



**Kyai (Suing as Administrator of the Estate of Kyai Muvevi) & another  
v Attorney General & 4 others (Environment & Land Petition  
20 of 2021) [2024] KEELC 4167 (KLR) (16 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4167 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
ENVIRONMENT & LAND PETITION 20 OF 2021**

**LG KIMANI, J  
MAY 16, 2024**

**BETWEEN**

**ONESMUS MULI KYAI (SUING AS ADMINISTRATOR OF THE ESTATE OF  
KYAI MUVEVI) ..... 1<sup>ST</sup> PETITIONER  
ITINGU MWANIA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF KITUI ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF LAND ADJUDICATION ..... 3<sup>RD</sup> RESPONDENT  
DIRECTOR OF SURVEYS ..... 4<sup>TH</sup> RESPONDENT  
REGISTRAR OF LANDS, KITUI ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioners filed a joint petition dated 24<sup>th</sup> June 2018 challenging ownership of portions of land parcels Nzalae/Mutonguni/744, Nzalae/Mutonguni/514, Nzalae/Mutonguni/516 and Nzalae/Mutonguni/751.
2. The 1<sup>st</sup> Petitioner claims as an administrator of the estate of Kyai Muvevi Ikonya, having obtained a grant vide Machakos Succession Cause 399 of 2006 as the registered owner of land parcel number Nzalae/Mutonguni/503. The 2<sup>nd</sup> Petitioner claims as the original owner of land parcel number Nzalae/Mutonguni/512.
3. The Petitioners aver that in 1952 the 2<sup>nd</sup> Respondent allowed settlers including the 2<sup>nd</sup> Petitioner and the deceased to graze their livestock in an area known as Katutu which was then part of trust land the 2<sup>nd</sup>



- Respondent was holding on behalf of the people of then Kitui District (now Kitui County). In 1970 the 4<sup>th</sup> Respondent allowed the settlers to settle on the land and in conjunction with other respondents had the area declared an adjudication section and named it Nzalae/Mutonguni Adjudication Section.
4. The Petitioners claim that the deceased and the 2<sup>nd</sup> Petitioner settled and grazed on the land in 1952 before the 2<sup>nd</sup> Respondent allowed people to graze and that the settlers had established boundaries and identified their portions of land before the 1<sup>st</sup> and 3<sup>rd</sup> Respondents declared the area an adjudication area.
  5. The Petitioners further claim that during adjudication the adjudication committee and other officers carried out adjudication and came up with maps and fixed boundaries according to how people settled on the land.
  6. The petitioners claim that after adjudication, the committee identified and established ownership rights on the following parcels of land among others:
    - Nzalae/Mutonguni/514 reserved for Katutu market.
    - Nzalae/Mutonguni/503-to the deceased
    - Nzalae/Mutonguni/516-Katutu Primary School
    - Nzalae/Mutonguni/512-to the 2<sup>nd</sup> Petitioner
  7. However, they claim that much later the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents manipulated the records, the established boundaries, maps and plans to deny the petitioners their right to own the land by changing their decisions without notice or knowledge of the petitioners and the deceased. The results of these acts were that the respondents:
    - a. Created Nzalae/Mutonguni/744 measuring 1.01 Ha from the 2<sup>nd</sup> petitioner's parcel number Nzalae/Mutonguni/512 and allegedly reserved it for the chief's camp.
    - b. Excised 0.055 Ha from the 2<sup>nd</sup> Petitioner's parcel Nzalae/Mutonguni/512 and annexed it to Nzalae/Mutonguni/514 making it part of the Katutu market, leading to the 2<sup>nd</sup> Petitioner losing a total of 1.065 Ha.
    - c. Excised 0.334Ha from the deceased's Nzalae/Mutonguni/503 and made it part of Nzalae/Mutonguni/516 which had been allocated to Katutu Primary School.
    - d. Excised 2.83Ha from the deceased's Nzalae/Mutonguni/503 and registered it as Nzalae/Mutonguni/751 and allegedly reserved it for Katutu Girls Secondary School.
  8. The Petitioners stated that upon discovery of the above manipulations, the Petitioners and the deceased filed objections which were dismissed. The Petitioners aver that the respondents have developed the Chief's camp and Katutu Girls Secondary School in other parcels of land and have transferred and registered Land Parcel number Nzalae/Mutonguni/516 to another individual Kitavi Nzila instead of Katutu primary school to grab land from them.
  9. The Petitioners also aver that they are still in occupation and use of the portions of land in dispute and it will amount to an infringement of their rights to let the respondents change this when the land is not even needed for public use.
  10. They, therefore, claim violation of their Constitutional rights under Article 40(1), (3), loss of economic livelihood and perpetual poverty and landlessness and the deceased's beneficiaries and the 1<sup>st</sup> petitioner has been denied their right to inherit from their father.



11. The Petitioners aver that the Respondents' actions were fraudulent, illegal and discriminatory. The Petitioners stated that they were time-barred from filing an appeal since the actions by the respondent's officers were kept secret and away from them and titles had already been processed, leading the petitioners to withdraw civil case number 20 of 2007 filed against the respondents.
12. The Petitioners pray for the following orders:
  - a. An order declaring that the respondent's acts complained of amounted to deprivation of the claimants' constitutional rights to acquire and own property.
  - b. A declaration that the Director of Land Adjudication, Director of Survey and the officers in the Ministry of Lands illegally and unlawfully excised 0.55Ha from Land Parcel Number Nzalae Mutonguni/512 belonging to Iting'u Mwanja and made them part of Land Parcel Number Nzalae Mutonguni/514.
  - c. An order directing the respondents to excise 0.55Ha of land from Nzalae Mutonguni/514 and register the same to Iting'u Mwanja.
  - d. An order declaring that parcel of land number Nzalae Mutonguni/744 was illegally excised and created from Nzalae Mutonguni/512 belonging to Iting'u Mwanja and an order directing the Registrar of Lands Kitui to transfer and register the said land to Iting'u Mwanja.
  - e. A declaration that the Director of Adjudication, Director of Survey and the officers in the Ministry of Lands illegally and unlawfully excised 0.334 Ha from Land Parcel Number Nzalae Mutonguni/503 belonging to the late Kyai Muvevi Ikonya and made them part of Nzalae Mutonguni/516.
  - f. An order directing the respondents to excise 0.334Ha of land from Nzalae Mutonguni/516 and register the same to Kyai Muvevi Ikonya.
  - g. An order declaring that parcel of land Nzalae Mutonguni/751 belonging to the estate of Kyai Muvevi Ikonya and an order directing the Registrar of Lands Kitui to transfer and register the said land to the estate of Kyai Muvevi Itomya.
  - h. In the alternative, the court finds that the respondents having violated the petitioners and the deceased's constitutional rights by depriving them of their property are liable to compensate the petitioners and an order that the respondents do compensate the petitioners for the lost parcels at the current or prevailing market value of the properties.
  - i. Any other orders that this court may deem fit to grant in the circumstances.
  - j. The respondents do pay the costs of this petition.
13. The Petition is supported by the affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners and Augustus Musya Kyai. The 1<sup>st</sup> Petitioner reiterated the contents of the Petition, adding that an RIM map he obtained supports the averments made in the petition and the supporting affidavits. He further stated that the Katutu Primary School has written to state that they do not own the land in dispute. He also stated that Katutu Secondary School has been built on land parcel Nzalae/Mutonguni/437 since 1989.
14. The Petitioners stated that the 5<sup>th</sup> Respondent had recognized that the people settled on the land had nowhere else to go and allowed them to settle and build homes in 1970 as well as declared the area Nzalae/Mutonguni adjudication section.



15. The 2<sup>nd</sup> Petitioner swore an affidavit also repeating the contents of the petition as set out above. He confirmed his claim that a portion of 0.055 hectares was excised from his land parcel number Nzalae/Mutionguni/512 and made part of Nzalae/Mutionguni/514 reserved for Katutu market while a portion of 1.01 hectares was excised from his same land and made into Nzalae/Mutionguni/744 reserved for the Chiefs camp. He stated that he had obtained an RIM map that shows the manipulated boundaries. He stated that the chief's camp is already built elsewhere on parcel 514 and the land is not needed for that purpose.

### **1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents' Replying Affidavit.**

16. Peter K. Nduati, the Assistant Director of Land Adjudication and Settlement Kitui County swore an affidavit in response to the Petition. He stated that Section 13 of the [Land Adjudication Act](#) provides that every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer and point out boundaries to the demarcation officer in the manner required within the period fixed by the notice under section 5 of the act.
17. He stated the land Parcel 744 was presented by the Nzalae/Mutonguni community for recording as a public utility for the chief's camp to be held in trust by the then County Council of Kitui. He denied that Land Parcel 744 was ever part of Land Parcel 512 and neither was it a subdivision of the said land.
18. He deposed that the 2<sup>nd</sup> Petitioner, Itingu Mwanja the owner of land parcel 512 had pursued and lost interests in land parcels 744 and 514 through an objection to the adjudication register and an appeal to the Minister. Upon dismissal of the appeal to the Minister, the restrictions on the parcels of land were removed on 27<sup>th</sup> July 2005.
19. He denied that Land Parcel 512 was excised and merged with Land Parcel 514 reserved for Katutu Market. He stated that Land Parcel 514 with its original boundaries was presented as a claim by the Nzalae/Mutonguni community and registered in the name of the County Council of Kitui to hold in trust as a public utility.
20. He stated that parcel No. 516 was presented as a claim by the Nzalae/Mutonguni community for recording in the name of the County Council of Kitui in trust for them as Katutu Primary School. There were no remarks and/or comments about subdivision next to the sketch maps of parcels 503 and 516. The restriction placed on parcel 516 was removed after the dismissal of the appeal to the Minister on 20<sup>th</sup> May 2005 and the restriction was removed on 19<sup>th</sup> April 2006.
21. He stated that parcel 751 was presented as a claim by the Nzalae /Mutonguni community for recording in the name of the county council of Kitui to hold in trust for them as Katutu Secondary School and its boundaries were intact. There were no remarks and/or comments about subdivisions next to the maps.

### **2<sup>nd</sup> Respondent's Replying Affidavit**

22. The 2<sup>nd</sup> respondent initially filed a replying affidavit sworn by Alexander Kimanzi on 13<sup>th</sup> March 2019 but the same was replaced by the replying affidavit of Agnes Mulewa, the acting County Secretary of the 2<sup>nd</sup> Respondent sworn on 22<sup>nd</sup> June 2022 and filed on 23<sup>rd</sup> June 2022. She deposed that the suit lands Nzalae/Mutonguni/514, 516, 744 and the entire Nzalae/Mutonguni area was before 1964, a virgin trust land managed by the defunct County Council of Kitui.
23. Between the years of 1964-1970, people from the surrounding area started grazing therein although there were no settlements and they paid nominal fees to the defunct county council of Kitui. When the population began to rise the defunct County Council of Kitui allowed them to settle and establish villages.



24. The area was declared an adjudication section in 1979 and a committee of 12 people was appointed to help the demarcation officers with the resolution of disputes. At the request of the people and with approval of the defunct County Council of Kitui, certain spaces were preserved as public utility lands for purposes of establishing schools, cattle dips, health centres and markets and under this arrangement the following land parcels were preserved Nzalae/Mutonguni/514, Katutu market, 516- Katutu Primary School, 744- Katutu Chief's office and 751-Kitutu Harambee Secondary School (currently Katutu Girls Secondary School.)
25. No resident raised any reservation at the adjudication process until the time of lodging of objections when the 1<sup>st</sup> Petitioner and one Kithuku Kutu(Deceased) lodged their objections 62, 63, 64 and 65 of 1984. The said Kithuku Kutu withdrew his objection concerning Land Parcel 750 and it remained a public utility land.
26. The objection proceedings by the 2<sup>nd</sup> Petitioner were heard and dismissed and the appeal to the Minister was also dismissed and the final decision was implemented in the year 2005.
27. It was stated that the titles to the suit parcels of land were not acquired fraudulently and that upon promulgation of *the Constitution* of Kenya 2010, the parcels of land which were public utilities were inherited by the County Government of Kitui.
28. It was deposed that the County Government does not play a role in the Land Adjudication process, keeping of adjudication records and issuance of titles and there is no evidence of manipulation or violation of the Petitioner's rights by the 2<sup>nd</sup> Respondent.
29. It is further averred that the 2<sup>nd</sup> Respondent did not hold the lands in trust by the County Government on behalf of the petitioners therefore the 2<sup>nd</sup> Respondent was under no obligation to ensure the interest was registered in favour of them and they pray that the petition be dismissed with costs.

### **Evidence at the hearing**

30. The hearing proceeded by way of viva voce evidence on 22/7/2020 initially before the Hon. Justice Angote where the 1<sup>st</sup> Petitioner PW1 Onesmus Muli Kyai testified and adopted his supporting affidavit sworn on 24<sup>th</sup> June 2018 as evidence as well as the documents annexed thereto. He stated that he was allocated parcel no.503 which was previously an amalgamation of Land Parcels 503, 751 and 516 which was their initial land. He stated that parcel 516 for Katutu Primary School goes beyond the road and that portion was erroneously given to the school and is now registered in the name of Kitavi Nzila and it measures 11.04 ha. He relied on the map on page 27 of the Petitioners' bundle of documents. He further relied on a letter from the headmaster of the school stating that the school was not claiming the land.
31. He testified that Parcel No.751 was allocated to Katutu Secondary School but the said school was built almost 3 kilometres away from the said land and that when the site was proposed for the school in the year 2001, the school land and was constructed in the 80s.
32. Upon cross-examination, the 1<sup>st</sup> Petitioner confirmed that he has a title deed to and lives on Land Parcel 503 and that the survey was done in 1978 when he was in school and he saw it being conducted. That they sold to the school land parcel 516 for a sum of Ksh.1000/= . He stated that in the year 2001 when the site for the school was proposed the school had already been constructed. He also stated that in 1977 he was still a child and that he knew his father filed an objection and the objection was never heard.
33. PW 2 Itingu Mwania, the 2<sup>nd</sup> Petitioner also gave evidence and adopted the filed affidavit. He referred to page 72 of the Petitioners' bundle and stated that his land parcel 512 has since changed to 1481 after



- selling a portion of it. Before adjudication, he stated that his land included 744 and a small portion of 514 which are supposed to be part of his land.
34. He also stated that there is a chief's office next to his land even though the map indicates that Parcel 744 was reserved for the chief's office but it is currently not located on Land Parcel 744 but on a portion of Parcel 514.
  35. Upon cross-examination, PW 2 confirmed that he is living on Land Parcel 1481 which is around 30 acres and that the chief's office is located on portion 514 at the market. He also stated that he had complained to the survey's office but he lost and he appealed the decision and lost again but that the survey people never visited the land. He blamed the survey people for the error.
  36. The defence case proceeded before this court on 16/11/2022 when DW 1 Peter Kamau Nduati, Assistant Director, Land Adjudication office adopted his affidavit sworn on 29<sup>th</sup> March 2021 as well as the documents annexed to it as evidence. With regards to the suit lands, he stated that the interest was recorded in the name of Kitui County Council holding it in trust for Katutu Market. He confirmed that according to their records, parcel 503 was recorded in the name of Kyai Muvevi (Deceased) and that Land Parcel 512 was recorded in the name of Itingu Mwanja, the 2<sup>nd</sup> Petitioner. Several parcels of land were reserved for public utility to be held in trust by Kitui County Council Land parcels 516 for Katutu Primary School, 744 for Kitui Chief administration, and 751 for Katutu Secondary School.
  37. According to DW 1, an adjudication committee was set up to work with the Office of Land Adjudication and the parcels were presented by the community accordingly. He denied that some parts of Land Parcels 512 and 503 were excised to create public utilities because it was not indicated in the demarcation book since sub-division is usually in the last column of the demarcation book on remarks. He noted that if a party is aggrieved by the adjudication process the Act provides for the mechanisms to deal with any issues that arise.
  38. DW 1 confirmed that there were objection proceedings filed by the 2 petitioners which were dismissed. He also confirmed that they appealed to the Minister where it was also dismissed and it was concluded that parcels 514 and 744 were to remain as property of the County Council. He stated that there was no way that the land for parcel 516 was donated by the deceased 1<sup>st</sup> Petitioner then he could not then claim it back again. Referring to the title for LR 503, he noted that it was recorded as 8.03Ha. He confirmed that what was recorded by the demarcation officer is what is in the title. He however clarified upon cross-examination that he has not visited the site since his duties ended a long time ago and he does not know whether any of the public utilities have been constructed.
  39. Upon re-examination, DW 1 stated that his work as an adjudication officer ends as per Section 27 of the [\*Land Adjudication Act\*](#) when the adjudication register is submitted to the Chief land registrar, which consists of adjudication records and maps after all the parcels are surveyed. After this is done, they have no obligation to go back to visit the adjudication section. He denied there being any record of amalgamation of any parcels as there were no records.
  40. DW2 Agnes Mulewa gave evidence as the acting county secretary to the 2<sup>nd</sup> Respondent and adopted her replying affidavit sworn on 22/6/22 as well as the annexed documents. She stated that the properties under the custody of the county government have not encroached onto the petitioners' lands. Upon cross-examination, she denied ever visiting the site but that she knew where the chief's office was located but did not know the particulars of the land that borders the said chief's office. She stated that she has visited Katutu Harambee Secondary School and that it is on Land Parcel 751. On re-examination, she stated that the Katutu market is under the county government while Katutu primary school is under



the national government and so is the chief's office and the County government has no control over them.

### **Site visit and Joint Surveyor's and land registrar's report**

41. The Court conducted a site visit on 9<sup>th</sup> May 2023. The 1<sup>st</sup> Petitioner claimed that their parcel's original border was up to the road which was excised and is now part of Land parcel 514 and that the boundaries were shown to him by the chief. He also pointed to shops and a stone structure with tanks on top which he stated that he built yet this portion has been allocated to LR 516 which is registered to Kitavi Nzila and was initially allocated to the School. He confirmed having conducted farming on LR 751 reserved for Katutu Secondary School since 1976, claiming that it forms part of his land.
42. The court confirmed that the office of the chief was housed by the Ministry of Education on land parcel 514 according to the 2<sup>nd</sup> petitioner the office of the chief was already built. However, he stated that he did not know the acres that he was originally given. The court observed that Katutu Primary School was built on the larger part of land parcel 516 while the portion beyond the road had structures said to have been built by the 1<sup>st</sup> petitioner in 2000.
43. During the site visit the court ordered that the District Surveyor and Land Registrar visit the suit parcels of land and prepare a report to ascertain the status of the suit parcels of land vis-a-vis the registry index map.
44. The Joint Surveyor's and Land Registrar's report was filed in court on 22<sup>nd</sup> September 2023 where they mapped the ground accordingly. It was found that Land Parcels Nzalae/Mutonguni 744,751,516 and 514 were original and not out of sub-division. It was noted that there existed a road on the ground and the map cutting through parcels 516 and 751, therefore creating two portions for both of the two parcels, with the lower side being expansive as compared to the smaller upper parts.
45. They also acknowledged that there were raised water tanks on LR 516 and shops whose ownership they did not ascertain and that the current chief's camp was temporarily housed within LR 514 which was reserved for the Katutu market.
46. Their recommendation was for all the proprietors to maintain clear and proper boundaries at all times to dispel any disputes relating to boundaries in the future.

### **The Petitioners' written submissions.**

47. Counsel for the Petitioner submitted on the case, highlighting that the 1<sup>st</sup> Petitioner is suing in his capacity as administrator of the estate of Kyai Muvevi, who during the adjudication of the area was established and recorded as the owner of Nzalae Mutonguni/503. However, he avers that after the rights were recorded, 2.83Ha of the deceased's land was carved out and given to the 2<sup>nd</sup> Respondent and allegedly reserved for Katutu Girls Secondary School and another 0.334Ha was carved out and annexed to parcel number 516 reserved for Katutu Primary School.
48. For the 2<sup>nd</sup> Petitioner, he claims that his land parcel no.512 lost 1.01Ha which was registered as Parcel number 744 reserved for the chief's camp while 1.065ha was excised onto parcel 514 reserved for the market, which was all done after the 2<sup>nd</sup> Respondent had completed the recording process.
49. It is submitted that the petitioners' appeals to the Minister did not yield any fruits as information was held from them and that the land the respondents took was allegedly for public purpose but is not being utilized for their intended purpose since the said public utilities were already constructed in different portions.



50. The petitioners highlighted the findings from the site visit that the said public utilities are not in the areas reserved for them which contradicts the affidavits of the respondents and noted that they contest the boundaries since there are already distinct and clear boundaries and that they are not claiming ownership of Land Parcels 514 and 744. They claim that it was a fraudulent act by the respondents to excise part of their land in the name of a chief's camp when it is not on the reserved parcel number 744. They also referred to an annexure "OM 6" where Katutu primary school stated that they do not have a claim to land beyond what was fenced in Land parcel 516 while on the map, the parcel extends beyond the road.
  51. It is the petitioners' submission that there should be a clear explanation of why the petitioners were not allocated their respective lands despite having been in occupation for so long and that absence of such explanation infers fraud on the part of the respondents and other adjudication officers, relying on the case of Lucy Karauki Kirambia vs Muthengi Muthigu & 2 others (2018)eKLR and Joshua Mithika & another vs Kobia M'Twamwari Kangeri & 2 others (2021) eKLR.
  52. The Petitioners are apprehensive that they stand in danger of being forcefully evicted which will result in compulsory acquisition without due compensation which is unconstitutional and against article 40 as they relied on the case of John Masinde Kamchenja vs Land Adjudication Settlement Officer, Trans Nzoia County & 2 others (2021) eKLR and Charles Opondo Ochieng & 2 others-vs Kabarak Farm Limited & 19 others (2021) eKLR.
  53. The Petitioners concluded that equity would demand that the petitioners retain the suit lands as respondents did not own the land in the first place and prayed that the petition be granted with costs.
- 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents' replying affidavit.
54. State Counsel for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents highlighted the ownership of Parcels Nzalae Mutonguni 514, 503, 516 and 512 and noted that the joint surveyor and land registrar report indicated that all parcels were original and none were subdivided as well and that the Petitioners have encroached onto Land Parcel 751 and were farming thereon.
  55. It is their submission that the petition offends the provisions of section 29 of the [Land Adjudication Act](#) since the decision in the Minister's appeal is final and not subject to appeal. The court cannot sit on appellate jurisdiction in this matter but can only exercise its supervisory jurisdiction as it was held in the case of Corave Amrnath(Suing on behalf of the late Armnarth Gupta) v. Patricia Kazungu & 2 others(2021)eKLR as well as the case of John Masiantet Saeni v Daniel Aramat Lolungiro & 3 others eKLR.
  56. Their submission therefore is that the [Land Adjudication Act](#) has set up an elaborate procedure through which the rights and interests of all persons are established and once the same is determined the matter is final.
  57. On the matter of the chief's camp being housed on a different parcel of land, it was submitted that it is housed by the Ministry of Education since there is yet to be constructed a Chief's camp there and that the area is still reserved for public use and that Land Parcel 751 is still reserved for Katutu Secondary School even though it is still not developed.
  58. It is therefore their submission that the contested suit parcels are public land and that the Petitioners are looking for ways to take it for themselves. They conclude that this suit is an abuse of the court process as it contravenes Section 29(1) of the [Land Adjudication Act](#), Section 7 of the [Fair Administrative Action Act](#) and Order 53 of the Civil Procedure Rules, 2010 and should be dismissed with costs.



## Analysis and Determination

59. The court has considered the petition and the supporting affidavits, the replying affidavits and evidence adduced during the hearing. The Court has also considered the submissions by Counsel for the parties and considers the following as the issues arising for determination;
- A. Whether the Respondents fraudulently and illegally excised from the 1<sup>st</sup> Petitioner's portions of land parcel Nzalae/Mutonguni/512 and annexed the same to land parcels Nzalae/Mutonguni/514 and Nzalae/Mutonguni/744 respectively and whether the Respondents excised from the 1<sup>st</sup> Petitioner's portions of land parcel Nzalae Nzalae/Mutonguni/503 and annexed the same to form part of land parcels Nzalae/Mutonguni/516 and Nzalae Nzalae/Mutonguni/751.
  - B. Whether the Respondents violated the Petitioners' constitutional rights under Article 40 (1) and (3) of *the Constitution* of Kenya 2010.
  - C. Whether the Petitioners are entitled to the orders sought.
  - D. Who will bear the costs of this petition?
60. It is not in dispute that the suit parcels of land Nzalae/Mutonguni/744, 514, 516 and 751 are located in the Nzalae/Mutonguni adjudication area within the County of Kitui, formerly County Council of Kitui. It is also not in dispute the titles to the said parcels of land were issued following the land adjudication process under the *Land Adjudication Act* CAP 284 Laws of Kenya.
61. The petitioners' claim has been stated elsewhere in this judgment. In summary, they state that at the initial stages of the adjudication process, the adjudication committee identified and established ownership rights on the suit parcels of land and that land parcel number Nzalae/Mutonguni/503 was allocated to the deceased Kyai Muvevi, parcel Nzalae/Mutonguni/514 was reserved for Katutu market, Nzalae/Mutonguni/744 was reserved for the chief's camp. The Petitioners further claim that land parcel Nzalae/Mutonguni/512 was allocated to the 2<sup>nd</sup> Petitioner Itingu Mwanja, while Nzalae/Mutonguni/516 was reserved for Katutu Primary School and Nzalae/Mutonguni/751 was reserved for Katutu Girls Secondary School.
62. The Petitioners claim that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents later on manipulated the records, established boundaries, maps and plans to deny them their right to ownership of part of land parcels Nzalae/Mutonguni/503 for the 1<sup>st</sup> Petitioner and Nzalae/Mutonguni/512 for the 2<sup>nd</sup> Petitioner, by changing their decisions without notice or their knowledge. The results of these acts were that from the 2<sup>nd</sup> petitioner's parcel number Nzalae/Mutonguni/512, the Respondents excised a portion of land measuring 1.01 Ha and created land parcel Nzalae/Mutonguni/744 allegedly reserved for the chief's camp. They also excised from the same land a portion measuring 0.055 Ha and annexed it to Nzalae/Mutonguni/514 making it part of the Katutu market, leading to the 2<sup>nd</sup> Petitioner losing a total of 1.065 Ha.
63. The Petitioners further claim that from the deceased's land parcel Nzalae/Mutonguni/503, the Respondents excised a portion measuring 0.334 Ha and made it part of Nzalae/Mutonguni/516 which had been allocated to Katutu Primary School. They also excised a further portion measuring 2.83 Ha and added to land parcel Nzalae/Mutonguni/751 and allegedly reserved it for Katutu Girls Secondary School.
64. The Respondents on their part deny the Petitioner's claim stating that during land adjudication in the Nzalae/Mutonguni adjudication area, the suit parcels of land Nzalae/Mutonguni/744, 514, 516 and



751 were presented under Section 13 of the *Land Adjudication Act* as claims by Nzalae/Mutonguni community for recording in the name of the County Council of Kitui in trust for them for various public utilities being the chief's camp, Katutu market, Katutu Primary School and Katutu Girls Secondary School respectively.

65. The Respondents claim that there were no records of subdivisions of the Petitioners' parcels of land to create or to add onto the public utilities as stated. It was also stated that there were no details or remarks on the demarcation maps of the Petitioners' parcels of land which would be suggestive of any subdivisions.
66. It was further the Respondent's position that the deceased and the Petitioners filed objections to the register before the Adjudication and Settlement Officer who after hearing the objections dismissed them. The deceased and the Petitioners being dissatisfied with the decisions at the objection, appealed to the Minister and the appeals were heard and dismissed.
67. The court observes that the adjudication process came to an end around the years 2004 and 2005 when the appeals to the Minister were heard and determined. The Constitutional provisions in force at the time regulating trust land was Chapter IX of the repealed Constitution of Kenya. The relevant part was Section 115 (1) and (2) which stated that:
  - (1) All Trust land shall vest in the county council within whose area of jurisdiction it is situated:
  - (2) Each county council shall hold the Trust land vested in it for the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force and applicable thereto, be vested in any tribe, group, family or individual:

Provided that no right, interest or other benefit under African customary law shall have effect for the purposes of this subsection so far as it is repugnant to any written law.
68. Section 116 of *the Constitution* made provision for the Registration of individual titles to Trust land leading to the cessation of land being trust land and stated that:
  1. A county council may, in such manner and subject to such conditions as may be prescribed by or under an Act of Parliament, request that any law to which this subsection applies shall apply to an area of Trust land vested in that county council, and when the title to any parcel of land within that area is registered under any such law otherwise than in the name of the county council it shall cease to be Trust land.
  2. The laws to which subsection (1) applies are -
    - a. the *Land Consolidation Act* and the *Land Adjudication Act*; and
    - b. any other law permitting the registration of individual titles to estates, interests or rights in or over land that, immediately before registration, is Trust land (except so far as the law permits the registration of estates, interests or rights vested in persons or authorities for whose use and occupation the land has been set apart under this Chapter). 11.
69. The petitioners claim that in 1952 the 2<sup>nd</sup> Respondent allowed settlers to graze their livestock in the area which was then part of trust land and in 1970 the settlers settled and in 1976 declared the area an adjudication area naming it Nzalae/Mutonguni adjudication section.
70. The 2<sup>nd</sup> Respondent on its part states that before 1964 the area where the suit parcels of land were located was virgin trust land managed by the defunct County Council of Kitui. Between 1964 and



- 1970 people from the surrounding areas began grazing although there were no settlements and when the grazing population rose the county council allowed people to settle and declared the land in the area an adjudication area in 1979 thus applying the *Land Adjudication Act* as provided under Section 116 (2) (a) of *the Constitution* (repealed).
71. Under section 115 of *the Constitution*, the rights, interests or benefits in respect of the land held by the persons ordinarily resident on trust land were rights, interests and benefits held under the African customary law for the time being in force and applicable and vested in any tribe, group, family or individual. As per section 116 of the repealed Constitution, the *Land Adjudication Act* was meant to give effect to these rights.
72. The preamble to the *Land Adjudication Act* captures the purpose of the Act as it states that it is:
- “ An Act of Parliament to provide for the ascertainment and recording of rights and interests in Trust land, and for purposes connected therewith and purposes incidental thereto.”
73. Section 13 of the *Land Adjudication Act* gives details of the process through which claims to trust land are made. In particular, Section 13 (1) states that:
1. Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the notice published under section 5 of this Act.
74. In the present case, the Petitioners confirm that they did make claims to the parcels of land that belonged to them. Of particular interest in this case is that the deceased Kyai Muvevi was recorded as the owner of land parcel number Nzalae/Mutonguni/503 while the 2<sup>nd</sup> Petitioner was recorded as the owner of land parcel number Nzalae/Mutonguni/512. As per Section 13 (1), the Petitioners must have pointed the boundaries to the parcels of land they claimed. However, it is noted that the Petitioners have not indicated or produced documents that show the sizes of the said parcels of land recorded to them. They have further not shown that the size of the land recorded to them was different from what they were finally awarded.
75. The Respondents on their part stated that suit parcels of land Nzalae/Mutonguni/744, 514, 516 and 751 were presented under Section 13 of the *Land Adjudication Act* as claims by Nzalae/Mutonguni community for recording in the name of the County Council of Kitui in trust for them for various public utilities being the chief's camp, Katutu market, Katutu Primary School and Katutu Girls Secondary School respectively. According to the records shown to the court by the witness for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents Mr Peter Nduati the above-mentioned parcels of land measured as follows as per the Demarcation Book; land parcel Nzalae/Mutonguni/744 was 1.01 Hectares, Nzalae/Mutonguni/514 was 7.14 Hectares, Nzalae/Mutonguni/516 was 4.77 Hectares and Nzalae/Mutonguni/751 was 4.19.
76. According to the said Demarcation Book, the parcels of land belonging to the Petitioners herein measured as follows; Nzalae/Mutonguni/503 was 8.03 Hectares and Nzalae/Mutonguni/512 was 12.88 Hectares.
77. The Demarcation Officer under section 15 is given the duty of demarcating land under adjudication. The said section provides that:
- Subject to any general or particular directions given by the adjudication officer, the duties of the demarcation officer within an adjudication section are—



- (a) to demarcate or cause to be demarcated—
  - (i) the boundaries of each separate piece of land, whether claimed by an individual or by a group: Provided that where the boundary of a piece of land is already demarcated by a physical feature it need not be determined whether the exact line of the boundary runs along the centre of the feature or along its inner or outer side;
  - (ii) the boundaries of all land which is entirely free from private rights, or the private rights in or over which have been relinquished in favour of the county council;
  - (iii) the boundaries of all land which has been set apart under *the Constitution*; and
- (b) to submit to the committee any boundary dispute which he is unable to resolve.

78. Section 16 provides for the duty of the survey officer to carry out such survey work as is required in carrying out the adjudication process. Under Section 19, the work of the recording officer is set out where he/she is to consider all the claims made and to prepare a form in respect of every parcel shown on the demarcation map. If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he is obligated to submit the dispute to the committee to decide.

79. In the present case the demarcation book that was produced in evidence by the 2<sup>nd</sup> respondent included sketch maps of the parcels of land subject to this suit. The said maps show that land parcel numbers 514, 516, and 751 are all registered under the County Council of Kitui and reserved for Katutu market, Katutu Primary School and Katutu Secondary School respectively and they show the acreage of the said parcels of land. The maps also show that there is a road cutting through parcels 516 and 751. This was confirmed by the joint surveyor and Land Registrars report dated 19.9.2013 and also shown to the court during the site visit. The Petitioners did not show any alternative maps or documents that show that the acreage of the suit parcels of land was at any time different or that the portions of land beyond the road were part and parcel of their parcels of land and not part and parcel of the parcels as claimed in the petition.

80. Further, none of the parties to this petition claim that they presented any dispute over the portions they claimed had been wrongly allocated to others at this stage either about the role played by the demarcation officer, the survey officer or the recording officer and thus no dispute was referred to the adjudication Committee as is anticipated by the law.

81. Under section 23 of the Act the forms prepared by the recording officer under section 19 comprise the adjudication record and the said section sets out the criteria used in recording land in the adjudication report. The said section 23 (2) states that:

In preparing the adjudication record, the recording officer, if he is satisfied that—

- a. any person has, under recognized customary law, exercised rights in or over land which should be recognized as ownership, shall determine that person to be owner of that land:



- (b) any group has, under recognized customary law, exercised rights in or over land which should be recognized as ownership, shall determine that group to be the owner of that land;
- (c) land has been set apart under *the Constitution*, shall determine the person in whom the land is vested to be the owner of the land set apart;
- (d) land is entirely free from private rights, or all private rights in or over the land have been relinquished in favour of the county council, shall determine the county council to be the owner of the land;
- (e) any person or group is entitled to any interest in land not amounting to ownership, including any lease, right of occupation, charge or other encumbrance, whether by virtue of recognized customary law or otherwise, shall determine the nature, incidents and extent of the right to enable it to be recorded in the name of the person or group entitled to the benefit of it

82. Under Section 24 the demarcation map and the adjudication record are collectively known as the adjudication register and when the adjudication register has been completed, the adjudication officer certifies the adjudication record and demarcation map, and under Section 25(c) of the Act give notice to the public that the adjudication register has been completed and may be inspected during a period of sixty days from the date of the notice and that any person named in or affected by the adjudication register may, within sixty days object to the adjudication officer in writing, and the adjudication officer shall consider any objection made and determine the objection.

83. All parties to this petition testified that the Petitioners filed objections to the register under Section 26 of the Act against the Kitui County Council. In particular, Kyei Muvevi Itonya (deceased) filed objections Nos 84 and 85 of 1988 against land parcels 516 and 751. The objections were dismissed and the land was ordered to remain in the name of the Kitui County Council. The deceased filed an appeal to the Minister in appeals 246 and 249 of 1988 and the two appeals were dismissed.

84. The evidence adduced shows that the 2<sup>nd</sup> Petitioner filed an appeal to Minister No. 242 and 243 of 1988 relating to land parcels 514 and 744. The two appeals were heard and dismissed and the land was ordered to remain in the name of Kitui County Council.

85. The evidence produced in court does not show that any of the decisions on the appeals to the Minister were challenged by way of judicial review and thus the said decisions took effect as envisaged under Section 29 (3) of the Act which states that;

When the appeals have been determined, the Director of Land Adjudication shall—

- a. alter the duplicate adjudication register to conform with the determinations; and
- b. certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

86. After this, title deeds for the parcels of land were issued. The documents of search and title deeds to the suit parcels of land show that title deeds for the suit parcels of land were issued as follows:

Land parcel: Date of title: Registered owner: Hectares



744.

15.1.2001 Kitui County Council 1.01

(Chiefs camp)

512 22.10.2007 Itingu Mwanja 12.88

751 15.1.2001 Kitui County Council 4.19

(Katutu Secondary)

516.

15.1.2001 Kitui County Council 11.04

Katutu Primary school

15.1.2001 Kitui County Council 7.14

503 28.11.2014 Kyai Muvevi Itomya 8.03

87. The Petitioners claim that the title deed for land parcel number 516 was issued to Kitavi Nzila and measures 11.04 hectares as per the certificate of search dated 28<sup>th</sup> March 2017. However, this fact is negated by the more recent certificate of search dated 26<sup>th</sup> September 2023 attached to the report filed in court by the Land Registrar dated 19<sup>th</sup> September 2023 which indicated that the title deed is in the name of Kitui County Council reserved for use by Katutu Primary School and it measures 4.77 hectares as has been maintained by all parties.
88. Of importance is the fact that the acreage shown on the title deeds and certificates of official search for all the suit parcels of land are the same ones that were shown in the demarcation book. This gives credence to the evidence adduced by the witnesses for the Respondents that the record for the suit land parcels was never altered and there was no evidence of the said parcels of land having been at any time subdivided and portions annexed from the petitioner parcels of land. Indeed, the copy of the map produced by the Petitioners which they call the RIM map is very similar to the one that was produced by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent's witness.
89. Further, the joint report was filed by the County Surveyor (National Government) Kitui and the Land Registrar Kitui dated 19<sup>th</sup> September 2023 which set out to ascertain the status on the ground of the suit parcels of land, confirmed that land parcels 744, 751, 516 and 514 were original in nature meaning that they were not born out of a formal land subdivision but rather an initial declaration of land rights as done by the department of land adjudication and settlement during the time of demarcation. The report further confirmed that the acreages on the ground as computed, marched the registered areas for all the respective parcels of land. The report further confirmed that there was a road both on the ground and on the map cutting through parcels 516 and 751 therefore creating two portions one on either side of the road for the two parcels of land with the lower part being more expansive than the upper part.
90. In the Court's view, the above evidence negates the 1<sup>st</sup> Petitioner's contention that 2.83 Ha of the deceased's land was carved out and given to the 2<sup>nd</sup> Respondent and reserved for Katutu Girls Secondary School and another 0.334 Ha was carved out and annexed to parcel number 516 reserved for Katutu Primary School. In the Court's view, the 1<sup>st</sup> petitioner seems to be under the mistaken belief that the two portions of land parcels 751 and 516 separated by the road from the main portions of the said parcels ought to have been part of the 1<sup>st</sup> Petitioner's land parcel number 503. This belief is not supported by any document from the initial adjudication process.



91. The evidence on the record as stated above further negates the 2<sup>nd</sup> Petitioner's claim that his land parcel No.512 lost 1.01 Ha which was registered as Parcel number 744 reserved for the chief's camp while 1.065 Ha was excised from his land and made part of the parcel 514 reserved for Katutu market.
92. In the Court's view, there is absolutely nothing on record to indicate that the boundaries to the suit parcels of land were ever altered on the map either during recording, demarcation, survey or after the Minister's Appeals were concluded as the Petitioner's claim.
93. It is trite in law that he who alleges must prove as provided under Sections 107(1) and 109 of the *Evidence Act*, Cap 80 Laws of Kenya. The Court of Appeal in the case of Mumbi M'Nabea v David M.Wachira [2016] eKLR stated as follows while commenting on the burden of proof in the Kenyan context:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen. Section 107(1) of the *Evidence Act*, Cap 80 Laws of Kenya provides as follows:-

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

The above provision provides for the legal burden of proof. However, Section 109 of the same Act provides for the evidentiary burden of proof and states as follows:-

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.”

The position was re-affirmed by the Court of Appeal in Maria Ciabaitaru M'mairanyi & Others v. Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000 [2005] 1 EA 280 where it was held that:-

“Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

94. It is further the Court's view that the fact that the chief's office is currently operating from a different parcel of land and that Katutu Girls' Secondary School was constructed on a different parcel of land from the one reserved, does not mean that the Petitioners have the right to the land that was reserved for the said public utilities.



**B. Whether the Respondents violated the Petitioners' constitutional rights under Article 40 (1) and (3) of *the Constitution* of Kenya 2010.**

95. The Petitioners claim a violation of their Constitutional rights to own and acquire land under Article 40 (1), and the right not to be deprived of their property without full and prompt compensation under Article 40 (3). They also claim to have been exposed to loss of economic livelihood, perpetual poverty and landlessness and the deceased's beneficiaries and the 1<sup>st</sup> petitioner have been denied their right to inherit from their father.
96. The Petitioners further aver that the Respondents' actions were fraudulent, illegal and discriminatory. The Petitioners also stated that they were time-barred from filing an appeal since the actions by the respondent's officers were kept secret and away from them and titles had already been processed, leading the petitioners to withdraw civil case number 20 of 2007 filed against the respondents.
97. The Court has perused the objection proceedings filed by Kyei Muvevi Itonya (deceased) Nos 84 and 85 of 1988 against land parcels 516 and 751 and the appeal to the Minister numbers 246 and 249 of 1988. The court has also considered the 2<sup>nd</sup> Petitioner's appeal to the Minister No. 242 and 243 of 1988 relating to land parcels 514 and 744. All the mentioned disputes were heard and dismissed and the various parcels of land were ordered to remain in the name of Kitui County Council.
98. In the Court's view, the grounds challenging ownership of portions of the suit parcels of land raised in this petition are the same grounds raised during the objections and appeals to the Minister. Indeed, the claim by the petitioners is in the court's view an attempt by the petitioners to appeal the process and the decision in the appeals to the Minister in contravention of the provisions of Section 29 of the *Land Adjudication Act* which provides that the decision in the appeals to the Minister is final by stating that;
1. Any person who is aggrieved by the determination of an objection under section 26 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.
99. The Court of Appeal confirmed the position that the Minister's decision cannot be appealed, whether under the Act or in Court. The option available to the parties was to pursue Judicial Review and not to re-open the case. This was held in the case of Amarnath (Suing on *Behalf of the Estate of the Late Amarnath Gupta v Kazungu & 2 others (Civil Appeal E033 of 2021)* [2023] KECA 1280 (KLR) (27 October 2023) (Judgment) where the court held that:

“The Act is clear that any person aggrieved by a decision made under Section 26 of the Act must follow the process under Section 29 and appeal to the Minister. Once the Minister, or the panel delegated to makes a determination, his order is final. That means the Minister's decision cannot be appealed, whether under the Act or in Court. The option the Appellant had was to pursue Judicial Review process provided under Article 47 of *the Constitution*, and the *Fair Administrative Action Act*, 2015 a statute enacted pursuant to the Article 47 of *the Constitution*. He could not re-open the case and challenge it except through Judicial Review. The Appellant was attempting to undo the process he participated in using a process that is not provided for, and that is not allowed..... The ELC commenting on the role of the



Court vis-a-vis that of the adjudicating bodies under the Act in the persuasive authority of Tobias Achola Osindi & 13 Others vs. Cyprian Otieno Ogalo & 6 Others [2013] eKLR by Okongo J., as follows:

“The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the residents of the area concerned. I am fully in agreement with the submission by the advocates for the defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the court. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process.”

100. The Court in the above-cited case of Amarnath (supra) followed the case of Julia Kaburia vs. Kabeera & 5 Others [2007] eKLR, where the court held:

“The *Land Adjudication Act* provides an exclusive and exhaustive procedure for ascertaining and recording land rights in an adjudication section. By Section 30 (1) (2), the jurisdiction of the court is ousted once the process of land adjudication has started until the adjudication register has been made final...

In our respective view, the consent envisaged by Section 30 to institute or continue with civil proceedings is not a consent to file a suit challenging the decision of the Land Adjudication Officer himself on the merits of his decision. Rather the consent is given to a person to file a suit or continue with a suit against persons who have a competing claim on the land under adjudication.”

101. Having carefully considered this Petition, the Court finds that the process of land adjudication had effectively come to its logical conclusion and could not be re-opened otherwise than in the manner contemplated by the law. The Petitioners have not presented any separate claims or causes of action against the Respondents other than the matters which were adjudicated upon and determined by the Minister's Appeals and the said decisions were final.
102. Further, the court is not convinced and no evidence has been presented to show that the petitioner's claim that their constitutional rights were violated in the process of land adjudication. The process of land adjudication is sanctioned and provided for by the law in particular at the time when the process was being undertaken under Sections 115 and 116 of the repealed Constitution of Kenya, the repealed Trust *Land Act* and the *Land Adjudication Act*.
103. The Petitioners presented their claims before the relevant bodies under the *Land Adjudication Act*. The parties were present during the hearings of the disputes and were given an opportunity to be heard to call witnesses and to cross-examine the witnesses for the opposing parties. The Petitioners were unable to convince the Adjudication and Settlement Officer during the objection hearing and the Minister's delegate during the hearing of the appeal to the Minister that they were entitled to the portions of land that they claimed. The petitioners have not shown in what way their constitutional rights to ownership of the portions of land claimed were violated or that the process of hearing their disputes violated their constitutional rights.



**C. Whether the Petitioners are entitled to the orders sought.**

104. From the foregoing analysis of the issues, the court finds that the Petitioners are not entitled to the orders sought in the petition dated 21<sup>st</sup> May 2018.

**D. Who will bear the costs of this Petition?**

105. The court orders that the costs of this petition shall be paid to the respondents by the petitioners.

106. The final orders of the court are that the petition herein is dismissed with costs to be paid to the Respondents by the Petitioners.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 16<sup>TH</sup> DAY OF MAY, 2024.**

**HON. L. G. KIMANI**

**ENVIRONMENT AND LAND COURT JUDGE**

Judgement read in open court and virtually in the presence of-

J. Musyoki Court Assistant

M/S Mwikali holding brief for Mwalimu for 2<sup>nd</sup> Respondent

Muli holding brief for Kasimu for 1<sup>st</sup> and 2<sup>nd</sup> Petitioners

M/S Kerubo for 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents

