



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MERU

ELC SUIT NO. 122 OF 2007

M'BECHI NKANDAU

M'MURITHI M'MBWIRIA

JOSEPH MWIKUMI M'NJOGU

M'ITONGA MUTUNGA

PLAINTIFFS

FRANCIS KAMAU NGUGI

JOSEPH MBUTU M'IMANYARA (Suing on behalf of the

14 persons whose list of names is attached with this plaint)

VERSUS

THE HON ATTORNEY GENERAL.....1ST DEFENDANT

DIRECTOR OF LAND

ADJUDICATION & SETTLEMENT.....2ND DEFENDANT

LAND REGISTRAR MERU.....3RD DEFENDANT

ALL THE PLAINTIFFS IN CMCC NO. 83/1997 &

HCCC NO. 78/02 (LIST HEREIN ATTACHED).....4TH DEFENDANT

JUDGMENT

Introduction/ Background

1. The plaintiffs group is associated with a person known as **Johana Ntuara** or the **Kagwanja clan** while 4th defendant's group is associated with one **Murira Karigicha** or the **Omo clan**. The two groups appear to have had long standing disputes which culminated in litigation under the **land adjudication act (Cap 284 laws of Kenya)** in **Committee case no.57 of 1983** and **Board case No. 40 of 1983**. The dispute then spilled over to **objection case no 78 to 107 of 1988** where a decision was given on **23.3.1989**. This decision triggered the **appeal to the minister** in case no **137 of 1991**, where a decision was delivered thereof by **S.N.Toyya**, the then **District commissioner**. The decision of the minister was to be implemented pursuant to the provisions of **section 29** of the **land adjudication act**. This was done via the letter written by the then director of land adjudication and settlement, one **J.B.Mutsembi** to the chief land registrar and it is alleged that the said letter misrepresented the minister's decision whereby the titles were issued to the present **4th defendants (group of Murira)**. The **Murira group** then filed a case Meru C.M.C.C No. 83 of 1997 against the **Ntuara group** seeking orders of eviction of the latter from the suit parcels. The case was then transferred to Meru High court to become **Meru H.C.C.No. 78 of 2002**.

2. The **Ntuara group** then filed their own case, the same being Meru H.C.C.No. 122 of 2007 where they were challenging the implementation letter of **J.B.Mutsembi**. Somewhere down the line, the two suits were consolidated with **Meru H.C.C. No. 122 of 2007** becoming the lead file.

The Pleadings in; Meru H.C.C.NO 78 of 2002 (formerly Meru c.m.c.c.no.83 of 1997)

3. This case was filed by the **Murira group** where the eleven plaintiffs are;

- (i) Mutwiri Tarcisious Mugambi (administrator of the estate of Daniel Mugambi)
- (ii) Mukira Karigicha
- (iii) Jane Igoki Daniel
- (iv) Stephen Murungi
- (v) M'Ringera M'Aburi
- (vi) Peter Mareta Mung'inya
- (vii) M'Mbui M'Arithaa
- (viii) Ndereba M'Rithaa
- (ix) Mucheke Mbui
- (x) Joshua Mathonga
- (xi) Daniel M'Irambu

4. The eleven defendants sued were the **Ntuara group** and they are;

- (1) Mbechi Nkandau
- (2) M'Murithi M'Mbwiria
- (3) Joseph Nteere M'Anjau
- (4) Priscilla Waithera Daniel
- (5) Joseph Mbutu Manyara
- (6) Joseph Mwikumia M'Anjogu
- (7) Mugo Njeri
- (8) Wairimu Kiburi
- (9) M'Itonga Mutunga
- (10) John Kithinji
- (11) M'Mwongera M'Rintaugu

5. The plaintiffs had claimed that they were the registered owners of the suit parcels as follows;

- | | |
|--------------------|---------------------------|
| (a) Kiamuri A/283 | (deceased) |
| (b) Kiamuri A/284 | 2 nd plaintiff |
| (c) Kiamuri A/295 | 3 rd plaintiff |
| (d) Kiamuri A/1019 | 4 th plaintiff |
| (e) Kiamuri A/448 | 5 th plaintiff |
| (f) Kiamuri A/1217 | 6 th plaintiff |

- (g) Kiamuri A/294 7th plaintiff
- (h) Kiamuri A/293 8th plaintiff
- (i) Kiamuri A/1018 9th plaintiff
- (j) Kiamuri A/1147 10th plaintiff
- (k) Kiamuri A/1017 11th plaintiff

6. The plaintiffs had further stated that the then defendants had trespassed on their parcels in the following manner;

<u>Parcel no.</u>	<u>Trespasser/unlawful occupant</u>
(a) Kiamuri A/283	1 st defendant - Mbechi Nkandau
(b) Kiamuri A/284	2 nd defendant – M’Murithi M’Mbwiria
(c) Kiamuri A/295	3 rd defendant-Joseph Nteere M’Anjau
(d) Kiamuri A/1019	4 th defendant – Priscilla Waithira Daniel
(e) Kiamuri A/448	5 th defendant – Joseph Mbutu Manyara
(f) Kiamuri A/1217	6 th defendant–Joseph Mwikumia M’Anjogu
(g) Kiamuri A/294	7 th defendant – Mugo Njeri
(h) Kiamuri A/293	8 th defendant – Wairimu Kiburi
(i) Kiamuri A/1018	9 th defendant – M’Itonga Mutunga
(j) Kiamuri A/1147	10 th defendant – John Kithinji
(k) Kiamuri A/1017	11 th defendant - Mwongera M’Rintaugu

7. In that suit (**CMCC 83 of 1997**), the orders sought by the plaintiffs were;

- 1) Eviction orders to compel the defendants out of the respective land parcels.
- 2) Permanent injunction restraining the defendants from trespassing upon the said parcels.

8. The defendants in that case had filed a statement of defence and counterclaim on **7.3.1997**, where they averred that they had a dispute which went to the minister vide **appeal no. 137 of 1991** where it was decided that they, being the original occupiers of the suit parcels be registered as owners of the respective parcels. **The defendants (Ntuara group) then sought for the rectification of the register to depict the defendants as the rightful owners of the suit parcels.**

Pleadings in Meru H.C.C.C NO122 OF 2007

9. This case was filed by the **Ntuara group** against the group of **Murira**. The Plaintiffs claim that the 2nd defendant through one of its officers, **J.B Mutsembi** subverted an award given in the Ministers **Appeal No. 137 of 1991** and awarded the parcels in the subject matter of this suit to the **4th defendants**. That the conduct of **J.B Mutsembi** deprived the plaintiffs of their rights in their respective portions of land. The plaintiffs herein therefore instituted this suit vide a **plaint dated 27th September 2007**, where they prayed for judgement as follows;

- i. **Declaratory Orders that the Implementation Letter signed by one J.B Mutsembi on behalf of the 2nd defendant be declared null and void.**
- ii. **The court to order that the land registrar do cancel all entries in the land registers in respect of LR. KIAMURI ‘A’ /283, 284, 286, 287, 291,293, 294, 448, 468, 1018, 1217, 1130, 295 and 1132 and reenter the names of the plaintiffs in their respective parcels as the owners thereof.**
- iii. **That in the alternative the 1st and 2nd defendants be ordered to compensate the plaintiffs of the loss of their parcels**

herein at market price and to be paid costs including valuation costs.

10. The 4th Defendants in their defense statement filed on 9.1.2008 stated that the plaintiffs have no locus standi to sue the defendants, that the suit is improperly and un-procedurally before the court and that plaintiffs remedy if any lies elsewhere as it violates the mandatory provisions of the Government Proceedings Act, The Registered Land Act, The Adjudication Act and the Limitations of Actions Act.

11. The 1st 2nd and 3rd Defendants represented by the Attorney General filed their statement of defence on 10.10.2011 where they claim that they are strangers to the allegations set out in the plaint and that they have no knowledge of the hearing and determination of the Appeal **No.137 of 1991** by the District Commissioner.

The Evidence

12. **PW1, FRANCIS KAMAU NGUGI** is the only witness who testified on the side of the plaintiffs. He adopted his witness statement recorded on **27.6.2017** as his evidence. He states that he was born to the **Kagwanja** clan of which **Johana Ntuara** belonged to. **Johana Ntuara** was the original owner of the suit parcels which were **31 in number**. The 1st Plaintiff, Mbechi Nkandau is a brother of Johana Ntuara. PW1 avers that the land adjudication cases were conducted on clan basis and Joana Ntuara represented the Kagwanja clan while **Murira** represented the **Omo clan**.

13. According to PW1, there were many land disputes. In the first one (**Committee stage**), Johana won, long before Murira came into the picture. Then **Murira Karigicha** came in and filed **Arbitration Case No. 40 of 1983** where he lost. He then filed objection cases **78- 107** for the **31 parcels**, whereby Murira won **24 parcels** while **Johana** was then left with around **7 parcels**.

14. The plaintiffs had then filed an appeal to the minister, the same being **No. 137 of 1991**. The minister made his decision in favour of the appellants (the present plaintiffs) through the DC Meru, but the titles were issued to other people, the 4th defendants. PW1 states that despite this turn of events, the plaintiffs never left the land. The people who got titles then filed the Meru Suit **CMCC no. 83 of 1997** which was consolidated with this suit. PW1 contends that the original occupants of the parcels of land are the plaintiffs in this case.

15. In support of plaintiffs case, **PW1** produced the following documents as their exhibits;

1) The adjudication register for KIAMURI "A" SECTION.

2) Letter of 10.3.1994 from the minister to the director of land adjudication containing the decision.

3) The proceedings and judgment of the minister.

4) **THE LETTER OF 25.7.1994 WRITTEN BY THE DIRECTOR OF ADJUDICATION TO THE CHIEF LAND REGISTRAR. (Implementation letter).**

5) The letter of 2.3.1995 from the district land adjudication officer Meru to the director of adjudication raising the issue of contradictions in the implementation of the minister's decision.

16. On 26.11.2018, the matter was scheduled for further hearing of plaintiff's case. However, the court marked the case as closed as plaintiffs' counsel was absent and the witnesses had declined to give evidence in absence of their advocate.

17. **DW1 MUTWIRI TARCISIOUS MUGAMBI** testified and he adopted as his evidence, his statement dated 30th January 2018 where he indicated that he is the Proprietor of **LR. KIAMURI 'A' /1018**. He avers that in the early 1990 he did a case before the minister and when the appeal was allowed he was registered as the 1st Proprietor of the land and was issued with a title deed of the same. Later, he subdivided the parcel into three portions; **KIAMURI 'A' 2256, 2257 AND 2258**. He sold No. **2258** to **Joseph Mbaabu Mugambi** in June 2012, **No. 2256** to **Isaac Muriungi** and No. **2257** to **Wilfred Gitonga Mburugu** and currently, he doesn't own any land in the area.

18. In support of 4th defendants case, **DWI** produced as evidence the 11 documents in his list dated **30.1.2018**. These are;

(i) Adjudication register for Kiamuri A Adjudication section.

(ii) Implementation of the minister's decision dated 25/7/1994.

(iii) Copy of the register (Green cards) for L.R No.s Kiamuri "A"/293, 1147, 468, 1017, 981, 292, 1217, 286, 284, 295, 1019 and 1018.

(iv) Agreement for sale of L.R No. Kiamuri 'A'/286 for L.R No. Kiamuri 'A' and 291 and 1922.

(v) Title deed for L.R No. Kiamuri 'A'/291

(vi) Agreement for sale of L.R No. Kiamuri 'A'/468

(vii) Agreement for L.R No. Kiamuri 'A'/1017

(viii) Ruling dated 3.5.2012

(ix) Agreement for sale of L.R No. Kiamuri 'A'/1217

(x) Agreement for L.R No. Kiamuri 'A'/2258

(xi) Mutation for L.R No. Kiamuri 'A'/1018

19. **DW2 JULIUS KIRIMI MAGIRI** adopted his statement dated 30th January 2018 as his evidence. He stated that he is the registered proprietor of **LR No. KIAMURI 'A'/468** measuring 2 acres. He bought the said parcel from **Martin Kathurima** in 2010 and at the time the land was vacant and he took over possession without any objection. He has fenced his land and has extensively developed the same by planting mangos and Gravelia trees.

20. Additionally, he is also the owner of **LR. KIAMURI 'A' /290** which he bought from **Fabiane M'Ikiara, LR. KIAMURI 'A'/ 292 and 981** which he bought from **Murira Karigicha, LR KIAMURI 'A'/1017** which he bought from **Joshua Mathonga** and **Daniel M'Irambu** and finally **LR KIAMURI 'A'/1147** which he bought from **M'Arithaa Ndereba M'Mbui M'Arithaa** and **Muchecke M'Mbui**. All his properties have been extensively developed as he has put up houses, piped water, gravelia trees and has fenced the land with barbed wire fence.

21. During cross examination DW2 said that there was a case filed against the sons of Ntuara but he did not know if there was an appeal to the minister. The caution according to him had been removed from the green card.

22. **DW3 JOSEPH MBAABU** adopted his statement dated 30th January 2018 as his evidence where he stated that he is the registered proprietor of **LR. KIAMURI 'A' /283**. That in 1990's his father **Daniel Mugambi M'Aburi** did a case before the minister which he won against **Mbechi M'Nkandau**. The land was thereafter transferred to his late father as the first registered proprietor of the land. After the death of his father, the property was transferred to **DW3, Eric Mwiti and Duncan Majau**.

23. **DW4 JAMLICK MWONGERA M'NKANATA** testified and adopted his statement dated 30th January 2017 as his evidence. He avers that he is the proprietor of **LR No. KIAMURI 'A'/286** which he bought from **Joseph Marangu Mburugu** and has developed the land extensively with semi-permanent houses, livestock, piped water, borehole various crops trees and has erected a fence. He is also the proprietor of **LR NO. KAIMURI 'A' 291** which he bought from **Julius Kinyua Jason M'Mungania** and when he transferred the parcel there was no objection from anyone. To date he is not aware of the people who are suing him and his land should have no dispute as he was an innocent purchaser for value and without notice.

24. **DW5 STEPHEN MURINGI M'TUARUCHU** testified and adopted his statement dated 30th January 2018 as his evidence where he stated that Daniel Mugambi (deceased) transferred **LR No. KIAMURI 'A' 217** to him in 1992 and he took possession of the land. However, he sold the land to **Japhet Kinoti** in the year 2012 and Japhet is in occupation of the land to date.

25. **DW6 CLIFFORD MWITI MUGAMBI** also adopted his statement dated 30th January 2018 as his evidence where he stated that he is the son of **Daniel Mugambi M'Aburi** who had a case before the minister with one M'Murithi M'Mburia over the parcel of land **LR. KIAMURI 'A'/284** and he won the case. After the death of his father, **DW6, Nicholas Mburugu Mugambi, Douglas Mwirigi Mugambi and Silas Muthuri** became the beneficiaries of the said parcel.

26. The Attorney General for the 1st to 3rd defendant did not tender any evidence.

Plaintiffs Submission

27. The plaintiffs in their submissions argued that the persons who were listed in the register of rights as the original owners of various parcels within Kiamuri 'A' Adjudication Section are as follows;

- | | |
|-------------------------|--------------|
| 1) M'Bechi Nkadau | Plot No. 283 |
| 2) M'Murithi M'Mbwiria | Plot No. 284 |
| 3) Stephen M'Arimi | Plot No. 287 |
| 4) Francis Kamau Ngugi | Plot No. 291 |
| 5) Warimu Kiburi | Plot No. 293 |
| 6) Mugo Njeru | Plot No. 294 |
| 7) Joseph Mburu Manyara | Plot No. 248 |
| 8) Maina Kimani | Plot No. 468 |

- 9) M'Itonga Mutunga Plot No. 1018
- 10) Joseph Mwikumi M'Njogu Plot No. 1217
- 11) Johana Mutea Nkeiya Plot No. 1130
- 12) Salome Karuku M'Itere Plot No. 1132

28. That after the minister heard and determined the appeal between the parties pursuant to **Minister's Appeal No. 137 of 1991**, the district Commissioner signed the award/decision and forwarded it to the 2nd defendant for implementation. The 2nd defendant however misinterpreted the award and registered the parcels in favour of the 4th defendants. This amounted to wrongful exercise of authority on the part of the 2nd defendant which deprived the plaintiffs of their rights.

29. The 3rd defendant received the record of rights from the 2nd defendants and issued the title deeds to the wrong persons.

30. In support of their case, the plaintiffs relied on Section 29 of the Land Adjudication Act.

Defendants Submissions

31. The 4th defendants have argued that **PW1** was not authorized to testify on behalf of the other plaintiffs and that the other plaintiffs did not testify in court and those who are deceased have not been substituted as required by law. It is further submitted that plaintiffs have not based their claim on trust or fraud and therefore their claim cannot be maintained nor can the court cancel or impeach the 4th defendants Title Deeds. These defendants aver that they are protected under Section 27 (a) of the Registered Land Act.

32. In support of their case, the 4th Defendants proffered the cases of;

§ **Patrick Murime Gitau & 2 others vs. Ngethe Gathuku & 4 Others Civil Case No. 4259 of 1989,**

§ **Gachira vs. Gachira Civil Appeal No. 325 of 2003,**

§ **Kenneth Mwenda vs. Julius Rimberia & Another ELC No. 24 of 2015.**

Analysis and Determination

33. I have carefully analyzed the pleadings, the record and the submissions and I frame the issues for determination as follows;

I. Whether plaintiffs have authority to sue on behalf of other claimants.

II. Whether the decision of the minister was misinterpreted/Misrepresented.

III. Whether the titles issued in respect of Parcels known as LR. KIAMURI 'A' / 1185, 295, 1217, 448, 294, 293, 292, 291, 286, 132,130, 468, 290, 285, 284, 283, 1019, 1020, 1017, 1147, 981, 982, and 1018 should be cancelled.

IV. What relief should the court grant?

Whether plaintiffs have authority to sue?

34. I have seen a very old document attached to the plaint where the listed parties were giving their mandate to have the suit filed on their behalf. Considering the age of this dispute, I will say no more about the issue save to state that the suit is properly before this court.

The ministers decision in appeal no 137 of 1991

35. There is no doubts that the present plaintiffs are the ones who had lodged an appeal to the minister after losing substantially in the A/R objection proceedings before the Land Adjudication officer in objection no.s **78-107**. The decision made in the Appeal to the Minister in **Case No. 137 of 1991** is what triggered the first suit no. **CMCC 83 of 1997** and the subsequent one no **122 of 2007 High court**.

36. **Section 29** of the **Land Adjudication Act** provides that;

“(1) Any person who is aggrieved by the determination of an objection under section 26 (1) & (2) of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—

(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make

such order thereon as he thinks just and the order shall be final.

(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar”.

37. Thus whatever decision was made by the minister, it was to be forwarded to the Director of adjudication for onward transmission to the Chief Land registrar for issuance of the title deeds. The Minister’s decision has been availed as plaintiff exhibit 3 and I have also found it in file no CMCC 83 of 1997. It is therefore paramount to capture the body of that decision of the minister to establish the legality of the implementation process.

38. The extract of the decision from page 4 is as follows;

“This disputed land has in total 31 parcels registered in individual names. This indicates that it is not a block and that specific individuals have already established their rights over parcels registered against them. (emphasize mine). On a visit to the shamba on 18/1/2994 it was evident that most of it has actually been developed, well prepared and tended fields of millet, maize and other crops were viewed. Fairly well kept homesteads dating several years, back were visible. Individuals within were also interviewed and confirmed having been on the shamba for long periods. On this shamba also are old mango trees. Indigenous tree species were also scattered. Some parcels of land had not been developed. The alleged graves of M’Mugwongo’s wives were viewed, but were not established beyond reasonable doubt. What comes to light is that after demarcation individuals continued developing their parcels without any hindrance. They have established their interests. The issue of clan ownership of this land is debatable at the moment. This matter must have been handled at the committee stages during the walking of boundaries. This appears to have been done hence the existence of individual parcels. It’s of interest that Murira appears in scene in July 1983 when the actual process started in 1970. It’s not understood why Omo clan under the leadership of Murira should have waited until the individual rights were exerted. Had M’Mugwongo any interest as a person, he should have declared it in those stages because he was still alive. It’s also not clear why the Omo clan left the whole affair to Kirigia who in terms of clan affair was actually a foreigner. Were there no other clan elders? It is apparent that M’Mugwongo must have lost an interest as a person and hence left for Kambiti where Murira as an individual had some acquired interests. After sometime and with the death of M’Mugwongo, Murira, perhaps driven by greed and thirst for money started an orchestrated campaign for the “lost” lands of M’Mugwongo. This interest is not clan based and is individualistic. None of the Omo clan had been given any interest since the start. Had there been names of Omo from the start, then this would have been a different matter. But the argument is that if Murira gets back the whole junk of land, he would give it to the clan members. Who are they and where have they been all this time? It is possible they are at Kambiti? Had these clan members presented a case on their behalf to be supported by the clan leaders of the likes of Murira, a case could have been developed. Why are they being fronted this time?

Ntuara and Mwaja had cases with Kirigia as early as the establishment of boundaries. They stand a case as custodians of a group of the Abogeta clan. What defeats reasons is that they actually don’t know the owners of parcels on this land. They state they know only twenty five parcels. What happened to the 6 other parcels? They give an impression that their exercising the privilege of clan leadership leave some doubt.

How come that they didn’t have the actual figure of their beneficiaries? Who are these other five who are in the shamba? They are apparently not known by the Murira group. Were there some other clan leaders who were there also in the scene? In view of the foregoing, both Ntuara and Murira as the custodians of the shamba on behalf of their respective clans raises doubt and should not be given a lot of weight. They are apparently not competent for purposes of this matter and it would be defeating fairness and justice to grant them the powers to demarcate this land. And since there are individuals on it with specific parcels numbers, it is only fair that they be given chance to establish how they got them. This however, has not been the subject of this appeal and individual parcels are not in dispute as such.

ORDERS

“In the light of the above, and pursuant to cap 284 subsection 29 (10 of laws of Kenya, I Suleiman Toyya DC Meru do order that persons originally entered as the parcel owners of part of 1185, 295, 1217, 448, 294, 293, 292, 291, 286, 132,130, 468, 290, 285, 284, 283, 1019, 1020, 1017, 1147, 981, 982, and 1018 be registered as the rightful owners”.

39. This decision was forwarded to the **Director of Land Adjudication** vide the letter of **10.3.1994** –see plaintiff exhibit 2. The Director of adjudication then forwarded the decision of the minister to the Chief Land Registrar through the document dated **25.7.1994** (plaintiff exhibit 4). I again find it necessary to extract the contents thereof; as this is the contested document.

“

25TH July 1994

REF: IMPLEMENTATION OF MINISTERS DECISION ON APPEAL UNDER SECTION 29 OF LAND ADJUDICATION ACT CAP 284.

Appellants.....Johana Ntuara and Julius Mwanja

Respondents.....Murira Karigicha

Parcel Nos. 286, 287, 283, 284, 285, 290, 291, 292, 293, 294, 295, 448, 469, 1018, 1017, 1019, 1020, 981, 982, 1130, 1132, 1183, 1147 and 1217.

Appeal dismissed. Restrictions to be removed. The above parcel to remain as currently registered. Under section 29 (3) of the land adjudication act. I certify that the duplicate adjudication register for Kiamuri 'A' adjudication section relating to the above parcels are final in all respect”.

J.B MUTSEMBI

For Director of land adjudication & Settlement”.

40. There is no rocket science needed to discern the mischief created by the Director of Land Adjudication and settlement. The ministers decision was crystal clear that the parcels of land mentioned there in were to revert to the persons who were originally registered in the adjudication register. How did the Director come up with the words **CURRENTLY REGISTERED** in place of **ORIGINALLY REGISTERED**. The director did not stop there, he indicated that **APPEAL WAS DISMISSED!** Where in the ministers decision was it indicated that the appeal was dismissed? This is a situation where the minister had even caused a scene visit and he had established that there were individuals settled on the land with clearly demarcated parcels with homes dating several years back. These were the people who were to remain as owners of the land. The content in the implementation letter authored by the Director of adjudication is clearly not a case of misinterpreting the minister’s decision. It was a case of deliberate misrepresentation.

41. Plaintiffs’ exhibit 1 is the same document availed as defence exhibit 1. **It is an extract of the adjudication register** and it clearly shows how some of the names of the originally registered persons were cancelled and new names were inserted. All the parcels of land mentioned in the minister’s final order are the ones which have been cancelled in the adjudication register. For instance, on the first page of the adjudication register, **parcel no. 281** was initially registered in the name of **Stanley Magaju** but was cancelled to reflect the name of **Peter Ndia Muturi**, for parcel **no. 283**, the name of **Mbechi Nkandau (1st plaintiff)** was cancelled in favour of **Daniel Mugambi M’Aburi**, while in parcel **no. 284** the name of **M’Murithi M’Mbwiria** was cancelled in favour of **Daniel Mugambi M’Aburi**. The aforementioned cancellations must have occurred when **Murira** won most of the parcels during the objection proceedings (**objection no. 78 – 107 of 1988**). However, the minister’s decision did not uphold the decision in the objection cases. The minister’s decision was crystal clear that the land belonged to the original owners. It follows that the original owners are the ones whose names were cancelled in the adjudication register. The titles were however issued to the new registered owners instead of the original ones.

42. I also find that the nexus between the defendants and the suit parcels does not run deep. For **DW1**, when he got the title to his land **NO. 1018**, he subdivided it into 3 portions, sold all of them and left the scene, yet this is the person who is identified by some of his fellow witnesses (**DW 3 and DW 6**) as the person who became the administrator of the estate of **Daniel Mugambi M’Aburi**. Daniel Mugambi M’Aburi on the other hand was not one of the original owners of land as far as the adjudication register is concerned.

43. As for **DW2** he bought several parcels of land from other persons like **Muriira Karigicha**. It is not lost to this court that **Murira Karigicha** is the one who was championing the interests of the plaintiffs in **case no 83 of 1997**. **Murira was also not one of the original owners of the land**. **DW3** and **DW 6** have identified themselves as the sons of **Daniel Mugambi M’Aburi**. They inherited the land from their father, the same person whom I have already stated that he was not the original owner of the land. **DW 6** has been candid enough regarding the situation on the ground where he avers that though he owns one of the suit parcels, No. 284 he has never utilized the same as the land has always been occupied by **M’Murithi M’Mbwiria**, the 2nd plaintiff.

44. **DW4** bought the land from 2015-2016, while **DW5** got the land in 1992 and sold it in 2012 and therefore these two witnesses were buyers of the land and not original owners of the land.

45. I have also taken into account the pleadings in the original suit **CMCC NO 83 of 1997** where the present defendants were the plaintiffs who had sought orders of eviction of the current plaintiffs. This is a clear indication that the group which was in occupation of the land is the current plaintiffs. It is the one the minister had found on the suit land. There would have been no need to have a suit for eviction filed if the current plaintiffs had not been in occupation of the land.

46. It appears that the contradiction in the letter authored by **J.B. Mutsembi** was discovered early enough. The District Land adjudication officer, Meru did bring to the attention of the Director of adjudication that something was amiss and he did so through his **letter of 2.3.1995** see plaintiff exhibit 5. The DLASO sought to know the correct interpretation. There was no response from the Director of adjudication which again confirms that this officer **J.B.Mutsembi** and perhaps his office too did not want to undo the corrupt schemes.

47. It is appalling that by the whiff of a pen and by use of four words **“appeal dismissed”** and **“currently registered”**, the office of the Director of adjudication created **a historical injustice** affecting a large population of the citizen. The ripple effect of such impunity has adversely affected the generations and will certainly continue to be felt since undoing the mess may take some time. I will give an example; **DW6, Clifford Mugambi**, a son of Daniel Mugambi, and who is one of the people who largely benefited from the mess created through the implementation letter is the owner of parcel **284**. But he has never used this land as it is in the hands of the 2nd plaintiff.

48. How comes the office of the Director of adjudication and settlement in Nairobi never bothered to respond to their officer in Meru (the DLASO)? How comes the office of the Attorney General was missing in action during the trial of this case? It is a rather unfortunate situation that this level of impunity was left to thrive for decades without the slightest move to undo the mess.

49. From the foregoing analysis, I have no hesitation in making a finding that the minister’s decision was implemented in an illegal manner through misrepresentation and corrupt schemes.

Whether the titles issued in respect of Parcels known as LR. KIAMURI 'A' /1185, 295, 1217, 448, 294, 293, 292, 291, 286, 132,130, 468, 290, 285, 284, 283, 1019, 1020, 1017, 1147, 981, 982, and 1018 should be cancelled.

50. The above 23 mentioned parcels are the ones which were the subject of the minister's decision. **Article 40 (6) of the constitution** provides that;

“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired”

51. In the case of **Munyua Maina v Hiram Gathiha Maina, COA Civil Appeal NO. 239 of 2009**, it was held as follows;

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances....”

52. Having made a finding that the minister's decision was illegally implemented, it follows then that the resultant titles issued were unlawfully obtained. Thus the said titles ought to be impeached. The titles to be impeached are the ones mentioned in the minister's decision.

53. I note that the suit parcels have been alienated over the years. However, this was done during the pendency of the suits which was irregular. Further, I note that restrictions and cautions were lodged in many of the parcels from the very beginning. For instance in land parcel numbers;

1017-12.11.1992,

1147-12.11.1992,

284-25.4.1996,

286-2.12.1992,

1217-23.11.1994.

Thus even as buyers were scrabbling for the land, it was clear that there was a serious dispute which spilled in court as from 1997 and the said buyers cannot feign ignorance.

54. **Relief;** This court is alive to the fact that the dispute is very old and that some of the people who were registered as the original owners of the suit parcels may have passed on. As such, the land and titles shall revert back to their estate in instances where the owners are deceased. I proceed to grant orders as follows.

I. The suit Meru H.C.C.NO 78 OF 2002 (formerly Meru Cmcc 83 of 1997) is hereby dismissed with no orders as to costs,

II. The suit Meru H.C.C.NO 122 OF 2007 is hereby allowed in the following terms;

1) It is hereby declared that the implementation letter written by one J.B.MUTSEMBI on 25.7.1994 in respect of the decision in the minister's appeal no 137 of 1991 is null and void.

2) All the titles issued in respect of land parcels mentioned in the minister's decision the same being numbers KIAMURI“A”/1183, 295, 1217, 448, 294, 293, 292, 286, 468, 290, 285, 284, 283, 1019, 1020, 1017, 1147, 981, 982 and 1018 or their subsequent subdivisions are to be cancelled forthwith and the titles are to be issued in the names of the original owners.

3) The Deputy Registrar of this court is hereby authorized to sign all requisite documents to give effect to the implementation of this judgment.

4) The 2nd and 4th defendants are condemned to pay costs of the suit jointly and severally.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 22ND DAY OF MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Kimaita holding brief for Kaumbi for plaintiffs

Kiogora for 4th defendants

Kiongo for 1st and 3rd defendants

Francis Kamau

Joseph Manyara plaintiffs

M'Murithi M'Mwiria

Tarsicious Mugambi

Peter Mareta

Julius Kirima Defendants

Clifford Mwiti Mugambi

Jamleck Mwongera M'Nkanata

HON. LUCY. N. MBUGUA

ELC JUDGE