



**REPUBLIC OF KENYA**

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

**ELCL CASE NO. E002 OF 2023**

**JUDITH KAMBA KAUMBUTHU (*Suing as  
The Legal Representative of  
DOUGLAS KAUMBUTHU -  
DECEASED*).....PLAINTIFF**

**=VERSUS=**

**THE BOARD OF MANAGEMENT,  
NJOTENE PRIMARY SCHOOL.....1ST  
DEFENDANT**

**SUB COUNTY LAND ADJUDICATION &  
SETTLEMENT OFFICER, IMENTI NORTH &  
BUURI SUB COUNTIES.....2ND  
DEFENDANT**

**THE HON ATTORNEY GENERAL .....3RD  
DEFENDANT**

**JUDGMENT**

**Introduction**

1. During land demarcation and adjudication in Ruiru/Rwarera Adjudication Section, the late **Douglas Kaumbuthu** [*hereinafter referred to as “the deceased”*] owned and

was demarcated and registered as the owner of land parcel **number 8**, measuring **19 acres** within **Ruiri Rwarera Adjudication Section**. During the same period, the **Ruiri Rwarera Land Adjudication Committee** approached the deceased and requested him to surrender to **Njotene Primary School** 14 acres out of parcel number 8. According to the estate of the deceased, the Committee was to compensate him with 30 acres within Ruiri Rwarera Adjudication Section.

2. The estate of the deceased contends that the Land Adjudication Committee failed to honour the arrangement, prompting the estate to file an adjudication register objection [AR Objection] through which the 14 acres were restored to the estate. The AR Objection award was subsequently overturned by the Minister in September 2022 following an appeal by the School. The estate contends that whereas the deceased surrendered the 14 acres to the school, he has never been compensated as envisaged. Through this suit, the estate seeks compensation.
3. The defendants contest the claim for compensation. They contend that according to an earlier demarcation map for Ruiri Rwarera Adjudication Section, the deceased was compensated with three parcels within the original Ruiri Rwarera Adjudication Section, together totaling 20.5 acres. Two out of the three parcels ceased to exist following a court order by the Court of Appeal placing them in a new adjudication section [Mbwa 1 Adjudication Section]. It is alleged that the court order removed the two parcels from

the Imenti Clan and placed them under the Tigania Clan. The defendants contend that it was the responsibility of the deceased and his estate to go to the Adjudication Committee in the newly established Mbwaa 1 Adjudication Section and seek compensation land from the Tigania Clan.

4. The key issues to be determined in the suit are: (i) Whether the late Kaumbuthu was compensated by the Directorate of Land Adjudication and Settlement in terms of the land exchange arrangement which he had with Ruiru Rwarera Land Adjudication Committee; and (ii) Whether the estate of the late Kaumbuthu is entitled to any of the reliefs that are sought in the suit. Before I analyse and dispose the issues that fall for determination, I will briefly summarize the parties' respective cases.

#### **Plaintiff's Case**

5. Judith Kamba Kaumbuthu initiated the suit on behalf of the estate of the late Kaumbuthu through a plaint dated 11/7/2023. The plaint was amended on 15/3/2024. The estate led evidence by three witnesses and filed written submissions dated 13/1/2026 through **M/s Mwirigi Kaburu & Co Advocates**. The case of the plaintiff was that, at the request of the Ruiru Rwarera Land Adjudication Committee, the deceased agreed to surrender his 14 acres out of parcel number 8 to facilitate expansion of **Njotene Primary School**. The surrender was to be in exchange for 30 acres that the Ruiru Rwarera Adjudication Committee was to identify, show to the deceased, and hand to the deceased in vacant possession within Ruiru Rwarera

Adjudication Section. Whereas the deceased surrendered his 14 acres for expansion of the school, the 30 acres were never and have never been given to the deceased. The estate added that even after the Minister allowed the school's appeal and allowed it to keep the deceased's 14 acres, the estate of the deceased has never been compensated

6. The plaintiff prayed for the following reliefs: (i) an order compelling the defendants to show, put in occupation and register the 30 acres in the name of the plaintiff; (ii) in the alternative to the above relief, an order compelling the defendants to compensate the deceased's estate for the 14 acres registered in the name of the school at the market value of Kshs 800,000 per acre as at 2024; (iii) in default of the above two reliefs, an order decreeing that the 14 acres surrendered by the deceased be hived from the 1st defendant's land [parcel number 1228 Ruiru Rwarera Adjudication Section] and be re-transferred back to the deceased's estate.
7. Following the testimony of the Land Adjudication Officer (DW1) in which she testified that the land adjudication register in Ruiru Rwarera Adjudication Section was closed and there was no vacant land available, the plaintiff abandoned the plea for compensation in form of 30 acres in Ruiru Rwarera Adjudication Section. She stated as follows at page 12 of her written submissions.

***“12. The plaintiff sought for compensation of 30 acres. However, while being cross-***

***examined by the court, DW1 confirmed that it is not possible to get another land because the Ruiru Rwarera Adjudication is now complete and title deeds were issued. This therefore leaves the plaintiff the alternative prayer.”***

### **Defendant’s Case**

- 8.** The defendants filed a joint statement of defence dated 29/2/2024. The defence was amended on 11/12/2024. At the hearing, they led evidence by one witness, Mary Maina [DW1]. She was the Land Adjudication Officer for Imenti South, Imenti North, Imenti Central, Buuri East and Buuri West. She was the Land Adjudication Officer for Ruiru Rwarera Adjudication Section which falls within Buuri East Sub County. In addition, the defendant filed written submissions dated 16/2/2025 (sic) through **M/s E. Wairimu**, Senior State Counsel [*There was definitely a typographical error with regard to the year because trial hearing was concluded on 5/11/2025*].
- 9.** The defendants admit that parcel number 8 within Ruiru Rwarera Adjudication Section was allocated to the late Kaumbuthu. They contend that the late Kaumbuthu surrendered 14 acres out of parcel number 8 to the Land Adjudication Committee for public use in favour of Njotene Primary School. They add that the late Kaumbuthu was compensated with three plots, namely: (i) Plot No 3133 measuring 13 acres; (ii) Plot No 4272 measuring 1.5 acres; and (iii) Plot No 4320 measuring 6 acres, altogether totaling 20.5 acres. They deny the allegation that the

Directorate of Land Adjudication and Settlement breached the land compensation arrangement, contending that it was the responsibility of the late Kaumbuthu to follow up on the compensation parcels even after the demarcation register of a section of Ruiru Rwarera was nullified and the affected parcels land placed in a different adjudication section [Mbwaal Adjudication Section] vide a Court of Appeal order.

### **Analysis and Determination**

- 10.** The court has considered the parties' pleadings, evidence and submissions. The key issues that fall for determination in this suit are: (i) Whether the Directorate of Land Adjudication and Settlement compensated the late Douglas Kaumbuthu for his 14 acres it took from him for the expansion of Njotene Primary School, in terms of the arrangement it had with him; (ii) Whether the estate of the late Douglas Kaumbuthu is entitled to the reliefs that are sought in this suit; and (iii) What order should be made with regard to costs of the suit.
- 11.** Did the Directorate of Land Adjudication and Settlement compensate the late Douglas Kaumbuthu for the 14 acres it took from him for the expansion of Njotene Primary School? In their amended statement of defence, the defendants admitted that the deceased and the Directorate of Land Adjudication and Settlement [through the Ruiru Rwarera Adjudication Section Land Committee] agreed that the deceased was to surrender 14 acres out of his land [parcel

number 8] for the expansion of Njotene Primary School. They averred that under the mutual arrangement the Directorate compensated the deceased with three parcels within the Ruiiri Rwarera Adjudication Section: (i) parcel number 3133 measuring 13 acres; (ii) parcel number 4272 measuring 1.5 acres; and (iii) parcel number 4320 measuring 6 acres, together totaling 20.5 acres.

- 12.** The estate denied the alleged compensation and contended that the Directorate reneged on the arrangement prompting the estate to file an objection with a view to reclaiming the late Kaumbuthu's 14 acres. The estate further contended that there had been no compensation to the late Kaumbuthu. What acreage was Kaumbuthu entitled to as compensation? Was the agreed compensation actualized?
- 13.** In her testimony during cross-examination, the Land Adjudication Officer [**DW1**] testified that the Minister made a finding in the award of September 2022 that under the mutual arrangement, the deceased was to be compensated with 30 acres. Indeed, the first finding in the award of the Minister reads as follows:

***“1. The portion Ruiiri/Rwarera Plot No 1228 a partial sub division of Ruiiri Rwarera Plot 8. It was initially owned by Douglas Kaumbuthu, who was approached by the Ruiiri/Rwarera land committee in the early 1980s to consider exchanging part of his land and leave the portion to the school***

**and was allocated Ruiru/ Rwarera parcel No 4272, 4320 and 3133 which measured 30 acres. In addition the school was started on a community land of 6 acres. While Mr Kaumbuthu exchanged the above portion with 14 acres.**

**2. Since the agreement, a public primary school was established and registered on the approximately 19.6 acres of land.”**

- 14.** It does therefore emerge from the finding of the Minister that the compensation land which the late Kaumbuthu was to get was 30 acres. Did he get the 30 acres? Did he get any other acreage?
- 15.** DW1 testified that the demarcation registers relating to parcel number 4320 [measuring 13 acres] and parcel number 3133 [measuring 6 acres] were nullified by an order of the Court of Appeal and the block of land within which the two parcels fell was moved to a newly established adjudication section [Mbwa 1 Adjudication Section]. What allegedly remained in Ruiru Rwarera Adjudication Section was parcel number 4272, measuring 1.5 acres. The Directorate of Land Adjudication and Settlement did not tender any evidence to demonstrate that its land adjudication committee in the new adjudication section demarcated compensation land in favour of the deceased. Secondly, the Directorate was not able to point out the location of the 1.5 acre that they alleged remained in Ruiru Rwarera Adjudication Section and

was demarcated in the name of the deceased. The Directorate was unable to tender evidence of any final adjudication register or land register relating to the 1.5 acres despite **DW1** stating that the adjudication register relating to Ruiru Rwarera was closed.

- 16.** The Directorate of Land Adjudication and Settlement was responsible for land demarcation and settlement in **Ruiru Rwarera Adjudication Section** and in **Mbwaa 1 Adjudication Section**. Secondly, the Directorate was the custodian of all records relating to persons in whose favour land had been demarcated or registered through adjudication in the two sections. They had all the final adjudication registers. If there existed a demarcation or an adjudication registration in favour of the deceased in relation to the 30 acres that the deceased was entitled to, the Directorate should have availed the relevant evidence. None was availed.
- 17.** From the totality of the evidence placed before this court, there is nothing to show that the late Kaumbuthu ever received the 30 acres he was entitled to. There is no evidence of existence of the 1.5 acre that is alleged to have been demarcated and registered in his favour in Ruiru Rwarera Adjudication Section. Similarly, there is no evidence of registration of the alleged 1.5 acre in his favour. Neither the retired Constitution nor the current Constitution would permit such a deprivation of land to pass without a remedy.

- 18.** For the above reasons, the court finds that the Directorate of Land and Settlement has failed to give the late Kaumbuthu the 30 acres the Land Adjudication Committee in Ruiru Rwarera Adjudication Section agreed to give him when they took his 14 acres for the expansion of Njotene Primary School, a public primary school in the area.
- 19.** Is the estate of the late Kaumbuthu entitled to the reliefs sought in the amended plaint? The estate conceded in its written submissions that the adjudication register relating to Ruiru Rwarera Adjudication Section had been closed and the plea for demarcation of 30 acres in favour of the estate was impractical at this point. Secondly, the court has reflected on the plea relating to the default-relief [prayer c], which is an order decreeing the excision of 14 acres from the school's land. The school serves a public purpose. Such a relief would constitute a reversal of the award of the Minister through an ordinary civil (land) suit and would be illegal. It is also not lost to the court that the 14 acres were acquired by the Land Adjudication Committee and handed to the school in the 1980s. The school has since then utilized and developed the land to provide education to the general public. Excision of the land at this point will gravely hurt the general public. Consequently, the only available relief is monetary compensation in tandem with the alternative relief, that is, prayer (b).
- 20.** The plaintiff led evidence by **Nicholas Nga'ng'a Mbugua** [PW1], a registered land valuer. He produced a valuation report dated 20/2/2024. The report relates to the 5 acres

that the deceased retained after 14 acres were hived out of parcel number 8 and given to Njotene Primary School. The valuer assessed the value of one acre at between Kshs 700,000 and Kshs 800,000. No other valuation report was tendered as evidence.

- 21.** In the absence of any other evidence relating to the value of the 14 acres that the late Kaumbuthu surrendered to the Ruri Rwarera Land Committee for the expansion of Njotene Primary School, the court will accept the figure of Kshs 700,000 as a fair open market value for one acre. Consequently, the value of the 14 acres is hereby assessed at Kshs 9,800,000. The estate of the late Kaumbuthu will be awarded the above sum as a fair and just compensation for the deceased's 14 acres. The sum will attract interest at court rate from the date of judgment.
- 22.** For avoidance of doubt, the liable party is the 2nd defendant and the decree and the certificate of costs are to be settled by the Accounting Officer [Principal Secretary] responsible for the monetary legal liabilities/obligations of the Directorate of Land Adjudication and Settlement in the National Government.
- 23.** On costs, the general principle under **Section 27** of the **Civil Procedure Act** is that costs follow the event. Consequently, the 2nd defendant will bear the plaintiff's costs of the suit. The 1st and 3rd defendants were necessary parties to this suit for the effectual and complete adjudication and settlement of all the questions

in the dispute. They were represented by the Office of the Attorney General which is a public office. There will be no award of costs to them.

**24.** In the end, the plaintiff's claim succeeds and is allowed in the following terms: -

***(a) Judgment is hereby entered in favour of the plaintiff against the 2nd defendant for Kshs 9,800,000 together with interest at court rate from the date of this judgment.***

***(b) The 2nd defendant shall bear the plaintiff's costs of this suit.***

**DATED, SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF APRIL, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**