

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**EMBU**  
**CONSTITUTIONAL PETITION NO. 5 OF 2019**

**MATHEW MURIUKI NJAGI.....1<sup>ST</sup>**  
**PETITIONER**

**HENRY NJERU NJAGI.....2<sup>ND</sup>**  
**PETITIONER**

**FRANCIS NJUKI NGARI.....3<sup>RD</sup>**  
**PETITIONER**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup>**  
**RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF LANDS  
AND PHYSICAL PLANNING.....2<sup>ND</sup>**  
**RESPONDENT**

**THE CHIEF LAND REGISTRAR.....3<sup>RD</sup>**  
**RESPONDENT**

**LAND REGISTRAR SIAKAGO.....4<sup>TH</sup>**  
**RESPONDENT**

**DISTRICT LAND ADJUDICATION AND  
SETTLEMENT OFFICER MBEERE SOUTH.....5<sup>TH</sup>**  
**RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, MBEERE SOUTH  
SUB COUNTY, EMBU COUNTY.....6<sup>TH</sup>**

**RESPONDENT**

**NGOCI MBITI.....7<sup>TH</sup>**

**RESPONDENT**

**NJIRU MBITI.....8<sup>TH</sup>**

**RESPONDENT**

## JUDGMENT

1. Through the petition dated 4/7/2019, the petitioners sought several reliefs namely, an order calling for the decision made on 6/3/2018 in Minister’s Appeal No. 212 of 2002 before this court for quashing and setting aside; an order cancelling the names of Ngoci Mbiti, the 7<sup>th</sup> respondent from the register of land parcels Mbeere/Kiambere/170, 1749 to 1757, 3674 and 3298, and an order directing the Land Registrar, Mbeere South to register the parcels of land in the petitioners’ names; an order prohibiting the 7<sup>th</sup> and 8<sup>th</sup> respondents or their agents from interfering with the petitioner’s ownership and occupation of the suit lands as well as costs of the suit.
2. According to the petitioners’, the dispute is over ownership of 12 parcels of land being Mbeere/Kiambere/170, 1749 to 1757, 3674 and 3298 that previously comprised one block of land known as Block 170 in Kiambere Land Adjudication area. They averred that Block 170 was part of the land that belonged to

Mwendia Clan but which was sold to the Nyonga Clan by the 8<sup>th</sup> respondent in 1972.

3. After buying the land, the Nyonga Clan led by its patriarch Njagi Mbuthanji, took possession and began utilising it for their economic and cultural needs including building homes, cultivating, grazing, hunting and bee keeping. They stated that from 1972 up to the time when the land adjudication process started in the area, they did not face any interference from the Mwendia clan. However, around 1982 the Mwendia clan, led by the 7<sup>th</sup> respondent, began objecting to the registration of the land in the name of Njagi Mbuthanji and they filed objections at the Unit and Committee stages which they lost.
4. That upon the death of Njagi Mbuthanji, the 1<sup>st</sup> petitioner assumed representation of the Nyonga clan while the 7<sup>th</sup> respondent represented the Mwendia clan. They stated that the Nyonga clan won the first objection hearings, but the Mwendia clan later filed Objection No. 167 of 1992 before the Arbitration Board, which awarded the land to them.
5. Aggrieved by that decision, the Nyonga clan filed Minister's Appeal No. 212 of 2002, which forms the basis of this petition. The petitioners contend that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> respondents violated their constitutional rights as follows:
  - i. That although the appeal was filed on 18/5/2002, it was not heard until 2018, and was heard in their absence and in a biased manner.
  - ii. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents registered the land in the name of the 7<sup>th</sup> respondent before the appeal

was heard, which deprived the petitioners of their right to own property and went against Section 29 of the Land Adjudication Act.

iii. That on 6/3/2018, the petitioners attended the hearing of the appeal but on arriving at the venue of the hearing, they were turned away because the 6<sup>th</sup> respondent was said to be attending to the Mwea crisis that had erupted. They were again turned away on 8/5/2019 when the case was scheduled to be heard and were told to wait for another notification which they did not receive. They later learnt that the appeal had already been heard and determined on 6/3/2018 and they were served with a document indicated to be the proceedings of the Appeal to the Minister. According to the Petitioners, the proceedings contained anomalies.

6. The petitioners averred that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents conduct amounted to arbitrary deprivation of their right to property and contravened Article 40(2), 3(b) of the Constitution. They urged that the actions of the 6<sup>th</sup> respondent of backdating proceedings showed open bias against them and that they were denied the right to fair administrative action under Article 47(1) and (3) of the Constitution. They contended that if the award is implemented, they would suffer irreparable loss and damage because their extended families depend on the suit land for their livelihood.

7. The 3<sup>rd</sup> petitioner exhibited copies of the authority to swear, sale agreement between the 8<sup>th</sup> respondent and Njagi Mbuthianji and official searches for the suit land. He also exhibited copies of proceedings of the Land Adjudication Committee and Board, the appeal in the Minister's Appeal Case No. 212 of 2002, the proceedings in the Minister's appeal and notice for hearing of the appeal dated 30/4/2018.
8. The 1<sup>st</sup> petitioner filed a further affidavit in which he deponed that the then Deputy County Commissioner Mbeere South Sub County, Madam Opwora disowned any participation in the proceedings that culminated in the impugned decision. He averred that both Mr Mwangangi, an officer attached to the Deputy County Commissioner's office and Secretary of the appeal sittings were charged with the offence of forgery at the Siakago Law Courts with. He expounded that there is a forensic report indicating that the Chairperson's signature was forged. He produced copies of the statement of the Deputy County Commissioner under oath, the charge sheet and the investigation report prepared by the Directorate of Criminal Investigation (DCI).
9. The 5<sup>th</sup> respondent responded to the petition through the replying affidavit of Consolata K. Mbui who deponed that the Kiambere Adjudication Section went through the entire land adjudication process stipulated by the Land Adjudication Act. She averred that parcel 170 was allocated to Njagi Mbuthianji after he bought it from Njiru Mbiti of Mwendia Clan as per the demarcation book, which she attached. She added that Ngochi

Mbiti, the 7<sup>th</sup> respondent, the son of Njiru Mbiti lodged Committee Case No. 94/84 against Njagi Mbuthianji, which was heard *ex parte* against the 7<sup>th</sup> respondent because he failed to attend the hearing.

10. According to Ms. Mbui, the land remained the property of Njagi Mbuthianji as per the proceedings of the committee case which she exhibited. She explained that the 7<sup>th</sup> respondent filed Arbitration Board Case No. 62/84, an appeal against the land committee case, which was heard and determined on 8/1/85 upholding the decision of the committee and that the land was awarded to Njagi Mbuthianji.
11. She contended that when the adjudication register for Kiambere was declared complete, Ngochi Mbiti lodged an objection against Njagi Mbuthianji, that is, Objection No. 163 against the suit land. The objection was heard and determined in favour of Ngoci Mbiti and thereafter the 1<sup>st</sup> petitioner, Mathew Muriuki a son to Njagi Mbuthianji filed an appeal with the Minister being Appeal Case No. 212 of 2002, which was heard on 6/3/2018 and determined in favour of the 7<sup>th</sup> respondent. She stated that it was apparent from the proceedings before the Minister that the 1<sup>st</sup> petitioner did not attend the hearing. She attached copies of the proceedings before the minister, proceedings in Objection Case No. 163 and the proceedings in the Arbitration Board Case No. 62/84.
12. George O. Omolo swore the replying affidavit on behalf of the 6<sup>th</sup> respondent and deponed that a criminal case was filed with regard to Minister's Case No. 212 of 2002 between the 1<sup>st</sup>

petitioner and the 7<sup>th</sup> and 8<sup>th</sup> respondents by the Director of Criminal Investigations against the Director of Adjudication & Settlement department. That criminal case being Misc. Criminal Application No. E017 of 2022 challenged the proceedings in the appeal to the Minister, alleging that the proceedings were made by a a clerk who did not have jurisdiction. Siakago Misc. Criminal Application no. E017 of 2022 was heard and determined, and an order issued was issued by the court on 24/6/2022 directing that the file be returned to the current Deputy Commissioner Mbeere South to hear and determine Appeal to Minister case no. 212 of 2002.

13. He averred that the DCI investigated the proceedings to the Minister and used the report in the prosecution of Misc. Criminal Application no. E017 of 2022. He urged that following the conclusion of Misc. Criminal Application no. E017 of 2022 and the court's orders directing that the file be returned to the current deputy County Commissioner for fresh hearing and determination of the Appeal to the Minister, this court should also find that the proceedings in the appeal to Minister case No. 212 of 2002 were made by a person without authority or jurisdiction and quash the proceedings and order that the 6<sup>th</sup> respondent hears the appeal to the Minister case no. 212 of 2002 as provided by Cap 284 Laws of Kenya.
14. Mr. Omolo exhibited the proceedings and Order in Siakago Misc. Criminal Application No. E017 of 2022 and the DCI Mbeere South Inquiry File no. 1/2022.

15. The 7<sup>th</sup> respondent, Ngoci Mbiti, who is no longer with us, responded to the petition vide the replying affidavit where he deponed that he was the long serving Chairman of the Mwendia Clan and that all the suit land is registered in his name as a trustee for the clan. He averred that the 8<sup>th</sup> respondent purported to sell clan land to the petitioners without the mandate from the Mwendia Clan yet he was not a clan official. He contended that Minister's Appeal Case No. 212 of 2002 had been overtaken by events as the suit land had been registered in his name on behalf of his clan. He added that even when the minister heard the appeal on 6/3/2018, he lacked jurisdiction to do so since the subject matter was registered land and not land under an adjudication section. He was emphatic that after the suit land was registered under the Registered Land Act, the only recourse available to the petitioners was to seek cancellation of the title deed in a court of law.
16. Mr. Mbiti denied that the petitioners occupied or utilised the suit land. He maintained that the 8<sup>th</sup> respondent did not pass any title to the petitioners capable of being claimed. He averred that the petition was time barred and should be dismissed with costs.
17. The 8<sup>th</sup> respondent filed a replying affidavit where he deponed that he sold Block 170 to the petitioners because he wanted to raise money to redeem his wife who had been stolen by another man. He averred that having sold his share of Block 170 to the petitioners, he had no further claim to it. He was not part of the proceedings before the Minister and any of the objection proceedings.

18. The 7<sup>th</sup> respondent filed a response to the 8<sup>th</sup> respondents replying affidavit and deponed that the 8<sup>th</sup> respondent could not purport to sell land which was not his and that he did not confer any proprietary rights on the petitioners.
19. Parties agreed to canvass the petition through written submissions. The petitioners submitted that the decision in Minister's Appeal No. 212 of 2002 resulted in breach of natural justice, a violation of their right to a fair hearing and denial of their right to property. They relied on their affidavits and documentary evidence and averred that the proceedings before the Deputy County Commissioner, Mbeere South Sub-County, were marred with fraudulent dealings, forgeries and misrepresentations. They urged the court to allow the petition.
20. The 1<sup>st</sup> to 6<sup>th</sup> respondents submitted that the proceedings in the appeal to the Minister were not heard by a person with the authority to hear and determine the case as demonstrated in the replying affidavit of George O. Omolo, the 6<sup>th</sup> respondent. They submitted that had the petitioners wished to challenge the legality of the process of arriving at the final decision, they would have come under judicial review. They relied on **Lepore Ole Maito versus Letwat Kortom and 2 others (2016) eKLR** on this point.
21. The 1<sup>st</sup> to 6<sup>th</sup> respondents urged the court to find that the decision in the appeal to the Minister was arrived at by an incompetent person who lacked the authority to hear and determine the matter. They invited the court to dismiss the petition and refer the matter back to the Deputy County

Commissioner, Mbeere South for hearing and determination in line with the orders issued in Siakago Principal Magistrates Court in Criminal Application No. E017 of 2022.

22. The 7<sup>th</sup> respondent submitted that the petitioners were not entitled to the reliefs sought because the 7<sup>th</sup> respondent is the registered proprietor of the 12 land parcels as the Chairman and trustee of the Mwendia clan and that he was therefore entitled to the protection of his right to property under Article 40 of the Constitution of Kenya 2010. He submitted that the Mwendia clan has utilised the suit land since time immemorial and that the petitioners have never occupied the land. He added that the 8<sup>a</sup> respondent could not purport to sell land that was not his and confer proprietary rights on the petitioners because he was not the leader of the clan. Further, that he had not exhibit any sale agreements to support his allegations.
23. Further, it was submitted that the suit against the 7<sup>th</sup> Respondent abated by operation of law under Order 24 Rule 4 of the Civil Procedure Rules since no application was made for his substitution within a year of his death and that if judgment were to be entered the occupants of the suit land would suffer irreparable harm as they will be deprived of their land. They urged the court to find that the suit land belonged to the 7<sup>th</sup> respondent as the lawful registered proprietor who held it in trust for the Mwendia clan. They urged that the proceedings against the 7<sup>th</sup> respondent should be struck out as the suit against him abated.

24. The issue for determination is whether the petitioners are entitled to the reliefs they seek in the petition. The petitioners claim that the decision rendered in Minister's Appeal No. 212 of 2002 on 6/3/2018 which awarded the suit land to the 7<sup>th</sup> respondent was reached through a process marred with irregularities, fraud, and breach of natural justice. The material placed before this court, including the statement of the then Deputy County Commissioner, Beverly K. Opwora, in Siakago Criminal Miscellaneous Application No. E017 of 2022, the investigation report by the DCI, and the affidavit of the Deputy County Commissioner, Mbeere South Sub-County, George O. Omolo, all confirm that the proceedings were conducted by persons without jurisdiction and that they were tainted with illegality.
25. In light of these, the court is persuaded that the petitioners were denied an opportunity to be heard and that their right to property guaranteed and protected by Article 40 was violated as well as their rights Article 47 of the Constitution which provides for the right to fair administrative action.
26. The court issues the following orders:
- i. A declaration is issued that the proceedings and decision delivered on 6/3/2018 in Minister's Appeal No. 212 of 2002 were unconstitutional and unlawful for violating the petitioners' rights under Articles 40 and 47 of the Constitution.
  - ii. An order is issued nullifying and setting aside the decision of 6/3/2018 made in Minister's Appeal No.

212 of 2002 together with all the registrations or dealings with the parcels of land in dispute arising from that decision.

- iii. Minister's Appeal No. 212 of 2002 is remitted back to the Deputy County Commissioner, Mbeere South Sub-County, for a fresh hearing and determination in strict compliance with the law.
- iv. Each party shall bear its own costs.

Delivered virtually at Embu this 2<sup>nd</sup> day of October 2025.

**K. BOR**  
**JUDGE**

**In the presence of: -**

Mr. Mungai Kivuti for the Petitioners

Mr. J. Kiongo for the 1<sup>st</sup> to 6<sup>th</sup> Respondents

Mr. Robinson Ngari for the 8<sup>th</sup> Respondent

No appearance for the 7<sup>th</sup> Respondent