



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**ELCL PETITION NO. E004 OF 2023**

**EPHANTUS NJUKI KAMUMO.....**

**.....PETITIONER**

**=VERSUS=**

**LAWRENCE MUCHIRI MUGO.....1ST  
RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT  
OFFICER, MERU SOUTH.....2ND  
RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER,  
MERU SOUTH.....3RD  
RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER,  
IGAMBANG'OMBE.....4TH  
RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION.....5TH  
RESPONDENT**

**THE LAND REGISTRAR, MERU SOUTH.....6TH  
RESPONDENT**

**THE HON ATTORNEY GENERAL.....7TH  
RESPONDENT**

## JUDGMENT

### **Introduction**

1. This petition challenges the decision of the Director of Land Adjudication & Settlement, remitting three appeals, among them **Appeal No 417 of 2011**, back to the **Land Adjudication and Settlement Officer, Chuka Sub-County**, with instructions to him to liaise with the Minister's delegatee (**the Deputy County Commissioner**) to provide clarity on the question of ownership of land parcel number **537 Kamwimbi Adjudication Section. Appeal No 417 of 2011** challenged the award/decision of the Land Adjudication Officer in an Adjudication Register Objection (AR Objection) relating to land parcel number **537, Kamwimbi Adjudication Section**. The Land Adjudication Officer had made decisions in two other objections relating to the same parcel. The three decisions of the Land Adjudication Officer culminated in three different appeals to the Minister, relating to the same land. The Minister's delegatee, similarly, made three different decisions disposing the three different appeals. The petitioner contends that the decision of the Director of Land Adjudication and Settlement seeking clarity on the question of ownership of the suit land and the subsequent decision of the Deputy County Commissioner to rehear **Appeal No 417 of 2011** infringe his right to property under **Article 40** and the right to fair administrative action under **Article 47** of the **Constitution**.
2. The issues that fall for determination in the judgment are: (i) Whether the petition meets the threshold of a constitutional

petition under the law; (ii) Whether the decision of the Director of Land Adjudication and Settlement, remitting back the three appeals and seeking clarity on the question of ownership of land parcel number **537 Kamwimbi Adjudication Section** violated the provisions of **Articles 10, 40 and 159 (2) and (3) of the Constitution**; (iii) Whether the rehearing proceedings conducted by the **Deputy County Commissioner, Igambang'ombe Sub-County** pursuant to the notices dated 29/11/2023 and 14/12/2023 in **Appeal Case No 417 of 2011** violated the petitioner's rights under the Constitution; (iv) If the answer(s) to (i) and/or (ii) above is/are in the affirmative, what are the appropriate remedies?; and (v) What order should be made with regard to costs of this petition? Before I analyse and dispose the issues, I will briefly outline the parties' respective cases.

### **Petitioner's Case**

**3.** In the petition dated 19/12/2023, **Ephantus Njuki Kamumo** (the petitioner) sought the following reliefs:

***a) A declaration that the decision by the Office of Land Adjudication and Settlement represented by the 5th respondent herein, to rehear the Appeal 417 of 2011 violates the provisions of Article 10, 40 and 159 (2) and (3) of the Constitution and hence null and void.***

***b) A declaration that the petitioner's rights as guaranteed under Articles 10, 40 and 159 (2) and (3) of the Constitution have been***

***infringed to the extent that the proceedings conducted by the Deputy County Commissioner, Igambang'ombe Sub-County on the 13th of December 2023 in Appeal 417 of 2011 are null and void.***

***c) An order directing the 2nd, 4th, 5th and 6th respondents to effect the decision by the 3rd respondent in Appeal No 417 of 2011 and a title deed be issued to the petitioner in respect of Parcel No 537 Kamwimbi Adjudication Section.***

***d) The costs of the petition be borne by the respondents.***

- 4.** His case is that land parcel number **537 Kamwimbi Adjudication Section** has been the subject of dispute resolution within the framework of the Land Adjudication Act. He lodged before the Minister **Appeal Case No 417 of 2011**. The **late Njagi Muchunje** was the respondent in the appeal and was represented by **Lawrence Muchiri Mugo (the 1st respondent)**. The Minister, through the Deputy County Commissioner, heard the appeal on 10/6/2022 and rendered a decision in his favour. Subsequently, he received a letter dated 7/12/2023 from the Deputy County Commissioner inviting him for a rehearing of the same appeal. He sought an adjournment to allow him time to challenge the decision to rehear the appeal but he was denied the adjournment. He is aggrieved by the decision to rehear the appeal. He contends that the decision to rehear the appeal is a breach of his right to fair administrative action.

5. The 1st respondent opposed the petition through a replying affidavit dated 5/2/2025. His case is that the decision which the petitioner is waving is not bonafide because **Appeal No 417 of 2011** has never been heard. He contends that on its face, the decision is expressed as having been rendered on **19/1/2022** following a hearing conducted on **10/6/2022**. It is his case that there is no way a legitimate ruling/decision/award would precede the hearing of the appeal, adding that the petitioner alleges that the appeal was heard on 10/6/2022 yet the decision is alleged to have been rendered on 19/1/2022.
6. The 1st respondent further contends that the invitation for hearing of the appeal by the Minister's delegatee was prompted by a letter dated 16/2/2023 from the **Director of Land Adjudication and Settlement** through which the Director remitted Minister **Appeal Case Nos 417/2011; 194/2017** and **227/2019** to the **Land Adjudication & Settlement Officer, Chuka Sub-County**, with instructions that he was to liaise with the Deputy County Commissioner and cause to be resolved various aspects which had made the decisions in the three appeals unimplementable. He adds that all the three appeals related to the suit land.
7. In summary, the aspects/issues which the Director pointed out are:
  - (i) ***In Appeal No 194/2017 the appellant was one Erasmus Ileri Njeru while the respondent was one Njagi Muchunje and 11 others. In the said decision, the suit***

*land was awarded to Njagi Muchunje but the ruling was undated and unsigned.*

*(ii) In Appeal No 227/2019, the appellant was Ephantus Njuki Kamumo while the respondent was Njagi Muchunge. The Director noted that the ruling was unsigned, undated and unstamped.*

*(iii) In Appeal No 417/2011, Ephantus Njuki Kamumo was the appellant and Njagi Muchunje was the respondent. The ruling was dated 19/1/2022 and the said ruling indicated that the hearing of the appeal was conducted on 10/6/2022, which was factually impossible/illogical.*

8. The respondent who represented **Njagi Muchunje** in **Appeal No 417/2011** is emphatic that the award which the petitioner is waving is not authentic because there is no way a hearing conducted on 10/6/2022 would attract an award/ruling that precedes/predates the hearing of the appeal.

#### **Case of the 2nd - 7th Respondents**

9. The 2nd - 7th respondents opposed the petition through grounds of opposition dated 25/2/2025 and written submissions dated 19/7/2025. Their case is that the petition does not meet the threshold of a constitutional petition as outlined in **Anarita Karimi Njeru v Republic (1979) eKLR**. They state that the petition is imprecise and too general.

## **Analysis and Determination**

- 10.** I have considered the petition, the responses to the petition, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. As pointed out in the introduction part of this judgment, the issues to be determined in this judgment are: (i) Whether the petition meets the threshold of a constitutional petition under the law; (ii) Whether the decision of the Director of Land Adjudication and Settlement directing the Chuka Sub-County Land Adjudication Officer to liaise with the Minister's delegatee (the Deputy County Commissioner) to provide clarity on the question of ownership of land parcel number **537 Kamwimbi Adjudication Section** violated the provisions of **Articles 10, 40 and 159 (2) and (3) of the Constitution**; (iii) Whether the proceedings conducted by the **Deputy County Commissioner, Igambang'ombe Sub-County** pursuant to the notices dated 29/11/2023 and 14/12/2023 in **Appeal Case No 417 of 2011** violated the petitioner's rights under the Constitution; (iv) If the answer(s) to (i) and/or (ii) above is/are in the affirmative, what are the appropriate remedies?; and (v) What order should be made with regard to costs of this petition? I will be brief in my analysis and disposal of the issues.
- 11.** Does this petition meet the threshold of a constitutional petition under the relevant law? Prior to the promulgation of **The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** (the **Rules**), the threshold of the basic/essential contents of a constitutional petition was outlined in the famous case of **Anarita Karimi Njeru v Republic (1979)**

**eKLR.** The above rules have provided a legislative framework on the essential contents of a petition brought to the court to enforce a provision of the **Bill of Rights. Rule 10** provides as follows:

***“10. Form of petition***

***(1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.***

***(2) The petition shall disclose the following—***

***(a) the petitioner’s name and address;***

***(b) the facts relied upon;***

***(c) the constitutional provision violated;***

***(d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;***

***(e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners,***

***which is related to the matters in issue in the petition;***

***(f) the petition shall be signed by the petitioner or the advocate of the petitioner;***

***and***

***(g) the relief sought by the petitioner.***

***(3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.***

***(4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.”***

- 12.** The court has evaluated the petition in the context of the requirements of rule 10. The name and the address of the petitioner has been disclosed in the petition. The facts relied upon are disclosed in paragraph 1 of the petition. The constitutional provisions alleged to have been violated are disclosed under paragraph 2 (a) and 2 (b) of the petition. They are also in the prayers. They are **Articles 10, 40, 47 and 159 (2) and (3)**.
- 13.** Did the decision of the Director of Land Adjudication and Settlement seeking clarity on the question of ownership of the suit land violate Articles 10, 40 and 159 (2) and (3) of the Constitution? **Article 10** sets out national values and principles of governance which state organs, state officers and public officers must observe whenever: (i) applying or interpreting the constitution; (ii) enacting, applying or interpreting any law; and (iii) making or implementing public policy decisions. The national values are: (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the

marginalized; (c) good governance, integrity, transparency and accountability; and (d) sustainable development.

- 14.** Article 40 provides a constitutional framework on protection of the right to property. **Article 159 (2) and (3)** sets out the principles that guide all organs exercising judicial or quasi-judicial authority.
  
- 15.** The gravamen in this petition is that **Appeal Case No 417 of 2011** was heard by the Minister's delegatee on 10/6/2022 and a decision was rendered thereon in favour of the petitioner. The petitioner contends that the Director's decision seeking clarity on the question of ownership of the suit land was an attempt at reversing an appeal that had already been heard and determined by the Minister within the framework of **Section 29** of the **Land Adjudication Act (the Act)**. The petitioner exhibited a letter dated 29/8/2023 from the Director of Land Adjudication and Settlement to the Land Adjudication and Settlement Officer, Meru South Sub-County. The 1st respondent, similarly, exhibited the above letter. In addition, the 1st respondent exhibited a letter dated 16/2/2023 from the Director of Land Adjudication and Settlement to the **Land Adjudication and Settlement Officer, Chuka Sub-County**. The two letters detailed various contradictions, omissions and errors in the rulings relating to the three appeals that had been disposed by the Minister's delegatee in relation to the suit land. In the letter dated 16/2/2023, the Director directed the **Land Adjudication and Settlement Officer** "to liaise with the Deputy County Commissioner - Meru South, to resolve various issues as indicated" in the table that was contained

in the said letter. With regard to **Appeal No 417 of 2011**, the Director pointed out that whereas the award/ruling of the Minister indicated that it was rendered on 19/1/2022, there was an irreconcilable contradiction relating to the date when the appeal was heard, noting that the ruling indicated that the appeal was heard by the Minister on 10/6/2022. The Director pointed out thus:

***“The date the DCC started hearing the case is 10 June 2022. How can the ruling be dated 19th January 2022? The ruling contradicts the ruling in Appeal No 194 of 2017 dated 4th August 2022.”***

- 16.** The Director pointed out that the rulings/decisions were “unimplementable due to the ambiguities.” The court has looked at the ruling relating to **Appeal No 417 of 2011** which the petitioner attached to the petition as an exhibit. It indeed indicates that it was rendered on 19/1/2022. It also indicates that the appeal was heard on 10/6/2022.
- 17.** The petitioner subsequently filed a further affidavit to which he exhibited the same ruling bearing 19/1/2023 as the date of delivery and 10/6/2022 as the date of hearing. The petitioner deposed as follows in paragraph 17 and 18 of the further affidavit dated 7/5/2025:

***“17. That as regards paragraph 6 of the 1st respondent’s replying affidavit, it is true that in Appeal to the Minister Case Number 417/2011 was heard on 10th June 2022 and a verdict issued on 19th of January 2023 not 19th of January 2022 as initially indicated.***

***That it must have been a typographical error which was rectified after the Directorate of Land Adjudication and Settlement wrote a letter noting the anomalies on the dates. The error does not affect the substance of the proceedings and decision thereof. See attached certified copy of proceedings marked "FENK-3". The letter from the Directorate of Land Adjudication and Settlement has been produced by the 1st respondent as "LMM4".***

***18. That once the case was heard on 10th June 2022 and a verdict made on 19th of January 2023, the sitting panel and/or DCC became functus official and could not re-open the case for another hearing on his own volition."***

- 18.** The petitioner did not explain how he obtained a change of the date of delivery of the ruling from 19/1/2022 to 19/1/2023 after initially exhibiting the ruling dated 19/1/2022. If indeed the Minister's delegatee became *functus officio*, who subsequently changed the date after the Director flagged out the anomaly? The Minister's delegatee did not file any affidavit to state whether there was a typographical error in the ruling and whether he changed the date. The petitioner is the one who attempted to address the issue by stating thus:

***"That it must have been a typographical error which was rectified after the Directorate of Land Adjudication and Settlement wrote a letter noting the anomalies on the dates."***

- 19.** It is clear from the evidence presented in this petition that there were serious anomalies that made the awards of the Minister unimplementable.
- 20.** First, in Appeal No 194 of 2017 the suit land was awarded to **Njagi Muchunje** (now represented by the 1st respondent) and in **Appeal No 417 of 2011** the same suit land was awarded to the petitioner. This was a serious contradiction. Secondly, whereas the ruling in **Appeal No 417/2011** indicated that the appeal was heard on 10/6/2022, the ruling itself was dated 19/1/2022. The two dates were irreconcilable.
- 21.** Given the above serious contradictions and irreconcilable errors, it is the view of the court that the decision of the Director of Land Adjudication and Settlement requesting that the Minister's delegatee provides clarity on ownership of the suit land was proper. There was no other logical and lawful way to go about the issue. I have not found any iota of violation of the Constitution in the decision of the Director requesting for clarity on the question of ownership of the suit land. That is the finding of the court on the second issue.
- 22.** Were the rights of the petitioner violated/infringed by the subsequent proceedings conducted by the Deputy County Commissioner in **Appeal No 417 of 2011** pursuant to the notices dated 29/11/2023 and 14/12/2023. Confronted with the above contradictions, omissions and irreconcilable errors, the Minister's delegatee (the Deputy County Commissioner) decided to conduct a fresh hearing. The respondent exhibited two letters which the delegatee wrote,

inviting the parties for the fresh hearing. The letter dated 29/11/2023 cited **Appeal Case No 417 of 2011** and read as follows:

**“EPHANTUS NJUKI KAMUMO  
VS  
NJAGI MUCHUNJE**

**ADJ. SECTION - KAMWIMBI ‘A’  
P/NO.537.APEAL CASE NO.417 OF 2011**

**Thro:  
THE CHIEF - KAMWIMBI LOCATION**

**REF: LAND APPEAL TO THE MINISTER CASE  
HEARING**

***The above mentioned appeal cases will be heard on 13th December 2023 at the disputed land from 9.00 am by the Deputy County Commissioner and his team on behalf of the Minister for Lands, Housing and Urban Development, following your appeal.***

***In view of the above, you are hereby asked to appear before the Deputy County Commissioner on the said date, venue and time for the hearing of your case.***

**JULIUS TOO  
DEPUTY COUNTY COMMISSIONER  
IGAMBANG’OMBE SUB COUNTY”**

- 23.** The second letter was dated 14/12/2023 and cited **Case No 417 of 2011**. It read as follows:

***“EPHANTUS NJUKI KAMUMO***

***ADJ.SECTION - KAMWIMBI ‘A’***

***P/NO. 537.APPEAL CASE NO. 417 OF 2011***

***Thro:***

***THE CHIEF - KAMWIMBI LOCATION***

***REF: LAND APPEAL TO THE MINISTER CASE***  
***HEARING***

***This is reference to our letter Ref: IG/LND  
16/2/VOL.1/69 dated 29th November 2023  
addressed to you on the above subject.***

***You did not appear on the date and venue for  
the hearing of the above mentioned case  
following your appeal to the Minister for Lands,  
Housing and Urban Development.***

***In view of the above, you are hereby granted  
another chance to appear before the Deputy  
County Commissioner on 20th December 2023  
at the disputed land from 9:00 am to hear your  
appeal.***

***Kindly avail yourself and your witnesses.***

***JULIUS TOO***

***DEPUTY COUNTY COMMISSIONER***

***IGAMBANG’OMBE SUB COUNTY***

**Copy to:**

**1. Land Adjudication/Settlement Officer**

**24.** The court has examined the two letters in the context of **Article 47** of the **Constitution** and **Section 4** of the **Fair Administrative Action Act. Article 47 (1) and (2)** of the Constitution provides as follows:

***“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***

***(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.***

**25.** **Section 4 (3) and (4)** of the **Fair Administrative Action Act** provides as follows:

***“(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-***

***(a) prior and adequate notice of the nature and reasons for the proposed administrative action;***

***(b) an opportunity to be heard and to make representations in that regard;***

**(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;**

**(d) a statement of reasons pursuant to Section 6;**

**(e) notice of the right to legal representation, where applicable;**

**(f) notice of the right to cross-examine or where applicable; or**

**(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.**

**(4) The administrator shall accord the person against whom administrative action is taken an opportunity to-**

**(a) attend proceedings, in person or in the company of an expert of his choice;**

**(b) be heard;**

**(c) cross-examine persons who give adverse evidence against him; and**

**(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.**

**26.** The Minister's delegatee was inviting parties to attend a hearing after his earlier hearing and decisions had failed to

resolve the question of ownership of the suit land. The delegatee did not, however, explain to the parties the reason why he was proposing to undertake a second hearing of **Appeal No 417 of 2011. Article 47 (1) and (2) of the Constitution and Section 4 (3) (a) of the Fair Administrative Action Act** required the Minister's delegatee to give prior and adequate notice of the nature and reasons for the proposed action. To the extent that he failed to explain to the parties the reason why he was undertaking the rehearing, the court agrees with the petitioner that the hearing or hearings held pursuant to the said notices infringed the petitioner's rights. The consequence is that the hearing and the decision rendered pursuant to the said hearing are null and void.

- 27.** What are the appropriate remedies in the circumstances? The court has considered the reliefs which the appellant sought. Prayer (a) is not available because the court has found there was no violation of the Constitution in the Director's decision requiring the Minister's delegatee to determine the question of ownership of the suit land with clarity because his determinations were unimplementable for various reasons.
- 28.** The court has nonetheless found that in the two letters inviting the parties for fresh hearing, the Minister's delegatee failed to comply with the requirements of **Article 47 (1) and (2) of the Constitution and Section 4 (3) and (4) of the Fair Administrative Action Act.** Given the above two findings, the appropriate remedy is to direct the Minister to hear afresh the three appeals jointly upon

complying with the requirements of **Article 47 (1) and (2)** of the **Constitution** and **Section 4 (3) and (4)** of the **Fair Administrative Action Act**. Prayer (3) is unavailable because the decision dated 19/1/2022 was found to be unimplementable and no other lawful hearing was held to generate the decision dated 19/1/2023 which the petitioner procured unilaterally after the Director pointed out the irreconcilable anomaly of the decision preceding the hearing.

- 29.** On costs, there is no evidence to suggest that the contradictions and errors culminating into this petition were deliberate. For this reason, parties will bear their respective costs of the petition.

**Disposal Orders**

- 30.** For the above reasons, this petition partially succeeds in the following terms:

***(a) The proceedings conducted by the Minister's delegatee (the Deputy County Commissioner for Igambang'ombe Sub-County) in Appeal No 417 of 2011 relating to land parcel number 537 Chiakariga "A" Adjudication Section, pursuant to the notices dated 29/11/2023 and 14/12/2023 violated the Constitution and are therefore null and void and any decision made pursuant to the said proceedings is null and void.***

***(b) The Minister's delegatee shall hear afresh Appeal numbers 417 of 2011; 194 of 2017; and 227 of 2019 in a joint hearing of the said three appeals after complying with the requirements of Article 47 (1) and (2) of the Constitution and Section 4 (3) and (4) of the Fair Administrative Action Act.***

***(c) Parties shall bear their respective costs of the petition.***

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 27TH DAY OF OCTOBER, 2025.**

**B M EBOSO [MR]  
JUDGE**

**In the Presence of:**

Ms. Musili for the Petitioner

Ms. Ochola for the 1st Respondent

Court Assistant - Mr. Mwangi