



Kikui & 2 others v Musyoka (Suing as the Legal Representative of the Estate of the Late Johnson Musyoka Lavu - Deceased) (Civil Appeal 641 of 2019) [2025] KECA 1476 (KLR) (12 September 2025) (Judgment)

Neutral citation: [2025] KECA 1476 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 641 OF 2019
W KARANJA, SG KAIRU & P NYAMWEYA, JJA
SEPTEMBER 12, 2025**

BETWEEN

**PATRICK MUTUKU KIKUVI 1ST APPELLANT
PATRICK MUSAU KIKUVI 2ND APPELLANT
}MWIKYA NZILI NGANGA 3RD APPELLANT**

AND

KIMEU MUSYOKA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JOHNSON MUSYOKA LAVU - DECEASED) RESPONDENT

(An appeal from the Judgment of the Environment and Land Court of Kenya at Machakos (O.A. Angote, J.) dated 31st January 2019 in ELC Petition No. 7 of 2017)

JUDGMENT

1. This appeal arises from the judgment of the Environment and Land Court (ELC) (Angote, J.) delivered on 31st January 2019. The main issue in the appeal is whether the ELC erred in nullifying the decision of the Minister made under the *Land Adjudication Act*. That decision was contained in a ruling of the District Commissioner, Kathiani District, Machakos County on behalf of the Minister dated 27th April 2012 which directed that an earlier decision of the Land Adjudication Committee of 9th December 1975 be implemented.
2. The ELC nullified that decision on grounds that the respondent's constitutional right to fair hearing under Article 50 of *the Constitution* of Kenya was violated.
3. We have duly considered the appeal and the appellant's written submissions dated 4th March 2025 and the respondent's written submissions dated 14th March 2025 which were orally highlighted before



us on 17th March 2025 by learned counsel Mr. Mundia and Mr. Musyoki for the appellants and respondent respectively.

4. At the centre of the dispute is the ownership of parcels of land known as 1950 and 2685, Mitaboni Adjudication Section. The record shows that on 9th December 1975, the Land Adjudication Committee in resolving a dispute over the said properties between Nzili Nganga and Kavuu Mbole on the one hand and Tumbo Lavu and Kitavi Mutheu, on the other hand, found that Tumbo Lavu had bought a portion of the property but ordered that the properties be shared among the four wives of Lavu Ngao.
5. Tumbo Lavu with others appealed that decision before the Land Arbitration Board, Mitaboni. However, Tumbo Lavu died before that appeal could be heard. Johnson Musyoka Lavu alias Musyoka Lavu substituted Tumbo Lavu in that appeal. The Land Arbitration Board proceeded with the matter and determined that Tumbo Lavu, then represented by Johnson Musyoka Lavu alias Musyoka Lavu, and his co- appellants had settled on the properties and should have a share in the same.
6. Thereafter, two appeals, namely Appeal No. 477 of 1996 and Appeal No. 34 of 1998 were lodged before the District Commissioner against the decision of the Land Arbitration Board by Kavoo Mbole and another, as interested parties. Before those appeals could be heard and determined, Johnson Musyoka Lavu alias Musyoka Lavu died on 7th October 2016. That notwithstanding, in a ruling dated 27th April 2012, the District Commissioner, on behalf of the Minister, determined “that the decision made at the Committee stage on 9th December 1975 be implemented” having concluded that “...both parties are in agreement about the Committee decision...”
7. According to Kimeu Musyoka the respondent in this appeal, who is the legal representative of the estate of Johnson Musyoka Lavu alias Musyoka Lavu, he only became aware of that decision on 13th December 2016 when he was served with a letter dated 8th November 2016 informing him that a surveyor would visit the properties to implement the decision of the Minister. He asserted that by that time, it was too late to challenge the Minister’s decision by application for judicial review and was constrained to petition the ELC through a constitution petition dated 3rd April 2017 to challenge the constitutionality of the Minister’s decision.
8. Although counsel have addressed us on the eleven grounds of appeal set out in the Memorandum of Appeal, the overarching issue for determination as already indicated is whether the learned Judge erred in nullifying the decision of the Minister for violating the respondent’s right to be heard.
9. It is common ground that the hearing before the District Commissioner is alleged to have taken place on 29th March 2012 which preceded the impugned ruling of the Minister dated 27th April 2012. It is also an established fact, based on the Certificate of Death exhibited to the further affidavit of the respondent sworn on 16th May 2018, that Johnson Musyoka Lavu alias Musyoka Lavu died on 7th October 2010. It is therefore clear that the “hearing” and the ruling of the District Commissioner took place well after the death of Johnson Musyoka Lavu. However, in the ruling of the District Commissioner dated 27th April 2012, it was stated that:

“Both parties are in agreement about the committee decision. Thus, the Land Adjudication Officer endorsed the decision of the Committee. I rule that the decision made at committee stage on 9th December 1975 be implemented.”
10. Given that Johnson Musyoka Lavu alias Musyoka Lavu died prior to the hearing and determination by the District Commissioner, the learned Judge was right in finding, based on the evidence, that “there is



no evidence to show that any of the Lavu family members were heard by the Minister before he made his decision.”

11. We therefore uphold, without any difficulty, the conclusion by the learned Judge of the ELC that:

“Considering that most of the Respondents before the Minister were deceased, and none of the living members of the Lavu family, including the Petitioner herein, were notified of the proceedings before the Minister, and there could not have been any agreement between the parties as alluded in the decision of the 1st respondent. The Petitioner’s right to have the dispute concerning the suit land decided in a fair and public hearing before an independent and impartial tribunal or body was therefore violated (See article 50(1) of *the Constitution*).”

12. We respectfully agree. As the Court reiterated in the case of James Kanyiita Nderitu & Another vs. Marios Philotas Ghikas & Another [2016] eKLR, the right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system.

13. On that decisive ground alone, we see no basis at all for interfering with the decision of the learned Judge. The appeal fails and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF SEPTEMBER 2025.

W. KARANJA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, C.Arb, FCIArb.

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

Deputy Registrar

