



Sairo v Mumo, Olkejuado Primary School (Head Teacher) & 6 others (Environment & Land Petition E003 of 2022) [2023] KEELC 17631 (KLR) (31 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17631 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION E003 OF 2022**

MN GICHERU, J

MAY 31, 2023

IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLE 1(3), (C) 2, 19(1) AND (3), 25(C),
(A, B AND E), 165(3), A, B AND D (1), II 244 AND 258 OF THE CONSTITUTION**

BETWEEN

BETWEEN

PAULINE SAIRO PETITIONER

AND

**JUSTUS MUMO, OLKEJUADO PRIMARY SCHOOL (HEAD
TEACHER) 1ST RESPONDENT**

JOEL SAPUR (ASSISTANT CHIEF –TOWNSHIP) 2ND RESPONDENT

**J. TETAYIO(B.O.M CHAIRMAN AND WILSON SAPUR-PTA (CHAIRMAN)
OLKEJUADO PRIMARY SCHOOL 3RD RESPONDENT**

OLKEJUADO PRIMARY SCHOOL 4TH RESPONDENT

INSPECTOR GENERAL POLICE 5TH RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 6TH RESPONDENT

THE HON. ATTORNEY GENERAL 7TH RESPONDENT



RULING

1. This ruling is on the preliminary objection by the second, fourth, fifth and sixth Respondents dated 1/7/2022. The said objection states as follows.
 - i. This court lacks jurisdiction to entertain this matter as per the provisions of section 18(2) of the *Land Registration Act* (Act No. 3 of 2012).
 - ii. This is a boundary dispute that ought to be determined as per the provisions of section 19 of the *Land Registration Act* and regulation 40 of the *Land Registration (General) Regulations 2017*.
2. In response to the preliminary objection, the respondent swore a replying affidavit dated 27/2/2023 in which she deposes as follows.

Firstly, she filed this petition as a result of the infringement of her various Constitutional Rights after her house was torched (she has said touched) by the pupils of Olkejuado Primary School under the instructions, incitement and guidance of the first, second and third Respondents.

Secondly, the boundary dispute has already been resolved by the District Land Registrar's ruling of 3/2/2022.

Thirdly, she seeks compensation in this suit and the Land Registrar cannot grant an order for compensation.
3. I have carefully considered the preliminary objection in its entirety including the grounds, the replying affidavit, the submissions by both sides and the law cited therein. I find that the preliminary objection has no merit for the following reasons.
4. Firstly, the Land Registrar has already determined the boundary if the ruling dated 3/2/2022 is anything to go by. However the copy filed in court is incomplete as page 5 thereof is missing. This is the page that contains the bulk of the land Registrar's findings. Sections 18(2) of the *Land Registration Act* provides as follows:-

“The court shall not entertain any action or other proceedings relating to a dispute as to boundaries of registered land unless the boundaries have been determined in accordance with this section”.

My understanding of the above provision is that before the land Registrar determines a boundary dispute, then the court has no jurisdiction. After the boundary has been determined, then the court has jurisdiction. In this case, the court has jurisdiction even if the dispute is on a boundary now that the Land Registrar has determined the dispute. It goes without saying however that the Petitioner must prove, in this petition that the house alleged to have been torched was on her land and not on school land.

5. Secondly, striking out pleadings is a draconian move that locks out a party from justice yet under article 50(1) of the *Constitution*, every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

A court should sustain a suit rather than strike out except where it is obvious that there is no jurisdiction, the suit discloses no cause of action, is res judicata or is affected by limitation.



6. Finally, prayers (a), (b), (c), (d), and (e) in the petition dated 4/5/2022 cannot be granted by the Land Registrar as they are clearly out of his jurisdiction.

For the above stated reasons, I dismiss the preliminary objection dated 1/7/2022. Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 31ST DAY OF MAY, 2023.

M.N. GICHERU

JUDGE

