



REPUBLIC OF KENYA



KENYA LAW
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**Kelvin & 5 others v Ngari Group Ranch & 7 others (Environment & Land
Case E005 of 2020) [2023] KEELC 16965 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16965 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E005 OF 2020**

**YM ANGIMA, J
APRIL 27, 2023**

BETWEEN

**ARAMAN PALORI KELVIN 1ST PLAINTIFF
VINCENT SAM LENGEEES 2ND PLAINTIFF
LASI LETIWA 3RD PLAINTIFF
MARK MUSA ARAMAN 4TH PLAINTIFF
SOIM LEKUME 5TH PLAINTIFF
GABRIEL LEKALASIMI 6TH PLAINTIFF**

AND

**NGARI GROUP RANCH 1ST DEFENDANT
PITALI LEKALANTULA CHAIRMAN – NGARI GROUP
RANCH 2ND DEFENDANT
LINUS MILTON LENOLGENJE SECRETARY – NGARI GROUP
RANCH 3RD DEFENDANT
KIRATI LENAIRONGOTO TREASURER – NGARI GROUP
RANCH 4TH DEFENDANT
LAND REGISTRAR COUNTY GOVERNMENT OF SAMBURU
COUNTY 5TH DEFENDANT
LAND REGISTRAR NYAHURURU LAND REGISTRY 6TH DEFENDANT
CHIEF LANDS REGISTRAR 7TH DEFENDANT
ATTORNEY GENERAL 8TH DEFENDANT**



RULING

1. By a notice of preliminary objection dated and filed on 14.10.2022, the 1st – 4th Defendants (the Defendants) objected to the Plaintiff's suit on the following grounds:
 - a. That the suit herein is incompetent, inept and an abuse of the court process.
 - b. That the Honourable Court lacks jurisdiction to hear and determine the suit by dint of Section 8(1) of the [Land Consolidation Act](#), Cap 283 Laws of Kenya and Section 30(1) of the [Land Adjudication Act](#) Cap 284 Laws of Kenya.
 - c. That the suit herein was filed without the requisite consent and it offends the exhaustion principle.

The Defendants consequently prayed that the suit be struck out with costs.

2. When the matter came up for directions on the hearing of the preliminary objection it was directed that the same shall be canvassed through written submissions. The record shows that the Defendants filed their submissions on 09.12.2022 whereas the Plaintiffs filed theirs on 25.01.2023.
3. The court is of the opinion that the first objection on the suit being allegedly inept or an abuse of the court process cannot properly form the subject of a preliminary objection as enunciated in the case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. It does not raise a pure point of law which can be argued on the assumption that all the facts pleaded by the Plaintiffs are correct. Further evidence would be required to demonstrate that the suit is inept and otherwise an abuse of the court process.
4. The court is further of the opinion that the principle of exhaustion of statutory remedies cannot be effectively canvassed as a preliminary objection in the circumstances of this suit. That is a matter which can be canvassed through an application whereby affidavit evidence would have to be tendered and considered. Be that as it may, it is doubtful if Sections 26 and 29 of the [Land Adjudication Act](#) (LAA) would be applicable to the Plaintiffs' grievances since they are simply seeking to obtain their rightful share of land from the 1st Defendant (Group Ranch). The court is of the opinion that those two sections would only be applicable to the adjudication process pursuant to which the Group Ranch obtained its title and not to the subsequent distribution of land amongst the group members. There is no provision in law for an aggrieved member of a Group Ranch to lodge an objection to the adjudication officer and to lodge an appeal to the Minister in a bid to vindicate his perceived rights as such member.
5. The only legitimate preliminary objection regards the jurisdiction of the court to entertain the suit in view of the provisions of Section 30 of the [LAA](#). The Defendants submitted that the court had no jurisdiction to entertain the suit in the absence of written consent of the Land Adjudication Officer since the suit land was still undergoing adjudication under the said Act. The Defendants relied upon the case of [Noordin Bhaijee & another v Damaris Akinyi Nondi & another](#) [2022] eKLR in support of their submission.
6. The Plaintiffs, on the other hand, submitted that on the basis of the material on record the adjudication process was concluded a long time ago and a title deed issued to the Group Ranch. It was further contended that even the allocations to individual members of the group were done and even title deeds for some members processed. It was, therefore, submitted that Section 30 of the [LAA](#) had



no application in the instant case. The court was consequently urged to overrule the preliminary objection.

7. Section 30(1) of the LAA 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.”

8. In the case of Noordin Bhajjee & another v Damaris Akinyi Nondi & another (*supra*) the Court of Appeal held, inter alia, that:

“The section therefore requires consent to be given before institution of civil proceedings concerning an interest in land in an adjudication section. The said consent is a condition precedent to a valid suit concerning disputes of land in an adjudication section and specifically requires the suits to be discontinued if started without consent. The section therefore clearly affects the power and jurisdiction of courts to hear and determine such disputes. The rationale for the said provisions is that there is an elaborate process that is laid down by the Land Adjudication Act, on how to determine which persons are, and the extent to which, they are entitled to interests in the land under adjudication, and it is therefore necessary that it is first employed before resort is made to the courts, and also shielded from unnecessary and unjustified abuses. Indeed, it has been severally held by this court that where a dispute resolution mechanism exists outside courts, the same has to be exhausted before the jurisdiction of the courts is invoked. See in this regard the decisions in *Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR and *Mutanga Tea & Coffee Company Ltd v Shikara Limited & another* [2015] eKLR.”

9. The court fully agrees with the holding in the said decision that without the consent of the land adjudication officer the court would have no jurisdiction to entertain a suit over land in an adjudication section. However, it must be noted that the section is only applicable where the adjudication process is pending and not where it has been completed.

10. It is evident from the material on record that the adjudication process was concluded before a title deed was issued to the Group Ranch on 23.11.2006 for 2474 Ha. There is no way such a title deed could have been issued if the adjudication process was still ongoing. The material on record further shows that when the officials of the Group Ranch prepared an allocation list the same was presented to the relevant authorities which processed title deeds for some of the members of the Ranch. The Defendants themselves exhibited copies of such titles (although some pages thereof were missing). It would not be possible for such titles to be issued without completion of the adjudication process.

11. The upshot of the foregoing is that the court finds and holds that Section 30(1) of the LAA is not applicable to the instant suit. Accordingly, the court makes the following orders:

- a. The 1st – 4th Defendants’ notice of preliminary objection dated 14.10.2022 is hereby overruled in its entirety with costs to the Plaintiffs.
- b. Costs of the preliminary objection shall be in the cause.
- c. The suit is hereby fixed for hearing on 05.07.2023.

Orders accordingly.



RULING DATED AND SIGNED AT NYAHURURU THIS 27TH DAY OF APRIL, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

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Y. M. ANGIMA

JUDGE

In the presence of:

Mr. Ali for the Plaintiffs

Ms. Muriithi holding brief for Mr. Waichungo for the 1st – 4th Defendants

N/A for the 5th Defendant

Ms. Nyambura for the Attorney General for the 6th – 8th Defendants

C/A - Carol

