



REPUBLIC OF KENYA



KENYA LAW
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**Munuve v National Land Commission & 2 others (Civil Suit
E039 of 2021) [2026] KEELC 728 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL SUIT E039 OF 2021
EK MAKORI, J
JANUARY 28, 2026**

BETWEEN

ROSE NTHAMBI MUNUVE PLAINTIFF

AND

THE NATIONAL LAND COMMISSION 1ST DEFENDANT

SHAIBU KHAMIS MTUMWA 2ND DEFENDANT

THE LAND REGISTRAR KILIFI COUNTY 3RD DEFENDANT

JUDGMENT

1. By an amended plaint dated 21st November 2022, the plaintiff prays for the following orders:
 - a. A declaration that the plaintiff is the absolute and indefeasible owner of the parcel of land titled Chembe/Kibabamshe /411.
 - b. A declaration that the order of the National Land Commission directing the registration of the parcel of land Chembe/Kibabamshe /411 in the name of the 2nd defendant is null and void.
 - c. An Order of Inhibition, restraining the 3rd defendant from further dealings, including transfer, lease, or in any way whatsoever, with the parcel of land known as Chembe/Kibabamshe /411.
 - d. An Order of Perpetual Injunction restraining the 2nd defendant from carrying out any construction, development, or in any way dealing with plot Chembe/Kibabamshe / 411.
 - e. An Order of Eviction of any trespasser.
 - f. Costs of this suit.



2. The suit was defended. The defendants entered appearances, filed defenses dated 14th July 2021, 26th July 2022, and 12th July 2023, and participated in the hearing.

The Plaintiff's Case

3. In her written statement filed in court alongside the lawsuit, the plaintiff, Rose Nthambi Munuve, who testified as PWI, asserts that she was allocated the parcel of land Chembe/Kibabamshe/411 through an adjudication process in 1975. Upon payment of all requisite fees, she was issued a Certificate of Title on July 24, 1978. She further states that, around 1986, the government directed her to return the title. Subsequently, she received a letter of offer from the Settlement Fund Trustee dated 1995, after paying all necessary premiums. Furthermore, she was summoned before the National Land Commission in October 2015 and appeared with all relevant documents. However, via a gazette notice dated July 17, 2017, the commission ordered that the land be registered in the name of the 2nd defendant.
4. To substantiate her claim, the plaintiff submitted the following documents: A Notice to the Attorney-General; a Draft Valuation Roll for Chembe/Kibabamshe/411; a Letter of Allotment for Rose Nthambi Munuve; an Adjudication Fees Receipt for Chembe/Kibabamshe/411; a Copy of the Certificate of Title for Chembe/Kibabamshe/411; an Extract from Gazette Notice No. 6862 dated 17th July 2017; and a Valuation Report for Chembe/Kibabamshe/411.
5. To support her ownership of the land, she stated that it is clear from the title she received that she obtained financial accommodation via a charge with the Commercial Bank of Africa, which she duly paid.

The 1st Defendant's Case

6. The 1st defendant opposes the claim in its entirety through its witness, Mr. Brian Ikol, who testified as DW1. The 1st defendant confirmed that, in 2014, as part of preparations for a review of grants in Kilifi County, they verified the ownership status of parcels of land within the Chembe Kibabamshe Settlement Scheme, an exercise that lasted 6 months. This verification was carried out and involved all owners and/or occupiers of the plots, with their names documented against their respective land portions. A report was generated from this exercise and used to invite all interested parties to hearings conducted by the 1st defendant.
7. The advertisement was published in a widely circulated daily newspaper and disseminated to the Office of the 1st defendant's County Coordinator in Kilifi, the County Commissioners, as well as the Chiefs and village elders. The 1st defendant affirms that public hearings were held from September 9th to 17th, 2015, and from February 1st to 4th, 2016, at the Red Cross Hall in Malindi, during which the suit property, Chembe Kibabamshe/411, was among the properties under consideration. The Commission established that the government revoked and canceled all titles previously issued under the adjudication process in the Chembe/Kibabamshe area.
8. In 1995, new allotment letters were issued to the affected individuals under the settlement scheme. In light of these findings, the Commission recognized and affirmed that the 2nd defendant is the lawful owner of the subject property. Accordingly, it issued its determination, which was subsequently published in the Kenya Gazette via Gazette Notice No. 102 of 17th July 2017.
9. The 2nd defendant, Shaibu Khamis Mtuwa, who testified as DW2, adopted his witness statement dated 11th April 2023. He averred that he holds a title dated 10th April 2000. As part of his evidence, he exhibited the title dated 10th April 2000. He also exhibited a certified true copy of a Green Card for the title dated 10th April 2000. He further exhibited a Receipt for rates dated 29th August 2011. He



said he settled on this land sometime in the 1990s after being allocated it through the SFT program. He paid all necessary dues to the SFT. He stated that in 2016, following the lifting of the embargo, he applied to have the title dated 10th April 2000 subdivided into 24 plots, which he exhibited, and that, on that basis, he is the owner of the suit property.

10. The Land Registrar, Josiphine Rama, testified as DW3. HER evidence is summarized in her letter of 30th December 2024, titled "Report Chemebe/Kibabamshe /411 -Kilifi Court." The subject matter concerns Chembe /Kibabamshe /411, which spans 2.6 Hectares and is located on Map sheet No. 22. According to records maintained in the Land Registry, a green card was opened on 22 December 2015. The property was registered in the name of Shaibu Khamis Mtuwa on 18th December 2015, who had been offered the land under the SFT, paid all the requisite fees, and a discharge of charge was issued, with a title deed issued on the same date. On 9 February 2017, the title was subdivided, via mutation number 04244672 on 6 January 2017, into 24 portions, each assigned a new number ranging from 1115 to 1138. These plots measure approximately 0.10 Hectares each, except for plot No.1136, which measures 0.087 Hectares. Notably, all 24 plots are still registered under the name of Shaibu Khamis Mtuwa. Additionally, plots numbered 1133, 1134, 1135, 1135, 1135,1137, 1138 were charged on 1 March 2024 to K.C.B Bank Kenya Limited as a single charge amounting to Kshs. 10,500,000/-, serving the aforementioned plots.

Analysis and Determination

11. Following the hearing, the court instructed the parties to submit written arguments. I received submissions from the plaintiff's learned counsel, Mr. Kenzi; the 1st defendant's learned counsel, Ms. Wanini; and the 3rd defendant's learned state counsel, Mr. Ojwang. I am grateful that these submissions greatly assisted the court in reaching a decision on the matters presented.
12. Based on the above, the issues for the court to decide are: whether the plaintiff has a valid title to the land in question; whether the 2nd defendant's title is valid; whether the National Land Commission's decision was justified; whether the plaintiff is entitled to the reliefs sought; whether, alternatively, the plaintiff should receive indemnity; and who should bear the costs of this case.
13. The validity of the titles held by the parties can be decided simultaneously because they form the core of this matter.
14. Mr. Kenzi, on behalf of the plaintiff, asserts that the plaintiff has provided evidence that she was issued a title deed through the adjudication process in 1978. She also demonstrated that, as part of the use of the title, it was mortgaged to the Commercial Bank of Africa and that the loan was subsequently fully paid and discharged. The authenticity of the titles was never contested until approximately 1993, when they were recalled and replaced. She later received a letter of offer, fulfilled all stipulated conditions, and was to be issued a title under the New Settlement Scheme. Consequently, the plaintiff holds a valid title to the land that remains unchallenged, and it is appropriate for this court to declare so. He asserts that the indefeasibility of the title held by the plaintiff is governed by the provisions of sections 24 and 25 of the *Land Registration Act*.
15. On their part, Ms. Wanini for the 1st defendant and Mr. Ojwang for the 3rd defendant assert and submit that, in the exercise of the powers conferred under Section 14 of the *National Land Commission Act*, the Commission invited the interested parties to the suit property, including the plaintiff and 1st defendant, for a hearing. They were allowed to appear before the Commission and present the documents they would rely on to support their claim to the suit property. During the hearing, it emerged that although the plaintiff was initially issued a title deed in 1978, it was later confiscated because she was allocated an adjudication title and the area was declared a settlement scheme area. She



- confirmed receiving an allotment letter in 1995, but did not pay the requisite fees within the stipulated time.
16. Thereafter, the 2nd defendant was issued with a title deed. These facts were duly supported by the records held by the Chief Land Registrar at the Ministry of Lands. In that regard, the Commission's determination relied on and referred to the evidence and documentation produced by all the parties. The Commission performed its obligation and exercised due diligence in accordance with Article 47 of *the Constitution*. The plaintiff has not strictly proved any fraud in the registration of the title in the name of the 2nd defendant. She confirmed that her title deed had been confiscated, and although she was issued an offer letter, she failed to act because she already had a title. In that regard, she failed to discharge the burden of proof to be entitled to the orders sought.
 17. Regarding the issues as framed and the determination of which party between the plaintiff and the 2nd defendant holds a valid title, it is not in dispute that the plaintiff's title was recalled. The Chembe/Kibabamshe was declared a settlement scheme under the Settlement Fund Trustee (SFT) program, not an adjudication section. The plaintiff was given an offer letter under the SFT Program. She paid nothing. The 2nd defendant was thereafter given an offer letter, complied with the SFT conditions, including the discharge of the charge issued to him, and was subsequently issued the title document.
 18. It was these two warring titles that the NLC was probing, determining that the 2nd defendant held a superior title to the plaintiff's, having complied with the SFT conditions, since the area was not an adjudication section.
 19. In exercising the powers conferred under Section 14 above, the Commission invited the interested parties to the suit property, including the plaintiff and the 1st defendant, to a hearing. They were allowed to appear before the Commission and present the documents they would rely on to support their claim to the suit property.
 20. During the hearing, it emerged that the plaintiff was initially issued a title deed in 1978. However, it was confiscated because she was allocated an adjudication title, and the area was declared a settlement scheme area. She confirmed receiving an allotment letter in 1995, but she did not pay the requisite fees within the stipulated time. Thereafter, the 2nd defendant was issued a title deed after complying with the SFT requirements. These facts were duly supported by the records held by the Chief Land Registrar at the Ministry of Lands. In that regard, the Commission's determination relied on and referred to the evidence and documentation produced by all the parties. Based on the materials at hand, and in my view, the Commission performed its obligation and exercised due diligence in accordance with Article 47 of *the Constitution*.
 21. The plaintiff did not strictly prove any fraud in the registration of the title in the name of the 2nd defendant. She confirmed that her title deed had been confiscated, and although she was issued an offer letter, she did not act because she already had a title. In that regard, she failed to discharge the burden of proof to be entitled to the orders sought.
 22. Because the area was declared an SFT and not an adjudication area, the plaintiff was required to pay the requisite SFT monies. She did not. See *Ngugi v Commissioner of Lands; Owindo & 63 others (Interested Parties)* [2023] KESC 20 (KLR).
 23. Based on the evidence presented, I find that the 2nd defendant has a superior title compared to the plaintiff, who did not meet the SFT conditions. The plaintiff did not provide any records showing that procedures under the *Land Adjudication Act*, Cap 284, were followed; she only submitted a receipt for Kshs. 50 related to that process and did not explain the steps that resulted in the issuance of the 1978 title.



24. On the issue of indemnity, having found that the root of the title the plaintiff holds was not affirmed as to have been regularly issued, the prayer for indemnity will also not stand.
25. Consequently, the plaintiff's suit is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NYERI ON THIS 28TH DAY OF JANUARY 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Omboga H/B for Kenzi for the Plaintiff

Ms. Wanini for the 1st Defendant

Kendi: Court Assistant

In the Absence of:

Mr. Kilonzo for the 2nd Defendant

Mr. Ojwang for the 3rd Defendant

