



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 29 OF 2018**

SILVERIO AKUBU ..... 1<sup>ST</sup> PLAINTIFF  
PETER KIBUNDU.....2<sup>ND</sup> PLAINTIFF  
PETER M'MAUTA ..... 3<sup>RD</sup> PLAINTIFF  
RICHARD MEEME .....4<sup>TH</sup> PLAINTIFF  
PETER KITHINJI .....5<sup>TH</sup> PLAINTIFF

**VERSUS**

CHARLES BAARIU SALESIO.....1<sup>ST</sup> DEFENDANT  
THE LAND ADJUDICATION OFFICER  
IGEMBE CENTRAL/NORTH/SOUTH.....2<sup>ND</sup> DEFENDANT  
THE DERMICATION OFFICER  
AMWATHI MUTUATI IIB ADJUDICATION SECTION... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL .....4<sup>TH</sup> DEFENDANT

**RULING**

1. The plaint hearing was filed on 27/7/2018 whereby orders were sought inter-alia to declare that the purported publication of election of 1<sup>st</sup> defendant as the chairman of Amwathi/Mutuati IIB Adjudication section be nullified and that there be an order restraining the said 1<sup>st</sup> defendant from assuming office as the chairman of the aforementioned Adjudication section.
2. An application was contemporaneously filed with the plaint where orders were sought inter-alia seeking injunction to restrain the defendants either by themselves, agents or anybody acting at their behest from installing 1<sup>st</sup> defendant as the chairman and an injunction restraining the 1<sup>st</sup> defendant from assuming office or discharging the mandate of the chairman of the aforementioned adjudication section. The orders sought in the application were given on interim basis on 1/8/2018.
3. The respondent (Attorney General) filed their own application on 13/8/2018 where they sought to have the orders given on 1/8/2018 discharged or in the alternative that the court directs that a new chairman be elected.
4. The matter came up in court on 26/9/2018, where it was agreed by consent of both parties that the two applications be abandoned on the following terms:

- (i) That the current chairman (the plaintiff) to remain in office pending the hearing of the main suit.**
- (ii) Parties are granted 30 days each to comply with order 11.**
- (iii) Pre-trial conference before the Deputy Registrar on 5/12/2018.**

5. On 21/3/2019 plaintiff's Counsel informed the court that the District Land Adjudication & settlement officer (DLASO) had hindered the process of compliance with the orders of 26/9/2018, whereby the process of adjudication was not ongoing. He also stated that the 2<sup>nd</sup> defendant had blatantly refused to facilitate the operations of the adjudication exercise and had even instructed his officers to close down the offices.

6. In light of the foregoing the court summoned the DLASO to explain the situation. Mr. John Muchiri the DLASO, appeared before this court on 27/3/2019 and he introduced himself as an assistant director of land adjudication and settlement in charge of land adjudication and settlement in Igembe adjudication area which covers more than 22 ongoing adjudication sections. This officer stated that the person responsible for the day to day activities in respect of the adjudication process is the demarcation officer. He further stated that his interaction with various adjudication sections is only supervisory. He also denied that he is not cooperating with the chair of the committee.

7. The demarcation officer Mr. David Ng'etich did appear before this court on 14/5/2019 where he stated that he has never conducted demarcation work on the ground. He averred that for the demarcation exercise to go on the committee members must be present and that in the present case the committee members don't turn up. The demarcation officer had stated that the Amwathi committee has 49 members and for there to be a quorum, more than half of the committee members are needed. The number mentioned by the demarcation officer as forming quorum is 26 people and that this quorum had never been achieved. He further stated that if the committee members were available he would be ready to carry on the demarcation exercise. He also added that although he is not involved in the dispute one can go to the field and be killed.

8. What emerged from the information given by the demarcation officer is that the committee is divided. Against this background the court gave directions for all the members of the Amwathi adjudication Committee to appear before this court on 20/5/2019 for the court to get first hand facts regarding the divisions in the committee.

9. The committee members did turn up before this court on 20.5.2019, whereby the court conducted an exercise of identifying the members present and getting to know on which side they were aligned to. The members in support of 1<sup>st</sup> plaintiff were 17 in number (Akubu group), while the members aligned to 1<sup>st</sup> defendant were 11 (Baariu group). The members were identified through their letters of appointment as committee members.

10. Plaintiff's counsel avers that pursuant to provisions of the land adjudication act, the Amwathi committee has quorum and hence the adjudication process should continue. He avers that pursuant to section 6 of the land adjudication act, the members required shall not be less than 10. He therefore indicated that the committee members present supporting the 1<sup>st</sup> plaintiff are more than enough the quorum required.

11. On the other hand, counsel for the respondent avers that the committee members are 49 in number and since the quorum is half of that number then the quorum is missing with 7 members. He avers that if the exercise is conducted without the quorum the exercise would have to be repeated again.

12. I have analyzed all the arguments raised herein and I have no doubts that the committee of Amwathi adjudication section is a divided one. The pleadings herein revolve around the issue of chairmanship of the committee i.e. whether it should be the first plaintiff or 1<sup>st</sup> defendant who should head the committee. 13. **Section 6 (1) of the land adjudication act (cap 284 laws of Kenya)** provides as follows;

**“In respect of each adjudication section the adjudication officer after consultation with district commissioner of the district within which the adjudication section lies, shall appoint not less than 10 persons resident within the adjudication section to be the adjudication committee for the adjudication section”.**

13. **Section 8 (3) of land adjudication act** provides that;

**“The quorum of a committee or board where the total number of members is an even number shall be one half of that number, and where the total number of members is an uneven number it shall be one half of the even number that is greater than that number by one”.**

14. Section 8 (4) further provides that;

**“the decision of  $\frac{3}{4}$  or more of the members of a committee or board who are present and vote shall be the decision of the committee or board, as the case may be”.**

15. From the foregoing it is clear that the statutory requirement is for the committee to have not less than 10 members, but no specific number is provided by the statute for the maximum number. The committee can have an even or uneven number of committee members.

16. The demarcation officer informed the court that the Amwathi committee has 49 members. I have perused the records and I have seen a list availed by the DLASO indicating that the committee members of Amwathi/Mutuati IIB adjudication section consist of 49 members. I am not persuaded by the averments of plaintiffs' counsel that the quorum of the committee is pegged at the minimum requirement of 10 members. The factual position is that the quorum of the committee is as provided for under section 8 of the land adjudication act. Which means that the quorum is pegged at the actual number of the committee members. In this case, the quorum should have 25 members.

17. 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”.***

18. 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.

19. The fact that half of the committee members are required to have a quorum and that three quarters of the members present are required to give a decision is an indication that the principle of inclusiveness should be upheld in every step.

20. The importance of adjudication was aptly captured in an article by **Thomas Smucker- “Land Tenure Reform and changes in land use”** 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.....***

***The assurance of rights consists of the certainty with which land use and tenure rights that are granted will not be prematurely interrupted or denied.... The current process of reform entails the adjudication of land rights to individuals... and the registration and titling of adjudicated parcels. 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”.***

21. In a nut shell, the residents of Amwathi desire to have titles for their parcels, and this can only be achieved if adjudication process is finalized.

22. The **provisions of article 10 of the constitution** provides as follows;

***“The national values and principles of governance in this article bind all state organs, state officers, public officers and all persons whenever any of them applies or interprets this constitution, enacts, applies or interprets any law, makes or implements public policy decisions. The national values and principles of governance include; - patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people, human dignity, equity, social justice, INCLUSIVENESS, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability and sustainable development.”***

22. It is paramount that for the adjudication process to be carried out fairly and justly, it is necessary to ensure that the **principal of inclusiveness** is safeguarded for the process to be real and not illusory. Thus where as it is mandatory to have a quorum for the committee to carry out its mandate, it is even more important to have a harmonious committee. That way, both the letter and the spirit of the law will be embraced.

24. My conclusion is that adjudication exercise may have stalled not only because there is lack of quorum of the committee members, but because of the disharmony in the committee. After all, this appears to be the reason why the suit was filed.

25. **Way forward.** This is an interim ruling as the court has neither determined the applications (which were in anyway abandoned) nor the suit. As such, parties may explore the option of having the suit heard on merits, or they can opt to hold fresh elections and better still mediation can be considered. As at now the court cannot give directions for the exercise to continue, when the dispute is live.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 23<sup>RD</sup> MAY, 2019 IN THE PRESENCE OF:-**

**C/A: Kananu**

Muriuki for plaintiff

Kiongo for defendant

Plaintiff

1<sup>st</sup> defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**