



Gona & another v Minister of Lands & Settlement & 5 others (Environment & Land Petition 34 of 2019) [2023] KEELC 16892 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16892 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 34 OF 2019**

**MAO ODENY, J
APRIL 19, 2023**

BETWEEN

JAMBO FONDO GONA 1ST PETITIONER

GEORGE KIRATU GITHINJI 2ND PETITIONER

AND

THE MINISTER OF LANDS & SETTLEMENT 1ST DEFENDANT

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT 2ND
DEFENDANT**

THE DISTRICT LAND REGISTRAR, KILIFI 3RD DEFENDANT

KADENGE KENGA KOI 4TH DEFENDANT

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

THE HON. ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. This ruling is in respect of a Preliminary objection dated February 3, 2022 by the 5th defendant's on the following grounds;
 - a. That pursuant to Section 29 of the *Land Adjudication Act* the decision of the Ministerial Panel is final.
 - b. That this matter having been determined by the Ministerial Panel, it could only come to this court by way of Judicial Review to cash the decision.
 - c. The suit has been disguised as a constitutional petition and yet the issues raised fall within parameters of an ordinary suit.



- d. The petitioner does not disclose any reasonable cause of action.
2. Counsel for the 5th defendant submitted that the decision by the Ministerial Panel can only be challenged by way of judicial review process and therefore the petition is an abuse of the court process which is an attempt to circumvent the findings of the Ministerial Panel. Counsel urged the court to allow the preliminary objection as prayed.
3. Counsel for the petitioners submitted that this court has the jurisdiction to handle this matter by virtue of Article 162 (2) of the *Constitution of Kenya* and that the preliminary objection arises out of the interpretation of the ruling by Hon. Justice Olola relating to the Petitioners' Application dated July 27, 2020 that the issues raised in the petition can only be dealt with in a Judicial review as opposed to a petition.
4. Counsel further submitted that the petition raises constitutional issues which the defendants have violated and cited the case of *Mumo Matemu v Trusted Society of Human Rights alliance & 5 others* [2013] eKLR and South African Case of *Fredricks & others v MEC for Education and Training, Eastern Cape & Others*.

Analysis And Determination

5. The issue for determination is whether the preliminary objection has merit as per the grounds that Section 29 of the *Land Adjudication Act* which provides that the verdict of the Ministerial Panel is final unless reviewed vide a Judicial Review process.
6. This matter came up for hearing of the Petitioners' Notice of Motion dated July 27, 2020 whereby the applicant sought for an order of injunction restraining the respondents from interfering with the suit land.
7. Vide a ruling dated April 30, 2021 the court held at paragraph 15 which is relevant to this application that:

“As it were under Section 29 of the said Act Cap 284, the decision of the Panel is final and an aggrieved party could only come to this court for Judicial Review if some procedural impropriety was alleged. I did not see any evidence of the same before me.”
8. The court proceeded to dismiss the Petitioner's application for injunction.
9. The issues that the Petitioner is raising in the Petition emanate for the decision of the Ministerial Panel which heard the matter and determined it. If the Petitioners were aggrieved, then they should have filed a Judicial Review to challenge the process if there was any impropriety.
10. Section 29 of the *Land Adjudication Act* sets out the process and procedure that appeals before the Minister should take and provides thus: -
 - (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 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 orders thereto as he thinks just and the order shall be final.

11. In the case of *Tsuwi Mkare Tsuwi v Alex Nzaro Chai* [2020] eKLR the court held that:

“As can be seen from the provisions of Section 29(1) of the Act as cited above, once the Minister has rendered his decision, that is the end of the matter. From my reading of the *Land Adjudication Act*, Cap 284 of the Laws of Kenya, the Legislature did not intend that a person whose case fails to succeed before the Ministerial Panel can appeal to this Court or approach it in the manner in which the Plaintiff has done herein.

Accordingly, it is my considered view that the dispute in regard to who owns which parts of the disputed property has long been settled and this Court has no jurisdiction to re-open the case and make another determination as to who between the Plaintiff and the Defendant is the rightful owner of the disputed properties.”

12. I agree with the Olola J that this court cannot reopen the case that was finalized by the Ministerial Panel and re-litigate afresh. The upshot is that the 5th Respondent’s preliminary objection has merit and the petition is struck out with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 19TH DAY OF APRIL, 2023.

M.A. ODENY

JUDGE

