

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**EMBU**

**ELC PETITION NO. 2 OF 2017**

**ALFRED MUNYI & 34  
OTHERS.....PETITIONERS**

**VERSUS**

**MINISTER FOR LANDS.....1<sup>ST</sup>  
RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION  
& SETTLEMENT.....2<sup>ND</sup>  
RESPONDENT**

**NATIONAL LAND COMMISSION.....3<sup>RD</sup>  
RESPONDENT**

**CHIEF LAND REGISTRAR.....4<sup>TH</sup>  
RESPONDENT**

**MARGARET WAMITI JONAH (Sued as the Legal  
Representative of the Estate of JONAH KUBUTA)  
.....5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL .....6<sup>TH</sup>  
RESPONDENT**

**JUDGMENT**

1. The Petitioners, who claim to be legitimate owners of the land known as parcel number 1468 Riandu/Nthawa (the suit land) by virtue of holding it as ancestral land, filed the Amended Petition dated 21/2/2022 seeking a declaration that the allocation of the suit land by the 1<sup>st</sup> Respondent contravened

Articles 40, 47, 50 and 60 of the Constitution of Kenya and was therefore illegal. They sought an injunction to restrain the Respondents from evicting them or executing the judgment, which the 1<sup>st</sup> Respondent made on 26/5/1976. They sought an order of certiorari to quash the decision of the 1<sup>st</sup> Respondent that allocated the suit land to the 5<sup>th</sup> Respondent and a declaration that the title issued to the 5<sup>th</sup> Respondent was null and void. The other prayer is for an order of mandamus directed at the 4<sup>th</sup> Respondent to cancel the 5<sup>th</sup> Respondent's title over the suit land. Alternatively, an order of mandamus directed at the 3<sup>rd</sup> Respondent was sought for it to investigate the manner in which the suit land was registered in the name of the estate of Jonah Kubuta, the 5<sup>th</sup> Respondent.

2. Alfred Munyi, the 1<sup>st</sup> Petitioner, swore the affidavit in support of the petition. He deponed that he was authorized to swear the affidavit on behalf of the other Petitioners and that he is one of the legal owners of the suit land and had been in possession since 1940. He averred that in early 1970, Jonah Kubuta, the 5<sup>th</sup> Respondent started claiming ownership of the suit land. This led to a dispute between him and the Petitioners that was determined by the Land and Settlement Disputes Court at Embu.
3. Mr. Munyi averred that vide the judgment delivered on 26/5/1976, the Minister for Lands and Settlement made a decision which gave Jonah Kubuta 150 acres. However, the Petitioners were surprised to learn from the Ministry of Lands that the judgment was altered and the 5<sup>th</sup> Respondent was allocated the suit land yet according to the initial judgment,

parcel number 1468 was subdivided into parcels 1382, 1370, 1371, 64, 70, 69, 68, 65, 1205, 939, 419, 71, 67, 73, 1400, 1399, 1398, 1391, 1397, 1396, 1402, 1395, 1405, 1442 and 1465. They contended that after the Minister allocated parcel no. 1468 to the 5<sup>th</sup> Respondent, the 5<sup>th</sup> Respondent subdivided the land to create new parcels and was issued titles for the new parcels.

4. They added that despite the 5<sup>th</sup> Respondent being issued title deeds, the Petitioners enjoyed quiet possession of their land until 2000 when unknown people accompanied by policemen and hired gangs with rowdy youth torched their houses. The Petitioners averred that in 2009, the 5<sup>th</sup> Respondent's family transferred the suit land to Kimunje Tea Factory.
5. On 20/2/2013 the Petitioners were evicted by armed police officers and the area Chief, who torched their houses and demolished the other houses whose value was estimated to be Kshs. 10,000,000/=.
6. Mr. Munyi exhibited the proceedings in appeal No. 65 of 1976 and Appeal No. 72 of 2026 before the Minister for Lands in Embu Township. The order appearing at the bottom of the judgment was to the effect that Alfred Kamuri would take 158.2 acres while Jonah Kubuta would take 150 acres. The Minister confirmed the decision of the Land Adjudication Officer. The other proceedings annexed to the affidavit show that a different order was made by J.H. Angaine, Minister for Lands and Settlement regarding the suit parcels of land.
7. The Petitioners maintained that according to the first judgment read to the parties, parcel no. 1468 Riandu/Nthawa belonged

to the 1<sup>st</sup> Petitioner. They stated that the 5<sup>th</sup> Respondent had embarked on evicting the Petitioners from the land while relying on the second judgment. The Petitioners averred that the Respondents had contravened Articles 10, 19, 40, 47, 50 and 60 of the petition. They invited this court to intervene and protect their constitutional rights pursuant to Article 23, 159, 162 (2) and 259 of the Constitution together with section 13 of the Environment and Land Court Act.

8. I.M. Muange swore a replying affidavit on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Respondents. Muange averred that according to their records, the green card for Nthawa/Riandu/1468 was opened from 1/8/1989, and was a combination of Nthawa/Riandu/1465, 939, 419, 65, 64, 73, 71, 70, 69, 67, 66, 1443, 1442, 1403, 1402, 1400, 1399, 1397, 1396, 1395, 1391, 1382, 1371, 1370 and 1205. The initial registered owner of the land was Jonah Kubuta. The title was closed on sub division on 16/4/1980 when new numbers were created, being Nthawa/Riandu/1514 to 1519.
9. Muange deponed that an undated entry was made in the green card of a court order dated 23/4/2013 in ELC No. 369 of 2007 from the High Court at Nairobi and that no further entries had been made on the land register. A copy of the land register was exhibited confirming this position.
10. Margaret Wamiti Jonah, the 5<sup>th</sup> Respondent, swore the replying affidavit in opposition to the petition. She deponed that she was the wife of late Jonah Kubuta but was not the administrator or legal representative of his estate and did not know in which capacity she was sued. She was emphatic that

she was not a party and did not participate in any of the proceedings before the Minister. Further, that she did not own any of the parcels of land mentioned in the petition or the judgments whose validity was being questioned in this petition.

11. The petition was canvassed through written submissions. The Petitioners summarized five issues for determination. These are whether the land initially belonged to the 1<sup>st</sup> Petitioner; whether the Minister of Lands and Settlement had the mandate to vary the first judgment and replace it with the second judgment dated 26/5/1976; and whether the review on 17/10/1976 of appeal case Nos. 72 and 65 of 1976 was lawful. The other issues were whether the suit land was illegally registered and whether the Petitioners were entitled to the reliefs sought in the amended petition.
12. The Petitioners submitted that it was not in dispute that parcel no. 1468 Riandu/Nthawa in its previous iteration first belonged to the 1<sup>st</sup> Petitioner and the other Petitioners. Additionally, that it was not in dispute that the suit land was within an adjudication area being Embu Township. They contended that the suit land was ancestral land, which they had occupied since 1940. They pointed out that the green card was opened on 1/8/1979 when Jonah Kubuta was registered as the owner of the land. They reiterated that the Minister awarded Jonah Kubuta 150 acres. Further, that the Minister ordered the combination of parcels 1410, 1428, 1409, 1377, 1376, 1449, 1408, 1450, 1429, 1407, 1406, 1404, 1401, 1400, 1399, 1398,

1443, 1391, 1391, 1396, 1402, 1403 and 1395, following which 150 acres was to be awarded to Jonah Kubuta.

13. The urged that the gist of the 1<sup>st</sup> decision in Minister Land Appeal No. 65/1976 was that the 5<sup>th</sup> Respondent was to be one of the owners of the land that became 1468 Nthawa Riandu and not the sole owner. They challenged the second judgment delivered by the Minister to the effect that the land belonged to the 5<sup>th</sup> Respondent. The Petitioners submitted that the Minister of Lands and Settlement did not have the right to materially alter or vary the judgment of appeal in 65/1976, which was pronounced in open court before all parties and which only awarded the 5<sup>th</sup> Respondent 150 acres. They maintained that that judgment was final.
14. The Petitioners submitted that appeal numbers 72/1976 and 65/1976 dealt with 11 shared parcels of land including parcel no. 72 recorded in the name of Embu County Council. They pointed out that in the first judgment the land allocated to the 5<sup>th</sup> Respondent was 150 acres while the second judgment effectively gave the 5<sup>th</sup> Respondent the entire mother parcel. They added that the Minister attempted to address these discrepancies through the review on 17/11/1976. They urged that the review did not change the illegal effect that the second judgment had on the first judgment. They maintained that parcel no. 1468 Riandu/Nthawa was illegally registered and cited Section 26 of the Land Registration Act on the grounds upon which a certificate of title can be challenged and case law on this point.

15. The Petitioners urged that under Section 49 (1) of the Land Adjudication Act, the Minister's decision in appeal No. 65/1976 which directed that the 5<sup>th</sup> Respondent was to get 150 acres was final when it was pronounced before open court on 26/5/1976. They added that the Minister varied the final order through the second judgment and that he attempted unsuccessfully to remedy the miscarriage of justice by a review of both decisions. They contended that they were left without any recourse in contravention of Articles 40 and 47 of the Constitution. The Petitioners urged that this court had the power to issue the reliefs sought.
16. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents submitted that the petition failed to demonstrate any irregularity, fraud, bias, or breach of statutory duty by the registrar or adjudicators. The Respondents accused the Petitioners of laches and of disguising the matter as a constitutional petition. They pointed out that the register was opened on 1/8/1989 and the land was subdivided in 1990. They maintained that the 33 year delay from the time the land was first registered in 1989 to 2017 when the petition was filed was unjustified, inordinate and an abuse of the court process. They added that the Petitioners failed to meet the threshold for constitutional petitions by setting out with a reasonable degree of precision that of which they complained, provisions infringed and the manner in which they were infringed.
17. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent submitted that their role under the Land Registration Act was purely administrative and included registering, maintaining and updating the land

records based on the documents presented. They denied that their role was to investigate land fraud or adjudicate disputes. They also added that a land registrar was protected from liability for acts done in good faith while discharging official duties. They maintain that the Petitioners have failed to present direct evidence linking the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents to any fraudulent or illegal activities. They invited the court to decline to issue the reliefs sought.

18. The 5<sup>th</sup> Respondent clarified that the proper description of the suit land was Nthawa/Riandu/1468 and not 1468 Riandu/Nthawa as the Petitioners pleaded in their suit. The 5<sup>th</sup> Respondent reiterated that she was neither the legal representative nor the administratrix of the estate of Jonah Kubuta. She maintained that she lacked the *locus standi* to defend the Petitioners claim.
19. The issue for determination is whether the court should grant the reliefs sought in the petition. Looking at the documents produced by the Petitioners, it is apparent that they are challenging orders made by the Minister in 1976. It is the Petitioners contention that they lived on the suit land as their ancestral land until they were evicted from the suit land between 2000 and 2013.
20. The genesis of this land dispute can be traced back to the adjudication and demarcation of the land. The land Adjudication Act is what gave the Minister powers to hear the appeal emanating from the adjudication process. Under section 29 of the Land Adjudication Act, the Minister's decision was final. What emerged from the proceedings conducted by

the Minister is that there was a first and second decision made over the allocation of the suit land. There seems to have been another decision or review of sorts by the Minister.

21. In this court's view it is not possible to make a fair and just determination of this dispute which has a bearing on historical land injustices, and which falls within the domain of the National Land Commission pursuant to Article 67 of the Constitution and the National Land Commission Act.
22. An order of mandamus is issued directing the 3<sup>rd</sup> Respondent to investigate the manner in which Riandu/Nthawa/1468 was registered in the name of Jonah Kubuta, the 5<sup>th</sup> Respondent and to make appropriate recommendations. The Petitioners are awarded the costs of the suit to be borne by the 1<sup>st</sup> Respondent.

Delivered virtually at Bungoma this 18<sup>th</sup> day of March 2026.

**K. BOR  
JUDGE**

**In the presence of: -**

Ms. E. Ondisa holding brief for Mr. W. Nyamu for the Petitioners

Mr. Kiongo Justin for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents

No appearance for the other Respondents