifespan of this suit, the parties had sought ways to resolve the dispute amicably through ADR as from 3.4.2017. Sadly, this did not bear fruits. On 14.10.2019, the court gave a raft of directions including the maintenance of status quo, the filing of a Cross Petition and responses thereof, as well as the hearing of the Petition by way of affidavit evidence. In particular, the Respondents were directed to file and serve their Replying Affidavits to the Petition and Cross Petition by 26.11.2019. To this end, parties were to file and exchange their written submissions and the matter was to be mention on 2.12.2019 for highlighting.



9. It is important to note that the Respondents did not file any such Replying Affidavits. Instead, when the matter came up on 2.12.2019, counsel for Respondents stated that their preliminary objection (which was to be heard alongside the petition) was sufficient and they would only submit on the same. The other parties gave substantive, rather lengthy oral submissions, but at the end of it all, the court with consensus from the advocates re-directed the matter for Alternative Dispute Resolution Mechanism in light of the volatile and sensitive nature of the dispute. Thereafter, the court was severally informed that Alternative Dispute Resolution Mechanism was progressing well but eventually, it collapsed!

### **Case for the Petitioners**

10. The Petitioners case is that sometime in the 1980's and/or early 1990's, the 1st Respondent declared the Amung'enti "b" Adjudication Section as an adjudication area which comprised a big swarth of what is currently known as Kiguru Location in Meru County. Many protracted land disputes ensued in this expansive area, such that vide a gazette notice dated 08/07/2014, the AMung'enti "b" Adjudication Section was split into 4 different sections namely; Amungenti "B", "C", "D" and "E".
11. The lands that are owned, utilized and occupied by the five (5) clans of whom the petitioners herein belong, fell into the newly created Amungenti "d" Adjudication Section."
12. Due to the ambiguity and uncertainty of the proprietary rights within Amung'enti "d" Adjudication Section, there has been a liturny of court cases, both civil and criminal in nature. Some of the cases include Meru ELC Petition 31 of 2014 in which a consent Judgment was entered on 2.11.2015 disbanding the land committees for the Amungenti Adjudication Section and a new committee was to be appointed in consultation between the Petitioners and the Government. This was followed up by the Maua Case CMCC No. 197/2015 where the court gave orders; that status quo prevailing as at 2.11.2015 was to be maintained where those whose occupation to the respective portions was not disputed were not to be evicted. Where status quo could not be ascertained, the lands were to remain unused for the period the committee was doing its work and parties were NOT to put up structures and homesteads pending the determination of ownership by the land committees.
13. The petitioners contend that the committees were duly constituted with the Chairman being Moses Chege Barungu. However, they were informed by the District Land Adjudication and Settlement Officer (Dlaso) -Igembe that "only those people possessing registration numbers would be considered for registration and that only the officers of the Dlaso would identify those to be registered as owners of the land and the decision would not be challenged in committee cases."
14. The Petitioners contend that the actions of the 1st Respondent are illegal and amounts to an attempt to disfranchise them and their Clansmen of their interests in the land leading to dispossession of their ancestral land.

### **Case for the Interested Parties**

15. As pointed out earlier, there is no record to show how Elias Kanyi Tourimba, Susan Gatundu and Johanna Marinya for case of 230 interested parties came to file their pleadings (Replying Affidavit and Cross Petition filed on 28.10.2019). This is because the Interested parties who obtained leave to be joined in these proceedings on 26.9.2017 were Daniel Kaliunga, Michael Karagu, Robert Kaura, Gelvasio Kabwi, Joseph Maithia, Joseph Langau, Joseph Kaberia Kibuaa and Peter Kitavi and 160 others of whom the full list was to be filed. The 8 Applicants gave authority to Daniel Kaliunga to plead on their behalf in the proceedings. In that regard, I find that the documents filed as the



Replying Affidavit and Cross-Petition have been brought forth by strangers to these proceedings and are therefore disregarded along with their submissions.

### **Case for the Respondents.**

16. The Respondents are relying on their Preliminary Objection.

### **Submissions of the Petitioners**

17. The lack of brevity in the submissions of the Petitioners is rather astounding. Nevertheless, I discern that the gist of their complaint is that the Respondents are recognizing owners of land on the basis of possession of old numbers, and that the Respondents have denied the genuine Land owners an opportunity to tender their grievances before the relevant committees.
18. The petitioners contend that in the 1990's there was a secret adjudication process which was fraudulently handled by the then DLASO, where note books of land registration were created and given out to some 11 or so persons who were all senior officers in the ministry of lands and provincial administration.
19. Upon learning of these events, the Petitioners tried to pursue their case with the various Government bodies. No committee cases could be heard as there was no proper adjudication and demarcation that had ever taken place in what is known as Amungenti "D" Adjudication Section.
20. It was submitted that with the creation of Amungenti D Adjudication Section, the Respondents were bound to carry out a fresh exercise that was open and participatory in order to create primary documents.
21. That the Respondents did commence a fresh exercise and tasked one Julius Kipkorir to conduct the process. However, the said officer stated that he was only going to recognize the bearers of the booklets as the owners. The petitioners further contend that some people appointed in the committees were strangers namely Daniel Kaliunga and Peter Kimenchi who don't belong to the five clans.
22. The Petitioners pray for a declaration that the ongoing adjudication and the creation of the primary documents is the genuine process.
23. In support of their cases, Petitioners relied on the case of: Meru High Court Criminal Case No. 83 of 2019 Republic v. Deputy Inspector General of National Police & 32 others (2013) eKLR. Republic v Inspector Genral of Police Exparte Jackson Cheruiyot Maiyo (2015)eKLR.

### **Submissions of the Respondents**

24. It was submitted that the problem persist because the Petitioners insists on the land being registered as blocks, yet Cap 284 deals with individual interests and not communal interests. That the Petitioners wanted to share the land amongst themselves each getting 5 acres from their respective blocks to the exclusion of all other occupants of the land including the interested parties.
25. It was submitted that the Adjudication process for Amungenti "D" Adjudication Section was never completed and that this issue is not in dispute. It is averred that parcel numbers were issued in the past, though no maps or registers were drawn up. Thus the committees should be left to do their work.
26. It was submitted that before the final register is published in accordance with Section 28 of the [Land Adjudication Act](#), no person can claim to be the exclusive owner of any parcel of land within an adjudication Section.



27. The Respondents relied on the cases of; Ann Kathanga Daniel & 5 others v District Land Adjudication Settlement Officer Igembe & Another (2019) eKLR. Kilisu Julius Mutungi Sile & 60 others V. Chairperson, Floren Adjudication Section “b” and 3 Others (2016) eKLR. George & Onyango v Board of Directors Numerical Machinery Complex Ltd.

### **Determination**

28. Before embarking on the issues for determination, I must point out my dismay in the manner the Respondent has handled this dispute. As pointed out earlier on, there are vicious historical land conflicts that appears to thrive due to botched or incomplete adjudication processes. With this in mind, I would have expected the Respondents to give a clear historical, impartial and factual perspective of the nature and extent of the dispute. The sheer silence of the respondents is appalling, but a pointer to the fact that they have been sapped into the abyss of the dispute.
29. As pointed out by the Petitioners in their submissions, the respondents are the once who have the statutory mandate to carry out the demarcation and adjudication exercise, shepherding the process through the various stages so as to ascertain the rights and interests in land held by various claimants. Thus in discharge of their constitutional mandate, the Respondents should have been at the forefront of facilitating this court to come up with a just, fair and legal final determination of the dispute herein, by impartially providing the court with the truthful and genuine facts related to this matter.
30. This court cannot rule out a scenario where the officers of the Respondents had become partisan, going by the way names have been dropped here and there. Nevertheless, the Respondents had a duty to present an account of what had happened in the past, the current situation and the happenings in between. In particular, the Respondents ought to have given a clear statement as to whether any form of adjudication had taken place in the 1980 - 1990, how the Amungenti “D” Adjudication Section came to be and what processes of adjudication have so far been undertaken.
31. As earlier noted, the Petitioners themselves are rather verbose and were not able to narrow down the issues for determination.
32. As for the Respondents, they attempted to adduce evidence via submissions which is not proper: In the case of *Gideon Sitelu Konchella v Julius Lekakeny Ole Sunkuli & 2 Others* (2018) eKLR the Supreme Court of Kenya stated that:
- “ A Replying Affidavit is the principle document wherein a Respondent’s reply is set and the basis of any submissions and or list of authorities that may be subsequently filed. Absence this foundational pleading, the replying affidavit, it follows that even the written submissions purportedly filed by he 1st Respondent on 17.8.2018 are of no effect.”
33. In that regard only the issues of law raised in Respondents’ submissions shall be considered.

### **Issues for determination**

34. I have considered the pleadings of the Petitioners, the affidavits thereof, the Preliminary objection, the submissions of the Petitioners and those of the Respondents (the latter, to the extent set out by the court), the legal frame work and the prevailing jurisprudence and I deem it fit to frame the issues for determination as follows:
- i. Whether this court has jurisdiction to hear the matter;
  - ii. What is the nature of the land tenure system in the suit land;



- iii. What is the law Applicable;
- iv. The dispute and;
- v. The Relief

35. Jurisdiction

The Respondents in their preliminary objection have averred that the jurisdiction of the court is ousted by operations of the *Land Adjudication Act* Cap 284 laws of Kenya. In their submission, they aver that the Petitioners can only exercise their rights over the suit land as set out under the aforementioned statute. That as at now, no rights can be enforced under Article 40 of *the Constitution* and therefore, the court lacks the locus to entertain the petition which should be dismissed.

36. True, the *Land Adjudication Act* provides, an elaborate Dispute Resolutions Mechanism in so far as adjudication process is concerned - See Tobias Achola Osindi & 13 Others v Cyprianus Otieno Ogalo & 6 Others (2013) eKLR. However, not all disputes relating to matters “adjudication” fall in the ambit of ascertainment of rights and interests in land. In Muthara Njuri Ncheke Council of Elders & Another v Committee of Ngare Mara/ Gambella Adjudication Section & 2 Others (2019) eKLR, this court while dealing with a dispute relating to a corrigendum notice declaring an adjudication area stated that:

“The preamble of the *Land Adjudication Act* provides as follows;

“An act of parliament to provide for the ascertainment and recording of rights and interest in community land, and for purposes connected therewith and purposes incidental thereto”,

Thus the dispute resolution mechanisms provided for under this act are geared towards meeting the objectives and goals set out in the preamble. The issue as to whether the corrigendum notice was issued in accordance with the law is one that cannot be resolved within the laid down dispute resolution mechanisms set out in the act.”

37. The court went ahead to cite the case of *Republic v Musanka Ole Runkes Tarakwa & 5 others Ex-parte Joseph Lesalol Lekitio & others* [2015] eKLR where Munyao J held that;

“A suit that questions the process of land adjudication, rather than the determination of interests, would not be a suit concerning an interest in land, and would therefore not require the consent of the land adjudication officer. Thus, where the adjudication officer, does not for example, appoint an adjudication committee, as provided by section 6 of the *land adjudication act*, a person may be perfectly entitled to institute proceedings in the nature of mandamus, to compel him to appoint the said committee. That would not be a determination of interests in land but would be a proceeding aimed at giving legitimacy to the adjudication process. In such an instance, the consent of the land adjudication officer would not be needed, for the proceeding would not be one concerning an interest in land”.

38. In the dispute at hand, there is a likelihood (the Respondents have neither denied nor confirmed) that an adjudication process was conducted in the 1980-1990’s in the area, in which some people acquired primary documents. It is also contended that the Amungenti “D” Adjudication Section came to be after the “subdivision” of Amungeti B!. Certainly these are issues that touch on the legitimacy of the processes and not just the ascertainment of the rights and interests in land. To this end, I find that this court has jurisdiction to determine the petition.



## The Land Tenure System

39. In paragraph 8 and 9 of the Petition, the Claimants state that they are the owners of the land in Amungenti “D” Adjudication Section, the land is not demarcated but the process has started. It is clear that no titles have been issued in the area as Adjudication is incomplete. It follows that the full rights of ownership to the land have not been pronounced.
40. In the case of *The County Government of Meru & Another v District Land Adjudication and Settlement Officer Tigania East Sub-County and 18 others* (2018) eKLR, I quoted an article “Land Tenure Reform and changes in land use by “Thomas Smucker”, as follows;

“The objective of the individualization of tenure is to increase tenure security through the state sponsored adjudication of rights, thereby creating incentives for improved land management and increased productivity...Land tenure is often considered as a “bundle of rights”, indicating that the holder of tenure may possess any of user rights such as cultivation or extraction of resources (Hahn 1998).....

The implications of these reforms for individual households and for changes in land-use systems continue to be of central importance to rural development in Kenya”.

41. In the above mentioned case, the court went ahead to state as follows in relation to the write up;

“This write up aptly captures the impact of the adjudication process. The individualization of land tenure is something held dear by Kenyans, where the ultimate goal is for one to hold on to a document known as a title deed. This certainly brings about social economic dynamics in terms of increased security, easier and greater land productivity, certainty in inheritance rights and it generally reduces land conflicts”.

42. The bundle of rights held by the petitioners and any other claimants in the suit land are certainly in the realm of customary tenure system. But that does not in anyway diminish their importance. However, the transition and crystallization to individual ownership thereof can only be done through the laid down legal frame work. It is therefore not the mandate of this court to make such a pronouncement as to who owns the land unless and until the dispute has been subjected to the mechanisms provided for under the relevant statutes.

## The Applicable law

43. Both the Petitioners and the Respondents appear to be in agreement that the applicable law is the *Land Adjudication Act*. However, the Petitioners contend that no proper legal adjudication process has been undertaken for 3 decades. The Respondent opted to be evasive on this point, simply stating that the adjudication is not complete and that Petitioners want to have their way in the adjudication process. I however have no reason to doubt that the applicable law is primarily the *Land Adjudication Act*. cap 284 Laws of Kenya.

## The Dispute

44. Ultimately, the clamour for the formal recognition of ownership of land in Amungenti “D” Adjudication Section forms the gist of the dispute. However, that recognition will have to go through the laid down dispute resolution mechanisms set out in the relevant Act. In that regard, the question as to who are the genuine owners of the land cannot be answered in this petition. The court will however



delve into the question of legitimacy of the process particularly in relation to use of old registration numbers as well as the place of the committees.

45. The case of *Ann Kathanga Daniel & 5 Others v District Land Adjudication & Settlement Officer Igembe & Another* (2019) eKLR availed by the Respondents gives a step by and step account of the various stages of adjudication process. In the aforementioned case, it is stated that:

“42. The application of this Act begins with the concerned Minister (read Cabinet Secretary) appointing the Adjudication officer who will oversee the operationalization of the Act. The Adjudication officer will then appoint other officers to assist him which include demarcation officers, survey officers and recording officers. The Adjudication officer will thereafter establish through the notice an adjudication section.

43. The Adjudication officer will also appoint adjudication committee, adjudication officer and an Arbitration Board to assist in his duties.

44. The Act under Section 24 contemplates the adjudication register which comprises the demarcation map and the Adjudication record which shall be displayed for inspection at a convenient place with the adjudication section.

45. Any person who is affected by the adjudication register may within sixty days under Section 26 thereof object to the adjudication officer in writing.

46. Upon setting out the manner in which that elaborate process is carried out, the Act concludes in terms of Section 26 by setting out an action to be taken out by the Chief Land Registrar who shall then cause registration to be effected in accordance with the adjudication register”.

46. Did the Respondents follow the aforementioned steps in Amungenti “D” adjudication Section? Again, the Respondent is mute, not even bothering to explain how the aforementioned adjudication Section was born. The Petitioners have however availed a document dated 8.7.2014 titled “Amendment of Notice No. ADM/LA/10 Vo. VI/95 of 23.6.1989” which reads:

“The Amungenti “B” Adjudication section is sub-divided into four Adjudication Sections namely: Amungenti “B” Adjudication Section Amungenti “C” Adjudication Section Amungenti “D” Adjudication Section Amungenti “E” Adjudication Section.....

All rights and interest in land within this adjudication Section WILL be ascertained and Recorded in accordance with the provisions of the *Land Adjudication Act*. Any person claiming any such rights or interests is requested to present his/her claim to the recording officer.”

47. In absence of any other document indicating how Amungenti “D” Adjudication Section was created, I take this document to be the primary document which gave rise to the said adjudication section.

48. The creation of an adjudication Section out of an existing adjudication Section has not always been peaceful and instead has had the ripple effect of giving rise to myriad disputes- See my decision in *Jacob Makunyu & 122 Others v District Land Adjudication and Settlement Officer, Imenti Central District & Another, Gideon Muchui Arithi & 1836 others (Applicants Interested Parties)* 2021 eKLR.



49. It is clear to my mind and beyond any peradventure that any purported process of adjudication in Amungenti “D” Adjudication Section could only have commenced after the date of 8.7.2014. Thus any purported adjudication process undertaken in the 1990’s in a none existent adjudication section is null and void and any booklets or registration documents purportedly issued in that era or such gone by decades are also null and void. To this end, I find that the orders sought in prayer No. ii & vii in the petition are merited.
50. As regards the issues touching on the committees, I find that both Petitioners and Respondents agree that the process of adjudication is underway. To this end, on 14.11.17, the advocates for the parties had agreed that earlier orders restraining the Respondents from carrying out adjudication process be lifted. The Petitioners contend that the relevant committees were duly constituted after litigation in Meru ELC Petition 31 of 2014 Meru and Maua CMCC 197 of 2015.
51. In paragraph 29(vi) of the Petition, the Petitioners contend that the 1st Respondent had ousted any role and responsibility from the elected and sworn committee members. The Petitioners have submitted that the Respondents have arbitrarily and with impunity attempted to brush aside the input of the Committee, adding that some strangers like Daniel Kaliunga and Peter Kimenchi have been incorporated in the committees.
52. The question which begs for an answer is: In what capacity are the Petitioners claiming that the work of the committees have been eroded?
53. In the case of *Silverio Akubu & 4 Others v Charles Baariu Salesio & 3 Others* (2019) eKLR, while emphasizing the importance of adjudication committees, I stated as follows;

“This court cannot apply judge craft to bypass the spirit and the letter of the law. I find that the committee is a very important feature in the adjudication process. The functions of the committee are set out in section 20 of the [Land Adjudication Act](#) where it is provided as follows;

“The committee appointed for an adjudication section shall— (a) adjudicate upon and decide in accordance with recognized customary law any question referred to it by the demarcation officer or the recording officer; (b) advise the adjudication officer or any officer subordinate to him upon any question of recognized customary law as to which he has sought its guidance; (c) safeguard the interests of absent persons and persons under disability; (d) bring to the attention of officers engaged in the adjudication any interest in respect of which for any reason no claim has been made; (e) assist generally in the adjudication process”.

The fact that the committee members are appointed from the area residents is a clear signal that these members become the Eye and Ear of the residents. They are entrusted with the duty of shepherding the process in such a manner that they even take into account the interests of persons who are absent and they also bring to the attention of the Dlaso the existence of land which has no claimants. That is not all, they have the mandate to determine disputes arising from the adjudication process. From this analysis, I can safely state that the committee is a powerful body in the adjudication process”.

54. What resonates from the above citation is that the committees are the focal points which connects the claimants (the purported owners) and the Dlaso. The 1<sup>st</sup> Petitioner claims to be one of the Committee members but he has not filed the case on behalf of the Committees. The Petitioners cannot purport to speak for the Committees. It was thus incumbent upon the Petitioners to bring the relevant committees



on board this ship as Interested Parties. That way the Committees would have been in a position to state if their mandate has been hampered by the Respondents or not.

### **Relief & Conclusion.**

55. I discern that various groups of people and individuals have vested interest in the land as well as in the process of ascertaining those interests. This court cannot purport to declare any such groups, clans or individuals as the owners of the land. However, the comments made by the Respondent in their submissions that the Dlaso has exclusive powers are really not helpful and only depict the sorry state of the fall out between the claimants and the Dlaso. In *James Opiyo Wandayi v Kenya National Assembly & 2 others* [2016] eKLR, the case of *The Indian Borough of Newham vs. Khatun-Zeb and Iqbal* [2004] EWCA Civ. 55 was cited where it was held that:

“Clearly a public body may choose to deploy powers it enjoys under Statute in so draconian a fashion that the hardship suffered by the affected individuals in consequence will justify the court in condemning the exercise as irrational or perverse...”

56. It is quite apparent that the Respondents have prosecuted this petition through stealth, almost missing in action. I therefore shudder to imagine how they are dealing with the petitioners and other claimants in the real action of adjudication and demarcation. There are telltale signs that all is not well and the fears expressed by the petitioners herein are certainly not misplaced. The powers and authority which Respondents claim is exclusive to the Dlaso should be exercised in a manner that renders services to the people instead of fanning flames of discord, bringing untold suffering to the claimants. Land disputes are emotive and the negative effects of land competition are manifested in Civil strife that spill into the arena of criminal and civil litigation due to breakdown of law and order. The Petitioners and any other claimants in Amungenti “D” Adjudication Section have a legitimate expectation that their rights and interest in the land are protected. This can only be done if the process of ascertainment of such rights and interests in the suit land is transparent, accountable, expeditious, fair and effective. To this end, the Respondents ought to be robustly involved in “all matters Justice” instead of singing a draconian tune of exclusivity. Thus the Respondents should be at the forefront of shepherding the adjudication process to its logical conclusion instead of naturing confusion, apathy and operating an opaque process.

57. Having noted that the process of adjudication is now underway, keeping in mind that the Respondents have not been transparent in their operations, I proceed to give the following orders:

- i. is hereby declared that the lands in Amungenti “d” Adjudication Section have never been legally and/or properly demarcated before July 2014.
- ii. It is hereby declared that the existence and recognition of registered numbers/booklets by the 1st Respondent which are not backed by existence of any grounds and/or proprietary rights is irregular, illegal and unconstitutional.
- iii. It is hereby declared that the Petitioners have a right to channel their grievances through the Dispute Resolutions Mechanisms set out under the [Land Adjudication Act](#) primarily the committee stage, Arbitration board and the objection stage.
- iv. The Respondents are directed to conduct the process of adjudication in a manner that is Transparent and Accountable.
- v. This is considered as a litigation in public interests, thus each party is to bear their own costs of the suit.

**DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF MAY, 2022.**



**LUCY N. MBUGUA**

**JUDGE**

**DELIVERED AT MERU THIS 18TH DAY OF MAY, 2022.**

**HON. C. K. NZILI**

.....

**JUDGE**

**In the presence of:-**

Materi Miss for the Petitioners

Kieti for the Respondents

Muhuri for the Interested parties

Court Assistant: Kananu

