



Lolugumen & 5 others (Suing on their behalf and on behalf of 383 Household of Lakira Village) v Lparttuk Group Ranch & 3 others (Environment & Land Case E007 of 2022) [2023] KEELC 16325 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E007 OF 2022**

**YM ANGIMA, J
MARCH 16, 2023**

BETWEEN

**GITOSIAN LOLUGUMEN 1ST PLAINTIFF
LDIMA LEORTO 2ND PLAINTIFF
JAMES LENKURIKURI 3RD PLAINTIFF
LDUMAIYON LENTUMUNAI 4TH PLAINTIFF
MAAI LENKIDI 5TH PLAINTIFF
MARIA LOLKUMENI 6TH PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF 383 HOUSEHOLD OF
LAKIRA VILLAGE**

AND

**LPARTTUK GROUP RANCH 1ST DEFENDANT
DIRECTOR OF SURVEYS 2ND DEFENDANT
DISTRICT LAND REGISTRAR – SAMBURU 3RD DEFENDANT
DISTRICT LAND ADJUDICATION OFFICER SAMBURU 4TH DEFENDANT**

RULING

A. Introduction

1. By a plaint dated 13.05.2022 the Plaintiffs sued the Defendants seeking, *inter alia*, a declaration that they and the 383 households they represented being residents of Lakira village were *bona fide* members of the 1st Defendant and legally entitled to the community land they were occupying; an



- order nullifying the final membership register of the 1st Defendant and the inclusion of the Plaintiffs and the 383 households in the final register and allocation list; and an order for the Plaintiffs and the 383 households to be issued with title deeds for the land in their occupation among other reliefs.
2. The Plaintiffs pleaded that they and the 383 households they represented had occupied Lakira Village in which the suit property fell since 1973 hence entitled to a portion of the land as their ancestral land. They pleaded that they had been wrongfully excluded from the final membership register and the allocation list by the representatives of the 1st Defendant without lawful justification hence the suit.
 3. Simultaneously with the filing of the suit the Plaintiffs filed a notice of motion of even date under certificate of urgency seeking some interim orders to preserve the suit property and leave to advertise the institution of the suit under Order 1 rule 8(2) of the Civil Procedure Rules, 2010 for any interested parties to apply to join the proceedings.

B. The Defendants' Response

4. The 1st Defendant filed a notice of preliminary objection dated 20.05.2022 in response to the suit and application. The 1st Defendant also filed a replying affidavit sworn on 19.05.2022 by its chairman Mark P. Loloolki in opposition to the application for interim orders and the suit. It was contended in the replying affidavit that the suit was filed in contravention of the Land Adjudication Act (Cap. 284), (L.A.A.) and that it was statute-barred under the "relevant statutory provisions".
5. The 1st Defendant further contended that the land adjudication process in regard to the suit property was concluded in 1995 when a final adjudication register was compiled. It was further contended that the Plaintiffs and the people they represent did not lodge any claim for any portion of the suit property during the adjudication process since they were not members of the 1st Defendant.
6. The Attorney General filed a replying affidavit sworn by Edward Okoth on behalf of the 2nd, 3rd and 4th Defendants. It was stated that Lpartuk Group Ranch was established under Lpartuk Ward Adjudication Section pursuant to the provisions of the L.A.A. It was contended that the adjudication section was established in 1990 and that the adjudication process was completed in 1995 when the adjudication register was opened for inspection. It was further contended that all the 65 objections which were lodged by various objectors were considered and determined after which a final adjudication register was prepared and forwarded to the Director of Land Adjudication and Settlement.

C. The 1st Defendant's Preliminary Objection

7. By its notice of preliminary objection dated 20.05.2022 the 1st Defendant raised the following objections:
 - a. The suit herein is fatally incompetent, bad in law and unsustainable for failing to comply with mandatory provisions of the relevant law and ought to be dismissed.
 - b. The suit herein offends the provisions of Section 30 of the Land Adjudication Act, Cap. 284 Laws of Kenya.
 - c. The alleged cause of action does not lie as against the first Defendant.
 - d. The suit is otherwise, mischievous, frivolous and vexatious and amount to abuse of the court's due processes and ought to be dismissed with costs.



D. Directions on Submissions

8. When the matter came up for directions it was directed that the preliminary objection shall be canvassed first through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. The record shows that the 1st Defendant filed its submissions on 19.07.2022 and supplementary submissions on 11.01.2023. The Plaintiffs filed theirs on 18.10.2022 whereas the Attorney General's submissions were filed on 17.11.2022.

E. The Issues for Determination

9. The court has considered the 1st Defendant's notice of preliminary objection and material on record. The court has noted that the Defendants have not filed any defences to the action thus far. The court is of the opinion that the following issues arise for determination herein:
- a. Whether the Plaintiffs' suit offends Section 30 of the [Land Adjudication Act](#).
 - b. Whether the Plaintiffs' suit is statute barred.
 - c. Who shall bear costs of the preliminary objection.
 - f. Analysis and Determination

a. Whether the Plaintiff's suit offends Section 30 of the [Land Adjudication Act](#)

10. The 1st Defendant submitted that the suit property was within an adjudication Section hence the consent of the land adjudication officer was required prior to the filing of the suit. It was submitted that the instant suit was bad in law and incompetent for offending the mandatory provisions of Section 30 of the [L.A.A.](#) hence the same should be struck out. The 1st Defendant relied upon the case of [Bhajjee & Another v Nondi & Another](#) (Civil Appeal No. 139 of 2019) [2022] KECA 119 (KLR) (18 February, 2022) (Judgment) in support of that submission.
11. The Attorney General supported the 1st Defendant's preliminary objection and submitted that the Plaintiffs had violated the provisions of section 30 of the [L.A.A.](#) in filing the suit without the written consent of the Land Adjudication Officer as required by law. It was also submitted that the Plaintiffs had failed to adhere to the specific dispute resolution mechanisms set out in the said Act to address their grievances.
12. The Plaintiffs, on the other hand, submitted that the provisions of Section 30 of [L.A.A.](#) were not applicable to the instant case because the adjudication process was concluded a long time ago and a title deed issued to the 1st Defendant hence the suit property was not within an existing adjudication section.
13. The Plaintiffs referred to the replying affidavits filed by the Defendants which indicated that the adjudication process was concluded in 1995 or thereabouts and a title deed issued to the 1st Defendant in 2021. They relied upon the cases of [Kanyarkwat Group Ranch & 4 others v Meringiro Lokadin Joseph & 3 others](#) [2021] eKLR and [Stringer Muzungu Lumwe & Another v Shida Tuji Tsuma & 2 others](#) [2021] eKLR in support of their submissions.
14. Section 30(1) of the [L.A.A.](#) stipulates as follows:

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an



adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29 (3) of this Act.”

15. It is evident from a plain reading of the provisions of Section 30(1) of the said Act that the consent of the land adjudication officer becomes necessary only if the adjudication register has not become final in all respects. The affidavit evidence filed by the Defendants indicates that the adjudication process was concluded in 1995 and a certificate to that effect was issued. The replying affidavit of Edward Okoth exhibited a copy of certificate of finality dated 02.11.1995 certifying that the adjudication register had become final. Moreover, there is evidence on record to demonstrate that the 1st Defendant was issued with a title deed to the suit property in 2021 something which could only happen after conclusion of the adjudication process.
16. The court has perused the Bhaijee Case which was cited by the 1st Defendant in support of the preliminary objection. The facts of that case indicate that the land adjudication officer had granted consent after the filing of the suit while the adjudication process was on-going. The Court of Appeal had no difficulty in holding that the suit was incompetent *ab initio* for want of consent of the land adjudication officer. That case is clearly distinguishable from the facts and circumstances of the instant suit.
17. In the premises, the court agrees with the Plaintiffs’ submissions that the Section 30(1) of the L.A.A. is not applicable to the instant suit because the land adjudication process was completed and the relevant adjudication register declared final in all respects. The court also concurs with the holding and reasoning of the Environment and Land Court in the Kanyarkwat Group Ranch Case and the Stringer Muzungu Lumwe Case that section 30 of the L.A.A. does not apply where adjudication has been completed and titles issued.

b. Whether the Plaintiffs’ suit is statute-barred

18. It is evident that the 1st Defendant filed supplementary submissions on the issue of limitation after the Plaintiffs had already filed their submissions on the issue of the applicability of Section 30 of the L.A.A. and whilst the preliminary objection was pending ruling. The Plaintiffs were not accorded an opportunity to respond to the 1st Defendant’s supplementary submissions.
19. The court has noted that the Defendants are yet to file their defences to the action and the Plaintiffs are yet to file a reply thereto. The court is of the opinion that the issue of limitation cannot be determined at this juncture in the circumstances. The court shall give directions later on how the issue of limitation shall be canvassed.

c. Who shall bear costs of the preliminary objection

20. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Since the issue of limitation is yet to be determined, the court is of the opinion that costs of the preliminary objection shall be in the cause.

G. Conclusion and Disposal Order

21. The upshot of the foregoing is that the court finds no merit in the 1st Defendant’s preliminary objection on the competence of the suit on account of section 30 of the LAA. The said objection is hereby



overruled with costs in the cause. The issue of the limitation of actions shall be determined at the trial, unless a specific application for that purpose is filed before the hearing of the suit.

Orders accordingly.

RULING DATED AND SIGNED AT NYAHURURU THIS 16TH DAY OF MARCH, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Wanjiru Muriithi for the Plaintiffs

Mr. Kipkirui holding brief for Mr. J.K. Bosek for the 1st Defendant

N/A for the AG for the 2nd – 4th Defendants

C/A - Carol

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Y. M. ANGIMA

JUDGE

